

## **Coalition of human rights organisations**

**The International Federation for Human Rights (FIDH), together with Human Rights Center “Memorial” (Russia), People in Need (Czech Republic), Norwegian Helsinki Committee for Human Rights, Austrian Helsinki Association for Human Rights, Novaya Gazeta (Russia) and Civil Rights Defenders (Sweden)**

### **ISRAILOV Case – Trial in Vienna, Austria**

#### **Summary of proceedings (16-26 November 2010)**

##### **I. Summary of court proceedings**

The trial at the *Landesgericht für Strafsachen* in Vienna started on 16 November 2010. Three judges and eight jury members will have to pass a judgement at the end of the trial, which is currently planned for the end January 2011. Accused are three recognized Chechens refugees. Otto Kaltenbrunner (alias Ramzan Edilov, nicknamed “Schurik”) and Suleyman Dadaev (alias Muslim Dadaev, also called Surcho) are accused of having committed the offence of establishing a criminal organization, the offence of attempting to abduct and deport a citizen to a foreign power, and the offence of murder. Turpal-Ali Yeshurkaev is accused of the second and third of these offenses but not the first one.

**On day 1** of the trial the prosecutor, the representative of the victims’ family as well as the three defense lawyers - each representing one of defendants - made their opening statements. The judge briefly asked the defendants about their personal data and whether they would regard themselves as guilty, partly guilty or innocent. All three claimed to be completely innocent. **Day 2** was dedicated to questioning of Otto Kaltenbrunner. **On day 3** Turpal-Ali Yeshurkaev was questioned as well as eight Austrian witnesses of the crime, who all only spoke on the condition of anonymity and in the absence of the accused. **On day 4** there was a continuation of the questioning of Turpal-Ali Yeshurkaev and, at the end of the day, of Otto Kaltenbrunner. Additionally, two criminal experts were heard as well as nine further witnesses of the crime. The main news of this day was the suggestion of the judge – based on the announcement of Kaltenbrunner’s defense layer Rudolf Mayer - to call the Chechen President Ramzan Kadyrov and his advisor Shaa Turlayev as witnesses - to use the allegedly good contacts of Mr. Kaltenbrunner to suggest to Kadyrov and Turlayev to be available for the court via a skype video conference, or of course to come personally.

**Day 5** was fully devoted to the questioning of Suleyman Dadaev. **On day 6** a taxi driver was questioned who drove Otto Kaltenbrunner back to his home town St. Pölten after Kaltenbrunner was called by the police to meet them (who knew by the time that he was the owner of the get-away car). Furthermore, two Chechen witnesses as well as the former concubine of Kosum Yeshurkaev (brother of Turpal-Ali and also a suspect) were questioned. The (meanwhile divorced) wife of Otto Kaltenbrunner as well as two brothers of Suleyman Dadaev made use of their right to refuse to give evidence. At the end of the day Dick Marty, Rapporteur of the Parliamentary Assembly of Council of Europe (PACE) on the situation of human rights in the North Caucasus, served as an expert witness. **On day 7** there were two more questionings of expert witnesses. The first one was with Lord Frank Judd, a former PACE rapporteur on human rights in Chechnya, who just co-issued a report by the

British Parliamentary Human Rights Group (PHRG) following a fact-finding mission in February 2010. And the second was with the social scholar Aude Merlin, who is author of books and publications about the North Caucasus. Additionally there was a Chechen witness and the doctor of Kaltenbrunner in St. Pölten, who examined Shaa Turlayev two times during his stay in Austria in October 2008. The wife of Suleyman Dadaev also made use of their right to refuse to give evidence. A Chechen refugee, who spoke on the condition of anonymity, claimed that Lecha Bogatirov, the main suspect, who according to the prosecutor, fired the lethal shots, returned to Chechnya from Austria, where “as people say, he killed somebody fulfilling an order, and after awhile became the head of a special police unit in his native village o Pobedinskoje”. According to this witness, Bogatirov previously served in the group of Movladi Baysarov, and after Baysarov was killed by Chechen special task forces in the center of Moscow, he fled to Austria. To the question of the Judge “why was Baysarov killed”, the witness said “People say, this was on the order of our President.” *On day 8* three more Chechen witnesses were questioned, whereby Kosum Yeshurkaev, the brother of Turpal-Ali, and a close friend of both Dadaev and Kaltenbrunner also made use of his right to refuse to give evidence.

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## **II. Introductory statements**

### **Prosecutor's introductory statement**

On the first day of the trial the prosecutor made a three hour long presentation, reconstructing the events in a very detailed manner, making use of graphic displays which showed the planning of the crime and its course of action. Several times he referred to the connections of Otto Kaltenbrunner to the present political leadership in Chechnya. Thus, he presented photographs, dated October and December 2008, showing Kaltenbrunner very intimately hugging President Ramzan Kadyrov. Regarding the involvement of President Kadyrov he said that „at the moment” this question could not be answered with enough certainty to indict him.” But he also made clear that there was a political order for the deed, coming from Chechnya. He based this allegation on a prior effort of the Chechen leadership to get a hold of Israilov in June 2008, as well as on several meetings and telephone contacts between representatives of the Chechen regime and the main accused.

### **Civil parties' legal representative opening pleading**

In her opening speech the representative of the bereaved family of the victim, Nadja Lorenz, insisted that in order for the Court to be able to judge this case it had to keep in mind what happened to the victim and his family and what brought them to flee Chechnya and escape the hands of Kadyrov and then take legal steps (especially before the European Court of Human Rights) to obtain justice for the crimes endured by the victim and his father in Chechnya, that including savage torture and the holding in an illegal detention facility. Then she described the legal steps, which the Israilov family set in order to bring the crimes committed against them to court. Finally, Nadja Lorenz described the level of threat of Umar Israilov in Austria, which worsened considerably during the course of 2008.

### **The three defense lawyers**

The defense lawyers questioned the indictment in their opening pleadings and claimed the innocence of their clients. The main arguments of the three were quite different from each other, and partly contradicting.

### **III. The accused**

#### **Otto KALTENBRUNNER**

The defense lawyer of Otto Kaltenbrunner, Rudolf Mayer, claimed that there is no hard evidence for the accusations against his client, the two others, as well as against Lecha Bogatirov, who, according to the prosecutor, fired the lethal shots and managed to escape to Chechnya. He questioned whether Bogatirov wanted to kill Israilov with his shots, because he alleged that if he wanted to do this he would have shot differently. He questioned whether it is beyond doubt that the order came from Chechen President, Ramzan Kadyrov, and announced to call him as a witness (as well as one of Kadyrov's advisor and close associate, Shaa Turlaev, and Russian Prime Minister Vladimir Putin).

After having been arrested on 13 January 2009, Otto Kaltenbrunner gave a false testimony of where he had been the day before and on the day of the killing (he said he was at home drunk on the occasion of his wives' birthday and then Russian Old New Year), and also did not mention that Bogatirov and Dadaev had taken his car, nor that he had picked them up in the town of Sollenau to help them escaping. However, he then offered his „personal cooperation“ to the police, by which he meant that he would carry out his private investigation and find out for himself what has happened and how it happened and then report to the police. “In our tradition it is prohibited to point fingers at somebody without knowing that he is guilty. One has to be able to prove it,” – claimed Kaltenbrunner both at the police station and in court. Kaltenbrunner also denied the fact that he visited Chechnya in the recent past.

This was followed by a long period of silence, when Kaltenbrunner refused to testify, followed again by a misleading statement to the police in July 2009 (after getting partial access to the case files). Finally, he admitted that he had made one trip to Chechnya in December 2008, which he said was set off by a visit of Shaa Turlayev in Austria in October 2008. In court Kaltenbrunner explained that the aim of his visit to Chechnya, which he claimed lasted 4 to 5 days (but according to the log dates he was in Russia from 13 December 2008 till 2 January 2009) - was “to show the whole world what happens now in Chechnya”. The accused was upset that in Austria only negative information was available about the developments there, which according to him, was 90 % lies. He also admitted that he indeed met with President Kadyrov for 2-3 hours in his private residence in Gudermes, that he was accompanied by Shaa Turlaev, and that he, Kaltenbrunner, asked Kadyrov to broadcast objective reports about Chechnya via TV (to Austria). He further discussed with Kadyrov how to “help” all those Chechen asylum seekers, who are without residence permit and without jobs and who allegedly *en masse* turned for assistance in return during Shaa Turlayev's visit. He said that he visited remote villages, newly constructed factories, schools, cultural centers and even the prison in Chernokozovo in December 2008. He said that he accessed the prison without a permit, because Ramzan Kadyrov and Shaa Turlaev were eager to help him see the prison, which Kaltenbrunner claimed, was not worse than the detention facility where he is kept in Vienna.

In court Otto Kaltenbrunner for the first time admitted that Kosum Yeshurakev, the brother of the accused Turpal-Ali Yeshirkaev, picked him up in Poland after his return from Chechnya on 3 January 2010. The fact that Dadaev called him immediately after his return in Austria -while he had never tried to call him during his stay outside of Austria – he explained by the Chechen habit to call each other around the New Year celebrations. Another phone conversation with Dadaev as well as a meeting with him the same evening (who returned from his shadowing of Israilov's house) he also said to be part of normal behavior.

Asked about his relation to Dadaev who positioned himself as an Islamist and an opponent of Kadyrov he answered that their friendship was not based on politics. He said that when Turlaev visited Austria, Dadaev refused to see Turlaev, because he did not want to have anything to do with Kadyrov's people. When asked whether he would regard himself as a supporter of Kadyrov, Kaltenbrunner first reacted evasively, but in the end praised Ramzan Kadyrov as the only one "who ensured that this republic regained its face, freedom, and was reconstructed."

When examining the circumstances of the murder, Kaltenbrunner gave unconvincing explanations at several points: for instance, the judge asked why he bought two new SIM cards a week before the murder that he then used to communicate with Bogatirov. He said the SIM cards were intended for his kids, but when, on one visit at his home, Bogatirov (who had his own functioning mobile) asked Kaltenbrunner to give him one of the cards, Kaltenbrunner simply did so without asking questions. The other card he used himself. The two SIM cards were used nearly exclusively for talks within the group of the accused and suspects between the 7<sup>th</sup> January and the 13<sup>th</sup> January 2009, the day of the murder, when the two cards were deactivated and thrown away almost simultaneously.

On 12 January, the day before the murder, Kaltenbrunner tried to call Kosum Yeshurkaev twelve times. He could not explain the court why he did so, saying "Maybe I had a question, something extraneous." He rejected to have met Yeshurkaev and Bukhari Salamov later on the same day, between 5 pm and 6:30 pm. He also rejected a joint car ride with Bogatirov and Dadaev to the car repairing shop of Yeshurkaev in Sollenau (80 kilometers away from St.Pölten) at 10:45 pm on the night preceding the murder. Finally he admitted this trip and he explained that when Dadaev and Bogatirov stopped by at his house, they asked him, whether he would want to join them, and as he had nothing better to do. However, when they finally arrived in Sollenau, he claimed to have been drunk that he did not even leave the car.

Asked about the frequent rounds of phone conversations with Kosum Yeshurkaev on the 13<sup>th</sup> January, each time followed by calls to Dadaev or Bogatirov, he gave evasive answers. Two phone conversations with Kosum Yeshurkaev - only around 15 minutes after the killing and one of them after Kosum had spoken to his brother Turpal-Ali - he denied. "After the killing I did not speak to Kosum at all." "(But what about the call at 12:17?)" "This call did not take place. I say thank you to those who produced this spreadsheet." According to these spreadsheets from the telephone company, Kaltenbrunner received a call from Dadaev at 12:38, who asked Kaltenbrunner to come to Sollenau to pick them up. This was finally acknowledged by Kaltenbrunner, who commented that it was something completely normal among Chechens: that they asked for help and he offered it. Two additional phone conversations with Bogatirov and Dadaev (at 12:41 and 12:53) he denied as well.

However, as Bogatirov's car, which was left behind in St. Pölten by Bogatirov and Dadaev, was not immediately available, Kaltenbrunner only started to pick them up at 13:45. In the meantime he called three numbers in the Russian Federation. In court, he admitted that he had called, at 12:48, the (flamboyant) number +7.925.77 99999, then at 13:03 the number +7.925.71 88888 and at 13:06 the number +7.928.266 3482, which is used by Shaa Turlayev. He said that it was only in order to congratulate on the (Orthodox) New Year and that he only reached mailboxes.

Kaltenbrunner explained that when he arrived in Sollenau (at 14:30) there was a conflict between him and Bogatirov, because Bogatirov insulted him by saying 'Why are you already so drunk early in the morning?', which then was the reason why he did not want to speak to Bogatirov (or Dadaev) the during the whole trip together. When they had driven some 15 kilometers, and he was called by a policeman who asked him to return to St. Pölten to speak to them, he claimed to have been dropped

out of the car by Bogatirov. He then continued the car ride by a taxi buying three small bottles of schnapps at a gasoline station. (In the evening of 13.1., his first explanations will be that he was very drunk the day before, had no idea who took his car, and had slept till noon at 13 January. He had wanted to look at some cars at this 13 January.) However, a witness interrogated on 26.11.2010, who worked for a car-selling company in Berndorf testified that Kaltenbrunner stop by at her shop at about 2 pm asked her to call a taxi and spent 15-20 minutes at her shop. He made phone calls and did not show any signs of alcoholic intoxication.

### **Suleyman DADAEV**

The defense lawyer of Suleyman Dadaev, Lennart Binder, said that his client did spy on Umar Israilov on several occasions, but that was not part of the planning of the crime. He also claimed that, if the accusation is a contract killing, one has to indict not only the contractor, but also the principal. He said that one element of similar killings of prominent enemies of the regime in Russia and Chechnya was to try and blame it on somebody else. Dadaev positions himself as an Islamist and the follower of Dokku Umarov. According to the defense lawyer, in this case Dadaev and Yeshurkaev were supposed to play this role of the scapegoats in the crime and Dadav's political views made him a logical choice for this role.

In his questioning, Suleyman Dadaev gave a new, relatively consistent (but very unlikely) version of what happened. He claims to have met Lecha Bogatirov for the first time on 12 January 2009, one day before the murder. Regarding the observations of Umar Israilov – via the log-dates of his mobile phone it is proven that he was in the neighborhood of Israilov's house at least on December 15, 19, 22, 25, 26, 27 and 31 as well on January 2, 3, 4, 5, 10, 11, 12 and 13 – he said that this were no observations, but that he wanted to talk to him at the request of Artur Kurmakaev, and that the issue was 300.000 USD, which Israilov allegedly had stolen. He further said that he indeed managed to talk to Israilov several times, at the beginning they quarreled but in the end agreed that he does not have the money but maybe knows who has the money.

Asked why he called Kaltenbrunner immediately after Kaltenbrunner's return to Austria from Chechnya, and after he had once again been near Israilov's house, and why he later in the same evening met Kaltenbrunner, he answers that he cannot remember. He claimed that he had no idea about Kaltenbrunner's stay in Chechnya. „I knew Kaltenbrunner as one of the closest aides of President Maskhadov. A mister Kaltenbrunner who supports Kadyrov I didn't know.”

About his membership in the board of a Chechen cultural centre in St. Pölten he says that his name came by pure chance on the list, but that he was asked by Kaltenbrunner before.

Asked about his political affiliation he claimed to be a „good Muslim“ and a supporter of Doku Umarov, whom he called the President of the Chechen Republic and whose political aim he described as building an independent Islamic state. He also termed Ramzan Kadyrov as a national traitor.

Asked about a meeting in Sollenau on 10 January between him, Kaltenbrunner, and Kosum Yeshurkaev, he claims not to remember or that Kaltenbrunner wanted to pick up his car.

Asked about his visit in the neighborhood of Israilov's house in the afternoon of 12 January, together with Bogatirov, he answered that the trip was made because Bogatirov wanted to meet some other people and that he wanted to use this trip to speak again to Israilov, whom they then did not see. The meeting of Bogatirov in a Viennese café allegedly was with two followers of Doku Umarov, who spoke about the need to kill Kaltenbrunner because of his trip to Chechnya. “That is when I went out of the café, because I did not want to listen to that.” Then they drove back to St. Pölten to

Kaltenbrunner and then drove together to Sollenau. (“Whose idea was this?”) I think it was our joint idea because there are always many Chechens there and that is nice.”

He vehemently denies that during this meeting he had asked Turpal-Ali Yeshurkaev to borrow his car for the next day. “I did not say anything like that in this evening. But in the next morning I called him in the name of Bogatirov and asked him to come.”

He claims that he was woken up by Bogatirov the next morning, the 13 January on 5 am, who simply told him ‘Let’s drive.’ He had no idea where they would go to. “I talked with Bogatirov about Israilov and Kurmakaev. And then I saw that we are driving in the direction to Vienna.” And as Bogatirov knew Kurmakaev very well, so Dadaev, he believed in Bogatirov’s assessment that there is some money. („But you did not believe yourself that this is true?”) “This is what I also think today, but at that time I thought that the story is possible.” Bogatirov wanted to fly to Spain or Portugal in the next days and before that wanted to talk to Israilov about the money. “At this time of the day?”, asked the judge.

Then, being near the house of Israilov, Dadaev claims to have slept in the car until around 11:30, only interrupted by some phone-calls. The content from phone-calls with Kaltenbrunner at 11:17 and 11:23 he could not remember, but was sure that he did not tell him that he together with Bogatirov was waiting for Israilov nor was there any discussion about Kaltenbrunner’s Volvo. Then he went to a nearby café and then at around 11:50 he came back to the car. Bogatirov got out of the car and told him that he could come home by himself (that is with Yeshurkaev) and that Dadaev could leave. And so he started to drive away. But then, when he was already on the way, he heard some women screaming, and as he wanted to know what happened he stopped the car, got out of it and looked into the direction of where the screaming came from. He then decided to call Turpal-Ali Yeshurkaev, reached him only at the second or third try. Yeshurkaev told him that he does not know what was going on, but that something was happening. Dadaev asked him where he was and he told it to him. So he drove there, and then Bogatirov and Yeshurkaev entered the car and Bogatirov shouted ‘Let’s drive away quickly’, and so I automatically drove away.

Then in the car, Bogatirov only briefly told that he was attacked by Israilov without telling any details about who shot at whom. Bogatirov only said to the other two that in the course of a brawl he had injured Israilov. When told by Dadaev that he had heard a shot, Bogatirov only answered that he had injured Israilov. But Bogatirov also did confirm that there was a shooting, but without details. Therefore Dadaev wanted to get rid of the two others, parked the car in front of another supermarket some 5 kilometers away and went to a tram to get away from the others. But, so Dadaev, the other two simply followed him and also entered the tram. They got out of the tram some 3 kilometers further away to continue with a taxi. During this time he called Kaltenbrunner, “I cannot remember about what it was. Maybe I wanted to warn him about his car.” He denied having asked to be picked up in Sollenau, because “at the time we did not know where we wanted to go to”, but just were driving in the direction to the south of Vienna, having said to the taxi driver he should bring them to Mödling, to correct this to Baden later.

In Baden, Kosum Yeshurkaev picked up his brother, scolded him and then drove away. He then called Kaltenbrunner from an internet café, because Bogatirov had told him so, and as Kaltenbrunner did not the way to Baden, they agreed to be picked up at the end of the federal street B18 near Sollenau. At 2:30 pm they were picked up by Kaltenbrunner, but as Kaltenbrunner smacked of alcohol, Bogatirov himself drove and brought him to a Georgian friend of Dadaev.

He claims that Artur Kurmakaev was the one who ordered him to speak with Israilov. The first meeting with Kurmakaev was in August 2008, and the issue was Dadaev's own problems which he had at home, and that he even was physically attacked by a group of men including Kurmakaev. He then contacted the police, who did not believe him, and instead sued him for giving a wrong testimony. Israilov only became the issue in meetings December 2008. "Kurmakaev, at the beginning was here on behalf of Kadyrov, but then it was said that he represents Dokku Umarov."

After having told this version to the judge, the prosecutor started to confront Dadaev with his earlier versions including some clear confessions. The prosecutor said he would only present some of the changes in the versions, the „highlights“. He said that Dadaev began by claiming that he was outside Austria at the day of the crime, but that he victim was an asshole and a henchman of Kadyrov. Dadaev also said that he had heard "that Israilov in Chechnya had more bodyguards than the Austrian President, and that Israilov had tortured, abducted, raped and killed many people", followed by another questioning in which he claimed the following: "My brother Zelimkhan is disabled due to Israilov and cannot walk properly any longer. Israilov has tortured him in 2003 when he still was a big guy. Back then he was the right hand man of Kadyrov and was commander of half Chechnya. In 2001, Akhmad Kadyrov has adopted Israilov, because Israilov was known to be particularly cruel." Asked about these descriptions of Israilov, Dadaev said that he does not know, if Israilov personally took part in torturing his brother, but that he knows that it was the Kadyrovtsy and for him they are all the same.

Then, he also admitted in an earlier questioning by the police the following: "I have subsequently noticed the planning and was also involved in the plan to bring him to the Czech Republic. I am completely sure that he should not have been killed in Austria. But I think that he would have been killed after finding the money." However, he claims that he mastermind of the planning was Kurmakaev, not Kaltenbrunner, and that the purpose was to find the money which Israilov allegedly had embezzled. This he commented now in the following manner: "I emphasize that I did not spy on him. But regarding Israilov I clearly saw how the clouds above him became constantly more dense and that something would happen."

Then, when the prosecutor confronted him with another element of a confession he had made earlier, Dadaev for the first time during the trial admitted of having taken part. In this police interrogation Dadaev speaks about when they left Kaltenbrunn's house on 13 January 2010: "Lecha woke me up at around 4 am, and we were driving to Vienna. During this ride Lecha told me that today there will be the 'big concert'. I knew that he meant the planned abduction by this." Now, in the trial, Dadaev claims that yes, Lecha had told him about a concert, "but if I had known that there would be something like an abduction, why then should I have gone there" and "I don't deny, I did have the feeling that something would happen to Israilov, but to feel and know are something different."

Dadaev also said in the same police interrogation that "Lecha had planned that when Israilov would leave the house, he would go together with Turpal-Ali to Israilov, and then would incapacitate him with a taser. Furthermore Lecha could incapacitate him with a blow as strong as he is. And so I sat in the car and was waiting for Israilov to appear." Dadaev's reaction in the court to this quotation: "I don't know what to answer to this", and then "I cannot remember having made such assertions", followed by "This are not only facts but also my opinions. I wanted to help the investigation."

Then the prosecutor asks: „Once again, did you participate at least in a planned abduction, or have you been only accidentally there as you tried to explain to us today?“ Dadaev answers: This question is not so easy to answer. I was afraid that something could happen. I knew something, I was not so non-informed. But I did not know that this would happen there, what did then happen.“ "That means, you did not know that a murder or a killing would happen?" „Of course not.“ "But did you expect an

abduction?” „I thought that possibly he could be abducted but I did not think that this could happen on Austrian soil. I did not take it seriously.”

After this half confession, Dadaev again falls back in denying his involvement, and claims to have repeatedly met Israilov to discuss with him their joint problems with Kurmakaev and about the story with the allegedly embezzled money. He claims that in the end he believed Israilov that Israilov did not have the money, but was convinced by Bogatirov who knew Kurmakaev so well and claimed that Kurmakaev has a good nose for such money.

### **Turpal-Ali YESHURKAEV**

The indictment believes that Turpal-Ali Yeshurkaev is the second person who was running after Umar Israilov, attempting to abduct him, but that it was Lecha Bogatirov who actually killed Israilov. Witnesses provided different account as to whether or not Yeshurkaev shot, or had a gun.

The defense lawyer of Yeshurkaev, Peter Philipp, claimed that the indictment was in contradiction with the fact that his client, being a drug user, was hired for such an operation one day before it took place. He further said that while the indictment said that his client had the smallest role in the operation, even this was wrong because his client played no role at all, because he did not know at all what was going on.

During interrogation in court on 18 November, Yeshurkaev presented a third version of the events of January 13 since his detainment (the previous two he verbalized during interrogation during preliminary detention). He admitted that there was a meeting of up to ten people in his brother Kosum's repair facility at around 12 pm on 12 January, and that Dadaev had asked him to borrow his car (a Opel Astra) for the following day. He claimed that he had not seen either Kaltenbrunner or Bogatirov there. He also said that he hardly knew any of the three indicted men and that is why he agreed to lend them his car only if he himself was the driver, since he did not want to pay fines for letting other people drive his vehicle. He said that Dadaev and Bogatirov did not inform him of what time exactly the car was needed and for which purposes. “We will call you and let you know when to start”, they said. “It could be for wedding or for shopping, I had no idea, it contradicts Chechen traditions to ask such questions”, said Yeshurkaev. The next morning, at 5 am Dadaev called and asked Yeshurkaev to come to Vienna. He then arrived to the city at around 8 am, met Dadaev at a gasoline station (Dadaev was driving Kaltenbrunner's VOLVO car) and followed Dadaev to the Leopoldauer Strasse, a few blocks away from Israilov's house. Dadaev showed him a place to park, at the ground where parking was prohibited. Yeshurkaev said he did not pay attention to the “no parking” sign. Yeshurkaev said that he “took a pill” (drugs) that morning, but he felt fine.

The whole morning from around 8 am till before the attempted kidnapping and following murder at around 12 am he claims to have waited in his car, only interrupted by some short walks in order to buy cigarettes, and by a walk to Kaltenbrunner's Volvo some twenty minutes before the shoot-out. Dadaev told him that they were waiting for someone who was about to come out. Yeshurkaev said he was waiting for so long without knowing its purpose because according to the Chechen tradition, it was embarrassing to ask such questions.

Yeshurkaev further admitted that before 12 am, the time of the murder, his brother Kosum called him three times. According to him, each time Kosum told him to immediately come to his car repairing shop in Sollenau in order to help him. He nevertheless stayed in Vienna because each time the other two told him that he only has to wait a very little longer and that “the man soon will come”.



Immediately after the last call of Kosum, he claims, he went to look for the other two men in order to say that now he finally had to go. Then he heard shots and saw Lecha Bogatirov running in his direction, pushing his car and pistol into his hands. Instinctively, claims Yeshurkaev, he ran after him and got into the first available car, which was the Volvo car driven by Dadaev. He described Bogatirov as a dangerous and mad psychopath. Nevertheless he also got into the run-away car because he wanted to get away from the site as quickly as possible. He admitted that he wanted to hide from the police.

According to Yeshurkaev, while being in the run-away car, the tram, and then the taxi to Baden (between 12:05 and 13:20) Dadaev, Bogatirev and himself did not speak with each other. "I saw that Bogatirov is a psychopath, maybe a moron. So I decided not to speak to him. He could have shot me as well."

He claims that he got punked. Asked how he means this he answered "I was asked to give my car, I drove there, and a person was killed. Of course one will think that I was involved."

The prosecutor and the lawyer of the victims reminded him of earlier, very different, versions of the events, which he gave when he was questioned by the police. He answered that at the time he was very sick and only wanted that the questioning over as soon as possible.

With the help of several witnesses and a video recording of the surveillance camera in a stationer, Yeshurkaev could be identified as one of the two persons who chased Israilov and who had a brawl with him (in which Israilov suffered some severe strokes with a gun at his head) and who finally shot him. This war insofar easy as Yeshurkaev had his white socks put over the edge of his trousers. Additionally several witnesses at least said that his shape fits one of the persons they saw.

#### **IV. Medical experts**

The first medical expert presented the results of the DNA-tests of four different trace areas: from within the get-away car, from the crime scene, from the jacket of the alleged killer and from the jacket and body of the victim. The only meaningful result was that the jacket of the killer had DNA traces of Bogatirov.

The second medical expert presented the forensic examination. It showed three lacerations at the head and three shot wounds in the body, all fired from behind. The lethal shot entered the back and then stroke through heart and splenic. Asked whether the victim had a survival chance the expert answered that it is a time factor. "If he would be shot at in front of the OP of a hospital he would have a good chance. ... A deadly outcome was quite likely."

#### **V. Expert testimonies**

##### **Dick Marty, the PACE rapporteur on the humsn rights situation in the North Caucasus**

In his witness testimony, Dick Marty said that the situation was very delicate in all three republics, characterized by violence, arbitrariness and impunity, but that it was not exactly the same everywhere. It was striking that there was a personality cult in Chechnya, which was absent in Dagestan and Ingushetia. „You talk with many different public officials and in every second sentence they say ‘thanks to our President’” He also said that the Islamization was much more rigorous than in the other two republics. For example it was ordered that all women have to wear a headscarf at the street. He said that not only were several prominent journalists and human rights defenders like Anna Politkovskaya and Natasha Estemirova killed, but that so far there was no conclusive investigation into all those killings.

### **Lord Frank Judd, former PACE rapporteur on Chechnya**

Lord Frank Judd, former PACE rapporteur on the human rights situation in Chechnya, recently visited Chechnya as part of fact-finding mission in February 2010 by the All-Party Parliamentary Human Rights Group (PHRG) of the British Parliament. The main conclusion of their report published in June 2010 was that the human rights situation in Chechnya was still very bad and people had neither security nor freedom. (The report can be found under [http://www.eng.kavkaz-uzel.ru/system/attachments/0000/0928/Chechnya-\\_PHRG\\_Chechnya\\_Mission\\_Report\\_2010.pdf](http://www.eng.kavkaz-uzel.ru/system/attachments/0000/0928/Chechnya-_PHRG_Chechnya_Mission_Report_2010.pdf))

Lord Judd reminded that the Russian Federation is a member of the Council of Europe, which means obligation to respect human rights. Moreover, tyranny and the repression provoked extremism and are conducive for terrorism. “When people disappear, when their houses are burnt down..., when there is torture, extrajudicial executions, then the people cannot have any confidence in the legal system. Where should discontent young people turn to? And that is why some become extremists.” Lord Judd emphasized that the main problem of contemporary Chechnya were virtually blanket impunity for Federal and Chechen security officials; so that “some perpetrators were so confident of not being prosecuted, they did not even cover their faces when carrying out their crimes.” Another problem was fear. Witnesses of grave crimes are afraid to come forward, because they are afraid not for their own safety but also about the safety of their relatives.

Chechen television contains perpetual propaganda about the achievements of the President Kadyrov. “President Kadyrov has created a cult of personality and an image of being all-powerful within Chechnya.” Lord Judd also quoted from a transcript from a program broadcast Chechen television recently, in which President Kadyrov was recorded as having said “I am looking for evildoers everywhere. If three people meet, one of them will always be one of my men. I know everything. I hear everything.”

Asked whether there is a policy aiming at bringing back to Chechnya people who have fled Europe, Lord Judd responded that Kadyrov said “Nobody, that is no Chechen, can escape from me and my justice, wherever they are.”

Asked about statements from Kadyrov in the public television that human rights organisations are national traitors, or that “enemies of the state” and whether such statements could result in killings abroad or whether they could be regarded as direct orders to kill, Lord Judd responded: “He says a lot of things which create this climate of fear and impunity. He encourages and activated people to set such deeds. But it is not only Kadyrov alone, but also the persons around him.”

### **Aude Merlin, professor at the Free University Brussels**

Aude Merlin said that she visited Chechnya both during the first as well as during the second wars. The visits have left horrible impressions, “the totally destroyed capital, and all what was afterwards with the impunity for the horrible crimes that were committed.”

Asked whether Ramzan Kadyrov was following the agenda of the central government in Moscow or whether he was having his own agenda, Merlin explained that both of these tendencies were present. She said that the Chechenization of the conflict, carried out stage by stage and beginning with the appointment of Akhmad-Hadji Kadyrov as the Acting Head of the Administration in Chechnya, was embedded in a policy of colonization. Moscow wanted to reduce the numbers of casualties among its military personnel, to show the world that the war is over, that there was order. Ramzan Kadyrov’s own political wishes are to have a autonomy and political, and military power.

Asked about which methods he used to win so much power, she answered that in his effort to bring people “into his boat” he also used torture, he used elections, he used ways to curb back the work of independent journalists and human rights organizations.

Asked about the motive for the apparent effort of the Chechen government to bring back the tens of thousands of Chechen refugees to Chechnya, Merlin answered that these endeavors already started in 2002, when the refugees in Ingushetia and Dagestan were pressured to return. “This has several reasons. First: Russia as well as the Chechen government wish to show that Chechnya again has become a normal republic. Second: Kadyrov wants to create the mythos that the Chechen society is united under his own presidency, without any opposition.”

Asked about how Kadyrov talks about his opponents, she answered that the references depend on the sources used. While in official declarations he and other members of the Chechen leadership would most often use disguised words, they also often are very blunt. She quoted from an interview with Kadyrov in the „Jeshednevnyj Jurnal“ from 24 June 2009, equaled experts and human rights defenders to bandits, terrorists, criminals.”

When asked about whether the Chechen President cared about the judgments of the ECtHR, Dr. Merlin answered that it was possible to speak about the many grave human rights violations of the Russian security structures vis-à-vis Chechens, and that also Ramzan Kadyrov repeatedly talked about it. “So far we only have judgments where the perpetrators are members of the Russian security structures, but not Kadyrov and his Kadyrovtsy. But when now those cases will be heard in the ECtHR which concern them, he will certainly care”.