



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-05-87/1-T  
Date: 23 February 2011  
Original: English

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**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Christoph Flüge  
Judge Melville Baird

**Registrar:** John Hocking

**Judgement of:** 23 February 2011

**PROSECUTOR**

**v.**

**VLASTIMIR ĐORĐEVIĆ**

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**PUBLIC JUDGEMENT  
WITH CONFIDENTIAL ANNEX**

**VOLUME I of II**

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**The Office of the Prosecutor:**

Mr Chester Stamp                      Ms Paige Petersen  
Ms Daniela Kravetz                    Ms Silvia D'Ascoli  
Ms Priya Gopalan                      Mr Elliott Behar

**Counsel for the Accused:**

Mr Dragoljub Đorđević  
Mr Veljko Đurđić

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## I. INTRODUCTION

1. The Accused, Vlastimir Đorđević is charged in the Indictment with crimes allegedly committed between 1 January 1999 and 20 June 1999 against Kosovo Albanians in Kosovo. The Indictment, as ultimately amended, alleges that forces of the Federal Republic of Yugoslavia (“FRY”) and Serbia carried out acts which resulted in the deportation of approximately 800,000 Kosovo Albanian civilians. It is alleged in particular that forces of the FRY and Serbia systematically shelled towns and villages, burned homes and farms, damaged and destroyed Kosovo Albanian cultural and religious institutions, murdered Kosovo Albanians, and sexually assaulted Kosovo Albanian women. Specific actions of this nature are alleged to have taken place between March and May 1999 in a number of towns and villages in 14 municipalities of Kosovo. The Indictment further alleges that forces of the FRY and Serbia murdered hundreds of Kosovo Albanian civilians and other persons taking no active part in the hostilities. Appended to the Indictment are lists of 840 allegedly murdered persons who are known by name. These allegations support five counts of crimes against humanity and war crimes, namely deportation, forcible transfer, two counts of murder, which is charged as a war crime and as a crime against humanity, and persecutions.

2. The Indictment charges the Accused, at the time Assistant Minister of the Ministry of Internal Affairs of Serbia (“*Ministarstvo Unutrasnjih Poslova*” or “MUP”) and Chief of the Public Security Department (“*Resor Javne Bezbednosti*” or “RJB”) of the MUP, with individual criminal liability under Article 7(1) of the Statute of the Tribunal for planning, instigating, ordering, or otherwise aiding and abetting in the planning, preparation, or execution of the alleged crimes. The Accused is also charged under Article 7(1) of the Statute for his alleged participation in a joint criminal enterprise (“JCE”), the purpose of which is alleged to have been the modification of the ethnic balance in Kosovo in order to ensure continued Serbian control over the province. It is alleged that this purpose was to be achieved by criminal means consisting of a widespread or systematic campaign of terror and violence that included deportation, forcible transfer, and persecutions directed at the Kosovo Albanian population during the Indictment period. The Accused is alleged to have contributed to this JCE by, *inter alia*, directing and exercising effective control over the RJB personnel and other members of the forces of the FRY and Serbia in Kosovo, by taking a lead role in the planning, instigating, ordering and implementation of the program of concealment by members of the RJB of the crime of murder, by incorporating volunteers into the MUP, by failing to report and to investigate crimes and by arming non Kosovo Albanian civilians in Kosovo while disarming the residents of villages which were of predominantly Albanian ethnicity.

3. The Accused is also charged with criminal liability under Article 7(3) of the Statute, as a superior, in his capacity as Assistant Minister of the MUP and Chief of the RJB, over MUP units deployed in Kosovo.

4. The Accused was initially indicted together with Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić by an indictment confirmed on 2 October 2003. On 8 July 2005 the case against the Accused, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić was joined with the case against Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić who were also charged with the same alleged crimes. On 26 June 2006 the case against the Accused was severed from the proceedings against Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić because the Accused was still at large. The trial in the latter proceedings commenced on 10 July 2006. A Judgement was delivered on 26 February 2009.

5. Having been arrested on 17 June 2007 in Montenegro and transferred to The Hague, at his further initial appearance on 16 July 2007 the Accused pleaded not guilty to all counts in the Indictment.

6. As discussed in detail in the Judgement that follows, forces of the FRY, in particular forces of the Army of the FRY (“*Vojska Jugoslavija*” or “VJ”), and forces of the Republic of Serbia, in particular forces of the MUP of Serbia, were engaged in Kosovo in 1998 and 1999. The Chamber will refer to the specific forces involved in an operation when the identity of these forces is known from the evidence. Where there is insufficient evidence regarding which specific forces of Serbia or FRY were involved, or where members of both Serbian and FRY forces participated in a specific operation, the Chamber will usually refer to these forces as Serbian forces. A reference to Serbian forces, therefore, should be understood as a reference either to Serbian or FRY forces, or to forces of both Serbia and the FRY.

7. Throughout the Judgement the Chamber has referred to locations by their names in both Serbian and in Albanian. Where these names are different in the two languages, the name of each location appears in the text in Serbian/Albanian, in the order in which names of locations are listed in the Indictment. Where the name of a location in Serbian is the same as in the Albanian language, this name appears only once.

8. A number of documents admitted into evidence, which originate in the MUP of Serbia or in the VJ refer to activities of Kosovo Albanian terrorists or Kosovo Albanian terrorist forces. The Chamber has received detailed evidence regarding only one such force engaged in armed activities in Kosovo in the period relevant to the Indictment, the Kosovo Liberation Army (“KLA”). Therefore, the reference to KLA in this Judgement should be understood also as a reference to

Kosovo Albanian armed individuals described in MUP or VJ documents as Kosovo Albanian terrorists.

9. Finally, a number of witnesses in this trial gave evidence with one or more protective measures. Where the Chamber has considered that citing directly the name or the pseudonym of a witness, in the context of the specific evidence, may reveal the identity of this witness, the Chamber has chosen to omit the references to this evidence from the public Judgement. These references are nevertheless included in the Confidential Annex to this Judgement.

## II. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

10. In the present Judgement, the Chamber is to determine the innocence or the guilt of the Accused in respect of each of the five counts of the Indictment. Article 21(3) of the Statute enshrines the presumption of innocence to which the Accused is entitled. This presumption places on the Prosecution the burden of establishing the guilt of the Accused, a burden which remains on the Prosecution throughout the entire trial. In respect of each count charged against the Accused, the standard to be met for a conviction to be entered is that of proof beyond reasonable doubt.<sup>1</sup> Accordingly, the Chamber has determined in respect of each of the counts charged against the Accused, whether it is satisfied beyond reasonable doubt, on the basis of the whole of the evidence, that every element of that crime charged in the Indictment, including each form of liability, has been established. In so doing, in respect of some issues, it has been necessary for the Chamber to draw one or more inferences from facts established by the evidence. Where, in such cases, more than one inference was reasonably open from those facts, the Chamber has been careful to consider whether any inference reasonably open on those facts was inconsistent with the guilt of the Accused. If so, the onus and the standard of proof requires that an acquittal be entered in respect of that count.<sup>2</sup>

11. The Chamber has weighed and evaluated the evidence presented by the parties. The nature of the case is such that the Chamber has been faced with a large amount of evidence, which is sometimes characterised by contradictions and inconsistencies.

12. The Chamber would emphasise that the mere admission of evidence in the course of the trial has no bearing on the weight which the Chamber has subsequently attached to it.

13. The Chamber further observes that the more than 10 years that have passed since the events alleged in the Indictment, would have, in all likelihood, affected the powers of recall of the witness.

14. Many of the witnesses called to give evidence in this trial have previously given evidence relevant to the same events in the trial in this Tribunal against Milan Milutinović et al, and in the trial against Slobodan Milošević. There were times where the evidence of a witness in the present trial differed from an account given in the proceedings against Milan Milutinović et al or in the proceedings against Slobodan Milošević, or in proceedings in other jurisdictions, or where the witness's oral evidence differed from a prior statement or testimony of the witness. It has been recognised that "it lies in the nature of criminal proceedings that a witness may be asked different

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<sup>1</sup> Rule 87(A) of the Rules provides, in its relevant part: "[...] A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proven beyond reasonable doubt".

questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court”.<sup>3</sup> Nevertheless, such differences in the accounts of a witness call for careful scrutiny when determining the weight to be given to the evidence of a witness. Some of this evidence will be reviewed in more detail later in this Judgement.

15. The Chamber received evidence from a number of witnesses who were residents of or present in towns and villages where the events in the Indictment are alleged to have taken place. With respect to some of these witnesses the Chamber observed a prevailing tendency to deny any knowledge about any activities of the KLA in Kosovo or KLA presence in certain areas. Each such case required careful assessment. There were a few such witnesses whose evidence the Chamber accepted as truthful. Other such witnesses were not accepted as honest or reliable. However, in many cases in the end the Chamber was satisfied that the evidence of the witness was otherwise honest and reliable, but the Chamber was not able to rely on the denial of the witness about knowledge of KLA activities or presence.

16. The Chamber also received the evidence of former or current members of the Serbian forces who were involved in or present during events alleged in the Indictment or were involved in related events. The evidence of some of these witnesses left the Chamber with the clear impression that they were seeking to minimise or misrepresent their own involvement or the involvement of their associates, or of elements of Serbian forces, in the events alleged in the Indictment, or to exculpate their own behaviour or the conduct of Serbian forces. Because of this the Chamber has not been able to accept their evidence, or aspects of it, as truthful and reliable. Of course, each such case required careful assessment.

17. The Chamber also received the evidence of former or current employees of the MUP of Serbia on issues of material importance to the case against the Accused. In the course of the evidence of some of these witnesses it became apparent that on certain issues their evidence before the Chamber was in material aspects different from what these witnesses had testified in trials of other accused before this Tribunal, or in a prior written statement or testimony. The Chamber formed the view that the oral evidence of some of these witnesses in this case had been influenced by their loyalty to their former superior. The Chamber has considered this factor when weighing and assessing the credibility of their evidence.

18. Despite the difficulties identified above, after having carefully reviewed and weighed all the evidence, the Chamber has been able to make findings on the facts in this case sufficient for it to be

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<sup>2</sup> *Čelebići* Appeal Judgement, para 458.

able to reach a decision on the guilt or innocence of the Accused on each of the five counts alleged in the Indictment. As will be seen, the Chamber has accepted some evidence notwithstanding the presence of contradictory or inconsistent evidence. At times the Chamber has rejected evidence despite the presence of other consistent evidence. At times the Chamber has been persuaded it should accept only part of the evidence of a witness while rejecting other parts. In each of these cases the Chamber has acted in light of the other evidence on the issue and only after very careful scrutiny of the witness and the evidence.

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<sup>3</sup> *Naletilić* Trial Judgement, para 10; *Limaj* Trial Judgement, para 12; *Mrkšić* Trial Judgement, para 14. See also *Vasiljević* Trial Judgement, para 21.



### III. CONTEXT

19. The crimes charged in the present Indictment are alleged to have been committed in 1999 in Kosovo, at the time a province in the south-west of the Republic of Serbia. The Republic of Serbia was then one of the constituent republics of the FRY. Today the Former Yugoslav Republic of Macedonia (“FYROM”) is to the south of Kosovo, the Republic of Montenegro and the Republic of Albania are to the west.

20. In early 1998 Kosovo had a population of approximately 2.1 million of which an estimated 83 per cent were of Albanian ethnicity, approximately 10 per cent were of Serb ethnicity, and about seven per cent were of other ethnic groups, including Roma.<sup>4</sup>

21. Under the Constitution of the Socialist Federal Republic of Yugoslavia (“SFRY”) of 1974 Kosovo had the status of an autonomous province within the Republic of Serbia and enjoyed a certain degree of autonomy and self-management.<sup>5</sup> The Constitution of SFRY of 1974 provided further for some linguistic rights for people in autonomous provinces, including the right to instruction in their own language.<sup>6</sup> The Constitution of the Socialist Republic of Serbia of 1974 also declared Kosovo an autonomous province<sup>7</sup> and provided for the right of Kosovo Albanians to education in their own language<sup>8</sup> and for the use of languages other than Serbo-Croatian before public authorities.<sup>9</sup> It allowed further for the possibility for the autonomous provinces to have their own administrative and executive organs and to pass legislation on issues not governed by republican law.<sup>10</sup> Based on these constitutional provisions, Kosovo had its own institutions, including a regional assembly and government, a Supreme Court, a separate police, and a central bank.<sup>11</sup> Kosovo was represented in the Assembly of Serbia<sup>12</sup> and in the SFRY Presidency.<sup>13</sup>

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<sup>4</sup> Exhibit P983, p 1. According to an official census conducted in Kosovo in 1981, Kosovo’s population in 1981 was approximately 1.6 million of whom 77 per cent were Kosovo Albanians, 13 per cent were Kosovo Serbs, and 10 per cent were of other ethnicity, Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 4. In 1991 another official census was carried out but most of the Kosovo Albanians did not take part in it, Helge Brunborg, T 6114; Exhibit P983, p 1; Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 4. The Federal Statistical Office of the FRY, based on projections from the 1981 census estimated the total population of Kosovo in 1991 to be 1,956,000, of which 82 per cent were Kosovo Albanians, 10 per cent ethnic Serbs, and 10 per cent other ethnicities, Exhibit P983, p 1. The Federal Statistical Office estimated further that in 1997 Kosovo had a *de jure* population of 2,188,000, and a *de facto* population (after taking into account migration) of 2,166,000, Exhibit P983, p 1. The Federal Statistical Office’s estimate for mid 1998 was that Kosovo has a *de jure* population of 2,222,000, Exhibit P983, p 1. This is consistent with UNHCR estimates according to which, in March 1998, Kosovo had a *de jure* population of 2,188,817, Exhibit P983, p 2.

<sup>5</sup> See Exhibit D902, Articles 1, 2, 4, 248, and 258.

<sup>6</sup> Exhibit D902, Articles 171 and 246.

<sup>7</sup> Exhibit D130, Articles 1, 291-293.

<sup>8</sup> Exhibit D130, Article 147.

<sup>9</sup> Exhibit D130, Article 240. See also Xhafer Beqiraj, T 4839.

<sup>10</sup> Exhibit D130, Articles 293, 294.

<sup>11</sup> Veton Surroi, T 247; Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 5; Mahmut Halimi, T 2932.

22. In March and April 1981 student protests took place in Priština/Prishtinë,<sup>14</sup> the capital of the province, during which protesters sought that Kosovo be given the status of a republic within the Yugoslav federation.<sup>15</sup> The demonstrators clashed with the police and a state of emergency was declared.<sup>16</sup> Joint security forces comprising members from all republics of the SFRY were sent to Kosovo.<sup>17</sup> In the following years inter-ethnic relations deteriorated.<sup>18</sup> Kosovo Serbs and members of other minorities were subjected to attacks. A number of Kosovo Serbs moved out of Kosovo, partly as a result of such attacks, and partly for economic reasons.<sup>19</sup>

23. On 24 March 1987, Slobodan Milošević, at the time head of the League of Communists of Serbia, delivered a speech at a rally for Kosovo Serbs held in Kosovo Polje/Fushë Kosovë. A phrase of this speech, “No one should dare to beat you”, was broadcast often on Serbian television.<sup>20</sup>

24. At approximately the same time the Presidency of Serbia set up a task force to draft a proposal to amend the Constitution of Serbia.<sup>21</sup> The amendments were adopted by the Assembly of Serbia in February 1989.<sup>22</sup> The effect of these amendments was seen by Kosovo Albanians as restricting the autonomy of Kosovo.<sup>23</sup> Their adoption by the Assembly of Serbia triggered protests in Kosovo, strikes, including a strike of the workers at the Trepča Mines, and calls for the resignation of officials in Serbia.<sup>24</sup> In response to the protests, the SFRY Presidency adopted special measures which were supported by a declaration of the SFRY Assembly.<sup>25</sup> SFRY authorities assumed responsibility for the police in Kosovo.<sup>26</sup> On 23 March 1989 the Kosovo

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<sup>12</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4300-4301; Vukašin Jokanović, T 13139.

<sup>13</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 5; Vukašin Jokanović, T 13139.

<sup>14</sup> Adnan Merovci, Exhibit P416, para 4; Vukašin Jokanović, T 13145-13146.

<sup>15</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4303-4304; Vukašin Jokanović, T 13145-13146.

<sup>16</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4303-4304; Vukašin Jokanović, T 13145-13148; Adnan Merovci, Exhibit P416, para 4. On Ibrahim Rugova’s evidence eight protesters were killed and hundreds were arrested, Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4310.

<sup>17</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4303-4304; Vukašin Jokanović, T 13146-13147. *See also* Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8566.

<sup>18</sup> Vukašin Jokanović, T 13148-13149.

<sup>19</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 5; Vukašin Jokanović, T 13149; Vukmir Mirčić, T 13232.

<sup>20</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 5; Adnan Merovci, Exhibit P416, para 5.

<sup>21</sup> Vukašin Jokanović, T 13152.

<sup>22</sup> Vukašin Jokanović, T 13153-13155.

<sup>23</sup> Exhibit P8, p 1; Ibrahim Rugova, Exhibit P285, p 2. The amendments took away the capacity of the Kosovo’s Assembly to veto amendments to the constitution of Serbia and gave Serbia’s Supreme Court the power to decide on extraordinary legal remedies, Vukašin Jokanović, T 13161, 13168-13169, 13202, 13222.

<sup>24</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 5; Ibrahim Rugova, Exhibit P285, p 2; Vukašin Jokanović, T 13156.

<sup>25</sup> Exhibit D905; Vukašin Jokanović, T 13157, 13192-13195, 13216.

<sup>26</sup> Vukašin Jokanović, T 13192. *See also* Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 6; Ibrahim Rugova, Exhibit P285, p 2.

Assembly voted to accept the proposed changes to the Constitution of Serbia.<sup>27</sup> On 28 March 1989 the constitutional amendments were promulgated in the Official Gazette of Serbia.<sup>28</sup>

25. In December 1989 elections were held in Serbia including Kosovo.<sup>29</sup> Following the elections the political situation remained unstable. In January 1990 delegates from Slovenia and Croatia walked out of the Congress of the League of Communists of Yugoslavia,<sup>30</sup> which significantly weakened the League of Communists and, for many, heralded the collapse of the single-party system and the disintegration of Yugoslavia.

26. On 2 July 1990 members of the Kosovo Assembly purported to declare that Kosovo was an independent entity within Yugoslavia, equal to other republics.<sup>31</sup> This declaration was made outside the building of the Assembly as the speaker of the Assembly did not allow the delegates to enter the building.<sup>32</sup> Following these events the Assembly of Serbia passed a law which disbanded the Kosovo Assembly.<sup>33</sup> The functions of the Kosovo Assembly were taken over by the Assembly of Serbia and the Executive Council of the Kosovo Assembly.<sup>34</sup>

27. In early July 1990 Kosovo Albanian radio and television stations were closed down and radio and television broadcasting in the Albanian language was discontinued.<sup>35</sup> The main Kosovo Albanian newspaper “Rilindja”<sup>36</sup> and some other Kosovo Albanian newspapers, were also closed down.<sup>37</sup>

28. On 28 September 1990 the Assembly of Serbia promulgated a new constitution which made the statute making powers of the Kosovo Assembly subject to the authority of the Assembly of

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<sup>27</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4190-4191; Vukašin Jokanović, T 13161, 13166-13167; Veton Surroi, T 248, 306-307; Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 6. The evidence differs as to the circumstances in which these amendments were passed. Veton Surroi, Ibrahim Rugova and Frederick Abrahams testified that members of the Kosovo Assembly were pressured to vote in favour of the amendments and that armoured vehicles and tanks were present in front of the Assembly. (Veton Surroi, T 248; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4190-4192) Vukašin Jokanović denied this. (Vukašin Jokanović, T 13172-13173, 12177-13179, 13212) This discrepancy is of no relevance to the allegations in the present case.

<sup>28</sup> Exhibit P8.

<sup>29</sup> Vukašin Jokanović, T 13180-13181.

<sup>30</sup> Vukašin Jokanović, T 13181.

<sup>31</sup> Ibrahim Rugova, Exhibit P285, p 2; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4193; Vukašin Jokanović, T 13183; Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 6.

<sup>32</sup> Veton Surroi, T 255; Ibrahim Rugova, Exhibit P285, p 2; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4193; Vukašin Jokanović, T 13197, 13183.

<sup>33</sup> Vukašin Jokanović, T 13186, 13198. See also Ibrahim Rugova, Exhibit P285, p 2; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4192.

<sup>34</sup> Vukašin Jokanović, T 13199.

<sup>35</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4197; Fuad Haxhibeqiri, Exhibit P1068, p 2; Fuad Haxhibeqiri, T 6974; Veton Surroi, T 249-250. Three Kosovo Albanian radio stations were also closed during this time, Fuad Haxhibeqiri, Exhibit P1068, p 3.

<sup>36</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4197; Fuad Haxhibeqiri, Exhibit P1068, p 3.

<sup>37</sup> Fuad Haxhibeqiri, Exhibit P1068, p 3; Fuad Haxhibeqiri, T 6976.

Serbia and which formally revoked the autonomous status of Kosovo.<sup>38</sup> The Constitutional Court of Kosovo was abolished and the Constitutional Court of Serbia was empowered to rule on the conformity of Kosovo's "statutes", the province's highest legal enactments, with the Constitution of Serbia.<sup>39</sup> Following the revocation of Kosovo's autonomous status, its governing bodies were dissolved.<sup>40</sup> Kosovo lost the control over its police force and territorial defence and these institutions were subordinated to the authorities in Belgrade.<sup>41</sup> The Serbian language became the official language to be used in written communications,<sup>42</sup> although the amendments also provided for the provincial constitution to determine which languages should be equal in official and public use in the territory of the province.<sup>43</sup>

29. In the years following the revocation of Kosovo's autonomous status inter-ethnic relations in Kosovo and the economic situation in the province deteriorated significantly. Many Kosovo Albanians lost their jobs. Some were dismissed, others left after being asked to sign declarations of loyalty to Serbia.<sup>44</sup> In 1990 and 1991 most Kosovo Albanians left state institutions. This problem was particularly serious in the Ministry of Interior<sup>45</sup> and in the judicial bodies.<sup>46</sup> Evidence suggests that by 1993, some 150,000 Kosovo Albanian workers in Kosovo had lost their jobs.<sup>47</sup> Parallel to this, incentives such as housing benefits were given to Serbs to encourage them to move to Kosovo.<sup>48</sup> These events led to many Kosovo Albanians leaving Kosovo.<sup>49</sup> Some evidence puts the figure of those who left the province over the seven years following the revocation of Kosovo's autonomy at approximately 350,000.<sup>50</sup>

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<sup>38</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 6; Vukašin Jokanović, T 13204-13206.

<sup>39</sup> Vukašin Jokanović, T 13207-13209; Mahmut Halimi, T 2932.

<sup>40</sup> Mahmut Halimi, T 2932; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4191-4192, 4332.

<sup>41</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4191-4192, 4332.

<sup>42</sup> Exhibit P8, p 22, Amendment XXVII; Bajram Bucaliu, Exhibit P825, pp 2-3; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2046-2047; Veton Surroi, T 252.

<sup>43</sup> Exhibit P8, p 22, Amendment XXVII; Vukašin Jokanović, T 13166.

<sup>44</sup> Ibrahim Rugova, Exhibit P285, p 3; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4193; Fuad Haxhibeqiri, Exhibit P1068, p 2; Fuad Haxhibeqiri, T 6978-6980; Sabit Kadriu, Exhibit P515, p 4; Mehmet Mazerkaç, T 3863; Adnan Merovci, T 2203.

<sup>45</sup> Đorđe Kerić, T 7813.

<sup>46</sup> Judges and prosecutors in Kosovo were gradually removed from their positions in the period 1989 to 1992. After 1992, one of the conditions to be appointed as a judge was explicit formal expression of loyalty to the State of Serbia, Mahmut Halimi, T 2934.

<sup>47</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4194-4195.

<sup>48</sup> Exhibit P5, pp 1-2, 4; Sabit Kadriu, Exhibit P515, p 4. A law requiring the prior approval of the authorities before real estate could be sold was passed. Some evidence suggests that this was applied in a discriminatory manner, non-Albanians not being given approval to sell their property to Kosovo Albanians, Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8509-8513; Veton Surroi, T 251, 317. See also Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 7. Nothing in the evidence suggests that Kosovo Albanians were denied permission to sell their property to non-Albanians.

<sup>49</sup> Sabit Kadriu, Exhibit P515, p 4.

<sup>50</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 7.

30. One of the main political parties in Kosovo, the Democratic League of Kosovo (“LDK”), was formed on 23 December 1989.<sup>51</sup> Ibrahim Rugova was elected president of the LDK.<sup>52</sup> LDK advocated a policy of non-violent resistance to the authorities in Serbia.<sup>53</sup> It supported the view that Kosovo should have the status of a republic within the Yugoslav federation while it continued to exist<sup>54</sup> and be independent if the federation ceased to exist.<sup>55</sup> LDK’s position was that independence should be achieved by peaceful, diplomatic, and democratic methods and violence should not be used.<sup>56</sup> In October 1991 the LDK formed a so-called “government” for Kosovo which mainly operated abroad. The party developed structures in many towns and villages and enjoyed strong support among the Kosovo Albanian population.<sup>57</sup> On 24 May 1992 Ibrahim Rugova was elected president of Kosovo. No official contacts were established with Belgrade.<sup>58</sup>

31. In the early 1990s a curriculum which reduced studies in Albanian history and culture and increased studies in Serbian history was introduced in primary schools in Kosovo. Kosovo Albanian teachers refused to follow this curriculum.<sup>59</sup> In 1990 and 1991, and in the following years Albanian language elementary and high schools were closed.<sup>60</sup> In response, the LDK set up a parallel unofficial system of education.<sup>61</sup> Classes were given in the Albanian language in private facilities and with the support of private funds.<sup>62</sup> The issue became a matter of international concern.<sup>63</sup> On 1 September 1996 an agreement was signed by the President of Serbia, at the time Slobodan Milošević and Ibrahim Rugova, with the purpose of enabling Kosovo Albanian children and teachers to return to public schools.<sup>64</sup> However, the agreement was not implemented and until

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<sup>51</sup> Adnan Merovci, Exhibit P416, para 11.

<sup>52</sup> Ibrahim Rugova, Exhibit P285, p 2.

<sup>53</sup> Adnan Merovci, Exhibit P416, para 12; Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 7.

<sup>54</sup> Ibrahim Rugova, Exhibit P285, p 2; Adnan Merovci, Exhibit P416, para 12.

<sup>55</sup> Adnan Merovci, Exhibit P416, para 12.

<sup>56</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4195.

<sup>57</sup> Ibrahim Rugova, Exhibit P285, p 3; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4199.

<sup>58</sup> Adnan Merovci, Exhibit P416, para 18.

<sup>59</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 6.

<sup>60</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4198-4199; Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3514-3515, 3518; Xhafer Beqiraj, T 4812, 4823-4824; Vetton Surroi, T 253, 254. See also Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3629; Exhibit P606.

<sup>61</sup> Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3514-3515, 3518; Xhafer Beqiraj, T 4812, 4823-4824; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4199; Vetton Surroi, T 253, 254. See also Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 6.

<sup>62</sup> Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3514-3515, 3518; Xhafer Beqiraj, T 4812, 4823-4824; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4199; Mehmet Mazrekaj, T 3863; Saranda Bogujevci, T 1905-1906.

<sup>63</sup> Vetton Surroi, T 260; Exhibit P265.

<sup>64</sup> Exhibit P266; Ibrahim Rugova, Exhibit P285, pp 5-6; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4207-4213; Adnan Merovci, Exhibit P416, para 27; Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8427; Adnan Merovci, T 2204; Vetton Surroi, T 262-263; Sefget Zogaj, T 3436. The agreement was negotiated by an Italian Catholic organisation, *Comunità di San Egidio*, and became known under the name of San Egidio Agreement, Adnan Merovci, Exhibit P416, para 27.

the end of the conflict in 1999 instruction to Kosovo Albanian children was mainly through the parallel system of education.<sup>65</sup>

32. In 1993 Kosovo Albanians who had previously worked in the police force in Kosovo purported to set up a ministry of defence as a mechanism to defend against the possibility of attacks by Serbian police or army forces. The Serbian police responded immediately and arrested a number of the people involved.<sup>66</sup> By 1995 most of the members of this mechanism were in official detention or had fled the country.<sup>67</sup>

33. In November and December 1995 international negotiations took place in Dayton, Ohio, USA, which concluded with the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina on 14 December 1995. The situation in Kosovo was not addressed in these talks or in the subsequent agreement. This led many Kosovo Albanians to believe that their policy of non-violent approach was not bringing results.<sup>68</sup> In early 1996 the first organised violence against Kosovo Serb civilians and police took place. Violent attacks on Serbian police continued throughout the summer and autumn of 1996.<sup>69</sup> Between June 1994 and June 1997 there were incidents involving explosions and arson in Priština/Prishtinë, buildings were destroyed or blown up. Kosovo Serbs began moving out of Kosovo.<sup>70</sup> Human rights groups documented incidents of arbitrary detentions and abuses of Kosovo Albanians by the Serbian police.<sup>71</sup>

34. In the late summer and autumn of 1997 non-violent student protests took place. The protesters demanded implementation of the educational agreement which had been signed by Slobodan Milošević and Ibrahim Rugova in 1996, but not implemented.<sup>72</sup> On 1 October 1997 the police intervened at a rally in Priština/Prishtinë using tear gas and beating a large number of Kosovo Albanian students.<sup>73</sup>

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<sup>65</sup> Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8493; Adnan Merovci, T 2204-2205. See also Exhibit D2 and Veton Surroi, T 330, testifying about a meeting between representatives of the European Commission and the Ministry of Education of 6 August 1998 aimed at encouraging the normalisation of the educational system in Kosovo.

<sup>66</sup> Ibrahim Rugova, Exhibit P285, p 5; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4206-4207; Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 7. See also Momir Stojanović, T 11691-11692.

<sup>67</sup> Ibrahim Rugova, Exhibit P285, p 5; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4206-4207.

<sup>68</sup> Veton, Surroi, T 257; Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 8.

<sup>69</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 8. See also Veton Surroi, T 257; Velibor Veljković, T 7100, 7108, testifying about an attack against the Suva Reka/Suharekë police station which took place in 1997.

<sup>70</sup> Đorđe Kerić, T 7813.

<sup>71</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 8.

<sup>72</sup> Baton Haxhiu, Exhibit P992, p 3; Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6071.

<sup>73</sup> Baton Haxhiu, Exhibit P992, pp 3-4; Baton Haxhiu, Exhibit P993 (*Milošević* transcript), T 5408; Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6077.

35. While the Kosovo Liberation Army (“KLA”) came into existence in the mid 1990s,<sup>74</sup> it was largely unknown until late 1997, although some evidence suggests that it was associated with attacks on the Serbian police and civilians which took place in the summer and autumn of 1996.<sup>75</sup> In 1996 and 1997, taking advantage of weakened border control in Albania, the KLA managed to bring weapons and other equipment from Albania across the border into Kosovo.<sup>76</sup> The KLA’s actions intensified in 1997 and especially towards the end of 1997.<sup>77</sup> On 28 November 1997 uniformed KLA members appeared in public for the first time in the town of Lauša/Laushë, Srbica/Skenderaj municipality, at the funeral of a teacher who had been killed by the police.<sup>78</sup> The structure and organisation of the KLA will be discussed later in this Judgement.<sup>79</sup>

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<sup>74</sup> See Momir Stojanović, T 11692, testifying that the name “KLA” was mentioned for the first time in December 1994.

<sup>75</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 8. See also Veton Surroi, T 257.

<sup>76</sup> Momir Stojanović, T 19691; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19692-19695, 19700.

<sup>77</sup> Veton Surroi, T 257-258; Danica Marinković, T 12916-12920; Exhibit D853, p 2; Danica Marinković, Exhibit D854 (*Milutinović* transcript), T 23500-23501; Exhibit D892.

<sup>78</sup> Veton Surroi, T 257-258, 267; Fred Abrahams, Exhibit P738, Statement of 24 January 2002, p 9. See also Baton Haxhiu, Exhibit P993 (*Milošević* transcript), T 5408.

<sup>79</sup> See *infra*, paras 1537-1577.

## IV. STRUCTURE OF THE SERBIAN FORCES INVOLVED IN KOSOVO IN 1999

### A. The Ministry of the Interior (MUP)

36. At times relevant to the Indictment the Ministry of the Interior of Serbia (*Ministarstvo Unutrasnjih Poslova*) (“MUP”) functioned under the Law on Ministries of 5 February 1991.<sup>80</sup> Its mandate was to perform the duties of state administration in relation to the protection and security of the state, the protection of human lives, safety of persons and property, the prevention and detection of crimes and the capture of the perpetrators and their transfer to the applicable authorities, the maintenance of public order, as well as, *inter alia*, border crossing control, the monitoring of the movements in the border area, citizenship and identity cards and passports.<sup>81</sup> In essence it performed the police function of the Republic of Serbia.

37. On 15 April 1997, Vljako Stojiljković was appointed as Minister of the Interior,<sup>82</sup> a post he maintained throughout 1998 and 1999.<sup>83</sup> Stojiljković committed suicide on the steps of the Federal Parliament in Belgrade in 2002.<sup>84</sup> By the formal structure established by the Law on State Administration<sup>85</sup> and the Law on Internal Affairs,<sup>86</sup> the Minister of the Interior, as head of the MUP, was accountable for the entire work and functioning of the MUP and represented the Ministry vis-à-vis all other state organs. In his capacity as Minister, Stojiljković was a member of the government of the Republic, as well as, and at the same time, the Deputy Prime Minister.<sup>87</sup>

38. The government, at the proposal of the Minister, appointed assistant ministers in the MUP for a four-year term of office.<sup>88</sup> Vlastimir Đorđević had been appointed as Assistant Minister of the interior by decision of the government of the Republic of Serbia issued on 11 September 1996.<sup>89</sup> Some nine months later, on 4 June 1997, Radomir Marković, Stojan Misić, Obrad Stevanović and Petar Zeković were appointed as further assistant ministers, each with responsibility for identified fields of authority.<sup>90</sup> At that time, Marković was given authority over Crime Police Affairs and Analysis and Information Technology; Mišić was given authority over Administration for Foreigners, Administrative and Legal Affairs, Fire-prevention Police and Communication Affairs;

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<sup>80</sup> Exhibit P68, Article 5; Exhibit D933, p 4.

<sup>81</sup> Exhibit P59; Exhibit D933, p 4.

<sup>82</sup> Exhibit D938.

<sup>83</sup> Exhibit P688, p 3; Exhibit P770, p 3; Exhibit P85, p 1.

<sup>84</sup> K84, T 2019; Časlav Golubović, T 1732-1733.

<sup>85</sup> Exhibit P69, *see* Article 43.

<sup>86</sup> Exhibit P66, *see* Article 7.

<sup>87</sup> Vlastimir Đorđević, T 9401.

<sup>88</sup> Exhibit D933, p 35.

<sup>89</sup> Vlastimir Đorđević, T 9395; Exhibit D394.



Stevanović was given authority over affairs relating to police administration and the operations centre, the secondary school and college of internal affairs and the police academy; and Zeković was given authority over affairs relating to the Administration for Joint Affairs and the Board and Lodging Administration.<sup>91</sup> The sixth assistant minister in 1998 and 1999 was Nikola Ćurčić, deputy chief of the State Security Department (*Resor Državne Bezbednosti*) (“RDB”) and Director of the Security Institute.<sup>92</sup>

39. The MUP consisted of two primary elements, the Public Security Department (*Resor Javne Bezbednosti*) (“RJB”) responsible for maintaining public order and the RDB responsible for maintaining state security and responding to threats to the state.<sup>93</sup>

40. On 30 May 1997, Stojiljković assigned the Accused Vlastimir Đorđević, at the time the chief of the Police Administration,<sup>94</sup> to the post of “Acting Chief” of the RJB.<sup>95</sup> By a decision of Minister Stojiljković on 27 January 1998 Đorđević was appointed as Chief of the RJB.<sup>96</sup> Momčilo Stojanović had the position of Assistant Chief of the RJB.<sup>97</sup> Đorđević held the post of Chief of the RJB until 30 January 2001, when he was appointed as counsellor to the minister and member of a coordination body for the south of Serbia.<sup>98</sup> Article 54 of the Rules of Internal Organisation of the MUP provides that “Departments shall be controlled by chiefs of departments”.<sup>99</sup> Hence, as the rule provides, the RJB as a whole functioned under the control of the Accused.<sup>100</sup> The Chamber therefore accepts that at all times material to the Indictment Đorđević exercised *de jure* control over the RJB.

#### 1. Public Security Department (RJB)

41. The RJB was tasked, *inter alia*, with the protection of life, the personal security of citizens and their property, crime prevention and detection, maintaining public law and order, traffic and road security, controlling the state border crossings, monitoring movements and stopovers within

<sup>90</sup> Exhibit P263. See also Vlastimir Đorđević, T 9408-9409, 9410.

<sup>91</sup> Exhibit P263. See also Vlastimir Đorđević, T 9408-9409, 9410.

<sup>92</sup> Exhibit D208.

<sup>93</sup> See Exhibit P357, Article 1; Exhibit P1349; Exhibit D933, p 6.

<sup>94</sup> Vlastimir Đorđević, T 9392-9393; Exhibit D393, pp 14-16.

<sup>95</sup> Vlastimir Đorđević, T 9396, 9768; Exhibit D395.

<sup>96</sup> Vlastimir Đorđević, T 9396, 9768, 9771; Exhibit D396; Exhibit D933, p 36.

<sup>97</sup> Exhibit D99, p 1; Exhibit P1044, p 1; Exhibit P1055, p 3.

<sup>98</sup> Vlastimir Đorđević, T 9396-9397, 9768, 9771; Exhibit D396; Exhibit D397; Exhibit D398; Exhibit P85; Exhibit P694, p 1.

<sup>99</sup> Exhibit P357, Article 54.

<sup>100</sup> Vlastimir Đorđević, T 9788, 9817, 9823-9824.

the border zone, and citizen's personal identification documents.<sup>101</sup> In the MUP headquarters in Belgrade, the most important organisational units of the RJB were the Crime Police Administration, headed by Dragan Ilić<sup>102</sup> and the Police Administration, headed by Assistant Minister Obrad Stevanović.<sup>103</sup> In addition, the following organisational units existed: Traffic Police Administration, Operations Centre, Border Police, Foreign Nationals and Legal Affairs Administration, Fire Prevention Police Administration, Communications Administration, Analysis Administration, Information Technology Administration, General Services Administration and Board and Lodging Administration.<sup>104</sup>

42. Vlastimir Đorđević testified that Assistant Ministers made proposals to the Minister with respect to matters within their fields of authority and conveyed the Minister's orders and requests down the line.<sup>105</sup> In a similar vein, Stojan Mišić, Assistant Minister in charge of alien affairs, travel documents, firefighting and communications,<sup>106</sup> gave evidence that the job of an Assistant Minister was to put proposals to the Minister, and to implement such proposals if approved by the Minister. Thus, in his explanation, the Assistant Ministers in any case acted on the Minister's orders or instructions in undertaking specific measures.<sup>107</sup> An Assistant Minister, therefore, was immediately subordinate to the Minister, who issued their assignments.<sup>108</sup> According to Vlastimir Đorđević, in marked contrast to the customary system of hierarchy and responsibility within the MUP, each Assistant Minister was responsible directly to the Minister for the functioning of particular sections within the RJB, which "diminished" Đorđević's role as head of the RJB.<sup>109</sup> Thus, despite his role as chief of the RJB, Đorđević maintained that he was not in the position to issue orders to any of the other Assistant Ministers; only the Minister could do this.<sup>110</sup> Mišić testified in similar terms that the Assistant Ministers "cannot issue assignments to each other".<sup>111</sup> Moreover, in Mišić's explanation, Assistant Ministers did not have "individual original authority to issues any measures to the organizational units" of the RJB which could "only be done by the Minister himself".<sup>112</sup>

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<sup>101</sup> Exhibit P357, Article 1. *See also* Vlastimir Đorđević, T 9434; Exhibit D933, p 6.

<sup>102</sup> Ljubinko Cvetić, T 6667. The Crime Police Administration was responsible for "preventing and detecting crime, finding and capturing perpetrators of crimes and bringing them before competent organs". Exhibit P357, Article 26.

<sup>103</sup> Ljubinko Cvetić, T 6594; Aleksandar Vasiljević, T 5683. The Police Administration was responsible for "order and organisation and provid[ing] professional assistance to police units of the Secretariat in carrying out operative and preventive police tasks, public law and order, and all police tasks carried out as work in the security sector". It also directly organized and carried out the tasks of preparing the reserve force. Exhibit P357, Article 27.

<sup>104</sup> Exhibit P357, Article 13; Exhibit D933, p 7.

<sup>105</sup> Vlastimir Đorđević, T 9409-9410.

<sup>106</sup> Stojan Mišić, T 14008.

<sup>107</sup> Stojan Mišić, T 14010-14011.

<sup>108</sup> Stojan Mišić, T 14012.

<sup>109</sup> Vlastimir Đorđević, T 9410-9411, 9418; *see also* Exhibit P1474, pp 1-2.

<sup>110</sup> Vlastimir Đorđević, T 9418, 10024.

<sup>111</sup> Stojan Mišić, T 14012.

<sup>112</sup> Stojan Mišić, T 14011.

43. The Chamber is not able to accept that by allocating the Assistant Ministers various areas of responsibility, this somehow reduced the authority of Đorđević or altered his high-ranking position in the MUP. It notes that pursuant to a Decree of 6 July 1997 – whereby Đorđević was promoted to the highest attainable rank within the MUP of Colonel-General and Stevanović and Marković were each promoted from Major-General to Lieutenant-General,<sup>113</sup> Đorđević became at that point the highest ranking MUP officer.<sup>114</sup> By 4 December 1998, Radomir Marković, who was appointed as Chief of the RDB, was also promoted to the same rank as Đorđević, *i.e.* Colonel-General.<sup>115</sup> It is the evidence of Đorđević that his higher rank did not make him superior to those with lower ranks, suggesting that is a “completely different subject”.<sup>116</sup> The Chamber is not convinced by this unsupported assertion. It would appear clear both from his rank and his position as head of the RJB, that the three other Assistant Ministers within the RJB were subordinate officers to Đorđević. He remained the superior of them. The principle of hierarchy was well-respected throughout the MUP structure, as it needed to be in order for the MUP to function effectively as a large organisation. Within this structure, the head of the RJB - the largest organisational element within the MUP - was the most important office after the Minister. Aleksandar Vasiljević referred to Đorđević as “the number 2 man in MUP”.<sup>117</sup> The Chamber notes that any limitation to Đorđević’s power by reason of the allocation of an area of responsibility to another Assistant Minister would only arise were there is an overlap between the specific responsibility of another Assistant Minister and the general authority of Đorđević as Chief of the RJB. There is no evidence to support the idea that this was the case. Indeed, quite contrary to this, the appointment of the other Assistant Ministers in June 1997 did not in any way inhibit Đorđević’s power and authority, which alone demonstrates that his authority as head of the RJB was not affected by the existence of other Assistant Ministers.

44. The Chamber is not persuaded that the Assistant Ministers were as lacking in authority as suggested by Đorđević and Mišić. Leaving aside their interrelationship, the Assistant Ministers were the most senior officials in the MUP, with only the Minister above them. Far from being a powerless position, this status indicates great power. Notably, each of the Assistant Ministers held a high rank (either Lieutenant-General or Major-General) within the Ministry, while Đorđević, the Chief of the RJB, and Marković, the Chief of the RDB, were Colonel-Generals. While, under the established legal system, ultimate authority lay with the Minister, this does not require that no other senior official within the MUP had the power to make any decisions. The MUP was a vast

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<sup>113</sup> Exhibit D421.

<sup>114</sup> Exhibit P49, Article 2; Vlastimir Đorđević, T 9770. *See also* Stojan Mišić, T 14073.

<sup>115</sup> Exhibit D208.

<sup>116</sup> Vlastimir Đorđević, T 9770-9771.

<sup>117</sup> Aleksandar Vasiljević, T 5933. *See also* K87, T 14162.

organisation. To vest sole decision-making authority with the Minister, with the Assistant Ministers limited to making proposals, particularly at a time of national emergency, makes no sense whatsoever in terms of legal structure, practical management and normal government functioning. The Chamber finds that the Assistant Ministers held high ranking posts in the MUP and were responsible for their particular fields of authority. It does not accept that this allocation of responsibility had the effect of diminishing Đorđević's authority as head of the RJB.

45. Within the Border Police Administration, there were border police stations at border crossings in the Republic of Serbia.<sup>118</sup> The border police had their headquarters at five locations in Kosovo: the Airport in the municipality of Priština/Prishtinë, and the border crossings at Vrbnica/Vërmicë in the municipality of Prizren, Cafa Prushit in the municipality of Đakovica/Gjakovë, and Đeneral Janković and Doganović in the municipality of Uroševac/Ferizaj.<sup>119</sup>

(a) Secretariats for Internal Affairs (SUPs)

46. The tasks of the MUP were performed on the ground by Secretariats of the Interior (SUPs) established in local areas throughout Serbia.<sup>120</sup> SUPs had responsibility for the security situation in the geographic area for which they were established.<sup>121</sup> There were 33 SUPs altogether in the territory of the Republic of Serbia, all of which were subordinate to the RJB.<sup>122</sup> Of these, in 1998-1999, there were seven SUPs in Kosovo.<sup>123</sup>

47. The seven SUPs in Kosovo during the Indictment period were as follows:

- Priština/Prishtinë SUP, covering the municipalities of Glogovac/Glllogoc, Kosovo Polje/Fushë Kosovë, Lipljan/Lipjan, Obilić/Obiliq, Podujevo/Podujevë and Priština/Prishtinë,<sup>124</sup> headed by Boško Petrić (until 16 April 1999) and Bogoljub Janićević (from May 1999);<sup>125</sup>
- Kosovska Mitrovica/Mitrovicë SUP, covering the municipalities of Vuçitern/Vushtrri, Zvečan/Zvecan, Zubin Potok, Kosovska Mitrovica/Mitrovicë, Leposavić/Leposaviq and

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<sup>118</sup> Exhibit P357, Article 18(2).

<sup>119</sup> Exhibit D933, p 9.

<sup>120</sup> Exhibit P357, Article 12; Exhibit D933, p 8.

<sup>121</sup> Exhibit P357, Article 12; Ljubinko Cvetić, T 6751; Exhibit D933, p 9.

<sup>122</sup> Ljubinko Cvetić, T 5691, 6598.

<sup>123</sup> Exhibit P357, Article 3; Exhibit P1056; Exhibit P1038, p 5; Exhibit D933, p 8.

<sup>124</sup> Exhibit P357, Article 3.

<sup>125</sup> Zarko Braković, T 4092; Zarko Braković, Exhibit P759, para 1; Exhibit D61; Vlastimir Đorđević, T 9735-9736.

Srbica/Skenderaj,<sup>126</sup> headed by Ljubinko Cvetić (until 16 April 1999) and Vucina Janicević (from 16 April 1999);<sup>127</sup>

- Peć/Pejë SUP, covering the municipalities of Istok/Istog, Klina/Klinë and Peć/Pejë,<sup>128</sup> headed by Boro Vlahović;<sup>129</sup>
- Đakovica/Gjakovë SUP, covering the municipalities of Đakovica/Gjakovë and Decane/Dečani,<sup>130</sup> headed by Dragutin Adamović (in 1998) and Milan Kovačević (in 1999);<sup>131</sup>
- Prizren SUP, covering the municipalities of Prizren, Orahovac/Rahovec, Suva Reka/Suharekë and Dragaš/Dragash,<sup>132</sup> headed by Miloš Vojnović;<sup>133</sup>
- Uroševac/Ferizaj SUP, covering the municipalities of Kačanik/Kaçanik, Uroševac/Ferizaj, Štimlje/Stime and Štrpe/Shtërpçë,<sup>134</sup> headed by Bogoljub Janičević (until April 1999) and Bozidar Filić (from May 1999);<sup>135</sup>
- Gnjilane/Gjilan SUP, covering the municipalities of Vitina/Viti, Gnjilane/Gjilan, Kosovska Kamenica/Kamenicë and Novo Brdo/Novobërdë,<sup>136</sup> headed by Dušan Gavranic.<sup>137</sup>

48. The SUP chiefs were directly subordinate to Vlastimir Đorđević.<sup>138</sup> Đorđević, as head of the RJB, had the right to make proposals on the appointment or dismissal of SUP chiefs. However, in his evidence he suggested that, in practice, the Minister did not consult him on these appointments. In support of this Đorđević identified some appointments as having been made by Stoličković without consulting him.<sup>139</sup> Other evidence discloses that Đorđević issued orders for the assignment or dismissal of SUP chiefs, such as the decision of 15 April 1999 concerning the cessation of Ljubinko Cvetić's function as the SUP chief for Kosovska Mitrovica/Mitrovicë.<sup>140</sup> Đorđević sought to maintain, however, that this was only done on the authority of, and instructions

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<sup>126</sup> Exhibit P357, Article 3.

<sup>127</sup> Ljubinko Cvetić, T 6590; Exhibit P78.

<sup>128</sup> Exhibit 357, Article 3.

<sup>129</sup> Exhibit P1037.

<sup>130</sup> Exhibit 357, Article 3.

<sup>131</sup> Nike Peraj, T 1289-1290; Vlastimir Đorđević, T 10123; Milan Đošan, T 11445.

<sup>132</sup> Exhibit 357, Article 3; 6D2, T 12189.

<sup>133</sup> 6D2, T 12190.

<sup>134</sup> Exhibit 357, Article 3.

<sup>135</sup> K86, T 5117; Exhibit D133; *see also* Vlastimir Đorđević, T 9735-9736.

<sup>136</sup> Exhibit 357, Article 3.

<sup>137</sup> Exhibit D38; Exhibit P1037.

<sup>138</sup> Stojan Mišić, T 14075.

<sup>139</sup> Vlastimir Đorđević, T 9423-9425; Exhibit D400, Decision by the Minister dated 4 June 1997 on the appointment of Branko Djurić as Chief of SUP in Belgrade which Đorđević claims was made without consulting him (Vlastimir Đorđević, T 9428-9429); Exhibit D38, Decision dated 17 December 1996 by the Minister assigning Dusan Gavranic as the chief of Gnjilane/Gjilan SUP, which Đorđević claims was made without consulting him; *see also* Vlastimir Đorđević, T 9429-9430.

given to him by, the Minister. He supported his contention that he lacked power in this regard by pointing out that unlike the previous chief of the RJB (Radovan Stojčić), who was deputy minister (and could thereby exercise the power of the Minister in his absence), Đorđević was an Assistant Minister, and could therefore only “assist” the Minister. As such, in contrast to a deputy minister, Đorđević maintained that he did not have the power by the terms of his own office to make appointments or dismissals.<sup>141</sup> For reasons already given, the Chamber is not persuaded by this explanation. It is non-sensical that the Minister would need to approve every assignment or dismissal of SUP chiefs, when this clearly fell within the purview of the chief of the RJB. It is also inconsistent with the “single authority principle” cited in the report of Defence expert Radomir Milašinović, which notes that, pursuant to this principle, “the RJB chief was the only immediate superior of administration chiefs in the MUP headquarters and of SUP chiefs (...). Consequently, the SUP chiefs and administration chiefs in the MUP headquarters were directly responsible only to the RJB chief, who in turn was directly responsible for his work and work of the units and personnel that were part of the Department only to the minister”.<sup>142</sup> As chief of the RJB, Đorđević was also able to order a SUP chief to set up groups or commissions to deal with certain issues, pursuant to Article 10 of the Rules on the Internal Organisation of the MUP.<sup>143</sup>

49. The SUP chief commanded operations in his geographic area of responsibility.<sup>144</sup> As discussed in detail below, in terms of the anti-terrorist actions and operations in Kosovo from June 1998 and in 1999, the SUPs in Kosovo were commanded by the MUP Staff in Priština/Prishtinë, which coordinated and planned operations.<sup>145</sup>

50. The SUPs were composed of Municipal Departments/Sectors of the Interior (*Odelenja Unutrnjih Poslova*) (“OUPs”) and local police stations.<sup>146</sup> In Gnjilane/Gjilan, there was an OUP in the municipalities of Vitina/Viti and Kosovska Kamenica/Kamenicë, and a police station in the municipality of Novo Brdo/Novobërdë. In Đakovica/Gjakovë, there was an OUP in the municipality of Decane/Deçan. In Kosovska Mitrovica/Mitrovicë, OUPs existed in the municipalities of Vučitrn/Vushtrri, Leposavić/Leposaviq and Srbica/Skenderaj, and police stations in the municipalities of Zvečan/Zveçan and Zubin Potok. In Peć/Pejë, there were OUPs in the municipalities of Istok/Istog and Klina/Klinë. In Prizren, OUPs were in the municipalities of Dragaš/Dragash, Orahovac/Rahovec and Suva Reka/Suharekë. In Priština/Prishtinë, OUPs existed in the municipalities of Glogovac/Glllogoc, Kosovo Polje/Fushë Kosovë, Lipljan/Lipjan,

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<sup>140</sup> Exhibit P77. Vlastimir Đorđević, T 9430-9432, 9485; see also T 9433 and Exhibit P79.

<sup>141</sup> Vlastimir Đorđević, T 9432.

<sup>142</sup> Exhibit D933, p 21.

<sup>143</sup> Vlastimir Đorđević, T 9467; Exhibit P357, Article 10.

<sup>144</sup> K25, Exhibit P340-A, pp 20-21.

<sup>145</sup> K25, Exhibit P340-A, p 20.

Obilić/Obiliq and Podujevo/Podujevë. In Uroševac/Ferizaj, there was an OUP in the municipality of Kačanik/Kaçanik, and police stations in the municipalities of Štimlje/Shtime and Štrpce/Shtëpcë.<sup>147</sup>

51. The OUPs and police stations directly performed tasks related to internal affairs in their geographic area of responsibility, except where a Secretariat had its headquarters, in which case the Secretariat directly performed the tasks.<sup>148</sup> The OUPs were responsible for conducting internal affairs and ensuring personal and property security of the public in the relevant area of responsibility, as well as preventing and solving crimes, finding and capturing perpetrators of crimes and bringing them before the competent authorities, and maintaining public law and order.<sup>149</sup> OUPs, within SUPs the territorial jurisdiction of which had a state border, also had border-related tasks and were required to have a Group for Border and Administrative Affairs.<sup>150</sup> Each OUP consisted of a police station, with or without branch police stations, a Section or Group for Crime Prevention and an Administration Section or Group.<sup>151</sup> They reported to the SUPs, which remained responsible for the work of the OUPs and police stations.<sup>152</sup>

52. While each separate unit or department of the MUP was responsible for its own line of work, the system provided for them to work in an inter-related and coordinated way to ensure the unity of the MUP as a whole.<sup>153</sup> Accordingly, the MUP would adopt an annual work programme establishing the annual tasks, duties and activities of the Ministry, in particular, related to current security-related tasks stemming from the work programmes of the Government, and the SUPs were required to adopt their own annual work plans in conformity with this.<sup>154</sup> Ultimate responsibility to the government and the legislature for the manner in which the MUP performed its duties lay with the Minister.<sup>155</sup>

53. From 5 April 1996, active police forces were issued blue camouflage uniforms with a shoulder insignia showing the word “policija”.<sup>156</sup> Older uniforms – those issued before

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<sup>146</sup> Exhibit P357, Article 4; Exhibit P1038, p 5; Ljubinko Cvetić, T 6746; Đorđe Kerić, T 7755.

<sup>147</sup> Exhibit P357, Article 4.

<sup>148</sup> Exhibit P357, Article 5.

<sup>149</sup> Exhibit P357, Articles 36 and 47.

<sup>150</sup> Exhibit P357, Article 47.

<sup>151</sup> Exhibit P357, Article 36.

<sup>152</sup> Exhibit P357, Article 12.

<sup>153</sup> Exhibit P357, Article 7; Exhibit D933, pp 7-8.

<sup>154</sup> Exhibit P357, Article 61.

<sup>155</sup> Exhibit P66, Article 7.

<sup>156</sup> Ljubinko Cvetić, T 6700-6701; Karol Drewienkiewicz, Exhibit P996, para 26; K86, T 5121-5122; K73, T 1514; K25, Exhibit P342 (*Milutinović* transcript) T 4665; Exhibit P327 (photograph no 7 depicts “policija” insignia).

5 April 1996 – were solid blue and had an insignia showing the word “milicija”.<sup>157</sup> The older uniforms were worn regularly by reserve police throughout the Indictment period because there was an insufficient number of the new style.<sup>158</sup> Evidence of witnesses indicates that sometimes regular police also wore the old solid blue uniforms.<sup>159</sup> Combat vests were also worn by police during the Indictment period; although not all police were issued with them.<sup>160</sup> These were often dark blue or black, however, regular MUP often wore green combat vests with their blue uniforms as there were not enough blue/black to go around.<sup>161</sup>

54. Descriptions provided by some witnesses and the Chamber’s assessment of photographic evidence indicates (a) while the camouflage uniform of the police is usually described as blue, being a camouflage pattern, it could be seen by some people or in some light conditions to be predominantly black or grey, and (b) while the older solid blue uniform was a dark shade of navy blue it could appear to be a shade of black in some light conditions.<sup>162</sup>

55. Headwear of the regular police included helmets and dark blue baseball-style caps, with MUP insignia on the front.<sup>163</sup> Evidence suggests that police sometimes wore unauthorised attire, such as “Rambo-style caps and bandannas”.<sup>164</sup>

56. The local MUP routinely carried side arms and, on occasion, long-barrel arms too.<sup>165</sup> These included CZ 99 pistols (a short-barrel weapon) and M-70s (automatic rifles).<sup>166</sup> The MUP did not have heavy artillery or tanks.<sup>167</sup>

(b) Special Police Units (PJPs)

57. Special Police Units (*Posebne Jedinice Policije*) (“PJPs”) were established pursuant to Article 6 of the Rules on Organisation of the MUP<sup>168</sup> by the former Minister of the Interior, Zoran

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<sup>157</sup> Ljubinko Cvetić, T 6700-6701; Karol Drewienkiewicz, Exhibit P996, para 26; K25, Exhibit P342 (*Milutinović* transcript) T 4665; K73, T 1514; K86, T 5122; Exhibit P327 (photograph no 6 depicts “milicija” insignia).

<sup>158</sup> Ljubinko Cvetić, T 6700-6701.

<sup>159</sup> Baton Haxhiu, T 6231; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4017-4018; Hazir Berisha, T 4640; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4269, 4272; Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2822, 2955.

<sup>160</sup> K73, Exhibit P331-A, para 13.

<sup>161</sup> K73, Exhibit P331-A, para 13; Exhibit P334 (photograph depicts units wearing blue MUP uniforms and green combat vests).

<sup>162</sup> See Exhibit P1311, pp 1, 5, 6, 8, 9, 10, 11.

<sup>163</sup> See Exhibits P316 and P1311, p 9 (photographs depicting local MUP wearing baseball style caps and helmets). See also the descriptions of police by Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2047; K14, Exhibit P1325, p 4; Merita Dedaj, Exhibit P1030, p 4.

<sup>164</sup> Exhibit P85, p 3.

<sup>165</sup> John Crosland, Exhibit P1201 (*Milutinović* transcript), T 9761.

<sup>166</sup> K86, T 5120.

<sup>167</sup> John Crosland, Exhibit P1400, paras 16 and 36.

<sup>168</sup> Exhibit P357, Article 6.



Sokolović, on 1 August 1993, to carry out “special security tasks” in regular circumstances and in the case of a state of emergency, with an emphasis on “combat tasks and interventions in the case of serious breaches of public law and order”.<sup>169</sup> Such tasks included the “detection, arrest and destruction” of rebel and sabotage and terrorist groups or individual members thereof. To carry out such complex security and combat tasks, the PJP units were to be developed into “mobile, rapid, technically well-equipped and professionally trained and drilled units armed with state-of-the-art weapons”.<sup>170</sup>

58. Members of PJPs were recruited from among active and reserve policemen in the SUPs, and other Ministry employees,<sup>171</sup> on the basis of age,<sup>172</sup> a stable mental and physical state, and “a strong sense of patriotism, courage, endurance and perseverance, [and] high moral qualities”.<sup>173</sup> To encourage a good selection of recruits, PJP members were paid extra.<sup>174</sup> Once a person was on the roster of PJP members, they underwent a special training specific to the task to which they were assigned.<sup>175</sup> 15 PJP detachments were established, five of which were headquartered in Belgrade, and two each in Novi Sad, Priština/Prishtinë, Užice, Kragujevac and Niš.<sup>176</sup> The detachments were formed according to the “assembly principle”, or on an *ad hoc* basis, except for the 21<sup>st</sup> Detachment which was a permanent force within the Belgrade SUP.<sup>177</sup> Therefore, when they were not so engaged, PJP members would perform ordinary police duties.<sup>178</sup> Thus, K25 generally served as a regular policeman except for those occasions when he was assigned to a PJP detachment.<sup>179</sup>

59. Each PJP detachment consisted of four to seven police companies, including support platoons.<sup>180</sup> There were between 500-600 men in each detachment, while each company within the detachment was composed of around 150-180 men.<sup>181</sup> A squad, the smallest unit in a detachment, comprised eight men: a commander, a sniper, a machine-gunner, a grenade-launcher operator, and four riflemen.<sup>182</sup>

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<sup>169</sup> Exhibit P58, para 2; Exhibit P1360, pp 1 and 3. See also Vlastimir Đorđević, T 9447-9448; Ljubinko Cvetić, T 6603; Exhibit D933, pp 10-12.

<sup>170</sup> Exhibit P1360, pp 3-4.

<sup>171</sup> Exhibit P58, para 4; Exhibit P1360, p 2.

<sup>172</sup> The age limit was 35 years of age, or 45 years in the case of officers. Exhibit P1360, p 2.

<sup>173</sup> Exhibit P1360, p 2.

<sup>174</sup> Exhibit P58, para 6; Exhibit P1360, p 6.

<sup>175</sup> Vlastimir Đorđević, T 9449.

<sup>176</sup> Exhibit P58, para 1; Exhibit P1360, p 1.

<sup>177</sup> Exhibit P1360, p 1.

<sup>178</sup> Zarko Braković, Exhibit P759, para 12.

<sup>179</sup> K25, Exhibit P340-A, p 2; K25, Exhibit P342, T 4723.

<sup>180</sup> Exhibit P1360, p 1.

<sup>181</sup> K79, Exhibit P1260, T 9585; K25, Exhibit P340-A, p 7.

<sup>182</sup> Exhibit P1360, pp 1-2.

60. The Police Administration of the RJB, headed by Obrad Stevanović,<sup>183</sup> was responsible for calling up PJP members (once a decision to engage a PJP detachment had been taken by the Minister or a person authorised by him: *see* below) and arranging for training and equipment. This entailed issuing a dispatch to SUPs to mobilise a company.<sup>184</sup> The SUPs would report back to the responsible department within the Police Administration when they had carried out the mobilisation order.<sup>185</sup> SUPs thus provided men and logistical support to PJP units<sup>186</sup> and implemented training programs drawn up by MUP headquarters for PJP units when they were not on detachment duty.<sup>187</sup> In principle, PJP units carried out their assignments in the SUP area to which they were attached, but they could also operate in the territory of other SUPs if required.<sup>188</sup> Commanders of PJP units were members of the SUP Collegium.<sup>189</sup>

61. Pursuant to the decision of 1 August 1993 which established the PJPs, the mobilising and engaging of PJPs could be done on orders of the Minister and, when approved by the Minister, also on orders of the Chief of the RJB.<sup>190</sup> It was the evidence of Vlastimir Đorđević that he never received any authority from the Minister “to use any part of any PJP to be sent out on any mission whatsoever”.<sup>191</sup> This is blatantly incompatible with the documentary evidence that, as Chief of the RJB, Đorđević issued dispatches deploying PJP units throughout the Indictment period.<sup>192</sup> It also stands in contrast to the evidence of Ljubinko Cvetić, Chief of the Kosovska Mitrovica/Mitrovičë SUP, that it was usually the Chief of the RJB, *i.e.* Vlastimir Đorđević, who made the decisions to engage PJP units.<sup>193</sup> The Defence sought to distance Đorđević’s role in the engagement of PJP units by emphasising that the dispatches signed by Đorđević were merely implementing decisions made by the Minister at the Collegium,<sup>194</sup> and that the “[p]lanning, management and engagement of the units” sent to Kosovo were the responsibility of the MUP Staff.<sup>195</sup> The Defence essentially characterises the role of the Chief of the RJB in respect of mobilising the PJPs as merely secretarial, responsible solely for issuing dispatches for the engagement of units for which he made no decision and carried no responsibility. The Chamber firmly rejects this characterisation. The evidence clearly indicates that as Chief of the RJB, Đorđević was authorised by the Minister during the

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<sup>183</sup> Exhibit P263; Vlastimir Đorđević, T 9818; Ljubinko Cvetić, T 6594; Aleksandar Vasiljević, T 5683.

<sup>184</sup> Vlastimir Đorđević, T 9453-9454.

<sup>185</sup> Vlastimir Đorđević, T 9456. *See* Exhibits P1191, P1192, P1193, P1194, P1195, P1196, P1197, P1198, P1199.

<sup>186</sup> Vlastimir Đorđević, T 9453-9454; Ljubinko Cvetić, T 6603, 6662, 6696.

<sup>187</sup> Ljubinko Cvetić, T 6698; Exhibit P1045, p 36.

<sup>188</sup> Exhibit P1360, p 4.

<sup>189</sup> Exhibit P689, p 8.

<sup>190</sup> Exhibit P58, para 2; Exhibit P1360, p 5. *See* also Ljubinko Cvetić, T 6604, 6607; Vlastimir Đorđević, T 9453, 9459.

<sup>191</sup> Vlastimir Đorđević, T 9459.

<sup>192</sup> Exhibits P131; P132; P137; P138; P139; P346; P1182; P1183.

<sup>193</sup> Ljubinko Cvetić, T 6604.

<sup>194</sup> Defence Final Brief, paras 246-247.

<sup>195</sup> Defence Final Brief, para 248.

relevant period to make decisions on engaging the PJP forces. Even if the ultimate decision-making about their engagement lay with the Minister and occurred at the Collegium, this does not dispose of the authority and responsibility for these units by the Chief of the RJB. The Chief of the RJB could also give approval to the PJP commander to issue orders to subordinate officers in the PJPs and request the execution of certain tasks even if PJPs had not been assembled.<sup>196</sup>

62. Further down the chain of command, the conduct of the PJPs on the ground during operations fell within the exclusive authority of the PJP commander.<sup>197</sup> The commander of the PJPs remained accountable to the Minister or to “an individual authorised by him”, in the Chamber’s finding as explained above, to the Chief of the RJB, *i.e.* Vlastimir Đorđević.<sup>198</sup> In joint MUP-VJ operations, the actual deployment and manoeuvring of units on the ground was theoretically done by the VJ operational commander, with the assistance of the PJP command.<sup>199</sup> However, as discussed below, issues in respect of re-subordination of MUP units to VJ command in Kosovo in 1999 meant that, in practice, PJP units often operated outside the formal command of the VJ.<sup>200</sup>

63. In 1998 and 1999, PJP units in Kosovo included the 122<sup>nd</sup> and 124<sup>th</sup> Intervention Brigades and the 23<sup>rd</sup>, 35<sup>th</sup>, 36<sup>th</sup>, 37<sup>th</sup>, 73<sup>rd</sup>, 85<sup>th</sup> and 86<sup>th</sup> PJP Detachments.<sup>201</sup> The 122<sup>nd</sup> Intervention Brigade was an amalgamation of the 21<sup>st</sup> and 22<sup>nd</sup> PJP Detachments. The 124<sup>th</sup> Intervention Brigade came into being on 18 June 1998 pursuant to a decision of Minister Stojiljković,<sup>202</sup> before which it was the 24<sup>th</sup> PJP Detachment.<sup>203</sup> The following day, 19 June 1998, the Accused issued a letter to all the SUPs instructing them to implement the Minister’s decision.<sup>204</sup> In Kosovo, each SUP had at least one PJP, while the Priština/Prishtinë SUP had two.<sup>205</sup>

64. Between July 1998 and 24 March 1999, the PJP normally wore blue tiger-stripe camouflage uniforms in Kosovo.<sup>206</sup> Those uniforms had “Milicija” stitched onto the sleeve of the jacket and

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<sup>196</sup> Exhibit P1360, p 5.

<sup>197</sup> Exhibit P1360, p 5; Ljubinko Cvetić, T 6604-6605.

<sup>198</sup> Exhibit P1360, p 5.

<sup>199</sup> Zarko Braković, Exhibit P759, para 21.

<sup>200</sup> *See infra*, paras 261-264.

<sup>201</sup> Exhibit P764, pp 2-3; Exhibit P345, pp 2-7; Exhibit P974; Exhibit P1392; Zarko Braković, T 4124; Ljubinko Cvetić, T 6603-6604.

<sup>202</sup> Exhibit P257.

<sup>203</sup> Zarko Braković, Exhibit P759, p 2; Zarko Braković, T 4083, 4088, 4091-4092.

<sup>204</sup> Exhibit P132; Vlastimir Đorđević, T 9461.

<sup>205</sup> Zarko Braković, Exhibit P759, para 9.

<sup>206</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9588-9589.

shirt.<sup>207</sup> From 24 March 1999, the PJP wore green camouflage uniforms.<sup>208</sup> The green camouflage uniforms incorporated several shades principally of green and brown.<sup>209</sup> The lighter shades of green have occasionally been described by witnesses as yellow.<sup>210</sup> The Chamber notes that obviously there was a period from 24 March 1999 when some PJP would have still worn the old uniform as it would not have been practical for all PJP units to be re-equipped on the one day. PJP wore a unique insignia on the upper sleeve of their green camouflage uniforms, upon which were the letters PJP.<sup>211</sup> The opposite sleeves carried images of the Serbian flag.<sup>212</sup> The green camouflage uniforms did not carry the “Milicija” insignia of the earlier, blue uniforms.<sup>213</sup> PJP units often wore green or black combat vests with their uniforms.<sup>214</sup> Once the green camouflage uniforms were introduced, the PJP combat vests read “Policija” across the back.<sup>215</sup> Some PJP units wore rank insignia; Junior Corporal’s, for example, wore two V’s on their shoulder.<sup>216</sup>

65. Headwear worn by the PJP included helmets and camouflage green baseball-style caps with insignia on the front.<sup>217</sup>

66. On occasion, during the Indictment period, some PJP removed their insignia and other items of their standard uniform. Despite this, it remained possible to identify PJP on account of their weaponry, vehicles and professional demeanour.<sup>218</sup> PJP equipment was more upmarket than that of the regular MUP police and included Gore-Tex boots.<sup>219</sup> On occasion, the PJP carried out patrols in armoured personnel carriers (APCs).<sup>220</sup> More regularly, PJP would use an armoured UAZ

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<sup>207</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9588-9589; K25, Exhibit P342 (*Milutinović* transcript) T 4664; John Crosland, Exhibit P1400, para 7; Exhibit P327 (photograph no 6 depicts “milicija” insignia); P325 (photograph no 6 depicts PJP in their older blue uniforms. The “milicija” insignia is visible on the right side of the image).

<sup>208</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9588-9589; K25, Exhibit P341-A (*Milošević* transcript) T 7845; K25, Exhibit P340-A, p 20; K86, T 5120; Žarko Braković, Exhibit P759, para 7.

<sup>209</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9588-9589; K86, T 5120; Exhibit P831 (lower right image depicts the green camouflage worn by PJP forces).

<sup>210</sup> K25, Exhibit P342 (*Milutinović* transcript) T 4674.

<sup>211</sup> John Crosland, Exhibit P1400, para 7; Žarko Braković, Exhibit P759, para 7; K25, Exhibit P341-A (*Milošević* transcript) T 7845; K86, T 5122; Exhibit P327, p 2 (image no 13 depicts PJP insignia). The Chamber notes that witnesses Braković and K25 recall that PJP wore their insignia on the right sleeve. Having considered all the evidence before it, however, the Chamber is satisfied that PJP insignia was in fact worn on the left sleeve at times.

<sup>212</sup> Žarko Braković, Exhibit P759, para 7. The Serbian flag is three equal horizontal bands of blue, white and red.

<sup>213</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9588-9589.

<sup>214</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9598-9590; K25, Exhibit P342 (*Milutinović* transcript), T 4665, T 4674.

<sup>215</sup> K79, Exhibit P1260 (*Milutinović* transcript), T9590; K25, Exhibit P342 (*Milutinović* transcript), T 4665.

<sup>216</sup> K25, Exhibit P340-A, p 4.

<sup>217</sup> See Exhibit P335 (photograph depicting PJP members wearing baseball-style caps with insignia on the front); K73, T 1511.

<sup>218</sup> John Crosland, Exhibit P1400, paras 7, 13.

<sup>219</sup> John Crosland, Exhibit P1400, para 7.

<sup>220</sup> John Crosland, Exhibit P1400, para 34.

vehicle,<sup>221</sup> armed with an M-84 7.9 millimetre machine gun,<sup>222</sup> model 110 trucks, Pinzgauers, and civilian trucks.<sup>223</sup> In terms of personal weaponry, the PJP often carried AK-47s,<sup>224</sup> automatic Zastava rifles and semi automatic CZ pistols.<sup>225</sup>

67. The PJP were instructed on the use of weapons by the VJ. The list of weapons they were trained to use included infantry mines, anti-personnel mines, mortars of 60 and 80 (or 82) millimetre calibre, the Browning 12.7 millimetre machine gun, the PAT anti-aircraft gun, the WASP hand held rocket launcher and the Zolja rocket launcher.<sup>226</sup>

68. Operational Pursuit Groups (“OPGs”) were a sub-unit of the PJPs, which comprised specially trained persons from PJP units.<sup>227</sup> The MUP Staff issued a decision establishing the OPGs in December 1998.<sup>228</sup> Pursuant to this decision, every SUP in the territory of Kosovo should allocate 10 to 15 men to the OPGs who would undergo special training.<sup>229</sup> OPGs operated as a rapid reaction force when the main PJP unit of a SUP was occupied.<sup>230</sup> OPGs were organized at the level of municipalities, and often performed “mopping-up” operations to eliminate remaining terrorists.<sup>231</sup> OPGs had a commander within the SUP to which it was attached. Goran Radosavljević, Assistant Head for Special Operations of the MUP Staff, was the head of the OPGs and led their training.<sup>232</sup>

69. The evidence does not suggest that the select OPG units had a uniform distinct from that worn by the regular PJPs, although as Ljubinko Cvetić indicated, they were better equipped than the PJP.<sup>233</sup> Aleksandar Vasiljević observed that they wore leather pouches around their necks in which to store stolen money and objects.<sup>234</sup>

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<sup>221</sup> “UAZ” refers to the Russian-made all-terrain vehicles.

<sup>222</sup> K25, Exhibit P341-A (*Milošević* transcript) T 7836.

<sup>223</sup> K25, Exhibit P340-A, p 13.

<sup>224</sup> Žarko Braković, Exhibit P759, para 7.

<sup>225</sup> K25, Exhibit P340-A, p 13.

<sup>226</sup> K25, Exhibit P340-A, p 3; K25, Exhibit P341-A (*Milošević* transcript) T 7814; K25, Exhibit P342 (*Milutinović* transcript), T 4755.

<sup>227</sup> Zarko Braković, Exhibit P759, para 11; K86, T 5118 (closed session); Ljubinko Cvetić, T 6605; Exhibit D933, p 12.

<sup>228</sup> K86, T 5118; Ljubinko Cvetić, T 6605.

<sup>229</sup> Ljubinko Cvetić, T 6605.

<sup>230</sup> Zarko Braković, Exhibit P759, para 11.

<sup>231</sup> Aleksandar Vasiljević, T 5733.

<sup>232</sup> Zarko Braković, Exhibit P759, para 11; Ljubinko Cvetić, T 6605-6606.

<sup>233</sup> Ljubinko Cvetić, T 6605.

<sup>234</sup> Aleksandar Vasiljević, T 5734.

(c) Special Anti-Terrorist Unit (SAJ)

70. The Special Anti-Terrorist Unit (*Specijalna Antiteroristička Jedinia*) (“SAJ”) was a special elite unit within the RJB tasked specifically with anti-terrorist operations.<sup>235</sup> Like the PJP, the SAJ was established by the former Minister of the Interior, Zoran Sokolović, on 5 April 1996 pursuant to Article 6 of the Rules on Organisation of the MUP.<sup>236</sup> It originally comprised three anti-terrorist units: the Belgrade SAJ unit, the Priština/Prishtinë SAJ unit, and the Novi Sad SAJ unit.<sup>237</sup> In late December 1998, the Minister of the Interior of the time, Stojiljković, disbanded the Novi Sad unit.<sup>238</sup> This had the effect of reducing the operational capacity of the SAJ by around 30 per cent, or 100 men.<sup>239</sup>

71. During the Indictment period, the Commander of the SAJ at the MUP Headquarters in Belgrade was Živko Trajković.<sup>240</sup> The Commander of the Belgrade unit was Zoran Simović, aka Tutinać,<sup>241</sup> and the Commander of the Priština unit was Radoslav Stalević.<sup>242</sup>

72. According to Zoran Simović, the decision to employ the unit could be made only by the Minister of the Interior but this was done in practice via the chief of the sector, *i.e.* Vlastimir Đorđević.<sup>243</sup> The operational commander of an SAJ unit was the unit commander. The SAJ commander, Trajković, would decide which unit to entrust with a certain task, *i.e.* whether that would be the SAJ Belgrade or Priština/Prishtinë.<sup>244</sup> Simović gave evidence that, ordinarily, since the SAJ was part of the RJB, Trajković reported to Đorđević.<sup>245</sup> However, following the establishment of the MUP Staff in Priština/Prishtinë in July 1998, Trajković reported to the head of the MUP Staff.<sup>246</sup> Furthermore, it was his evidence that from this time, the SAJ did not receive assignments from Đorđević but from the MUP Staff in Priština/Prishtinë.<sup>247</sup> As the Chamber has found elsewhere, the establishment and functioning of the MUP Staff did not affect the authority of Đorđević over the units subordinate to him in the RJB, but operated as a body used to coordinate and plan anti-terrorist operations in Kosovo. In this light, it is unsurprising that the SAJ would have received assignments from the MUP Staff, rather than from Đorđević directly, from July 1998.

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<sup>235</sup> Exhibit P357, Article 6; Ljubinko Cvetić, T 6601; Vlastimir Đorđević, T 9462; Radislav Stalević, T 13840; Zoran Simović, T 13573; Exhibit D933, p 12.

<sup>236</sup> Exhibit D401.

<sup>237</sup> Zoran Simović, T 13570-13571, 13605.

<sup>238</sup> Vlastimir Đorđević, T 9694; Radislav Stalević, T 13774; Zoran Simović, T 13579.

<sup>239</sup> Zoran Simović, T 13580. *See also* Exhibit P86, p 1; Exhibit D442, p 1.

<sup>240</sup> Živko Trajković, T 9056; Exhibit P57; Ljubinko Cvetić, T 6599; Radislav Stalević, T 13767-13768; Zoran Simović, T 13572.

<sup>241</sup> Zoran Simović, T 13569-13570; Radislav Stalević, T 13570, 13573; Goran Stoparić, Exhibit P493, para 48.

<sup>242</sup> Radislav Stalević, T 13767; Zoran Simović, T 13572.

<sup>243</sup> Zoran Simović, T 13573.

<sup>244</sup> Zoran Simović, T 13574.

<sup>245</sup> Zoran Simović, T 13604, 13607-13608.

<sup>246</sup> Zoran Simović, T 13608.

Moreover, on Simović's evidence, when contemplating the reinforcement of the SAJ with reserve forces, Trajković did not ask the Minister for their deployment through Lukić, but did so through the Accused.<sup>248</sup> Simović's explanation for this was that although the MUP Staff was in charge of operations in Kosovo, the deployment of MUP reserve forces was under the authority of the Ministry.<sup>249</sup> This is further confirmation that the establishment and functioning of the MUP Staff did not diminish or affect the authority of the Accused as Chief of the RJB.

73. The SAJ Belgrade and SAJ Priština/Prishtinë had an identical structure. They were composed of a command and three platoons. Each platoon had three squads.<sup>250</sup> After the disbandment of the Novi Sad unit in December 1998, the SAJ had in total approximately 200 men, 100 in each unit.<sup>251</sup>

74. SAJ members were specially trained, wore distinctive uniforms and insignia, and were equipped with modern weaponry.<sup>252</sup> An SAJ training centre, the 13 *Maj* Centre, was located at Batajnica, near Belgrade.<sup>253</sup> The Belgrade unit was based there.<sup>254</sup> On 23 March 1999, this unit was sent to Kosovo leaving only three or four men at Batajnica in effect as caretakers.<sup>255</sup> The SAJ training centre was bombed by NATO three or four days after the commencement of the NATO bombing campaign on 24 March 1999, resulting in the three to four members of the unit still at Batajnica relocating a few kilometres away from the Centre towards Belgrade.<sup>256</sup> This left the SAJ training centre at Batajnica empty and unguarded; the damage from the bombing was such that the buildings could not be secured.<sup>257</sup>

75. The SAJ did not have its own reserve force. The Police Administration,<sup>258</sup> as the organisational unit of the RJB responsible for the status and readiness of organisational units,<sup>259</sup> thus effectuated replenishment. In March 1999, a few days before the commencement of the NATO bombing campaign, the paramilitary group known as the "Scorpions," that had previously been associated with the RDB, was re-formed and became attached as a reserve unit to the SAJ.<sup>260</sup>

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<sup>247</sup> Zoran Simović, T 13597.

<sup>248</sup> Zoran Simović, T 13608, 13610-13611.

<sup>249</sup> Zoran Simović, T 13608, 13611.

<sup>250</sup> Zoran Simović, T 13574.

<sup>251</sup> Zoran Simović, T 13574, 13580.

<sup>252</sup> Vlastimir Đorđević, T 9464; Exhibit P327, item 12; K73, T 1514-1516 (closed session); K73, Exhibit P332, pp 8, 14; K86, T 5122 (closed session); John Crosland, Exhibit P1400, para 8.

<sup>253</sup> K87, Exhibit P1415, para 7.

<sup>254</sup> K87, Exhibit P1415, para 5.

<sup>255</sup> Zoran Simović, T 13575, 13609.

<sup>256</sup> K87, Exhibit P1415, paras 8-9.

<sup>257</sup> K87, Exhibit P1415, para 9.

<sup>258</sup> Živko Trajković, T 9089; *see also* Zoran Simović, T 13582; *see also* Radislav Stalević, T 13775.

<sup>259</sup> Exhibit P357, Article 15.

<sup>260</sup> Goran Stoparić, Exhibit P493, paras 9 and 35; Aleksandar Vasiljević, T 5663.

There were some 100 to 150 men in this group.<sup>261</sup> The detailed findings of the Chamber with regard to how the Scorpions came to be attached to the SAJ as a reserve force are discussed in a separate section of this Judgement.<sup>262</sup> However, the Chamber notes at this juncture its finding that the Accused, Đorđević, authorised the replenishment of the SAJ with the Scorpions unit.<sup>263</sup> The Scorpions were issued with SAJ identification papers, received SAJ reservist's salaries,<sup>264</sup> and were issued with the same uniform as that worn by the SAJ, but with the Scorpions patch/insignia on the arm.<sup>265</sup>

76. The SAJ wore green and brown tiger stripe camouflage uniforms and Gore-Tex boots.<sup>266</sup> They wore a unique insignia on the sleeve of their uniforms, on which the letters SAJ were visible in Cyrillic.<sup>267</sup> The letters SAJ were at the bottom of the insignia, and the top carried the word "policija".<sup>268</sup> On the other sleeve was a patch with the emblem of a double-headed eagle with a red shield and the Serb symbol with the four Ss. It also had a sword and a snake and was metallic grey in colour.<sup>269</sup> As was the case with the PJP, some SAJ removed their insignia during the Indictment period. They also wore regular police uniforms on occasion, but it was possible to identify SAJ on account of their weaponry, vehicles and professional demeanour.<sup>270</sup>

77. The SAJ often carried modern Heckler Koch weapons.<sup>271</sup> Towards the end of 1998, SAJ also started to use more heavy weaponry. They attached 12.7 calibre heavy machine guns to their vehicles and utilised 60 millimetre and 82 millimetre mortars.<sup>272</sup>

## 2. State Security Department (RDB)

78. Pursuant to the Rules of the Internal Organisation of the State Security Department (*Resora Drzavne Bezbednosti*) ("RDB"), the RDB was responsible for the protection of the security of the Republic of Serbia and the FRY and "uncovering and preventing activities directed at undermining or toppling the constitutional order" of Serbia and the FRY.<sup>273</sup> Its tasks comprised "counterintelligence, intelligence, countering extremism and terrorism and other security tasks of

<sup>261</sup> Goran Stoparić, Exhibit P493, para 39.

<sup>262</sup> See *infra*, paras 1934-1945.

<sup>263</sup> See *infra*, paras 1934-1945. See also K92, T 2748; Exhibit P86, p 1; Exhibit D442, p 1.

<sup>264</sup> Goran Stoparić, Exhibit P493, paras 13, 18; K92, T 2748.

<sup>265</sup> Goran Stoparić, Exhibit P493, para 11, 41; Goran Stoparić, T 2819.

<sup>266</sup> John Crosland, Exhibit P1400, para 8; Radislav Stalević, T 13864.

<sup>267</sup> John Crosland, Exhibit P1400, para 8; K88, T 1870; K86, T 5122; K25, Exhibit P342 (*Milutinović* transcript), T 4666; K73, T 1515; Exhibit P327, p 2 (image no 12 depicts SAJ insignia).

<sup>268</sup> K88, T 1870; K86, T 5122; K25, Exhibit P342 (*Milutinović* transcript), T 4666; K73, T 1515; Exhibit P327, p 2 (image no 12 depicts SAJ insignia).

<sup>269</sup> Radislav Stalević, T 13864.

<sup>270</sup> John Crosland, Exhibit P1400, para 13.

<sup>271</sup> John Crosland, Exhibit P1400, para 9.

<sup>272</sup> Živko Trajković, T 9060.

<sup>273</sup> Exhibit P1349, Article 2.



the Republic and FRY”.<sup>274</sup> RDB Centres were set up in Kosovo in Gnjilane/Gjilan, with a branch in Uroševac/Ferizaj, in Priština/Prishtinë, with a branch in Kosovska Mitrovica/Mitrovicë, and in Prizren, with branches in Đakovica/Gjakovë and Peć/Pejë.<sup>275</sup>

79. While the Minister of the Interior, *i.e.* Vljako Stojiljković, was technically in charge of the RDB, President Slobodan Milošević directed and controlled the department through its Chief, Radomir Marković.<sup>276</sup> David Gajić headed the RDB in Kosovo in 1998.<sup>277</sup> On 1 January 1999, he was replaced by Milosav Vilotić.<sup>278</sup>

80. Within the internal organisational units at the RDB headquarters, the Third Administration was in charge of fighting terrorism.<sup>279</sup> The Unit for Special Operations (*Jedinica za Specijalne Operacije*) (“JSO”) was a special organisational unit of this Administration, dedicated to “carrying out tasks of a specialised nature”, which included direct assault on various objectives.<sup>280</sup> The unit was better equipped, especially in terms of weaponry, than the PJPs.<sup>281</sup> It had a reputation for being a well-trained and capable unit.<sup>282</sup> The head of the JSO was Franko Simatović, aka “Frenki”.<sup>283</sup> The operational commander of the JSO was Milan (or Milorad) Ulemek Luković, aka “Legija”, Assistant Head for Special Operations of the MUP Staff,<sup>284</sup> who was immediately subordinate to Simatović.<sup>285</sup>

81. Originally, the JSO comprised mainly of former members of a group known as the “Red Berets”, which had been formed in 1991, and had been active in the armed conflicts in Bosnia and Herzegovina and Croatia.<sup>286</sup> The JSO continued to wear red berets and came to be known by that name<sup>287</sup> as well as “Frenki’s” or “Frenki’s men”.<sup>288</sup> Although some witnesses occasionally referred

<sup>274</sup> Exhibit P1349, Articles 2-3. *See also* Exhibit D933, pp 6-7.

<sup>275</sup> Exhibit P1349, Articles 26, 35-36; Exhibit D933, p 7.

<sup>276</sup> Aleksandar Vasiljević, T 5684-5685.

<sup>277</sup> Aleksandar Vasiljević, T 5885-5886; Exhibit P57, item 1; Exhibit P886, p 2.

<sup>278</sup> Momir Stojanović, T 11786.

<sup>279</sup> Exhibit P1349, Article 5; Exhibit D933, p 6.

<sup>280</sup> Exhibit P1349, Articles 5, 41-42; John Crosland, Exhibit P1401 (*Milutinović* transcript), T 9761.

<sup>281</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9675; John Crosland, Exhibit P1400, paras 9-10; John Crosland, Exhibit P1403, p 4.

<sup>282</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9676.

<sup>283</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9676; Frederick Abrahams, Exhibit P738, p 11; Mahmut Halimi, T 2956-2957; K90, T 1488-1489; K90, Exhibit P322 (*Milutinović* transcript), T 9314; Nike Peraj, Exhibit P313, para 12; Živko Trajković, T 9061; Momir Stojanović, T 11808; K25, T 1646-1647.

<sup>284</sup> Ljubinko Cvetić, T 6599, 6861, 6863; Exhibit P57, p 1; John Crosland, Exhibit P1400, para 11; K88, T 1983.

<sup>285</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9676; Aleksandar Vasiljević, T 5886; Zarko Braković, T 4139, 4195; Exhibit P57; Exhibit P764, p 3; K88, T 1983-1984.

<sup>286</sup> Goran Stoparić, Exhibit P493, paras 10 and 12.

<sup>287</sup> Goran Stoparić, Exhibit P493, para 11; Goran Stoparić, Exhibit P495 (*Milutinović* transcript), T 701-702; John Crosland, Exhibit P1403, p 4 (photo depicting JSO members in uniform and red berets).

<sup>288</sup> K25, Exhibit P342 (*Milutinović* transcript) T 4666-4667; K90, Exhibit P322 (*Milutinović* transcript) T 9314.

to “Frenki’s men” as paramilitaries,<sup>289</sup> Momir Stojanović, Head of the Security Section in the Command of the Priština Corps, confirmed that “Frenki’s men” in fact referred to a JSO unit. According to his evidence, the unit was based in Dečani/Dečan, above the monastery in Visoki.<sup>290</sup>

82. Goran Stoparić, a former member of the “Scorpions”, gave evidence that a number of paramilitary groups formed “satellite” units of the RDB,<sup>291</sup> which the Chamber understands to mean that the groups were not formally part of the RDB, but were paid to take part in RDB operations. In this regard, it notes Stoparić’s evidence that when he was based with the Scorpions in Đeletovci in the early 1990s, the group was visited regularly by RDB operatives, who brought with them the equipment needed by the group as well as salaries for each member of the Scorpions contained in envelopes.<sup>292</sup> The group received uniforms from the same factory that supplied the military and the police. Stoparić stated that volunteer paramilitary groups associated in this manner with the RDB included the Scorpions, Arkan’s Tigers, the Wolves from Vučjak, the Grey Wolves from near Zvornik, the CSB (Central Security Service) from Doboj, and the Vipers commanded by Gumar.<sup>293</sup>

83. In view of Stoparić’s personal involvement with the RDB as a member of the Scorpions from 1991-1995, the Chamber accepts that the Scorpions unit was attached to the RDB at this time. However, the Chamber recalls its finding above that in the time period relevant to the Indictment in this case, the Scorpions were attached to the SAJ of the RJB, rather than to the RDB. With regard to Stoparić’s evidence of other “satellite” units of the RDB, the Chamber accepts the evidence of Aleksandar Vasiljević that members of Arkan’s Tigers carried RDB identification passes<sup>294</sup> and that they were deployed in Kosovo Polje/Fushë Kosovë.<sup>295</sup> This evidence is confirmed by the notes taken by Vasiljević of a meeting of the Supreme Command held on 17 May 1999 which record Radomir Marković, Head of the RDB, as stating that “volunteers” were “a necessary evil”,<sup>296</sup> that Arkan had offered Marković about 100 of his men and that Marković had accepted 30 provided they wore uniforms.<sup>297</sup> The Chamber is satisfied that at least 30 members of Arkan’s Tigers were attached to the RDB during the Indictment period.

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<sup>289</sup> See Nike Peraj, Exhibit P313, paras 12 and 40; Nike Peraj, T 1258-1259. But see Nike Peraj, T 1279. John Crosland gave evidence that since members of the units involved in Kosovo including the JSO sometimes wore non-standard kit such as bandannas around their heads, it would not have been surprising for members of this unit to be mistaken as members of paramilitaries. John Crosland, Exhibit P1400, paras 13-14.

<sup>290</sup> Momir Stojanović, T 11810.

<sup>291</sup> Goran Stoparić, Exhibit P493, paras 7, 10.

<sup>292</sup> Goran Stoparić, Exhibit P493, para 13.

<sup>293</sup> Goran Stoparić, Exhibit P493, paras 9-10.

<sup>294</sup> Aleksandar Vasiljević, T 5669-5670.

<sup>295</sup> Aleksandar Vasiljević, T 5668.

<sup>296</sup> Exhibit P884, p 1.

<sup>297</sup> Aleksandar Vasiljević, T 5681; Exhibit P884, p 1.

84. In Kosovo, the JSO unit operated with PJP forces in the Mališevo/Malishevë area in mid-July 1998, in the areas of Drenica and Jablanica in 1998,<sup>298</sup> in the Gornje Streoc/Strelle i Epërm area in July/August 1998, in Bajgora/Bajgorë, Čičavica/Qiqavica and Kosmač in October 1998,<sup>299</sup> in Istok/Istog, Srbica/Skenderaj and Dečani/Dečan in 1999<sup>300</sup> and in Rogovo/Rogovë in January 1999, among others.<sup>301</sup>

85. The JSO wore a grey-green camouflage uniform, and red berets.<sup>302</sup> The green was notably different from that worn by other units, like the PJP.<sup>303</sup> The JSO often wore good quality protective armour (better than that worn by the regular police) when on an exercise, and slouch-style jungle-hats when on exercise or patrol.<sup>304</sup> As was the case with some PJP and SAJ, units of the JSO removed their insignia during the Indictment period. In addition, they sometimes wore regular police uniforms.<sup>305</sup> JSO units regularly wore, or carried with them, a variety of other head-gear, which could include bandannas, facemasks, cowboy-hats and what was referred to as “Frenki hats”, which were camouflage in design and carried the JSO insignia.<sup>306</sup>

86. Some evidence indicates that the JSO, or another special police unit, wore light grey coveralls, with a shoulder patch of red, white and blue in vertical wings or daggers, similar to the PJP insignia.<sup>307</sup> Both Joseph Maisonneuve and Karol John Drewienkiewicz described seeing such uniforms on police, including on the body of a dead policeman, at Rogovo/Rogovë, Đakovica/Gjakovë municipality, on 29 January 1999, where several KLA members had been killed. Drewienkiewicz indicated that the uniform was light grey “tending to blue” coveralls (“like a boiler

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<sup>298</sup> John Crosland, Exhibit P1401 (*Milutinović* transcript), T 9762-9763; John Crosland, Exhibit P1400, para 10; K79, Exhibit P1260 (*Milutinović* transcript), T 9677.

<sup>299</sup> Exhibit D340, p 10.

<sup>300</sup> John Crosland, Exhibit P1400, para 12.

<sup>301</sup> Karol John Drewienkiewicz, Exhibit P996, paras 165-166; Karol John Drewienkiewicz, T 6370-6372, 6481.

<sup>302</sup> John Crosland, Exhibit P1400, para 9; Exhibit P1403, p 4 (photograph depicts JSO units); K25, Exhibit P340-A, p 20.

<sup>303</sup> K25, Exhibit P340-A, p 20.

<sup>304</sup> John Crosland, Exhibit P1400, para 9.

<sup>305</sup> John Crosland, Exhibit P1400, para 13.

<sup>306</sup> K25, Exhibit P340-A, p 20; K90, Exhibit P321, para 47; K90, Exhibit P322 (*Milutinović* transcript), T 9457-9459, 9484; K90, T 1489.

<sup>307</sup> Karol John Drewienkiewicz, Exhibit P996, para 166; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7799, 8002; Karol John Drewienkiewicz, T 6372, 6481; Exhibit P1008, p 3.

suit”<sup>308</sup>) with “chest webbing”,<sup>309</sup> and that the men were better equipped than the regular police.<sup>310</sup> Joseph Maisonneuve gave evidence that some of the MUP forces on the ground in Rogovo/Rogovë wore one-piece grey jump suits.<sup>311</sup> The Chamber finds that this refers to the same uniform as that referred to by Drewienkiewicz as “coveralls”.

87. On occasion, the JSO carried out patrols in armoured personnel carriers (APCs).<sup>312</sup> The JSO used Toyota Land Cruisers and pick-up trucks, which were often mounted with 12.7 millimetre heavy machine guns.<sup>313</sup> They carried modern Heckler Koch .556 weapons.<sup>314</sup>

### 3. Reservists

88. The Law on Internal Affairs of the Republic of Serbia provided for the possibility for strengthening the MUP with conscripts from the reserve force of the Ministry in case of an imminent threat of war or war.<sup>315</sup> The Law provided that only those conscripts who met the requirements for work in the MUP were able to be assigned to the reserve force.<sup>316</sup> These requirements were that a person had not been convicted of a criminal offence and no criminal proceedings were being conducted against them, and for male employees, that they had completed military service or the secondary school of internal affairs, and were under a certain age limit.<sup>317</sup> In addition, police reservists could be called up for certain peace-time duties of the Ministry, in particular, to prevent activities aimed at threatening the security of the Republic, disturbances of law and order and attempts to spread disturbances of public law and order, and in order to provide assistance in the event of general hazards caused by natural disasters.<sup>318</sup> Reservists could be employed in “patrol and beat service, security, work at checkpoints, special operations and tasks, and other activities”.<sup>319</sup>

89. Police reservists were civilians with normal civilian jobs when they were not mobilised.<sup>320</sup> They were subject to the same entitlements as regular police officers when employed as

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<sup>308</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7799.

<sup>309</sup> Exhibit P1008, p 3.

<sup>310</sup> Karol John Drewienkiewicz, Exhibit P996, para 166; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7799.

<sup>311</sup> Joseph Maisonneuve, Exhibit P853, T 11172.

<sup>312</sup> John Crosland, Exhibit P1400, para 34.

<sup>313</sup> John Crosland, Exhibit P1400, paras 9, 38.

<sup>314</sup> John Crosland, Exhibit P1400, para 9.

<sup>315</sup> Exhibit P66, Article 27, para 1. See also Ljubinko Cvetić, T 6739-6740; Vukmir Mirčić, T 13297-13298.

<sup>316</sup> Exhibit P66, Article 27, para 2.

<sup>317</sup> Exhibit P66, Article 34. The age limit for posts requiring secondary education was 27, and for posts requiring a higher education diploma or university degree was 30. The age limits did not apply to those persons with at least five years experience in performing the duties of an authorized official.

<sup>318</sup> Exhibit P66, Article 28, para 1.

<sup>319</sup> Exhibit D101, para 3.

<sup>320</sup> Ljubinko Cvetić, T 6740.

reservists,<sup>321</sup> and were issued the standard blue uniform of policemen and weapons,<sup>322</sup> although some came to wear the uniforms of units to which they were attached.<sup>323</sup> Local reservists were under the jurisdiction of the local MUP.<sup>324</sup> So the local Serb reservists in Mala Kruša/Krushë-e-Vogël and Velika Kruša/Krushë-e-Madhe all wore a uniform and were armed by the Prizren SUP.<sup>325</sup>

90. In March 1999, a general mobilisation was carried out in Kosovo, activated by the head of the Public Security Department, Vlastimir Đorđević, acting on instructions of the Minister, which resulted in all local reservists being mobilised.<sup>326</sup>

91. Reservists were generally older than police in regular units, and usually wore older – out-dated – solid blue MUP uniforms.<sup>327</sup> One of the reasons reservists wore older uniforms was that there were not enough new ones to go around; regular units received new uniforms before reservists did.<sup>328</sup>

#### 4. Local defence units/Reserve police squads (RPOs)

92. In mid-1998, the local population of non-Albanian ethnicity in Kosovo began to be armed and trained by the VJ and the MUP.<sup>329</sup> The decision to form and arm these local defence units, also called reserve police squads (RPOs), was made by the MUP headquarters in Belgrade, passed down to the MUP Staff, and implemented by the SUPs.<sup>330</sup> RPOs were formed in order to defend Serb villages or enclaves.<sup>331</sup> A dispatch of the Kosovska Mitrovica/Mitrovicë SUP dated 1 July 1998 records that within that SUP, 41 RPOs were organised with a total of 1374 members and that a total of 1000 long-barrelled weapons were delivered to the RPOs.<sup>332</sup> On 10 July 1998, the MUP Staff issued an order on the formation of RPOs and the training of RPO members.<sup>333</sup> An order of the Joint Command<sup>334</sup> of 28 July 1998 set out the structure of local defence planning of populated areas.<sup>335</sup> 54,683 civilians in Kosovo were armed by July 1998, 12,170 of whom were issued arms

<sup>321</sup> Exhibit P66, Article 28, para 3; Ljubinko Cvetić, T 6740-6741; Exhibit D263, p 3.

<sup>322</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4738; K86, T 5120 (closed session); K86, T 5121, 5125, 5202 (closed session); Vukmir Mirčić, T 13297.

<sup>323</sup> K25, Exhibit P340-A, p 20.

<sup>324</sup> K25, Exhibit P340-A, p 18.

<sup>325</sup> K25, Exhibit P340-A, p 20.

<sup>326</sup> K92, T 2758-2759.

<sup>327</sup> John Crosland, Exhibit P1400, para 20; Nike Peraj, T 1208-1209.

<sup>328</sup> Ljubinko Cvetić, T 6701.

<sup>329</sup> Exhibit P1355; Exhibit P1051; Exhibit P901; Exhibit P1333, p 23; Exhibit P975; Ljubinko Cvetić, T 6719.

<sup>330</sup> Ljubinko Cvetić, T 6713.

<sup>331</sup> Ljubinko Cvetić, T 6610, 6644, 6671-6672; Exhibit P688, p 7; Vukmir Mirčić, T 12624; Exhibit D933, p 13.

<sup>332</sup> Exhibit P1054.

<sup>333</sup> Exhibit P1052, p 2.

<sup>334</sup> For analysis of the existence and functioning of the Joint Command, *see infra*, paras 224-252

<sup>335</sup> Exhibit P1223; Exhibit P1051.

by the MUP, and 34,716 of whom were issued arms by the VJ. The total figure included 7,797 persons who had been issued weapons earlier (after 1990).<sup>336</sup> There were around 255 RPOs in Kosovo by February 1999.<sup>337</sup> In a meeting of the MUP Staff at Priština/Prishtinë on 17 February 1999, Streten Lukić, the head of the MUP Staff, noted that RPOs in nearly all the villages inhabited by Serbs had been activated.<sup>338</sup> He further stated that meetings had been held with all the RPOs, which were attended by MUP General Momčilo Stojanović and Lieutenant-Colonel Blagoje Pešić.<sup>339</sup> The work of the RPOs and their engagement were “assessed as good and aimed at protecting the people, personal and property safety, easing tension and fears of revenge”.<sup>340</sup>

93. Members of RPOs did not have the same entitlements as regular MUP personnel, even when they were mobilised<sup>341</sup> and were less trained and less equipped than regular police reservists.<sup>342</sup> While the RPOs were closely connected to the MUP structure, the VJ also was involved, in particular, by training the members.<sup>343</sup>

94. The stated role of the RPOs was to defend their villages, towns and inhabited settlements from attacks of the KLA.<sup>344</sup> The RPOs were not permanently mobilised, but would be activated as needed in the local area.<sup>345</sup> The units had their own commander and deputy commander who would receive specific orders from the commander of the police station in the area.<sup>346</sup> Blagoje Pešić was in charge of the RPOs at the MUP Staff in Priština/Prishtinë.<sup>347</sup>

95. A large number of the VJ Priština Corps and Joint Command orders received in evidence, for example, tasked the “non-Šiptar [*i.e.* Kosovo Albanian] population in KiM”, “armed non-Šiptars” or “armed non-Šiptar population” with supporting the MUP forces in “breaking up and destroying *Siptar* terrorist forces”.<sup>348</sup> Ljubinko Cvetić affirmed that this occurred in practice.<sup>349</sup> Documentary evidence also confirms this. A report of the 3<sup>rd</sup> Army Forward Command Post (IKM) dated 2 October 1998 notes that “the distribution of weapons to citizens loyal to the FRY (of Serbian and Montenegrin ethnicity) has made it possible for large-scale resistance against the

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<sup>336</sup> Exhibit P688, p 7.

<sup>337</sup> Ljubinko Cvetić, T 6718; Exhibit P1055, p 4; Exhibit D933, p 13.

<sup>338</sup> Exhibit P85, p 1.

<sup>339</sup> See Exhibit P1055.

<sup>340</sup> Exhibit P85, pp 1-2.

<sup>341</sup> Ljubinko Cvetić, T 6741-6742; Radomir Mitić, T 12624.

<sup>342</sup> Ljubinko Cvetić, T 6610.

<sup>343</sup> Exhibit P1053.

<sup>344</sup> Exhibit P688, p 7; Ljubinko Cvetić, T 6610, 6644, 6671-6672; Radomir Mitić, T 12624.

<sup>345</sup> Ljubinko Cvetić, T 6644, 6672; Exhibit P1333, p 23.

<sup>346</sup> Ljubinko Cvetić, T 6644, 6671-6672, 6713-6714; Exhibit D933, p 13.

<sup>347</sup> Ljubinko Cvetić, T 6688.

<sup>348</sup> Exhibit P969, p 1; Exhibit P970, p 2; Exhibit P1382, p 2; Exhibit P766, p 2; Exhibit P767, p 2; Exhibit P350, p 2; Exhibit P961, p 2; Exhibit D104, p 2.

terrorists to be organised”.<sup>350</sup> At a meeting of the Collegium of the VJ General Staff of 21 January 1999, it was reported that “bearing in mind the number of people owning or having been distributed weapons, there is a realistic possibility on the Serbian and Montenegrin side of the Serbian population organising itself to offer resistance, and of an increasing emergence of radical forces”.<sup>351</sup> The Chamber accepts that RPOs had a role in combat operations in conjunction and coordination with the MUP and the VJ. This role was not always limited to the stated role of the RPOs as is apparent from some orders referred to in the course of the Judgement.

96. RPO members were only authorised to wear police or military uniforms when mobilised and engaged in reserve contingents of the MUP or VJ.<sup>352</sup> In practice, RPO members tended not to wear complete uniforms, but only parts of them.<sup>353</sup> Local Serbian forces also dressed on occasion in black militia uniforms.<sup>354</sup>

97. Weapons, including automatic and semi-automatic rifles, were issued personally to each member of the RPO.<sup>355</sup> Some RPO members took their weapons home when they were not mobilised.<sup>356</sup>

## 5. Collegium of the Minister

98. Under the governance of the previous Minister of the Interior, Zoran Sokolović, a Collegium had taken place between the Minister and the Chiefs of the RJB and RDB. Concurrently, the Chief of the RJB held his own Collegium, comprising all the heads of the RJB administrations, which met weekly. Thus, during that period, Vlastimir Đorđević attended the RJB Collegium as head of the Police Administration.<sup>357</sup> It is Đorđević’s evidence that from the time that Vlajko Stojiljković became Minister, in April 1997, and Đorđević became Acting Chief (May 1997) and then Chief (January 1998) of the RJB, “there was no collegium of the public security”; instead Minister Stojiljković held a Collegium comprising all the heads of the different administrations in the RJB. Significantly, it would have been Đorđević who would open these Collegium meetings and then give the floor to the chiefs of administrations in the RJB. The chiefs of administration would report on the situation of the preceding week and would submit proposals for the following week.<sup>358</sup> Đorđević would add his own comments and the Minister would then close the Collegium by giving

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<sup>349</sup> Ljubinko Cvetić, T 6672.

<sup>350</sup> Exhibit D340, p 4.

<sup>351</sup> Exhibit P902, p 16.

<sup>352</sup> Exhibit D111, para 19; Exhibit P771, p 12; Exhibit P345, pp 8-9.

<sup>353</sup> Ljubinko Cvetić, T 6610-6611.

<sup>354</sup> Lufti Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285-4286, 4318, 4335; Lufti Ramadani, T 1122-1124.

<sup>355</sup> Ljubinko Cvetić, T 6715; Exhibit P976.

<sup>356</sup> Vlastimir Đorđević, T 9918; Ljubinko Cvetić, T 6715.

<sup>357</sup> Vlastimir Đorđević, T 9412.

guide-lines to the administrations of the RJB and issuing orders as to what tasks should be carried out and who would be involved in them.<sup>359</sup> The conclusions of the Collegium would be sent to all participants of the meeting whose task it then was to implement the conclusions during the following week and report back at the next Collegium meeting.<sup>360</sup> Đorđević “always attended Collegium meetings”,<sup>361</sup> except during the period in 1998 when he was on the ground in Kosovo.<sup>362</sup> Those Assistant Ministers of the RJB who could not attend would receive minutes of the meetings.<sup>363</sup>

99. The Collegium of the Minister was “formalised” by way of a decision of Minister Stojiljković of 4 December 1998.<sup>364</sup> Đorđević explained that the Collegium established by this decision was, in all material respects, the same as the previous weekly Collegiums, except that the head of the RDB, Radomir Marković and his deputy, Nikola Ćurčić, attended.<sup>365</sup> No separate Collegiums involving just the RJB administrations were held after this time.<sup>366</sup>

100. There was a marked inconsistency in the evidence given by Defence witnesses as to the extent to which the Collegium discussed and made decisions about the use of MUP forces in Kosovo. Vlastimir Đorđević testified that at these Collegium meetings, Obrad Stevanović, the Chief of the Police Administration informed the Minister about sending police members, equipment and weapons to Kosovo. However, Đorđević insisted that the Minister was never provided with detailed information regarding anti-terrorist and combat activities conducted in Kosovo at Collegium meetings.<sup>367</sup> Similarly, Stojan Mišić gave evidence that the Collegium did not discuss anti-terrorist activity in Kosovo, nor did they receive reports on the implementation of those plans or make any decisions in respect of them.<sup>368</sup> He testified that “not once during the war did we discuss planning, organising and implementation of anti-terrorist activities in Kosovo [...] we also did not consider any reports which had to do with the prevention of terrorism”.<sup>369</sup>

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<sup>358</sup> Vlastimir Đorđević, T 9413.

<sup>359</sup> Vlastimir Đorđević, T 9413-9414, 9416.

<sup>360</sup> Vlastimir Đorđević, T 9414, 9416-9417.

<sup>361</sup> Stojan Mišić, T 14082.

<sup>362</sup> Vlastimir Đorđević, T 10031.

<sup>363</sup> Stojan Mišić, T 14084.

<sup>364</sup> Exhibit D208; Vlastimir Đorđević, T 9415.

<sup>365</sup> Vlastimir Đorđević, T 9415-9416. The full list of attendees were: the Minister, Vlastimir Đorđević, Assistant Minister and Chief of the RJB, Radomir Marković, Assistant Minister and Chief of the RDB, Nikola Ćurčić, Assistant Minister and Deputy Chief of the RDB and Director of the Security Institute, Obrad Stevanović, Assistant Minister, Stojan Mišić, Assistant Minister, Petar Zeković, Assistant Minister, Dragiša Dinić, Assistant Chief of the RDB, Dragan Ilić, Chief of the Crime Police Administration, and Branko Đurić, Chief of the Belgrade SUP, Vlastimir Đorđević, T 9412-9413, 9416; *see also* T 10025, 10026-10027; Stojan Mišić, T 14027; Exhibit D208.

<sup>366</sup> Vlastimir Đorđević, T 9416-9417.

<sup>367</sup> Vlastimir Đorđević, T 9420.

<sup>368</sup> Stojan Mišić, T 14032.

<sup>369</sup> Stojan Mišić, T 14054.



101. The Chamber finds it incredible that the Collegium did not discuss or make decisions about the situation in Kosovo in 1998 and 1999, by far the single most pressing security issue facing the MUP and Serbia at the time. Moreover, it was telling in the Chamber's view, that in contradiction to his previous assertions, Mišić also testified that there were "several Collegium meetings where we analyzed the overall security situation and sought adequate solutions",<sup>370</sup> that "on one occasion, the Minister stated at the Collegium that in view of the overall complex security situation, he formed a Staff of the Ministry for Anti-terrorist Activities [...] to deal more effectively with the problem of terrorism"<sup>371</sup> and that "one of the priorities at the Collegium Ministry sessions was the situation in Kosmet"<sup>372</sup> [...] the Ministry Collegium would receive requests for logistical support for police forces that were in Kosmet".<sup>373</sup> The Chamber notes that in order for the Collegium to properly consider requests for additional units, re-enforcements, replacements of men and units, and for additional or new types of equipment put to them, the members had to have had knowledge of the operations for which they were required and of the progress of the defensive strategies being followed in order to offer advice about such proposals and their effect and consequences for the MUP. It is not credible that the MUP would have large numbers of men, including key units, regularly and actively engaged in Kosovo, with the army, and yet the Minister's Collegium was not involved or even aware of their activities. Nor does the Chamber accept that no reports were ever received or discussed at the Collegium about the conduct of operations against the KLA or the security situation in Kosovo.

102. Documentary evidence also demonstrates the full extent to which the Collegium members were involved in planning and discussing the MUP operations in Kosovo during the Indictment period. The notes of a meeting of the Minister's Collegium of 14 February 1999, attended by "Rodja" *i.e.* the Accused, "Rade", *i.e.* Radomir Marković, Stojan Mišić, Branko Đurić, Dragan Ilić and Danilo Pantović contained in the notebook of General Obrad Stevanović, in which the Minister referred to the need to develop a plan in response to the eventuality of the entry of NATO forces, were put to Stojan Mišić in court during his evidence.<sup>374</sup> Mišić denied his presence at any such meeting, questioned whether the meeting was ever held, and raised doubts as to the authenticity of the document.<sup>375</sup> The Chamber notes that, while the notebook of Stevanović is not in evidence, very similar sentiments were recorded in the minutes of a consequential meeting, held a few days later on 17 February 1999, of the MUP Staff in Priština/Prishtinë attended by Stojiljković, Marković, Stevanović and the heads of SUPs and of units in Kosovo, which indicate that plans were

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<sup>370</sup> Stojan Mišić, T 14035.

<sup>371</sup> Stojan Mišić, T 14035-14036.

<sup>372</sup> "Kosmet" is shorthand for "Kosovo and Metohija".

<sup>373</sup> Stojan Mišić, T 14086-14087.

<sup>374</sup> Stojan Mišić, T 14099-14100.

discussed to “prevent and thwart the entry of NATO troops” and that “three mopping up operations in the Podujevo, Dragobilja and Drenica areas” were ordered.<sup>376</sup> The Chamber therefore accepts that a meeting took place on 14 February 1999, attended by the Accused, in which the Minister referred to the need to develop a plan in response to the eventuality of the entry of NATO forces. According to the minutes of the 17 February meeting, some 4000 policemen, 70 policemen of the operative group, and 900 police reservists were to be deployed. The minutes further reveal that just three days later, on 20 February 1999, another apparently consequential meeting of the MUP Staff in Priština/Prishtinë was held with police detachment unit commanders for further consultations about their engagement.<sup>377</sup> Further, on the basis of the above, the Chamber is not able to accept the truth of Mišić’s denial of any knowledge of a plan of the RJB to prevent the entry of NATO troops into Kosovo.<sup>378</sup>

103. While the Chamber accepts that the Collegium did not undertake detailed planning of specific operations – an activity that was undertaken by the MUP Staff in Priština/Prishtinë (*see below*) – the effect of the accumulation of evidence cited above in regard to key plans on the engagement of MUP units in large scale operations in Kosovo being discussed in meetings of Collegium members confirms, in the Chamber’s finding, in conformity with what logic dictates, that Collegium meetings were used by members to discuss and plan MUP engagement in Kosovo during the Indictment period.

## 6. MUP Staff for Kosovo

### (a) Original Staff

104. The Accused, Vlastimir Đorđević, set up the MUP Staff for Kosovo on 11 June 1997<sup>379</sup> pursuant to Article 10 of the Rules on the Internal Organisation of the Ministry of the Interior, which provided that the chief of a department or a secretariat may establish permanent or *ad hoc* staffs, commissions, task forces or other working groups made up of Ministry employees to examine certain issues or carry out more complex assignments which require the combined work of different highly specialised employees, from two or more organisational units within the department and secretariat.<sup>380</sup> In his report, Defence expert Radomir Milašinović noted that unlike military staffs “which were traditionally auxiliary organs of control, the MUP staffs in Kosovo and Metohija

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<sup>375</sup> Stojan Mišić, T 14099-14100.

<sup>376</sup> Exhibit P85; Stojan Mišić, T 14104-14105.

<sup>377</sup> Exhibit P85; Stojan Mišić, T 14105.

<sup>378</sup> Stojan Mišić, T 14106.

<sup>379</sup> Exhibit D402; Exhibit D403; Vlastimir Đorđević, T 9469.

<sup>380</sup> Exhibit P357, Article 10; Ljubinko Cvetic, T 6774-6775, 6776; Vlastimir Đorđević, T 9466-9467.

were not auxiliary but organs of control with clearly defined control functions and responsibilities”.<sup>381</sup> The tasks of the MUP Staff were to “plan, organise and undertake measures and activities to suppress armed rebellions; prevent and suppress civil disorder; prevent terrorism” and other assignments related to the area of Kosovo.<sup>382</sup> The MUP Staff served in practice as an intermediate level of command between the MUP Headquarters in Belgrade and SUPs in Kosovo.<sup>383</sup> A decision dated 12 June 1997, signed by the Accused Đorđević, set out the members of the Staff and designated the functions of each person.<sup>384</sup> Đorđević testified that although pursuant to the Rules he had authority to issue this Decision on staffing without the approval of the Minister, in practice, he did have the Minister’s approval.<sup>385</sup>

105. On 15 January 1998, Đorđević issued a further decision which expanded the mandate of the MUP Staff to include cooperation with the RDB, the VJ, other state organs and organs of local self government. One of its tasks was the prevention and suppression of terrorism in Kosovo.<sup>386</sup> On 23 January 1998, Đorđević mandated the MUP Staff with training PJP and SAJ units to perform security tasks.<sup>387</sup> The decisions issued by Đorđević stated that the MUP Staff was responsible for the performance of its work to the Minister, the Chief of the RJB and officials authorised by them.<sup>388</sup> By a decision of Đorđević of 15 May 1998, the mandate of the MUP Staff was renewed for a year.<sup>389</sup> The decision specified that the Staff leader reported to the head of the RJB and was required to inform him of all significant security incidents, the measures undertaken and the results of those measures.<sup>390</sup>

106. On 11 June 1998, Đorđević issued a decision revising the leaders, deputy leaders and members of the MUP Staff.<sup>391</sup> One of his senior officers, General Sreten Lukić, was appointed as Head of the MUP Staff and the MUP Staff was expanded to 14 members, all of whom were members of the RJB.<sup>392</sup> The decision set down that members would be appointed to the expanded

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<sup>381</sup> Exhibit D933, p 25.

<sup>382</sup> Exhibit D402, item 2. *See also* Vlastimir Đorđević, T 9469-9470.

<sup>383</sup> Ljubinko Cvetić, T 6597. As put in the report of Defence expert Radomir Milašinović “the Staff played the part of an additional organ of control positioned immediately below the level of the RJB chief in the MUP headquarters and immediately above the level of the SUP chiefs in Kosovo and Metohija”. Exhibit D933, p 26.

<sup>384</sup> Vlastimir Đorđević, T 9470-9472; Exhibit D403.

<sup>385</sup> Vlastimir Đorđević, T 9472.

<sup>386</sup> Exhibit D404, item 1 and 2.

<sup>387</sup> Exhibit P704, p 2. Vlastimir Đorđević, T 9475-9476

<sup>388</sup> Exhibit D404, item 2; Exhibit P704, p 2.

<sup>389</sup> Exhibit D100; Vlastimir Đorđević, T 9476.

<sup>390</sup> Exhibit D100, items 5 and 6.

<sup>391</sup> Exhibit P760.

<sup>392</sup> Exhibit P760. The members were: Sreten Lukić, assistant chief of the Secretariat in Belgrade for police affairs, as Staff leader; Radoslav Djinović, assistant chief of the SUP in Smelderovo, as Staff deputy leader; Goran Radosavljević, chief of the section for PJP in the SUP Belgrade, as assistant Staff leader for interventions; Žarko Braković, chief of the police department of SUP Priština, as the assistant Staff leader for police affairs; Milutin Vuković, commander of the Mechanised Brigade in Priština, as assistant Staff leader for mechanised units; Miodrag Ršumović, chief of the Department for the Suppression of Financial Crime, SUP Belgrade, as the

MUP Staff from among the heads of the SUPs in Kosovo and that the Staff should begin work on 1 June 1998 for an initial period of a year.

107. While on 11 June 1997, Vlastimir Đorđević had established a MUP Staff for Kosovo, which created an intermediate level of command between MUP Headquarters in Belgrade including the RJB headed by him, and the SUP chiefs in Kosovo, and which from 15 January 1998 had been required to cooperate, *inter alia*, with the RDB and the VJ, he had no authority as head of the RJB to formally include the RDB in this MUP Staff, or the VJ. The security situation in Kosovo was rapidly worsening and it is evident from the course of events in the first half of 1998 that the FRY and Serbia had to improve the efficiency and competence with which it dealt with the KLA. An obvious measure was to coordinate the anti-KLA activities of the Federal and Republican forces engaged in this role. Within the MUP this involved coordination of the activities of the RJB and the RDB in Kosovo.

(b) Ministerial Staff for the Suppression of Terrorism

108. The cooperation which the Accused could authorise was not sufficient. While a new Head and some strengthening of the MUP Staff was ordered by the Accused on 11 June 1998, it was only the Minister who had the legal power to formally ensure representation of the RDB on the MUP Staff. This he did only five days later, when he issued a decision for the establishment of a “Ministerial Staff for the Suppression of Terrorism”, which effectively expanded the membership of the MUP Staff in Kosovo to include the chiefs of the secretariats for internal affairs, centres and branches of the RDB.<sup>393</sup> While in form this was a new staff which superseded the existing Staff, and while the Accused maintained he had not been consulted about this decision, its leader remained Sreten Lukić of the RJB, and most of its composition was unchanged from that put in place by Đorđević just five days earlier.<sup>394</sup> The significant change was the formal inclusion of the state security representatives (the RDB).

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coordinator for financial crime; Novica Zdravković, working in the suppression of financial crime in the Criminal Police Department in the SUP Vranje, as the general crime coordinator; Radovan Vušurević, chief of the Department for Border Police, Aliens and Administrative Affairs of the SUP Novi Sad, as the assistant Staff leader for border police, aliens and administrative affairs; Milan Čanković, providing communications equipment, vehicles and other equipment in the Police Administration of the Ministry, as the assistant Staff leader for radio communications; Miloš Deretić, chief of the Department of Communications in the SUP Priština, as the assistant head of staff for wire communications; Milorad Rajičić, chief of the Department for Joint Affairs of the SUP Priština, as the assistant Staff leader for quartermaster security; Gojko Čelebić, working in the defence preparations in the Police Department of the SUP Priština, as assistant staff leader for logistics; Dobrašin Krdžić, working in matters of preventive medicine as the assistant Staff leader for medical security; and Raško Milenković, chief of the analysis Department of the SUP Priština, as the assistant Staff leader for surveillance analysis.

<sup>393</sup> Exhibit P57.

<sup>394</sup> Of the 14 original members of the Staff of 11 June 1998, just four (Braković, Ršumović, Deretić and Čelebić) did not continue to be members in the Ministerial Staff.

109. Under the formal legal structure established pursuant to the Law on the Interior the Public Security Department of the MUP (the RJB), of which the Accused was Chief, was entirely distinct from the State Security Department of the MUP (the RDB) which had its own Chief. Therefore it was not within the authority of the Accused, as Chief of the RJB, to effect coordination of the two arms of MUP or their functioning, even though this was obviously a desirable, if not necessary, development given the threat to the Republic of Serbia posed by the KLA. Hence the power of the Minister, who alone could coordinate the functions of the RJB and RDB, was invoked to take the step which the Accused alone could not take. Within five days of the Accused's decisions about the membership of the MUP Staff in Kosovo, the Minister acted to also include RDB representatives in one single Staff and to formally enable the one body to coordinate the actions of the RJB and RDB in Kosovo. General Lukić of the Accused's RJB continued as chief of the new Staff. For the most part it continued to perform the functions of the earlier MUP Staff but now, with RDB membership, it was able to coordinate within Kosovo both the activities of the RJB and the RDB in combating the threat of terrorism posed essentially by the KLA.

110. Since February 1998 the RJB MUP Staff had been charged by the Accused with cooperating with the RDB. The Minister's Order of 16 June 1998 took this a step further by formally bringing the two distinct organisations together, but only at the level of Kosovo, and only in the role of combating terrorism. Otherwise both RJB and RDB continued to be the two distinct components of the MUP. The Accused continued to hold the office of Chief of the RJB. His subordinate Lukić headed the Ministerial Staff. The Head of the Staff, General Lukić, was required by the decision of 16 June 1998, to report to the Minister about his actions, the actions of the Staff, and the aspects of the security situation under the remit of the staff, which was "to plan, organize and control the work and engagement of organizational units of the Ministry, and also sent and attached units, in suppressing terrorism" in Kosovo, as well as "to plan, organise, direct and coordinate the work of organisational units" of the MUP.<sup>395</sup> No step was taken to limit the powers of the Accused as Chief of the RJB. He continued to hold his office as Chief of the RJB, as did the Chief of the RDB. As with the former MUP Staff, the Ministerial Staff in Kosovo functioned as an intermediary between the Accused (with the MUP Staff in Belgrade) and the SUPs and OUPs in Kosovo.

111. The Defence submits that this decision of the Minister had the effect of cutting Đorđević out of the MUP Staff structure and divesting him from authority in matters related to anti-terrorist activity by MUP units in Kosovo.<sup>396</sup> In his report on the "Position and Role of the Chief of the Public Security Department in the Ministry of the Interior of the Republic of Serbia in Anti-

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<sup>395</sup> Exhibit P57, item 2 and 3.

<sup>396</sup> Defence Closing Brief, para 212.

Terrorist Activities in Kosovo and Metohija in 1998 and 1999”, Defence expert Radomir Milašinović argued that by this decision, the Minister reduced the authority of the RJB chief by establishing a direct line of subordination with the Staff head, thereby displacing the RJB chief and the RDB chief “from the chain of operational planning, organisation and control of the prevention of terrorism in Kosovo and Metohija”.<sup>397</sup> The report further postulates that apart from these special security tasks in the domain of the Ministerial Staff, the jurisdiction and powers of Đorđević as the RJB chief remained unchanged, and that he also had competence in the area of expert and administrative/logistic support to the Staff and the units engaged.<sup>398</sup>

112. The evidence of the Accused and the Defence case really hang on the very weak thread that in the Minister’s Decision of 16 June 1998, it is provided that the Ministerial Staff and Lukić as its Chief are to report to the Minister. This, it is concluded, was intended by the Minister, and it had the legal effect to exclude the Accused from his powers and duties as Chief of the RJB in respect of all MUP forces and operations in Kosovo. The Accused’s evidence went so far as to suggest this exclusion was absolute and in all respects, although that doesn’t take any account of the limitation, in the Minister’s Order of 16 June 1998, of the functions of the Staff to anti-terrorist activities. In the Chamber’s assessment there are fundamental flaws with this contention. By the Law on the Interior all functions of the MUP are subject to the Minister who has complete responsibility for all of them. The Chiefs of the RJB and the RDB are responsible to the Minister for all that is done in their respective administrations. The most obvious effect and intent of a requirement for the Ministerial Staff to report to the Minister, is to ensure no more than was the standard situation within the MUP, and in most governmental structures in representational governmental systems, *i.e.* the Minister remains the person ultimately responsible and who can intervene and make demands or give instructions as he deems it necessary. The Minister has ultimate control. For the Minister to have full power to control did not require that the intensive support structures of the MUP Administrations at the Belgrade Headquarters be excluded. This Headquarters Staff remains essential for ensuring the effective functioning of most activities. Nor does it require that the Chiefs of the RJB and the RDB be excluded. It would be discordant if this were intended.

113. In fact, the effect of the Defence proposition is that the two most senior officers available to the Minister, the Chiefs of the RJB and the RDB, were deliberately removed from the highest levels of advice and organisation of the Ministry at a time when the greatest level of competence and efficiency was required, and somewhat incongruously, that a Staff which comprises subordinates of the two Chiefs became the sole adviser to the Minister with respect to anti-terrorist activities in

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<sup>397</sup> Exhibit D933, pp 28-29.

<sup>398</sup> Exhibit D933, p 29.

Kosovo. Further, in the implementation of his decisions, Defence propositions accept that the Minister would continue to utilize the services of the administration of the RJB, which remained under the authority of the Chief of the RJB. The Staff in Kosovo was dependant for manpower, equipment, finance and all other aspects of administrative support, on the RJB and the RDB administrations in Belgrade. Anti-terrorist activities in Kosovo, while directed in operational detail by the Ministerial Staff there, could not be conducted without the ongoing support and maintenance of the Belgrade Administration. The Defence contention sought unsuccessfully to explain how the MUP could function if the Staff in Kosovo was entirely self contained and independent, answerable only to the Minister himself. The attempts of the Defence to explain how this could function, with the Accused and the Administration in Belgrade responsible only to provide what their subordinates in Kosovo demanded, are manifestly impractical as a matter of administration. Also entirely impractical is the basic contention that the Minister himself would have sole and full responsibility for all aspects of the conduct of the anti-terrorist activities in Kosovo, as well as exercising his normal functions and responsibilities especially during a time of armed conflict. The demands on the Minister's time make this impractical.

114. The only justification for such a structure that is offered is the personal idiosyncrasy of the Minister who wished, it is said, to exercise sole control. No explanation is apparent, or is offered, for the fact that the Chiefs of the RJB and RDB remained in office, functioning otherwise in the full exercise of their power and authority, or that before his 16 June 1998 decision the Minister had been able to involve himself directly in the work of the MUP Staff, and of the RJB, as he felt desirable. Neither is it apparent, nor is it suggested, how the Minister had the time and the capacity to assume full control of the anti-terrorist activities in Kosovo, and to do so utilizing the Headquarters staff of the RJB, but without the coordination or involvement of its Chief who was otherwise still in command of the RJB.

115. This whole contention of the Defence and the Defence expert depends on the thin thread that by his decision of 16 June 1998, the Minister had required the Chief of the Staff to report to the Minister. However, such a requirement is entirely in accord with the whole of the formal legal structure of the MUP. The Minister is the formal point of authority for the Ministry's functions. Reporting at the higher levels is to the Minister. But in normal contexts this does not exclude the senior organisational elements of the Ministry. Rather it embraces them. It merely reflects the ultimate responsibility of the Minister under which the RJB, and its Chief, functions. Much of the activity of the Headquarters administration of the MUP involves receiving and acting on reports and recommendations to the Minister and issuing decisions and orders in consequence. Administrative procedures and the judgement of the more senior Headquarters staff determine where the Minister

needs to be personally informed of, or deal with, an issue. The Minister can give directions about his involvement as he chooses.

116. It is in this context that a suggestion that a requirement to report to the Minister must have been intended, and should be read, as entirely excluding, from the chain of communication and the chain of command, the Minister's most senior advisers, is at once remarkable and lacking in persuasion.

117. For these reasons, and as discussed below, the Chamber does not accept the credibility of the expert report, save to the extent that the facts and opinions presented are confirmed by other credible evidence. The report was compiled sometime in 2008-2009,<sup>399</sup> primarily on the basis of what appeared to be "informal" interviews with around 50 MUP staff, who gave their "impressions" or recollections of the factual situation in 1998 and 1999.<sup>400</sup> These impressions or recollections were often based on or influenced by understandings of the meaning or applicability of legal provisions which were not always properly interpreted, or were relied on as governing what occurred in spite of evidence that MUP structures often acted outside the normal legal framework. Furthermore, with regard to such impressions or recollections about the effects of the establishment of the Ministerial Staff on the extent of Đorđević's authority as chief of the RJB, the Chamber notes that none are supported by documentary evidence. The whole report shows a lack of acknowledged scientific methodology.

118. Moreover, the contention that the establishment of the Ministerial Staff somehow diminished Đorđević's role and participation in decision-making structures of the MUP with regard to the activities of MUP forces in anti-terrorist operations is without any factual foundation. The Chamber takes into consideration, in particular, the fact that Đorđević was often on the ground in Kosovo throughout 1998 and 1999 and played a direct role operationally in the engagement of MUP forces in Kosovo.<sup>401</sup> As noted earlier, he actively participated in Collegium meetings at which anti-terrorist actions were discussed and planned, as well as Joint Command meetings (see below), dealing with the coordination of VJ and MUP forces on the ground in Kosovo. Significantly, there is no evidence to suggest that any of his functions were reduced or limited after the establishment of the Ministerial Staff. The Chamber also recognises that although the practical effect of the establishment of the Staff was that the RDB would be directly represented on the Staff and its operative unit, the JSO, would be more active in Kosovo, the vast bulk of direct MUP

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<sup>399</sup> Radomir Milašinović, T 14305.

<sup>400</sup> Radomir Milašinović, T 14291.

<sup>401</sup> See *infra*, paras 359, 398, 1900-1907, 1920-1925.



operations in Kosovo continued to be carried out by the RJB, including PJP and SAJ detachments, for which Đorđević remained responsible.

119. Sreten Lukić, who had been originally appointed by Đorđević, remained the head of the Ministerial Staff in Kosovo, while David Gajić, the Head of the RDB in Kosovo, was appointed as Lukić's deputy. The members of the Staff included JSO Commander Milorad Luković (Legija) the Assistant Head for Special Operations, Živko Trajković the Assistant Head for Special Anti-Terrorist Units, and Goran Radosavljević the Assistant Head for Special Police Units.<sup>402</sup> On 2 October 1998, the Minister appointed General Momčilo Stojanović, Đorđević's deputy as Assistant Chief of the RJB, to the MUP Staff.<sup>403</sup> On 21 May 1999, Colonel Dragan Bozović, Assistant Chief of the Police Administration, was appointed by the Minister as Deputy Head to the Staff.<sup>404</sup> All of these appointments were of persons subordinated in their normal activities to the Accused, Đorđević, as Chief of the RJB or to the Chief of the RDB.

120. As the Staff was formally a creation of the Minister, Đorđević did not have the power to appoint members to the Ministerial Staff.<sup>405</sup> He did, however, make decisions regulating the rights of MUP members who had been assigned to the Staff.<sup>406</sup> For example, pursuant to the Minister's decision to appoint Momčilo Stojanović to the Ministerial Staff, a decision dated 5 October 1998 and signed by Đorđević records the entitlements due to Momčilo Stojanović for performing his tasks in Kosovo as of 15 October 1998.<sup>407</sup> Similarly, Đorđević issued a decision on 21 May 1999 to dispatch Bozović to Kosovo and refers to his entitlements in this capacity.<sup>408</sup> It is significant that a letter dated 28 May 1999 from the Ministerial Staff, signed by its Chief General Sreten Lukić and addressed to Đorđević as Chief of the RJB, contains Lukić's proposal for the termination of appointments and addition of members to the Ministerial Staff as of 1 June 1999.<sup>409</sup> The letter of Lukić was addressed to Đorđević on 28 May 1999. Apparently, in the ordinary processes of administration, on 31 May 1999 there followed a decision of the Minister renewing the Staff for a further year which reflected Lukić's proposal to Đorđević.<sup>410</sup> Đorđević testified that he did not remember receiving this proposal but, if he had, he would have forwarded it to the Minister as he himself was not competent to deal with it.<sup>411</sup> This letter is a telling indication of the understanding at the time of Đorđević's continuing authority and of the handling of this matter within the

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<sup>402</sup> Exhibit P57, item 1.

<sup>403</sup> Vlastimir Đorđević, T 9483; Exhibit D99; Exhibit P1044; Exhibit P1055.

<sup>404</sup> Vlastimir Đorđević, T 9486; Exhibit P259.

<sup>405</sup> Vlastimir Đorđević, T 9484, 9486.

<sup>406</sup> Vlastimir Đorđević, T 9482, 9484-9485.

<sup>407</sup> Vlastimir Đorđević, T 9484-9485; Exhibit P1044.

<sup>408</sup> Vlastimir Đorđević, T 9486; Exhibit D405.

<sup>409</sup> Exhibit D406.

<sup>410</sup> Vlastimir Đorđević, T 9490; Exhibit P67.

<sup>411</sup> Vlastimir Đorđević, T 9488-9489; Exhibit D406.

Ministry. Further, a decision signed by Đorđević dated 30 May 1999 terminated the employment of Milan Čanković as a member of the Ministerial Staff.<sup>412</sup> Đorđević sought to explain such matters on the basis that only the Minister could issue decisions on the appointment of someone to the Ministerial Staff, but he could authorize Đorđević to issue a decision on the termination of someone's engagement in Kosovo or a decision regulating employment status relating to salary, for example.<sup>413</sup> These explanations notwithstanding, the documentary evidence cited above affirms, in the Chamber's finding, that Đorđević remained actively engaged in the membership and functioning of the Ministerial Staff in Kosovo throughout 1999.

121. It is the evidence of Vlastimir Đorđević that the Ministerial Staff never reported to him about their work and that he never received any information from them.<sup>414</sup> Stojan Mišić also testified that the Staff's "reporting went directly to the Minister about all anti-terrorist operations and activities".<sup>415</sup> However, other evidence indicates that the Ministerial Staff regularly reported to the MUP Headquarters, including to the Chief of the RJB, as discussed below.<sup>416</sup> According to Đorđević, he was not able to issue any instructions or tasks to the Ministerial Staff; this was solely the prerogative of the Minister. The Staff had qualified people of their own to plan how each operation was to be carried out; "[o]rders and related activities and control over the police units was executed exclusively through the Staff".<sup>417</sup>

122. The Chamber finds that what occurred in fact following the Minister's order of 16 June 1998, emphatically demonstrates that the Accused as Chief of the RJB, and the Chief of the RDB, and their administrations in Belgrade were not excluded. The Accused was included, not excluded, when the Ministerial Staff commenced to function. He also attended meetings in Kosovo and in Belgrade of the Ministerial Staff and other meetings when the anti-terrorist operations were planned and discussed. The administration of the RJB and RDB continued to function in respect of Kosovo. Reports of RJB units, SUPs and OUPs, continued to be made to the MUP Administration in Belgrade and also to the Staff in Kosovo, which itself reported to the RJB Administration in Belgrade headed by the Accused. The Accused was personally and directly involved in matters in Kosovo in the second half of 1998 and in 1999. While the Accused might have had less available time to spend in Kosovo once the NATO bombing campaign of the whole of the FRY commenced on 24 March 1999, he continued to exercise responsibilities for Kosovo.

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<sup>412</sup> Vlastimir Đorđević, T 10059; Exhibit P144.

<sup>413</sup> Vlastimir Đorđević, T 10059-10060.

<sup>414</sup> Vlastimir Đorđević, T 9484.

<sup>415</sup> Stojan Mišić, T 14041.

<sup>416</sup> See *infra*, para 131.

<sup>417</sup> Vlastimir Đorđević, T 9585.

123. The Chamber notes that in keeping with the general usage of witnesses and submissions during the trial, in the remainder of the Judgement it will usually use the description the “MUP Staff”, or the “MUP Staff for Kosovo”, whether the reference is to the MUP Staff for Kosovo before 16 June 1998, or the Ministerial Staff for the Suppression of Terrorism in Kosovo after 16 June 1998. This usage is convenient for brevity and does not imply any failure to recognise the change in its formal structure which is discussed in the preceding paragraphs.

124. Ljubinko Cvetić, head of the Kosovska Mitrovica/Mitrovičë SUP until mid-April 1999, explained that the MUP Staff, which was established solely for the territory of Kosovo, was a “mid-command” between the MUP in Belgrade and the SUPs in Kosovo.<sup>418</sup> The SUPs reported both to the MUP in Belgrade and to the MUP Staff.<sup>419</sup> All the SUPs in Kosovo and the MUP Staff remained subordinate to the RJB.<sup>420</sup> The authority of the Chief of the RJB over the SUPs, notwithstanding the existence of the MUP Staff, including in relation to combat activities in Kosovo, was demonstrated, *inter alia*, by the way that Special Police Units (“PJPs”), discussed below, were engaged. PJP detachments could only be used by the SUPs if orders were given by the MUP Staff or the Minister to the detachment commander.<sup>421</sup> However, the actual decision to engage PJPs had to be made at the Ministry level, and evidence discloses that it was the Chief of the RJB, *i.e.* Vlastimir Đorđević, who made such decisions.<sup>422</sup> In the Chamber’s finding, therefore, the fact that the SUPs received specific commands in terms of their counter-terrorist related actions from the MUP Staff did not affect the normal chain of authority in the MUP, since the MUP Staff was a conduit for the orders and directions of the senior leadership of the MUP in Belgrade, *i.e.* Minister Stojiljković, the Chief of the RJB, *i.e.* Vlastimir Đorđević, and the Chief of the RDB, *i.e.* Radomir Marković. The MUP Staff, discussed below, provided a useful coordination body for operations to be implemented by SUPs in their various areas of responsibility, but did not interrupt or affect the authority of Đorđević over the SUPs.

## 7. Reporting system within the MUP

125. The reporting system of the MUP during the period of the Indictment was governed by the Instructions on Information and Reporting, issued on 23 December 1994<sup>423</sup> as updated on 19 April 1996.<sup>424</sup> The Instructions set out the basic rule that information and reporting on security-related events and developments as well as on the execution of tasks was to be ensured by urgent

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<sup>418</sup> Ljubinko Cvetić, T 6590, 6597; Exhibit P78.

<sup>419</sup> Ljubinko Cvetić, T 6597.

<sup>420</sup> Ljubinko Cvetić, T 6598.

<sup>421</sup> Ljubinko Cvetić, T 6603.

<sup>422</sup> Ljubinko Cvetić, T 6604.

<sup>423</sup> Exhibit D232; Vlastimir Đorđević, T 9493-9494.

<sup>424</sup> Exhibit P1056, p 3. *See* Ljubinko Cvetić, T 6722.

information, daily information and periodic information and reporting.<sup>425</sup> The reporting system was based on the principle of hierarchy, entailing that each level of organisation reported to the level immediately above it.<sup>426</sup>

126. Pursuant to the Instructions, each organisational unit of the RJB was to ensure urgent, daily and periodic information and reporting among themselves on security-related events and developments, as well as on the execution of tasks, a responsibility to be checked by the head of organisational units.<sup>427</sup> Chiefs of the OUPs and commanders of police stations in municipalities were tasked with ensuring that information and reports on security-related events and developments in their municipality were submitted to the respective SUP.<sup>428</sup> The SUP chiefs in turn had to ensure that such information and reports were submitted to the Ministry and the RJB organisational units at the Ministry headquarters.<sup>429</sup>

127. Urgent information was to be conveyed immediately to the Ministry's Duty Operations Centre.<sup>430</sup> In extremely urgent cases, the OUP or police station had to directly communicate with the Ministry or another Secretariat.<sup>431</sup> A dispatch would be sent immediately to the competent administration in the MUP.<sup>432</sup> The commanders of police stations responsible for the control of crossings over the state border were to supply the relevant SUP with urgent information.<sup>433</sup> They also were obliged to send information directly to the authorised Department in the Ministry.<sup>434</sup> Such urgent information was supplied to local organs, as well as to the relevant organisational unit at the Ministry headquarters.<sup>435</sup>

128. Daily reporting was carried out by the issuance of daily bulletins containing a summary of events and developments and measures taken in the course of the day as well as any associated numerical data.<sup>436</sup> The duty services of the SUPs would compile the daily bulletin and submit it to the Ministry's Duty Operations Centre.<sup>437</sup> The Duty Operations Centre would in turn assemble a daily bulletin of this information and send it to "users", the list of which was approved by the Chief

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<sup>425</sup> Exhibit D232, Article 1.

<sup>426</sup> Exhibit D232, Articles 8 and 18; Vlastimir Đorđević, T 9494-9496.

<sup>427</sup> Exhibit D232, Articles 2 and 4.

<sup>428</sup> Exhibit D232, Article 5; Exhibit P1056, p 3.

<sup>429</sup> Exhibit D232, Article 6.

<sup>430</sup> Exhibit D232, Article 7.

<sup>431</sup> Exhibit P1056, p 3.

<sup>432</sup> Ljubinko Cvetić, T 6762.

<sup>433</sup> Exhibit D232, Article 8.

<sup>434</sup> Exhibit P1056, p 3.

<sup>435</sup> Exhibit D232, Article 9.

<sup>436</sup> Exhibit D232, Article 11.

<sup>437</sup> Exhibit D232, Article 12; Ljubinko Cvetić, T 6724. *See* Exhibits D276; D277; D278; D279 and D280.

of the RJB, Vlastimir Đorđević.<sup>438</sup> SUPs were obliged to send circular dispatches to the Ministry and all the OUPs and police stations in their area.<sup>439</sup>

129. The SUPs in Kosovo, *i.e.* Priština/Prishtinë, Kosovska Mitrovica/Mitrovicë, Uroševac/Ferizaj, Gnjilane/Gjilan, Đakovica/Gjakovë, Peć/Pejë and Prizren, were specifically required to send dispatches both to the Ministry in Belgrade and to the MUP Staff in Kosovo.<sup>440</sup> Ljubinko Cvetić, chief of the Kosovska Mitrovica/Mitrovicë SUP, confirmed that in 1999 reports about events in the territory of the SUP were sent both to the Ministry and to the MUP Staff.<sup>441</sup> The most important security-related information that occurred in all SUPs was sent by the Analytics Department within the RJB to the individual SUPs so that they were informed about the situation outside their territory, as well as to the head of the MUP Staff.<sup>442</sup> Chiefs of SUPs also gave a report to the head of the MUP Staff, Sreten Lukić, in Priština/Prishtinë every morning to inform him of current events not included in the bulletin.<sup>443</sup> In addition, reports were given during meetings of the MUP Staff. At a meeting of senior police officials, including PJP commanders, the SAJ commander and the JSO commander, and the MUP Staff on 4 April 1999, the participants discussed “previous tasks”, “achieved results”, “the situation on the ground”, and “forthcoming tasks”.<sup>444</sup> The unit or detachment commanders also reported on these issues.<sup>445</sup>

130. Reports from the SUPs were sometimes given orally to the MUP headquarters in Belgrade by telephone.<sup>446</sup> The telephone system of reporting was interrupted during April 1999 after the bombing of the post office in Priština/Prishtinë which resulted in the telephone lines being cut. During this period, a telephone line was established between some SUPs and the MUP Staff in Kosovo, but not to Belgrade.<sup>447</sup>

131. While the Instructions did not provide for a duty of the MUP Staff to report to the MUP headquarters in Belgrade (notably, the MUP Staff was created in 1997, after the issuance of the 1994 Instructions and 1996 update), the MUP Staff did in practice submit reports to the MUP headquarters in Belgrade.<sup>448</sup> The MUP Staff would issue summary reports to the Ministry leadership, a “sort of cross-section, a recap of everything that had happened in the field”, which Vlastimir Đorđević described as a “double-track channel” since the same information was sent by

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<sup>438</sup> Exhibit D232, Article 12; Vlastimir Đorđević, T 9495, 9510.

<sup>439</sup> Exhibit P1056, p 3.

<sup>440</sup> Exhibit P1056, p 3; Vlastimir Đorđević, T 9495, 9510, 10047.

<sup>441</sup> Ljubinko Cvetić, T 6723, 6726; *see* Exhibit P1060.

<sup>442</sup> Vlastimir Đorđević, T 9495, 9499-9504; *see* Exhibits D407; D408; D410; D411; D412.

<sup>443</sup> Ljubinko Cvetić, T 6763.

<sup>444</sup> Exhibit P764.

<sup>445</sup> Ljubinko Cvetić, T 6860.

<sup>446</sup> Ljubinko Cvetić, T 6723, 6726.

<sup>447</sup> Ljubinko Cvetić, T 6723.

the SUPs in Kosovo to the Operations Centre of the Ministry.<sup>449</sup> The MUP Staff also reported regularly to the MUP headquarters, including, specifically, the Minister's office, the Head of the RJB and the Head of the RDB.<sup>450</sup>

132. The reports were required to include, *inter alia*, information about any use of firearms by police as well as “[o]perative actions and measures in which a large number of employees and materiel and equipment are engaged (searches, raids, blockades, searches of the terrain, ambushes, providing security and the like)”.<sup>451</sup> The Accused testified that while such reports were to include information on the movement of the police and police operations, the information received by the Ministry in Belgrade covered only terrorist activities.<sup>452</sup> The Chamber does not accept the truthfulness of this testimony. Pursuant to the Agreement on the OSCE Verification Mission on Kosovo of 18 October 1998, SUPs in Kosovo were instructed by the MUP Staff, on 21 October 1998, to report specifically on, *inter alia*: (1) terrorist actions and the police response to these, effects and consequences; (2) police operations, including the type of operation, its time and place, the number of police members participating, combat and non-combat equipment used and the result and consequences; (3) movement of police units to, from and within Kosovo, and (4) observations on the work of KVM mission members.<sup>453</sup>

133. In addition, periodic information was supplied “if and when necessary, or regularly”.<sup>454</sup> Such information was more geared towards analysis, containing an assessment of the causes of the events and developments of interest to security and their possible consequences, an assessment of the security situation in view of these events and developments, and an assessment of the security situation in a certain area.<sup>455</sup> Monthly information circulars, based on the urgent and daily reports, were also issued to “users”.<sup>456</sup> Finally, an annual report was distributed to a list of users approved by the RJB chief.<sup>457</sup>

134. The SUPs were continually reminded of their duty to report throughout the Indictment period. At a meeting of senior police officials, including PJP commanders, the SAJ commander and the JSO commander, and the MUP Staff on 4 April 1999, Sreten Lukić underlined the

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<sup>448</sup> Vlastimir Đorđević, T 10047.

<sup>449</sup> Vlastimir Đorđević, T 9508; *see* Exhibit D284.

<sup>450</sup> Ljubinko Cvetić, T 6728; *see* Exhibits P691; P692; P693; P1058; P1059; P1327.

<sup>451</sup> Exhibit D232, p 13.

<sup>452</sup> Vlastimir Đorđević, T 9505-9507, 9515, 9719.

<sup>453</sup> Exhibit P1041; Vlastimir Đorđević, T 9505-9506. *See* Exhibits D274 and D275.

<sup>454</sup> Exhibit D232, Article 17.

<sup>455</sup> Exhibit D232, Article 18.

<sup>456</sup> Exhibit D232, Article 20.

<sup>457</sup> Exhibit D232, Articles 25-30.

“obligatory reporting of the Chiefs of Secretariats and unit commanders to the staff”.<sup>458</sup> In a Dispatch dated 1 April 1999 from the MUP Staff to the Kosovo SUPs, Lukić stated that “it is necessary that you submit a daily summary of important incidents and events for the period from 0600 hours to 0600 hours to the Staff of the Ministry of the Republic of Serbia [in Kosovo] [...], which you should send by fax to the MUP [...] Staff by 0700 hours on the following day,” which must include, *inter alia*, information about “Bombardment of NATO forces” and “Serious Crimes Committed”.<sup>459</sup> Ljubinko Cvetić testified that he received and implemented this dispatch.<sup>460</sup> The Decree on Internal Affairs During a State of War, issued on 7 April 1999 by the government of the Republic of Serbia, made the failure to file reports, or the filing of inaccurate reports and information or forging information by MUP employees a serious violation of professional duties and responsibilities, which could result, *inter alia*, in the restriction of movement of a person for up to 60 days or demotion to a lower position or rank for between one and two years.<sup>461</sup>

135. The units in the field communicated via radio.<sup>462</sup> Work-plans were prepared by the Communications Station indicating the radio frequencies and call signs to be used by which unit.<sup>463</sup> One such work plan in evidence indicates that the 125<sup>th</sup> Motorised Brigade had the call sign IBAR-40, the Joint Command had the call sign Pastrik, and the commander of the 37<sup>th</sup> Detachment of the MUP had the call sign Cegar 1.<sup>464</sup>

#### 8. Disciplinary and criminal procedures in the MUP for MUP staff

136. Disciplinary liability of MUP employees was regulated under the Law of Internal Affairs<sup>465</sup> and the “Decree on Disciplinary Responsibilities in the Ministry of the Interior”, adopted on 30 September 1992.<sup>466</sup> An officer who committed a serious breach of employment obligations and duties could be fined, transferred temporarily to another post, or dismissed.<sup>467</sup> A serious breach included, *inter alia*: the issuing of orders or carrying out of orders that unlawfully jeopardised the safety of people and property; material gain unlawfully acquired by making use of one’s official position; any action that would be a criminal act committed on duty or in connection with official duties; giving orders that, once carried out, would represent a criminal act; and concealment on the

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<sup>458</sup> Exhibit P764, p 4; Ljubinko Cvetić, T 6725-6726, 6859, 6863.

<sup>459</sup> Exhibit P1057.

<sup>460</sup> Ljubinko Cvetić, T 6727.

<sup>461</sup> Exhibit P47, Article 9(3).

<sup>462</sup> Ljubinko Cvetić, T 6729.

<sup>463</sup> Ljubinko Cvetić, T 6729-6732; *see* Exhibit P1061.

<sup>464</sup> Exhibit P1061.

<sup>465</sup> Exhibit P66, Section II (2), Articles 49-58; Vlastimir Đorđević, T 9516-9517.

<sup>466</sup> Exhibit P1049; Vlastimir Đorđević, T 9516-9517.

<sup>467</sup> Exhibit P66, Article 52.

part of a direct superior, of any serious breach of employment obligations or duties committed by a subordinate.<sup>468</sup>

137. If criminal proceedings were initiated against an officer, he was suspended from duty until the completion of the criminal proceedings.<sup>469</sup> Under the Law of Internal Affairs, a MUP employee was fired if a final judgement was handed down convicting him of certain criminal offences<sup>470</sup> or if he no longer fulfilled the conditions of his appointment.<sup>471</sup> Vlastimir Đorđević explained that it was also possible, pursuant to this law, to “get rid” of employees prior to the handing down of a final judgement, if the process was taking too long.<sup>472</sup> It was his evidence that the Ministry never stood in the way of carrying out proceedings against MUP employees.<sup>473</sup> When it concerned crimes that had to be prosecuted *ex officio*, MUP employees were treated like any other citizen.<sup>474</sup>

138. In terms of procedure, the immediate superior of an employee proposed the initiation of disciplinary proceedings to the head of the organ concerned, *i.e.*, the chief of the SUP or the chief of the administration.<sup>475</sup> The head of the organ then initiated disciplinary proceedings by filing a request with the disciplinary prosecutor. Disciplinary liability was incurred at the employee’s home SUP, after a report of this violation was submitted by the employee’s superior under whose command he was operating.<sup>476</sup> A commanding officer could remove a policeman from his unit and send him back to his original SUP if the violation was serious, accompanied by a report of the violation and proposal of measures to be taken either in disciplinary or criminal proceedings.<sup>477</sup>

139. On 4 April 1999, the FRY government passed a Decree on the Application of the Law on Criminal Procedure during a state of war, which came into force on 5 April 1999.<sup>478</sup> This had the effect of allowing an internal affairs organ to carry out certain investigative tasks independently in urgent cases without a decision of the public prosecutor, although the latter had to be informed of such tasks. It also allowed for an internal affairs organ to order a 30 day detention of a suspect, after which, the person, together with the criminal report, was to be immediately taken before the

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<sup>468</sup> Exhibit P66, Article 50.

<sup>469</sup> Exhibit P66, Article 56; Vlastimir Đorđević, T 9518; *see also* Ljubinko Cvetić, T 6743-6744.

<sup>470</sup> *I.e.* the crimes listed in Article 34, item 1 of the Law of Internal Affairs (Exhibit P66), namely: crimes against the constitutional order and security, the armed forces, economy or property or official duty, or criminal offences committed for personal gain or with dishonourable motives.

<sup>471</sup> Exhibit P66, Article 45; Vlastimir Đorđević, T 9519.

<sup>472</sup> Vlastimir Đorđević, T 9519-9520.

<sup>473</sup> Vlastimir Đorđević, T 9520-9521.

<sup>474</sup> Vlastimir Đorđević, T 9518-9519.

<sup>475</sup> Vlastimir Đorđević, T 9517-9518; *see also* Vlastimir Đorđević, T 9522. Exhibit D281 is an example of a disciplinary report submitted by police station to a SUP chief. Exhibit D417 is a request, dated 26 March 1999, for the initiation of disciplinary proceedings made by the Chief of the SUP of Bor, Časlav Golubović, against an employee who committed a violation while working outside Bor SUP, as part of a PJP unit.

<sup>476</sup> Vlastimir Đorđević, T 9522-9523.

<sup>477</sup> Vlastimir Đorđević, T 9523.

<sup>478</sup> Exhibit P200; *see also* Exhibit D933, p 18.



court having jurisdiction. Dragan Ilić, the chief of the Crime Police Administration, issued a dispatch on 6 April 1999, informing the SUP chiefs about these changes to criminal procedure.<sup>479</sup>

140. On 7 April 1999, the Decree on the Internal Affairs during a State of War was issued. The Decree envisaged additional serious violations that could be committed by MUP employees during a state of war, and stipulated the sanctions in relation to such offences. It also made disciplinary proceedings more urgent by way of certain procedural actions. Superiors, *i.e.*, chiefs of SUPs, could immediately discipline subordinates, especially for less serious violations.<sup>480</sup> The Decree stated that MUP employees were obliged to carry out all the orders of their superiors except orders that would require the commission of activities that constituted a criminal offence.<sup>481</sup> On 8 April 1999, the FRY Decree on the implementation of the Law on the Federal State Prosecutor During a State of War was issued, which provided that for the period of the war the Federal State Prosecutor could independently prosecute or directly take over prosecutions for crimes against the constitutional order and security of the FRY, crimes against humanity and other international law crimes, offences against the Army of Yugoslavia and any offences punishable by a minimum of five years imprisonment.<sup>482</sup> Vlastimir Đorđević sent a dispatch on 9 April 1999 informing the SUP chiefs of the Decree of 7 April 1999.<sup>483</sup> The Dispatch made clear that the Accused, as Chief of the RJB, had authorised the heads of organisational units to impose the prescribed measures and sentences for serious violations of employment obligations and duties.<sup>484</sup> Assistant Minister Petar Zeković sent another dispatch dated 21 April 1999 containing a further explanation of Đorđević's 9 April 1999 dispatch.<sup>485</sup> Đorđević testified that Zeković was "in charge of everything relating to the disciplinary court and higher disciplinary court".<sup>486</sup>

141. The Chamber received evidence that the Decree was implemented, at least in some cases. The chief of the SUP of Priština/Prishtinë issued a decision on 26 May 1999, in accordance with "Section 9 sub-section 3" of the "Decree on Internal Affairs during the State of War", terminating the employment of a police officer for having inflicted bodily harm and stolen from a civilian.<sup>487</sup> The chief of the criminal investigation department of SUP Priština/Prishtinë then submitted a criminal charge of this conduct to the District Prosecutor.<sup>488</sup> The conduct of the discharged policeman is also recorded in the summary of events of 19 May 1999, sent by the MUP Staff to the

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<sup>479</sup> Exhibit D257; *see also* Exhibit D933, p 18.

<sup>480</sup> Exhibit P47; Vlastimir Đorđević, T 9521.

<sup>481</sup> Exhibit P47, Article 7; *see also* Exhibit D933, p 22.

<sup>482</sup> Exhibit P204, Article 2.

<sup>483</sup> Exhibit P1050.

<sup>484</sup> Exhibit P1050, p 2.

<sup>485</sup> Exhibit D262.

<sup>486</sup> Vlastimir Đorđević, T 9752.

<sup>487</sup> Exhibit D418; *see* Vlastimir Đorđević, T 9525-9526.

<sup>488</sup> Vlastimir Đorđević, T 9526; Exhibit D418, p 4.

leadership of the Ministry, *i.e.*, the Minister, Đorđević, Marković, and Krstić.<sup>489</sup> The Chief of the SUP in Belgrade issued a Decision on 7 June 1999 terminating the employment of a PJP member on the basis of violations committed by him during his service in Kosovo.<sup>490</sup> Đorđević testified that this was the principle of procedure whenever any breaches of work duty were established within a SUP.<sup>491</sup>

142. Notwithstanding the above, as discussed in detail in a separate part of the Judgement, the evidence overwhelmingly demonstrates that crimes committed by MUP staff against Kosovo Albanian civilians were generally unreported, not subject to any effective investigation, and there was a systematic failure on the part of the responsible authorities to prosecute and punish offenders.<sup>492</sup> In the Chamber's finding, this amounted to a pattern of non-investigation of incidents involving the killings of Kosovo Albanian civilians by the end of March 1999 which continued until the end of the Indictment period and thereafter.<sup>493</sup>

143. Where investigations of killings of Kosovo Albanians were conducted by the MUP during this period, the evidence indicates a deliberate manipulation to present false results with regard to the status of the victims as members of the KLA killed in combat.<sup>494</sup> Those criminal or disciplinary measures taken against members of the MUP were mostly related to property theft and confirm the finding that no effective investigations were conducted in regard to serious incidents in which large numbers of Kosovo Albanian civilians were killed.<sup>495</sup> Moreover, as discussed at length elsewhere in this Judgement, the evidence discloses that MUP personnel took measures to actively prevent the discovery of killings, and thereby any investigation and prosecution of perpetrators, including by removing bodies from the crime scenes, transporting them to other locations sometimes hundreds of kilometres away to MUP owned sites in Serbia, and reburying them in unmarked mass graves.<sup>496</sup> The result of this pattern of non-reporting, non-investigation, and the deliberate concealment of bodies of victims, was that the vast majority of the MUP perpetrators of the crimes established in this Judgement went unpunished.

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<sup>489</sup> Vlastimir Đorđević, T 9528-9529; D418, p 10 first para under heading "3. Felonies committed".

<sup>490</sup> Exhibit D419; Vlastimir Đorđević, T 9529-9530.

<sup>491</sup> Vlastimir Đorđević, T 9529-9530.

<sup>492</sup> *See infra*, paras 2083-2105, 2108.

<sup>493</sup> *See infra*, paras 2102, 2108.

<sup>494</sup> *See* Exhibits D803, D804, D806, D807; *see infra*, paras 2083-2105.

<sup>495</sup> *See* Exhibits P1058, p 5; P1059, p 5; P696, p 5. *See infra*, para 2102.

<sup>496</sup> *See infra*, paras 1967-1982.

## B. The Yugoslav Army (VJ)

### 1. Legal framework

144. In 1998-1999, the Army of the Federal Republic of Yugoslavia (*Vojska Jugoslavije*) (“VJ”) was recognised by the FRY Constitution adopted on 27 April 1992, which provided that the FRY “shall have an Army to defend its sovereignty, territory, independence, and constitutional order” and set out that a federal law should be adopted regulating the VJ.<sup>497</sup> The Law on the VJ was adopted on 18 May 1994.<sup>498</sup>

145. In addition, the FRY Law on Defence adopted on 27 May 1994 provided that the VJ was “the main armed force and organiser of the armed struggle and all other forms of armed resistance to the enemy” in the defence of the country, which “shall unite all participants in the armed struggle and command all combat activities”.<sup>499</sup> In case of “an imminent threat of war, a state of war or a state of emergency”, it was the duty of the President of the Republic, in accordance with the decisions of the Supreme Defence Council, to order measures of readiness, mobilisation and use of the VJ and actions of the VJ “in order to prevent and eliminate the threat to the defence and security of the country”.<sup>500</sup> In 1998 the Supreme Defence Council (“SDC”) was made up of the President of the Federal Republic – Slobodan Milošević – and the presidents of the member republics – the President of Serbia Milan Milutinović and the President of Montenegro Momir Djukanović.<sup>501</sup>

### 2. VJ structure

146. At the top of the military hierarchy was the President of the Federal Republic and the SDC. The Constitution provided that in both peacetime and wartime, the VJ would be under the command of the President of the Federal Republic pursuant to a decision of the SDC.<sup>502</sup> The FRY President was to preside over the SDC.<sup>503</sup>

147. Within the VJ itself, the “highest professional and staff organ” for the preparation and use of the VJ was the General Staff, composed of the Chief of the General Staff and his assistants and support staff.<sup>504</sup> It’s job, *inter alia*, was to “determine the organisation, plan of development, and establishment of the commands, units, and institutions of the Army”<sup>505</sup> and to “issue rules, orders,

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<sup>497</sup> Exhibit P129, Articles 133 and 134 respectively.

<sup>498</sup> Exhibit P43.

<sup>499</sup> Exhibit P44, Article 16.

<sup>500</sup> Exhibit P44, Article 8.

<sup>501</sup> Aleksandar Vasiljević, T 5655-5656.

<sup>502</sup> Exhibit P129, Article 135. *See also* Exhibit P1440, p 96.

<sup>503</sup> Exhibit P129, Article 135; Aleksandar Vasiljević, T 5655-5666.

<sup>504</sup> Exhibit P43, Article 5; Exhibit P1440, p 97.

<sup>505</sup> Exhibit P43, Article 5.

commands, instructions, and other documents” in order to “implement documents issued by the President of the Republic” and those pursuant to its own duties.<sup>506</sup>

148. The Chief of the General Staff in 1998 until 24 November 1998 was General Momčilo Perišić. He was replaced by General Dragoljub Ojdanić.<sup>507</sup>

149. The VJ was made up of the Land Forces, the Air Force and Anti-Aircraft Defence and the Navy.<sup>508</sup> The Land Forces were the principal force of the VJ. In 1998-1999, the Land Forces were divided into three Armies – the 1<sup>st</sup> Army, based in Belgrade, Serbia, the 2<sup>nd</sup> Army, based in Podgorica, Montenegro, and the 3<sup>rd</sup> Army, based in Niš, Serbia. The land army was divided into operational units (corps), combined tactical units (divisions, regiments and brigades), and basic tactical units (companies, batteries, battalions, artillery battalions).<sup>509</sup> In addition, military territorial organs (districts and sections) were formed for “the control of mobilisation, recruitment and other matters of administration, and for combat operations in a particular territory”.<sup>510</sup>

150. Members of the VJ consisted of regular soldiers, soldiers performing their compulsory military service, students in military academies, students in secondary-level military schools, students attending schools for reserve officers and individuals in the Reserve Forces while they were performing their military service in the Army.<sup>511</sup> Volunteers could also reinforce the armed forces during a state of armed conflict.<sup>512</sup>

### 3. Command and control

#### (a) FRY President and Supreme Defence Council (SDC)/Supreme Command (SC)

151. As outlined above, the Constitution provided that the FRY President commanded the VJ in accordance with the decisions of the SDC.<sup>513</sup> The FRY Law on Defence outlined the mandate of the FRY President, “in accordance with the decisions of the Supreme Defence Council”, to order the implementation of the country’s defence plan, to command the VJ in wartime and peace, and to decide on the country’s territorial division into military areas.<sup>514</sup> The Law on the VJ specified that the FRY President’s duty to command the VJ “in accordance with the decisions of the Supreme Defence Council” included deciding on the deployment of the VJ and approving a plan for its use,

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<sup>506</sup> Exhibit P43, Article 6; *See also* Exhibit P1440, pp 96-97.

<sup>507</sup> Karol John Drewienkiewicz, Exhibit P996, para 63; Karol John Drewienkiewicz, T 6331.

<sup>508</sup> Exhibit P43 (FRY Law on the VJ), Article 2; Exhibit P1440, p 99.

<sup>509</sup> Exhibit P1440, p 99.

<sup>510</sup> Exhibit P1440, p 100.

<sup>511</sup> Exhibit P43, Article 9.

<sup>512</sup> Exhibit P43, Article 15; Exhibit P44, Article 18.

<sup>513</sup> Exhibit P129, Article 135.

<sup>514</sup> Exhibit P44, Article 40.

regulating and ordering the readiness of the VJ in case of an imminent threat of war, state of war or state of emergency, issuing orders for the mobilisation of the army, and issuing basic regulations and other acts related to the deployment of the VJ.<sup>515</sup>

152. The SDC had the duty to adopt the country's defence plan, render decisions in accordance with which the FRY President commands the VJ, assess possible war and other dangers to the defence and security of the country, determine the equipment and weapons needed for the country's defence, determine the arrangement of the territory for the country's defence, determine the strategy of armed conflict and rules on the use of forces in the country's defence and the conduct of war, and approve the basic elements of training, plans and programs for the country's defence.<sup>516</sup> During wartime, the SDC became the Supreme Command (SC)<sup>517</sup> and the President of the FRY was referred to as the "Supreme Commander".<sup>518</sup>

(b) Federal Ministry of Defence and Military Territorial Organs

153. The Federal Ministry of Defence was responsible, *inter alia*, for preparing and planning general mobilisation, organising preparations for the country's defence and performing other duties as defined by the country's Defence Plan.<sup>519</sup> Mobilisation was organised by the Ministry of Defence through military territorial organs. Each Military District (*Vojni Okrug*) consisted of a number of Military Departments (*Vojni Odsek*). Each municipality was covered by a Military Department which kept records of recruitment and who was sent to the VJ.<sup>520</sup> In Kosovo there was one Military District, located in Priština/Prishtinë. The commander of the Priština Military District was Colonel Zlatomir Pešić.

154. The Priština Military District controlled five Military Departments: Priština/Prishtinë, Prizren, Peć/Pejë, Gnjilane/Gjilan, and Kosovska Mitrovica/Mitrovicë. The Military District oversaw the Military Departments and reported to the Ministry of Defence in Belgrade.<sup>521</sup> Each Military Department controlled a number of Military Territorial Detachments. In Kosovo in early 1999 there were 24 Military Territorial Detachments in total. The Military Territorial Detachments were composed of reservists, and were sometimes referred to as the "Territorial Defence".<sup>522</sup> After

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<sup>515</sup> Exhibit P43, Article 4(3)-(6).

<sup>516</sup> Exhibit P44, Article 41(1)-(8).

<sup>517</sup> Milovan Vljaković, Exhibit D602 (*Milutinović* transcript), T 16091-16092.

<sup>518</sup> Aleksandar Vasiljević, T 5654-5656; Milovan Vljaković, Exhibit D602 (*Milutinović* transcript), T 16093.

<sup>519</sup> Exhibit P44, Article 43.

<sup>520</sup> Nike Peraj, Exhibit P313, para 18.

<sup>521</sup> Nike Peraj, Exhibit P313, para 19.

<sup>522</sup> The Chamber notes that there is some inaccuracy in the evidence of Nike Peraj with regard to what he refers to as "Territorial Defence". He refers to Nikola Mičunović as the "operational commander of the Territorial Defence for Đakovica/Gjakovë" and later as the "VJ major commanding the reservist units of the Territorial Defence". Nike Peraj, Exhibit P313, paras 36 and 59. A Priština Corps document (Exhibit P900) dated 31 March 1999 indicates

24 March 1999, these were re-subordinated to various Priština Corps units. An order of 27 March 1999 signed by Colonel Zlatimir Pesić tasked the Priština Military Sector with protecting the Serbian population, guarding roads and military installations, preventing operations by the KLA, and being “in a state of readiness to conduct PDB/anti-landing combat”.<sup>523</sup> An order of the Supreme Command Staff dated 31 March 1999 provided that in order to “facilitate effective counteraction” against terrorist forces in Kosovo a wartime Military Territorial detachment should be formed comprising a command and three territorial companies as part of the Priština Military district with Colonel Ristić as coordinator of such detachment.<sup>524</sup> The order provided that the detachment should be “brought up to strength” by the military district of Priština with “unassigned conscripts” of Albanian ethnicity living in Kosovo. Aleksandar Vasiljević commented that during his tour of security organs in Kosovo he had received briefs from security organs who were Albanians and had been appointed to those roles during peacetime, although he found it strange that Albanians would be included in the ranks after the war had started.<sup>525</sup> The military territorial department nonetheless remained 99 per cent Serb.<sup>526</sup>

(c) VJ General Staff

155. As noted above, in 1998-1999, the General Staff was the highest military command body immediately subordinate to the civilian leadership.<sup>527</sup> During a state of war the General Staff became known as the Supreme Command Staff.<sup>528</sup> This occurred in March 1999. From 24 November 1998, General Dragoljub Ojdanić was the Chief of the General Staff,<sup>529</sup> the highest ranking military officer in the VJ.<sup>530</sup> His function was to command the VJ through the issuing of orders to strategic units and other officers of the VJ immediately subordinate to him in order to accomplish the directives of the FRY President.<sup>531</sup> On 23 March 1999 new SDC Rules of Procedure were adopted which required the attendance of the Chief of the General Staff at SDC sessions and which authorised him to convene sessions of the SDC and to propose items for the agenda.<sup>532</sup>

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that Mičunović was the commander of the Đakovica/Gjakovë Military Territorial Detachment. This was confirmed by Miloš Došan. Miloš Došan, T 1141.

<sup>523</sup> Exhibit P896.

<sup>524</sup> Exhibit D181.

<sup>525</sup> Aleksandar Vasiljević, T 5848.

<sup>526</sup> Aleksandar Vasiljević, T 5849.

<sup>527</sup> Exhibit P43, Article 5.

<sup>528</sup> Aleksandar Vasiljević, T 5656.

<sup>529</sup> Exhibit P1363, pp 3-5; Aleksandar Vasiljević, T 5656, 5658.

<sup>530</sup> Exhibit P43, Article 5.

<sup>531</sup> Exhibit P43, Article 6; Exhibit P1440, p 97.

<sup>532</sup> Exhibit P1468, Articles 3 and 5 respectively.

156. According to the Command and Control Manual, the VJ operated under the principle of unity and singleness of command.<sup>533</sup> The principle of unity entailed that all the component sections of the VJ had a united and harmonised establishment and understanding of assignments, and was ensured by the “Supreme Council of the Defence of FRY”.<sup>534</sup> The principle of singleness of command determined that there was only ever one commander with responsibility for the tasks assigned in each level of the chain of command.<sup>535</sup> Subordinates were required to execute orders issued by superior officers “except if the carrying out of the order would be a criminal act”, in which case the service member was required to “immediately report such order to a superior commanding officer or an officer of a higher rank than the officer who issued the order”.<sup>536</sup> In 1998-1999 the VJ was an organised and disciplined military force and had an effective working command and control structure in practice.<sup>537</sup> Those who volunteered to serve with the VJ were also required to adhere to the system of command and control.<sup>538</sup> In practice, however, there was a lack of discipline among volunteers and a lack of commanders in the field.<sup>539</sup>

#### 4. VJ forces in Kosovo in 1998-1999

157. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Armies were the operational groups subordinated to the General Staff in 1998-1999. The 3<sup>rd</sup> Army’s zone of responsibility covered southern Serbia. It was divided into two corps, the Niš Corps and the Priština Corps.<sup>540</sup> These two corps comprised a number of brigades, battalions, and service regiments. The Priština Corps had responsibility over the territory of Kosovo.<sup>541</sup> The Commander of the Priština Corps in 1999 was General Vladimir Lazarević, who assumed this post on 9 January 1999.<sup>542</sup>

158. The Priština Corps, an element of the 3<sup>rd</sup> Army, was the primary VJ unit in Kosovo with a headquarters in Priština/Prishtinë. There was no engagement of the Priština Corps without the approval of the 3<sup>rd</sup> Army commander.<sup>543</sup> In 1998 General Nebojša Pavković was the Commander and General Vladimir Lazarević was the Chief of Staff of the VJ Priština Corps. On 9 January 1999, General Lazarević took over as Commander when General Nebojša Pavković was

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<sup>533</sup> Exhibit P1440, pp 61-62.

<sup>534</sup> Exhibit P1440, p 63.

<sup>535</sup> Exhibit P1440, p 62.

<sup>536</sup> Exhibit P43, Article 37.

<sup>537</sup> Joseph Maisonneuve, Exhibit P851, para 21.

<sup>538</sup> K90, Exhibit P322 (*Milutinović* transcript) T 9277.

<sup>539</sup> K90, Exhibit P322 (*Milutinović* transcript) T 9275-9276.

<sup>540</sup> Aleksandar Vasiljević, T 5658.

<sup>541</sup> Aleksandar Vasiljević, T 5659.

<sup>542</sup> Exhibit P1343, p 8; Exhibit P1494; Nike Peraj, Exhibit P313, para 6; Aleksandar Vasiljević, T 5659.

<sup>543</sup> See Exhibit D323, a request for additional explanation on using units of the Corps from General Pavković to the 3<sup>rd</sup> Army Command, dated 31 July 1998; Milan Đaković, T 8018.

appointed commander of the VJ 3<sup>rd</sup> Army in Niš.<sup>544</sup> The Chief of Staff of the Priština Corps from this time and throughout the Indictment period was Veroljub Zivković.<sup>545</sup>

159. The Priština Corps consisted of 12 brigades, each of which had responsibility for a particular area within Kosovo in 1999.<sup>546</sup> These included: the 15<sup>th</sup> Armoured Brigade, the 125<sup>th</sup> Motorised Brigade, the 243<sup>rd</sup> Mechanised Brigade, the 549<sup>th</sup> Motorised Brigade,<sup>547</sup> the 52<sup>nd</sup> Mixed Artillery Brigade,<sup>548</sup> the 52<sup>nd</sup> Air Defence Artillery Rocket Brigade, the 37<sup>th</sup> Motorised Brigade<sup>549</sup> and the 211<sup>th</sup> Armoured Brigade.

160. At the commencement of the NATO bombing campaign on 24 March 1999 there were less than 18,000 men in the Priština Corps.<sup>550</sup> This position changed dramatically after the commencement of the NATO campaign, no doubt because a NATO land invasion of Kosovo was anticipated. By 13 April 1999 there were 61,892 members of the Priština Corps, inclusive of re-subordinated units and volunteers.<sup>551</sup>

161. The brigades were composed of battalions, detachments and platoons. In each platoon there were 40-60 men.<sup>552</sup> Each infantry platoon had two 120 millimetre mortars,<sup>553</sup> with a firing range of 9.7 to 9.8 kilometres,<sup>554</sup> and the men were armed with automatic rifles and machine-guns.<sup>555</sup> Combat units were equipped with howitzers (artillery weapons), tanks and other armoured military vehicles, Pragas and other transport vehicles.<sup>556</sup>

162. VJ soldiers were obliged to wear uniforms when the rules of service so required.<sup>557</sup> Regular VJ units wore camouflage uniforms that were principally green, which carried VJ insignia on the upper left arm.<sup>558</sup> The regular VJ insignia depicted a double-headed eagle above the FRY flag. The

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<sup>544</sup> Nike Peraj, Exhibit P313 para 6; Milan Đaković, T 7873; Aleksandar Vasiljević, T 5659.

<sup>545</sup> Miloš Došan, T 11440.

<sup>546</sup> Exhibit P1366.

<sup>547</sup> Exhibit P1391, p 1.

<sup>548</sup> Exhibit P1441, p 4.

<sup>549</sup> Exhibit P1443.

<sup>550</sup> Exhibit P1441, p 3. As at 31 March there were 17,971 men in the Corps.

<sup>551</sup> Exhibit P948, p 2; Exhibit P1331, p 11.

<sup>552</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3433.

<sup>553</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9119.

<sup>554</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9120-9122.

<sup>555</sup> K89, Exhibit P1274, T 9125-9126.

<sup>556</sup> K54, Exhibit P782, p 2; K54, T4371; Joseph Maisonneuve, Exhibit P851, para 37; Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11056-11057.

<sup>557</sup> Exhibit P43, Article 32.

<sup>558</sup> K82, Exhibit P1315, para 2; K73, Exhibit P331-A, para 12.



eagle wings pointed downwards, and were lined with golden details.<sup>559</sup> Specific VJ Corps often wore their own unique insignia.<sup>560</sup>

163. The VJ were equipped with T-55 tanks, Pragas (anti-aircraft artillery), BDRM-2s (armoured reconnaissance vehicles), M 84 and T84 tanks, and a series of other heavy artillery, tanks and APCs.<sup>561</sup> As discussed elsewhere in this Judgement, from early April 1998 onwards, VJ started to repaint many of their vehicles in MUP blue (from VJ green).<sup>562</sup> The green, however, was often visible through the blue layer of paint. Vehicles repainted in this way included the BOV-3 (an air defence weapon), the BOV-M (a troop carrier) and the M80 (an APC).<sup>563</sup> In addition, the VJ used heavier 120 millimetre mortars.<sup>564</sup>

(a) Military police

164. Military police units were engaged in Kosovo during the Indictment period.<sup>565</sup> The military police was composed of different units, some dealing with internal affairs, others with military traffic control, and others with anti-terrorist actions.<sup>566</sup> The military police also provided security details for senior VJ officials and officers, including the Corps Commander and the Chief of Staff of the Corps. Security was provided through the military police units under the control of the Chief of the Security Section in the Command of the Priština Corps, Momir Stojanović.<sup>567</sup>

165. In June 1998, because of the complex security situation on the state border with the Republic of Albania and the overall security situation in the Kosovo, the security administration of the army reinforced the organs of the Priština Corps by sending some experienced operations officers. From that time, military security service organs were present in all the organisational units of the Priština Corps.<sup>568</sup> The “terrorist-related” tasks of the military security service organs were to detect, document and stop anti-terrorist, subversive and any other illegal activities in commands, units and installations of the Priština Corps or aimed against them.<sup>569</sup>

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<sup>559</sup> K73, T 1514; K82, Exhibit P1315, para 2; Exhibit P327 (photograph no 3 depicts VJ insignia).

<sup>560</sup> K73, T 1514.

<sup>561</sup> John Crosland, Exhibit P1400, paras 55, 65, 68; John Crosland, Exhibit P1401 (*Milutinović* transcript), T 9764.

<sup>562</sup> John Crosland, Exhibit P1400, para 33. The Chamber has found elsewhere in this judgement that the VJ equipment was being painted in MUP colours to disguise the operations of the VJ as MUP operations, *see infra*, para 276.

<sup>563</sup> John Crosland, Exhibit P1400, paras 33; John Crosland, Exhibit P1401 (*Milutinović* transcript), T 9764.

<sup>564</sup> K25, Exhibit P340-A, p 6.

<sup>565</sup> Exhibit P1381.

<sup>566</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3296.

<sup>567</sup> Momir Stojanović, T 11826-11827.

<sup>568</sup> Exhibit D723; Momir Stojanović, T 19685.

<sup>569</sup> Exhibit D723, Momir Stojanović, T 19685.

166. Within the VJ, there were two elite Special Forces units dealing specifically with anti-terrorist activities: the 63<sup>rd</sup> Parachute (or Air-borne) Brigade and the 72<sup>nd</sup> Special Brigade.<sup>570</sup> In addition, the anti-terrorist unit of the 52<sup>nd</sup> Battalion of the Military Police was a special unit tasked with anti-terrorist activities.<sup>571</sup> All three units were active in Kosovo during the Indictment period, being re-subordinated to the command of the Priština Corps. “Instructions for the engagement of military police units in combat” were sent by the VJ General Staff on 14 May 1999.<sup>572</sup> The Instructions noted that there “have been certain deviations from the basic purpose and tasks of the military police, which in consequence is less efficient and has unnecessary losses”.<sup>573</sup> They specified that in combat activities, “military police units should primarily be used for [...] mopping up, control of the territory by organising control checkpoints and ‘cruise’ patrols, sniping and anti-sniping activities in combat with terrorists and the forward line of defence, whereas special military police units should be used for both offensive and defensive antiterrorist activities”.<sup>574</sup> Special military police units functioned in the 72<sup>nd</sup> Special Brigade, the 63<sup>rd</sup> Parachute Brigade, and special purpose companies and platoons in military police battalions.<sup>575</sup>

167. Under direct General Staff command, the 72<sup>nd</sup> Special Brigade had an anti-terrorist battalion as well as a scouting sabotage battalion. Both the 72<sup>nd</sup> Special Brigade and the 63<sup>rd</sup> Parachute Brigade were part of the Special Forces Corps, stationed in Belgrade.<sup>576</sup> However, in early 1999, the anti-terrorist battalion of the 72<sup>nd</sup> Special Brigade was resubordinated to the 52<sup>nd</sup> Military Police Battalion of the Priština Corps.<sup>577</sup> According to Momir Stojanović, the Chief of the Security Section in the Command of the Priština Corps, the battalion was commanded by Lieutenant-Colonel Jovanović.<sup>578</sup> However, the balance of the evidence suggests that Stojanović himself took overall command of the anti-terrorist battalion of the 72<sup>nd</sup> Special Brigade and other anti-terrorist detachments at least on some occasions during the Indictment period. K73, whom the Chamber finds to be generally reliable, gave evidence that the battalion of the 72<sup>nd</sup> Special Brigade and the

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<sup>570</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3312; Momir Stojanović, T 11908-11910; *see also* Exhibit P1381, p 3, footnote 4.

<sup>571</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3294-3295; K73, T 1505-1506.

<sup>572</sup> Exhibit P1381.

<sup>573</sup> Exhibit P1381, pp 1-2.

<sup>574</sup> Exhibit P1381, p 3. The Instructions define “offensive anti-terrorist tasks” as all those activities against terrorists before they start their activities, such as gathering intelligence (counter-intelligence) on terrorists including reconnaissance of the area and facilities, attack (raid) on training centres or base regions, ambush activities in the area which the terrorists consider their own secure area, carried out primarily in a state of war or in imminent threat of war and in state of emergency. “Defensive anti-terrorist tasks” are defined as those which are carried out after terrorist activities and include the releasing of hostages, suppressing resistance of armed persons – terrorists, blockade of the area and facilities, and search of the area and facilities.

<sup>575</sup> Exhibit P1381, p 3, footnote 4.

<sup>576</sup> Momir Stojanović, T 11843.

<sup>577</sup> Exhibit P1341, p 16; Momir Stojanović, T 11814.

<sup>578</sup> Momir Stojanović, T 11814.

anti-terrorist unit of the 52<sup>nd</sup> Battalion of the Military Police, under the command of Stojanović,<sup>579</sup> at the end of January or beginning of February 1999, were deployed in Đeneral Janković in Kačanik/Kaçanik municipality.<sup>580</sup> After that operation the MUP anti-terrorist unit and the battalion of the 72<sup>nd</sup> Special Brigade were sent for a month to Našec which was situated near Prizren,<sup>581</sup> tasked with conducting reconnaissance operations around Albanian villages.<sup>582</sup> According to K73, at some point during the operations, Stojanović ordered the two units to ambush Serb and Albanian civilian vehicles for the purpose of attributing the attacks to the KLA although the order was not carried out because the commander of the battalion of the 72<sup>nd</sup> Special Brigade refused to do so.<sup>583</sup> Stojanović denied this evidence, stating that pursuant to orders by the corps commander, he went to the Prizren garrison to take the battalion to a children's resort on the banks of the Drim River. In his evidence, the battalion was used for in-depth securing activities of the state border near Mount Pastrik where the border offices could no longer withstand attacks by the “terrorists”.<sup>584</sup> For reasons explained elsewhere, the Chamber is not able to accept Stojanović’s contention that he never commanded VJ units, including the 72<sup>nd</sup> Special Brigade.<sup>585</sup> It notes that Stojanović admitted to being assigned to move the location of the anti-terrorist units, which indicates a command position. It further takes into account K73’s evidence that although it was not usual that a chief of security would command units engaged in combat, in 1999 all the military police units were subordinated to Stojanović and received orders from him.<sup>586</sup> In addition, the war diary of the 52<sup>nd</sup> Military Police Battalion recorded that on 13 April 1999, a special unit of this battalion was “tasked” by the Chief of the Priština Corps Security Department, *i.e.* Stojanović, to capture a border post in Kamenica (Albania).<sup>587</sup> This demonstrates, in the Chamber’s finding, that Stojanović was in a position to, and did, command anti-terrorist units during the Indictment period.

168. Military police were also used to man checkpoints, covering the area of deployment of the respective VJ units in Kosovo.<sup>588</sup> From at least early April 1999, checkpoints throughout Kosovo were manned both by military police units and by MUP forces (mixed checkpoints).<sup>589</sup>

169. VJ Special Forces operating within Kosovo during the Indictment period often wore insignia and carried weaponry that made them distinguishable from regular VJ units. In addition to green

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<sup>579</sup> K73, Exhibit P330, para 33; K73, Exhibit P332 (*Milutinović* transcript), T 3314.

<sup>580</sup> K73, Exhibit P330, para 31; K73, Exhibit P332 (*Milutinović* transcript), T 3312.

<sup>581</sup> K73, Exhibit P330, para 31.

<sup>582</sup> K73, Exhibit P330, para 32; K73, Exhibit P332 (*Milutinović* transcript), T 3313, 3354.

<sup>583</sup> K73, Exhibit P330, para 33; K73, Exhibit P332 (*Milutinović* transcript), T 3315.

<sup>584</sup> Momir Stojanović, T 11908-11910.

<sup>585</sup> *See infra*, paras 942-943.

<sup>586</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3314.

<sup>587</sup> Exhibit P338, p 6.

<sup>588</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19758.

<sup>589</sup> Exhibit P946, para 5.

camouflage uniforms, VJ Special Forces – including the 63<sup>rd</sup> Parachute Brigade, the Special Corp and the Military Police – often wore extra items of uniform and kit.<sup>590</sup> They wore plain grey or green combat vests, black berets,<sup>591</sup> camouflage “Panama” helmets, black face-nets and black gloves.<sup>592</sup> In addition to these items of uniform, the Military Police also wore white belts.<sup>593</sup>

170. The 63<sup>rd</sup> Parachute Brigade’s insignia, which was worn on the sleeve, could be distinguished by the eagle’s wings – which pointed upwards – and by its depiction of a parachute and the number “63” between the eagle’s wings.<sup>594</sup>

171. The Special Corp’s insignia could also be identified by the wings which pointed upwards.<sup>595</sup>

172. Members of the VJ military police wore a unique round insignia<sup>596</sup> which depicted a double-headed eagle on a black background with the wings pointed upwards, and carried gold letters above the eagle, spelling “Military Police” in Cyrillic.<sup>597</sup>

173. The military police had several types of personal weapons at their disposal, including CZ-99 pistols, standard M-70s, AB-2 automatic rifles, Heckler Koch MP5 Ks, pump-action shotguns, sniper-rifles and crossbows.<sup>598</sup>

(b) VJ reservists

174. VJ units consisted of regular VJ members and reservists.<sup>599</sup> The reserve forces consisted of military conscripts under the age of 60 who had completed their compulsory military service or who had fulfilled their obligation to do their compulsory military service in some other way.<sup>600</sup> Military conscripts could also be called to carry out military exercises in police units.<sup>601</sup> Reservists were registered by the competent territorial military organ and were issued with identity cards.<sup>602</sup>

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<sup>590</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3303; Exhibit P333 (photograph depicts VJ special forces standing atop an army vehicle).

<sup>591</sup> Michael Phillips, T 8696.

<sup>592</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3303; Exhibit P333 (photograph depicts VJ special forces standing atop an army vehicle).

<sup>593</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3297.

<sup>594</sup> K73, T 1514. Exhibit P327 (photograph no 1 depicts the 63<sup>rd</sup> Parachute Brigade’s insignia, and photograph no 2 depicts the VJ Special Corp insignia).

<sup>595</sup> K73, T 1514. Exhibit P327 (photograph no 1 depicts the 63<sup>rd</sup> Parachute Brigade’s insignia, and photograph no 2 depicts the VJ Special Corp insignia).

<sup>596</sup> K73, T 1514; K90, T 1364; Exhibit P327 (photograph no 4 depicts Military Police insignia).

<sup>597</sup> Exhibit P327 (photograph no 4 depicts Military Police insignia).

<sup>598</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3298-3299, 3302; Exhibit P333 (photograph depicts VJ Military Police standing atop an army vehicle).

<sup>599</sup> Exhibit P43, Article 7.

<sup>600</sup> Exhibit P43, Article 315. See also Exhibit P129, Article 137.

<sup>601</sup> Exhibit P43, Article 317.

<sup>602</sup> Exhibit P43, Articles 329 and 331.

175. Pursuant to an order from the Priština Corps Command dated 26 June 1998, weapons and ammunition were distributed to military conscripts within the area of responsibility of the Priština Corps Command, the Priština Military District and the 202<sup>nd</sup> logistics base.<sup>603</sup> Aleksandar Vasiljević commented that because the “terrorist forces” were very active during that time, a decision was made to issue reserve forces with weapons.<sup>604</sup> At a Collegium of the VJ General Staff in February 1999, Samardžić informed the participants that some 47,000 Serbs had been armed and that commanders at all levels had been sent out to the villages with ammunition. He explained that the role and assignments of the “armed Serbs” was to defend their villages and participate with VJ units in any operations in the immediate vicinity.<sup>605</sup>

176. VJ reservists wore either plain/solid green uniforms or regular VJ green camouflage uniforms.<sup>606</sup> The plain/solid uniforms were also described as SMB<sup>607</sup> uniforms. VJ reservists could usually be distinguished from regular VJ units in several ways; in particular, reservists often had beards and looked unkempt, whereas VJ generally did not.<sup>608</sup> The local reservists carried automatic weapons.<sup>609</sup>

## 5. Reporting procedure

177. Commanders of all VJ units starting with the brigades up to the Supreme Command Staff were required to send daily combat reports to their superiors and, in seven to 10 day intervals, summary reports about the activities of the army and the MUP, if there had been joint activities.<sup>610</sup> All units had to follow a checklist of issues to report on.<sup>611</sup> In particular, if a VJ officer received an order the carrying out of which would represent a criminal act, he was required to immediately report such order to a superior commanding officer or an officer of a higher rank than the officer who issued the order.<sup>612</sup> Commanders were under an obligation to report up the chain of command whenever they learned of any crimes that had occurred during the course of anti-terrorist operations or combat activities.<sup>613</sup> The reports also had to include any problems in combat actions or

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<sup>603</sup> Exhibit P901; Aleksandar Vasiljević, T 5946-5947.

<sup>604</sup> Aleksandar Vasiljević, T 5947.

<sup>605</sup> Exhibit P1333, p 23.

<sup>606</sup> K25, Exhibit 340, p 20.

<sup>607</sup> Hysni Berisha, T 3355-3356; Mahmut Halimi, T 2957. The SMB colour appears to be a reference in BCS to an olive-green/grey colour, Nike Peraj, T 1232; *see also* Mahmut Halimi, T 2957. The reference to SMB colour is a reference to one solid colour, Hysni Kryeziu, T 5581; Avdyl Mazreku, T 6192.

<sup>608</sup> K73, T 1512.

<sup>609</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4681.

<sup>610</sup> Milan Đaković, T 7927. *See* Exhibits P1230 and 1231. *See also* Exhibits D322, D187, D345.

<sup>611</sup> Milan Đaković, T 7927-7928.

<sup>612</sup> Exhibit P43, Article 37.

<sup>613</sup> Milan Đaković, T 7932. *See* Exhibit P1233, “an annex to the report regarding incidents resulting in death and use of critical ammunition” dated 5 October 1998, from General Pavković to the 3<sup>rd</sup> Army IKM. Paragraph 2, p 4 of the English version refers to an alleged massacre against the civilian population of the village of Gornje Obrinje/Obri e Eperme (Glogovac/Gllogocon) on 26 and 27 of September 1998.

disciplinary matters.<sup>614</sup> If a VJ officer learned of a non-member of the VJ committing a crime, he was required to report that to his superior officer or the MUP organ in the territory or the Prosecution service in that territory who would deal with it together with the MUP.<sup>615</sup>

178. Evidence indicates that the reporting obligations were complied with in part during the Indictment period in the sense that combat reports were regularly sent and that the Chief of Staff received daily briefings on the situation in the field and the activities of the Priština Corps.<sup>616</sup> Nike Peraj explained how reports from the units in the field were transmitted to the VJ headquarters in Niš and then to Belgrade. In the case of the 52<sup>nd</sup> Rocket Artillery Brigade of the VJ, stationed in the municipality of Đakovica/Gjakovë in March-April 1999, Colonel Branko Kotur in the VJ Corps headquarters collected reports from commanders in the field. This information would then be passed along to General Dušan Samardžić in the VJ headquarters in Niš. Information from Niš was then sent to the Ministry of Defence in Belgrade.<sup>617</sup> General Pavković, Commander of the Priština Corps, regularly reported to the Supreme Command Staff (General Staff) by daily combat reports.<sup>618</sup>

179. There were some irregularities in the line of reporting in 1999. Aleksandar Vasiljević gave evidence that Pavković communicated with the President of the Supreme Defence Council, Slobodan Milošević, without informing his immediate superior, General Ojdanić.<sup>619</sup> Ojdanić told Vasiljević that Pavković also frequently reported to Nikola Šainović who was in the Joint Command in Priština/Prishtinë instead of reporting to Ojdanić.<sup>620</sup>

180. Aleksandar Vasiljević testified that based on the regular reporting lines information originating from the Priština Corps Security organ should be written down and sent to the Security Department of the 3<sup>rd</sup> Army. The Security Department would then decide whether to report that to the Security Administration.<sup>621</sup> Vasiljević also received information orally, outside the regular lines of reporting.<sup>622</sup>

181. As discussed in detail in a separate part of the Judgement, despite the specific obligation on VJ members to report about criminal orders given by superiors and/or of crimes committed by VJ or MUP members in the field, the reporting of crimes committed by VJ officers or MUP personnel

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<sup>614</sup> Milan Đaković, T 8071. *See* Exhibit D345.

<sup>615</sup> Aleksandar Vasiljević, T 5738-5739.

<sup>616</sup> Milan Đaković, T 7927-7928.

<sup>617</sup> Nike Peraj, Exhibit P313, para 28.

<sup>618</sup> Aleksandar Vasiljević, T 5660.

<sup>619</sup> Aleksandar Vasiljević, T 5661.

<sup>620</sup> Aleksandar Vasiljević, T 5665.

<sup>621</sup> Aleksandar Vasiljević, T 5671.

<sup>622</sup> Aleksandar Vasiljević, T 5662; 5671.

against the civilian population in Kosovo in 1999 was minimal.<sup>623</sup> Milan Đaković testified that reports about irregularities in the field in Kosovo in 1999 were received occasionally but not with such regularity that there appeared to be a major problem. He recounted three incidents involving crimes committed by VJ officers in Kosovo against Kosovo Albanians in 1999, all of which resulted in investigations and prosecutions being conducted.<sup>624</sup> Other evidence indicates there were instances where crimes committed by VJ officers against Kosovo Albanian civilians were reported, sometimes followed by an investigation and prosecution.<sup>625</sup> However, the Chamber notes that the numbers and types of crimes and VJ perpetrators dealt with in this evidence contrasts dramatically with its findings, set out in Section VI of the Judgement, as to the large number of serious crimes committed against Kosovo Albanian civilians during operations in which the VJ participated. The entirety of evidence on the matters reported by VJ units indicates very clearly in the Chamber's finding that such crimes were severely under-reported.<sup>626</sup> In the Chamber's view, the reasonable inference of the failure to include such information in the official reports is that there was an intention to conceal the commission of crimes by members of the VJ.<sup>627</sup>

#### 6. Disciplinary and criminal procedures in the VJ

182. The Constitution of the FRY provided that military tribunals and military prosecutors shall be established under federal statute.<sup>628</sup> Military tribunals were independent and adjudicated on the basis of federal legislation.<sup>629</sup> In accordance with Article 30 of the Law of the Army of Yugoslavia, the organs of the military service, including the military police, had the same rights, powers and duties as the regular police of the MUP. Pursuant to the Law on Criminal Procedure and the Law on Military Courts, the organs of the military security service participated in the actions that preceded the institution of criminal proceedings. The powers of the organs of the military security

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<sup>623</sup> See *infra*, paras 2106-2107.

<sup>624</sup> One incident concerned two Albanian citizens having been killed in Kosovo Polje/Fushë Kosovë by three members of the VJ 37<sup>th</sup> Motorised Brigade. According to Đaković, the command was informed about this incident, the General ordered Colonel Stojanović to arrest these men and an investigation was conducted. Milan Đaković, T 8150. He stated that there was also such a response in relation to an incident involving killings in Lipljani. Milan Đaković, T 8151. The third incident concerned the killing of a Kosovo Albanian family in Žegra/Zhegër village in 1999 by members of the reserve force of the VJ 175<sup>th</sup> Infantry Brigade based in Gnjilane/Gjilan. General Pavković ordered Đaković to go to Gnjilane/Gjilan and the brigade commander was replaced. Those responsible were prosecuted and the senior officers were replaced. Đaković believed that these reservists were each given several years imprisonment for the killing of the civilians in Žegra/Zhegër. Milan Đaković, T 8152)

<sup>625</sup> See Exhibits D507-D511 and Exhibit P964. See also Exhibits P1394, p 2; P951, p 2; P1378, p 3; P946, p 2; P1390, p 4.

<sup>626</sup> Radomir Gojović, until 16 April 1999 the President of the military court in Belgrade, and thereafter, the Chief of the Legal Department of the Ministry of Defence, testified that there was an atmosphere of fear and a reluctance to report crimes. See Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16685.

<sup>627</sup> See *infra*, paras 2108.

<sup>628</sup> Exhibit P129, Article 138.

<sup>629</sup> Exhibit P129, Article 138; Exhibit P53, Article 2.

service could be used against all the personnel of the VJ and all those persons involved in hostile activities targeting the commands, units, and installations of the VJ.<sup>630</sup>

183. Military courts tried cases involving criminal acts committed by servicemen (comprising soldiers doing compulsory military service or working under a contract, military academy and military college students, members of the reserve force, and civilians performing specific military duties<sup>631</sup>), specific criminal acts relating to the defence and security of the country committed by other persons, and disputes relating to service in the VJ.<sup>632</sup>

184. The military courts of first instance were based in Belgrade, Niš (covering all the municipalities of Kosovo) and Podgorica.<sup>633</sup> In time of war, however, military courts of first instance ceased to work, while the Supreme Military Court continued work in the seat of the Supreme Command Headquarters.<sup>634</sup> As opposed to being established according to territorial jurisdiction as was the case in time of peace, during armed conflict military courts of first instance were established at the command headquarters of military districts, corps, armies, the Air Force and Air Defence Command Headquarters and the Naval Command Headquarters.<sup>635</sup> The Military Supreme Court continued its work at the Supreme Command Staff headquarters and departments of this court were formed at Army Commands.<sup>636</sup> The president, judges of military courts and judge-jurors of military courts of first instance were appointed by the FRY President at the proposal of the Chief of Staff of the Supreme Command (as opposed to the proposal of the Federal Minister of Defence in time of peace).<sup>637</sup> Departments of the Supreme Military Prosecutor were formed at army commands.<sup>638</sup> Military Courts of First Instance had territorial jurisdiction to try persons from the units or command where they were formed.<sup>639</sup> Military Courts at military district commands had jurisdiction over “persons from the organisational strength of the military district” as well as civilians who committed crimes within the subject-matter jurisdiction of military courts in the territory of the military district.<sup>640</sup>

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<sup>630</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19686.

<sup>631</sup> Exhibit P53, Article 6.

<sup>632</sup> Exhibit P53, Article 1.

<sup>633</sup> Exhibit P53, Article 8.

<sup>634</sup> Exhibit P53, Article 74.

<sup>635</sup> Exhibit P53, Article 74. Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16654; Radomir Gojović, T 10039-10340.

<sup>636</sup> Exhibit P174, p 3, Article 1.

<sup>637</sup> Exhibit P53, Articles 26 and 75.

<sup>638</sup> Exhibit P174, p 1, Article 2.

<sup>639</sup> Exhibit P174, p 3, Article 4.

<sup>640</sup> Exhibit P174, p 3, Article 4.



185. On 25 March 1999, the VJ General Staff issued an order to mobilise war time military courts and prosecutors in the organisational structure of VJ commands and units<sup>641</sup> and upon the proclamation of war, the Chief of the General Staff issued an order on the establishment of military courts and prosecutors, linked to the unit commands of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Armies, the naval military command, the air force command, the corps command, as well as at the level of the military district commands.<sup>642</sup> In 1998 and 1999, the military security service organs were present in all organizational units of the Priština Corps down to the level of the independent battalion.<sup>643</sup> Because the courts and prosecutors were attached to specific units, they only prosecuted members of a specific command, not according to the territory in which they operated.<sup>644</sup> Military courts were, moreover, adapted to wartime conditions so that they could perform their work out in the field.<sup>645</sup>

186. A Supreme Command Staff report on the work of military legal organs was prepared by the Legal Affairs Department of the VJ Staff Administration dated 12 May 1999.<sup>646</sup> The cover letter to the report dated 14 May 1999 stated that the Supreme Command Staff attributed a lot of importance to the work of the military judicial organs. An Order from the Supreme Command Staff to the 3rd Army Command dated 22 May 1999 instructed the 3rd Army Command to inform its members of the content of guidelines which had been compiled on the “operation, procedure, authorization and responsibilities of the military judiciary and other organs with regard to the detection of crimes, their perpetrators, initiating criminal proceedings and adjudicating”.<sup>647</sup> A document from the Supreme Command Staff dated 8 June 1999 set out, among other things, the priorities in conducting criminal proceedings (number one priority being the criminal proceedings on violations of the provisions of international law).<sup>648</sup>

187. Evidence indicates that the system for investigating and prosecuting crimes committed by VJ personnel in Kosovo was in place in 1999 and processed a number of cases. Aleksandar Vasiljević, Deputy Head of the Security Service of the VJ gave evidence that while he was in Kosovo, sometime between 17 May 1999 and 6 June 1999, he and General Gajić, the assistant for counter-intelligence, contacted 12 security officers from various units (from independent battalions up to the Priština Corps) in order to gather information, which resulted in 42 cases (involving approximately 100 perpetrators<sup>649</sup>) being registered concerning crimes allegedly committed by

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<sup>641</sup> Exhibit D199.

<sup>642</sup> Radomir Gojović, T 10339-10340.

<sup>643</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19685.

<sup>644</sup> Radomir Gojović, T 10339-10340.

<sup>645</sup> Radomir Gojović, T 10341.

<sup>646</sup> Exhibit D200.

<sup>647</sup> Exhibit D201.

<sup>648</sup> Exhibit D202; Aleksandar Vasiljević, T 5875.

<sup>649</sup> Aleksandar Vasiljević, T 5943.

military personnel, mostly in April 1999.<sup>650</sup> The crimes included murders of three to four people, rapes of under-aged girls, volunteers in the VJ murdering seven Kosovo Albanians in Gornja Klina/Klinë-e-Epermë, VJ members breaking into houses and maltreating inhabitants, and the case of a soldier at a checkpoint in Prizren who at the request of a policeman killed an elderly Albanian.<sup>651</sup> By June 1999, all but one case had been processed.<sup>652</sup> Vasiljević handed his report to the Head of the Security Administration, Geza Farkas. He believed that Farkas handed the report to the Chief of General Staff, General Ojdanić, who, in turn, passed it to President Slobodan Milošević.<sup>653</sup> Vasiljević later discovered that the report had not been archived.<sup>654</sup>

188. A “report on criminal proceedings instituted by the military judicial organs against VJ members for acts in contravention of the norms of humanitarian law” of the VJ Supreme Military Prosecutor provided to the OSCE Mission to Serbia and Montenegro dated 9 April 2002 indicates that from 1 June 1998 to 27 June 1999, military judicial organs instituted criminal proceedings against 305 persons for war crimes. Of these, 38 persons were tried for “crimes against humanity and the international law, against life and limb and for crimes of personal and moral degradation”, while the remaining 267 persons were tried for property crimes.<sup>655</sup> The cases included in Vasiljević’s report appear to be included in these figures. For the remaining cases related to war crimes, unlawful killing and wounding, murder, and rape of Kosovo Albanian persons by VJ members, after the charges were brought, the cases were deferred to the relevant district court or dropped due to lack of evidence.<sup>656</sup> The Chamber did not receive evidence related to the outcome of the cases deferred to the district courts.

189. The law prescribes that at the close of an armed conflict, the work of First-Instance Military Prosecutors ceases and the cases should be transferred to First-Instance Military Prosecutors with territorial jurisdiction;<sup>657</sup> similarly, military courts formed at the individual units would cease and military courts of first instance would transfer the incomplete cases to authorised military courts of first instance under Article 8 of the Law on Military Courts, *i.e.* according to territorial jurisdiction.<sup>658</sup> However, since the cases mentioned above in the report were against reservists still at the investigative stages, they were transferred to the civilian courts.<sup>659</sup> The evidence indicates

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<sup>650</sup> Aleksandar Vasiljević, T 5731. *See also* Exhibit P964.

<sup>651</sup> Aleksandar Vasiljević, T 5730-5731. *See also* Exhibit P964.

<sup>652</sup> Aleksandar Vasiljević, T 5731; 5857.

<sup>653</sup> Aleksandar Vasiljević, T 5833.

<sup>654</sup> Aleksandar Vasiljević, T 5944.

<sup>655</sup> Exhibit P964, p 1.

<sup>656</sup> Exhibit P964, pp 2-6.

<sup>657</sup> Exhibit P174, p 2, Article 7.

<sup>658</sup> Exhibit P174, p 4, Article 7.

<sup>659</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16689, 16723, 16728-16730; Radomir Gojović, T 10380, 10384, 10402-10404. Gojović testified that the reason why there were not many completed cases in a list detailing the number of convictions for serious crimes between 24 March and 15 May 1999 (Exhibit D507) is that

that there was no effective follow up mechanism in such cases and that the VJ had no basis on which it could or did maintain any interest in cases concerning its personnel that were transferred to the civilian courts. Radomir Gojović, who until 16 April 1999 was President of the military court in Belgrade, and thereafter, was the Chief of the Legal Department of the Ministry of Defence,<sup>660</sup> was not able to give any information about the cases transferred to the civilian courts.<sup>661</sup>

190. The Chamber is of the view, therefore, that while an effective prosecutorial and judicial system to deal with VJ criminality was in place in 1999, this was not properly utilised. For the most part, crimes committed by VJ members against the Kosovo Albanian population during the Indictment period, particularly those unrelated to property crime, were under-reported, rarely investigated, and where charges were filed, the proceedings were mostly deferred to civilian courts at the end of the armed conflict, the outcomes of which are unknown, even to top military legal personnel.

### C. Volunteers and paramilitaries

191. “Paramilitary” is a term that is used in humanitarian law instruments, such as Additional Protocol I to the Geneva Conventions, though it is not defined therein.<sup>662</sup> A paramilitary group is generally understood as a force or unit whose function and organization are analogous or ancillary to those of a professional military force, but which is not regarded as having professional or legitimate status.<sup>663</sup> In its jurisprudence, the ICTY has ascribed the term “paramilitary” to groups fighting alongside military or police forces in the Bosnian and Croatian conflicts, which were identifiable by their uniform, training, and leadership, and which were often incorporated into reserve forces.<sup>664</sup> When referring to “paramilitary groups” in this Judgement, this is the sense in which the term is used by the Chamber.

192. The existence and use of paramilitaries by Serbian forces in Kosovo during the Indictment period is a strongly contested issue. The Prosecution submits that Vlastimir Đorđević significantly contributed to the joint criminal enterprise by engaging paramilitary groups to commit crimes against Kosovo Albanian civilians.<sup>665</sup> Specifically, the Prosecution asserts that prior to the NATO bombings on 24 March 1999, Đorđević prepared for the introduction of paramilitaries and

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investigative procedures for such offences took time, and the cases were thus handed over to civilian courts when the war ended (see Radomir Gojović, T 10402-10403 and Exhibit D508, p 2).

<sup>660</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16642-16643; Radomir Gojović, T 10334-10336.

<sup>661</sup> Radomir Gojović, T 10442.

<sup>662</sup> See Article 43(3), Additional Protocol I.

<sup>663</sup> Oxford English Dictionary (Oxford: OUP, 2007).

<sup>664</sup> See *Martić* Appeal Judgement, paras 195, 205; *Krajišnik* Appeal Judgement, para 246; *Brdanin* Appeal Judgement, paras 146, 236.

<sup>665</sup> Prosecution Final Brief, para 1138.

volunteers in to the MUP.<sup>666</sup> It furthermore submits that Đorđević played a key role in the incorporation of the Scorpions into the MUP,<sup>667</sup> even though he knew he was “deploying a notorious paramilitary unit” which committed crimes against civilians in Podujevo/Podujevë.<sup>668</sup>

193. The Defence argues in contrast that there were no paramilitaries in Kosovo; in its submission, all the forces commissioned by Đorđević were legitimate reservists, and active measures were taken to ensure none of the volunteers had criminal records.<sup>669</sup> The argument rests on the contention that deployment of additional forces was lawful in a state of war, and that “the state had all the legal and factual means at its disposal to engage every individual it deemed necessary for the defence of the country and to equip such individuals in accordance with the tasks they were assigned”. In the Defence submission, therefore, there were no paramilitary and volunteer units in the territory of Serbia allowed in the MUP during the war in 1999.<sup>670</sup> Đorđević denied that he knew any of the forces deployed to Podujevo/Podujevë or in Kosovo in general had ever operated in Croatia or been part of the Scorpions.<sup>671</sup> Specifically, at the time of the admission and engagement of the MUP reserve force attached to the SAJ unit, Đorđević claims that he had no knowledge of any crime committed by any member of the reserve force in the territory of the former Yugoslavia.<sup>672</sup> Moreover, background checks were conducted on all candidates as required by law.<sup>673</sup>

194. The specific evidence in relation to Vlastimir Đorđević’s knowledge of the existence, and role in the deployment, of paramilitaries in Kosovo in 1999 is discussed elsewhere in this Judgement.<sup>674</sup> The Chamber records its finding here, however, that a number of paramilitary groups were present in the field in Kosovo in 1998-1999, working in concert mainly with MUP units in order to supplement their forces.<sup>675</sup> These are discussed below.

195. The law did not provide for the possibility of engaging paramilitaries and other volunteers into MUP forces.<sup>676</sup> Some evidence indicates that paramilitary units were nonetheless used in Kosovo from May 1998 and were present from that time on.<sup>677</sup> What is clear is that Minister Stojiljković and Vlastimir Đorđević prepared for the inclusion of paramilitary units into MUP units

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<sup>666</sup> Prosecution Final Brief, para 1139.

<sup>667</sup> Prosecution Final Brief, para 1141.

<sup>668</sup> Prosecution Final Brief, paras 1152, 1165-1166.

<sup>669</sup> Defence Final Brief, paras 101, 476-480.

<sup>670</sup> Defence Final Brief, para 107.

<sup>671</sup> Defence Final Brief, para 482.

<sup>672</sup> Defence Final Brief, para 481.

<sup>673</sup> Defence Final Brief, para 480.

<sup>674</sup> *See infra*, para 1934-1966.

<sup>675</sup> Aleksandar Vasiljević, T 5663-5664, 5667-5668; Goran Stoparić, Exhibit P493, paras 34-35; Goran Stoparić, T 2816.

<sup>676</sup> Ljubinko Cvetić, T 6675, 6678.

in early 1999. The Minutes of a meeting of the Priština/Prishtinë MUP Staff on 17 February 1999 report that Minister Stojiljković said “Approach and engage volunteers carefully, linking their engagement through the reserve police force when assessed as necessary”.<sup>678</sup> Subsequently, Đorđević sent a dispatch on 18 February 1999 to all the SUPs in Serbia and to the RDB, requesting them to “... establish complete control over volunteer and paramilitary units and their members”.<sup>679</sup> Minister Stojiljković sent a further dispatch on 24 March 1999 to the chief of the RJB, the headquarters of the RJB organisational units, all the SUPs, MUP Staff in Priština/Prishtinë and all the traffic police stations, referring back to the 18 February dispatch of Đorđević, and tasking them to “...register all volunteers and paramilitary units and their members and keep them under control in case that you might need to engage them”.<sup>680</sup> In this document, the Minister refers to the 18 February dispatch as “our dispatch”, indicating that the decision to engage paramilitaries was made jointly by Minister Stojiljković and the Accused Đorđević. The Chamber is unconvinced by the Defence explanation for the words “our dispatch” that all the RJB instructions sent to the organizational units and SUPs in Serbia had been approved before they were sent by the Minister.<sup>681</sup> The Minutes of a meeting with senior police officials in Kosovo dated 4 April 1999 record Sreten Lukić, the head of the MUP Staff, as noting the need to take “rigorous measures towards paramilitary units”.<sup>682</sup>

196. The Supreme Command was well aware of the use of paramilitaries by the MUP and the VJ in Kosovo. Minutes of a meeting of the Supreme Command held on 17 May 1999 report the discussion about crimes committed by paramilitary groups in Kosovo.<sup>683</sup> Radomir Marković said that he spoke to Vlastimir Đorđević who had said that the group headed by Slobodan Medić aka “Boca” (in the Chamber’s finding, the Scorpions) had been withdrawn to Prolom Banja.<sup>684</sup> As noted earlier and discussed in detail elsewhere in this Judgement, the Scorpions unit had been attached to the SAJ when members of the unit murdered 14 women and children in Podujevo/Podujevë on 28 March 1999.<sup>685</sup> It is clear that Đorđević was referring to this group being sent back to Prolom Banja following this incident. President Slobodan Milošević told Marković to convey to Vlajko Stojiljković and Đorđević that “their heads won’t be chopped off” but that “‘Boca’ must answer”.<sup>686</sup> In the finding of the Chamber, this evidence indicates that Milošević would not hold to account Stojiljković and Đorđević for the crimes committed by the Scorpions

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<sup>677</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6092, 6133.

<sup>678</sup> Exhibit P85, p 3.

<sup>679</sup> Exhibit P356, para 7, p 3; Ljubinko Cvetić, T 6677, 6853.

<sup>680</sup> Exhibit P702, para 5, p 1.

<sup>681</sup> See Closing Arguments, T 14488.

<sup>682</sup> Exhibit P764, p 3.

<sup>683</sup> Exhibit P884.

<sup>684</sup> Aleksandar Vasiljević, T 5681; Exhibit P884, p 1.

<sup>685</sup> See *supra*, paras 1930-1953.

members, whereas the leader of the Scorpions unit, Medić, aka “Boca”, would be. Milošević also stated that he supported the work of the RDB and of the security organs to have “all the cases of the ‘big Serbs’ resolved” since they only caused damage and that Stojiljković, Đorđević and Obrad Stevanović had no “reason to protect them”.<sup>687</sup> Aleksandar Vasiljević, who took the notes of this meeting,<sup>688</sup> explained that Milošević was referring to the fact that the MUP reserve forces included many persons “representing themselves as big Serbs, who [...] caused damage” such as “Boca, Arkan’s men, et cetera”.<sup>689</sup> In the Chamber’s finding, the term “big Serbs” in this context thus refers to members of paramilitary groups operating in Kosovo. The notes record that Nikola Šainović (Deputy Prime Minister of Serbia responsible for Kosovo) said that, “it is obvious that SAJ has its habits when it comes to forming the reserve”.<sup>690</sup> He is later recorded as saying that orders had been issued for all sectors to submit reports about the situation on the ground and “what needs to be investigated” and the need to monitor “what is a consequence of combat and what’s a crime”. A proposal to establish a special state commission to look into the use of paramilitaries in Kosovo was supported in the meeting by Pavković, Šainović and Odžanić, but Milošević by-passed the issue and concentrated instead on the need to improve coordination and relations between the VJ and the MUP.<sup>691</sup> The role of the Accused and Minister Stojiljković in the engagement and deployment of a unit of the Scorpions to serve with the SAJ in Kosovo is discussed briefly in the section of this Judgement which follows and the activity of members of this Scorpions unit is dealt with in more detail in a later part of this Judgement.

197. In contrast to the MUP, during a state of war, imminent threat of war, or state of emergency, the VJ could be reinforced with volunteers.<sup>692</sup> Volunteers were defined as individuals who were not subject to compulsory military service and military conscripts who did not have wartime assignments.<sup>693</sup>

198. The VJ units in Kosovo were reinforced with volunteers during the Indictment period. The procedure for the reception, induction and deployment of volunteers to the VJ was set out in an order from the Supreme Command Staff dated 7 April 1999.<sup>694</sup> An order from the Supreme Command Staff dated 14 April 1999 arranged induction, accommodation and distribution of volunteers in the reception centres of the 1st, 2nd and 3rd Army Commands.<sup>695</sup> The order

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<sup>686</sup> Exhibit P884, p 1.

<sup>687</sup> Aleksandar Vasiljević, T 5681-5683; Exhibit P884, p 1.

<sup>688</sup> Aleksandar Vasiljević, T 5678-5679.

<sup>689</sup> Aleksandar Vasiljević, T 5682.

<sup>690</sup> Aleksandar Vasiljević, T 5682-5683; Exhibit P884, p 1; *see also infra*, para 1952.

<sup>691</sup> Exhibit P884, p 1.

<sup>692</sup> Exhibit P43, Article 15; Exhibit P44, Article 18.

<sup>693</sup> Exhibit P43, Article 15.

<sup>694</sup> Exhibit P679.

<sup>695</sup> Exhibit D185.

established the responsibilities of the Army Command and the MUP in respect of the volunteers. There were two assembly points for volunteers: one in Bubaj Potak, which was later moved to Grocka, and the other one near Niš.<sup>696</sup>

199. There were problems with screening volunteers.<sup>697</sup> A letter of 20 April 1999 from the Supreme Command Staff sent by telegram to various commands in the VJ, reported that there had been no screening or security checks of some volunteers who had arrived at the Butaj Potak assembly point and had then been dispatched to the 3<sup>rd</sup> Army, that some of them were detained for murder or rape and refusing to obey orders and desertion and that a number of volunteers (50 per cent) gave up their engagement with the VJ because they were not ready to obey orders.<sup>698</sup> The 3<sup>rd</sup> Army Command found that the work at the Butaj Potak assembly point posed a great risk to security and that measures should be taken to eliminate such problems. A report of the 3<sup>rd</sup> Army sent to the Supreme Command Staff on 10 April 1999 also noted that there were a high number of volunteers who were members of paramilitary groups. A limited number of foreign volunteers from Republika Srpska, Russia and FYROM were included in the VJ units.<sup>699</sup> The Chamber notes that Miloš Došan denied that there were Russian volunteers in VJ units. He claimed that the only Russian volunteer he was aware of was a doctor who worked in the garrison clinic.<sup>700</sup> In view of the clear documentary evidence of the admittance of Russian volunteers into VJ units, as recorded in the Order of the 3<sup>rd</sup> Army Command of 10 April 1999,<sup>701</sup> and in light of the oral evidence of witnesses confirming the presence of Russian volunteers in Kosovo during the Indictment period,<sup>702</sup> the Chamber does not accept the denial of Došan, and views this as further reason to be cautious about the evidence given by him.

200. Aleksandar Vasiljević stated that although it was envisaged that volunteers should be deployed in VJ units and not left in a separate group, in some cases, such as the case of the 37<sup>th</sup> Brigade in Glogovac/Glllogoc, when 50 to 60 volunteers arrived, the commander formed a separate unit for them and appointed Stevan Jekić as commander. Although this was not supposed to happen, in practice it did and problems came mostly from such groups.<sup>703</sup>

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<sup>696</sup> Aleksandar Vasiljević, T5857-5858.

<sup>697</sup> Exhibit P1377, pp 1-2.

<sup>698</sup> Exhibit P680.

<sup>699</sup> Exhibit P1377, p 1.

<sup>700</sup> Miloš Došan, T 11405.

<sup>701</sup> Exhibit P1377, p 1.

<sup>702</sup> Several witnesses gave evidence about the presence of Russian volunteers with either MUP forces or the VJ. See Martin Pnishi, Exhibit P1033, p 3; K79 T 8304; Nike Peraj, Exhibit P313, para 20; K90, Exhibit P321, paras 30-32; K90, Exhibit P322 (*Milutinović* transcript), T 9311; Sami Parashumti, Exhibit P903, p 2.

<sup>703</sup> Aleksandar Vasiljević, T 5858-5859.

201. The Supreme Command Staff was fully cognizant of this matter and issued guidelines in order to regulate the problem of volunteers with mental issues in a telegram of 4 May 1999.<sup>704</sup> Military reports detailed offences committed by volunteers such as theft and arson.<sup>705</sup>

202. Paramilitaries often stood out from MUP and VJ units because of their distinctive demeanour and style of dress.<sup>706</sup> Witnesses described how paramilitary members sometimes carried long, bloodied knives, and otherwise exhibited threatening behaviour, which at times manifested into actual execution-style killings often in front of family members, severe beatings, rape, looting, burning of homes, and extortion.<sup>707</sup> The Chamber accepts that in the Indictment period they regularly served in Kosovo, arriving in vehicles from all over the former Yugoslavia, including Skopje, FYROM, Novi Sad and Belgrade, typically wearing sunglasses and bandannas, and carrying large knives.<sup>708</sup> They often painted their faces with black face-paint.<sup>709</sup> While some paramilitary groups wore specific uniforms, noted below, the evidence indicates that paramilitary forces often wore black military-style clothing.<sup>710</sup>

203. The evidence discloses that the paramilitary groups active in Kosovo during the Indictment period included the following:

#### 1. Scorpions

204. As noted above, the Chamber is satisfied that the Scorpions unit, or some of its members, had been incorporated into or served with the SAJ by March 1999.<sup>711</sup> The origins of the Scorpions unit lay in the use of the Territorial Defence (TO) of the Serbian Krajina, led by Slobodan Medić aka “Boca”, to protect oil wells located at the demarcation line with Croatia in the early 1990s. Until 1993 the members of this unit were employees of the oil industry.<sup>712</sup> In 1993 a decision was made by the supreme command of Krajina that the unit should become part of the army of Serbian Krajina to guard the border and secure the oil fields, although the unit continued to be financed by the oil industry of Krajina.<sup>713</sup> The unit was armed with weapons, other equipment and uniforms by

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<sup>704</sup> Exhibit P681.

<sup>705</sup> Exhibit D775.

<sup>706</sup> John Crosland, Exhibit P1400, para 15; John Crosland, Exhibit P1401 (*Milutinović* transcript), T 9771.

<sup>707</sup> Shukri Gerxhaliu, T 3168-3169; Sada Lama, T 3698-3699; Xhafer Beqiraj, T 4798; Nike Peraj, T 1258-1259; Bajram Bucaliu, T 5080; Adnan Merovci, T 2210-2211; Agim Jemini, T 3614-3615, 3533-3534; Hysni Berisha, T 3343.

<sup>708</sup> John Crosland, Exhibit P1400, para 15; John Crosland, Exhibit P1401 (*Milutinović* transcript), T 9771; Nike Peraj, Exhibit P313, para 44.

<sup>709</sup> Nike Peraj, Exhibit P313, para 90; Hamide Fondaj, Exhibit P627, p 3.

<sup>710</sup> Shukri Gerxhaliu, Exhibit P512, para 16; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2512, 2602; Hysni Berisha, Exhibit P587, p 4017-4018; Aferdita Hajrizi, Exhibit P774, p 5; Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4455; Shefquet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3792.

<sup>711</sup> See *infra*, Section on Responsibility, para 75.

<sup>712</sup> K92, T 2719-2720; Aleksandar Vasiljević, T 5667.

<sup>713</sup> K92, 2721, 2763-2764



the so-called Republic of Serbian Krajina. On one sleeve of the uniform, the unit carried the insignia of the army of Krajina and on the other sleeve, a scorpions insignia, which led to the unit receiving the name of “Scorpions”. The unit was headed by Slobodan Medić until 1996.<sup>714</sup> In 1995 and 1996 the Scorpions were deployed to other parts of Krajina, as well as to Trnovo, Republika Srpska in June, 1995 and in Bihac (Zazine Krajina).<sup>715</sup> The Scorpions were disbanded in May 1996. Some of them remained in the region (already reintegrated into Croatia), others left for the Republic of Serbia. Slobodan Medić moved to Novi Sad, Republic of Serbia. At the time it was disbanded as a unit of the so-called army of Krajina it had about 100 to 150 men.<sup>716</sup> It was generally known that members of the Scorpions had criminal backgrounds from their time spent in the battlegrounds.<sup>717</sup>

205. As discussed in detail elsewhere,<sup>718</sup> in 1999, two groups of the Scorpions went to Kosovo: one organised by Slobodan Medić aka “Boca”, and the other was organised and led by Dalibor Novaković.<sup>719</sup> The group headed by Slobodan Medić was composed of 120 to 150 individuals. As discussed in more detail in a separate part of the Judgement, in 1999, the Scorpions unit commanded by Medić was deployed to Kosovo to serve with the SAJ.<sup>720</sup> On 28 March 1999, in the town of Podujevo/Podujevë, in the Priština/Prishtinë municipality, members of this unit took part in the murder of civilians, including 12 children and two women.<sup>721</sup> After this incident, the group were ordered to leave Kosovo.<sup>722</sup> However, within a short time almost all of them were re-deployed in Kosovo. The role of Vlastimir Đorđević in organising the deployment and later re-deployment of the Scorpions during the period of the Indictment is discussed in detail in a later part of the Judgement.<sup>723</sup>

206. When deployed in Kosovo, the Scorpions functioned as a separate unit, under its own commanders but serving with SAJ forces, rather than dispersed as individuals into other units.<sup>724</sup> The uniform worn by members of the Scorpions was the same as that worn by the SAJ, but with a Scorpions patch/insignia on the arm.<sup>725</sup> They wore hats with the MUP insignia and the tricolour Serbian flag.<sup>726</sup> Their berets also carried the Scorpions badge.<sup>727</sup> The Scorpions were issued with

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<sup>714</sup> K92, T 2721-2724.

<sup>715</sup> K92, T 2724-2725.

<sup>716</sup> K92, T 2726.

<sup>717</sup> Aleksandar Vasiljević, T 5667.

<sup>718</sup> See *infra*, paras 1934-1945.

<sup>719</sup> Aleksandar Vasiljević, T 5666.

<sup>720</sup> Aleksandar Vasiljević, T 5666-5667.

<sup>721</sup> See *infra*, paras 1231-1261.

<sup>722</sup> Aleksandar Vasiljević, T 5663.

<sup>723</sup> See *infra*, paras 1946-1948.

<sup>724</sup> Goran Stoparić, Exhibit P495 (*Milutinović* transcript), T 787.

<sup>725</sup> Goran Stoparić, Exhibit P493, para 11, 41; Goran Stoparić, T 2819.

<sup>726</sup> Goran Stoparić, Exhibit P493, para 41; Goran Stoparić, T 2819.

SAJ identification papers and were given an SAJ reservist salary.<sup>728</sup> Although the Scorpions appear to have been engaged as reserve forces to serve with the SAJ, although not in compliance with the existing provisions for the use of reservists, they remained identifiable as a paramilitary unit. The Chamber rejects the Defence submission that the (irregular) incorporation of the Scorpions into the SAJ meant that the MUP did not engage the Scorpions as a paramilitary group during the relevant time. Given the common knowledge that the Scorpions were a paramilitary unit that had participated in wars in the former Yugoslavia, the Chamber further finds entirely unconvincing the evidence of Defence witness Radislav Stalević<sup>729</sup> that MUP organs did not know that the Scorpions were a known paramilitary unit before they were incorporated into the MUP as a reserve force.

207. The Scorpions wore green camouflage uniforms, similar to those worn by NATO forces.<sup>730</sup> Every Scorpions unit wore a scorpion insignia on one of their sleeves, and most also wore SAJ insignia on the other sleeve.<sup>731</sup> The Scorpions occasionally wore either camouflage (baseball-style) hats with a peak, which carried MUP insignia and the tricolour Serbian flag, or berets, which carried a scorpion insignia.<sup>732</sup> The Scorpions also wore combat vests and gloves every so often.<sup>733</sup>

## 2. Arkan's Tigers

208. The paramilitary group known as "Arkan's Tigers" were deployed in Kosovo during the Indictment period.<sup>734</sup> This group, headed by Željko Ražnatović (aka "Arkan"),<sup>735</sup> had been in existence since 1991<sup>736</sup> and had previously operated in Croatia, in 1992, and numbered 150 at that time.<sup>737</sup> Many of the men had criminal convictions.<sup>738</sup>

209. As noted above, the Chamber accepts that a number of Arkan's Tigers were attached to the RDB during the Indictment period. Aleksandar Vasiljević testified that members of Arkan's Tigers carried RDB identification passes<sup>739</sup> and that they were deployed in Kosovo Polje/Fushë Kosova.<sup>740</sup> The notes taken by Vasiljević of a meeting of the Supreme Command held on 17 May 1999 indicate that Radomir Marković, Head of the RDB, was directly offered 100 of these men by Arkan, and

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<sup>727</sup> Goran Stoparić, Exhibit P493, para 11.

<sup>728</sup> Goran Stoparić, Exhibit P493, paras 13, 18; K92, T 2748 (closed session).

<sup>729</sup> Radislav Stalević, T 13836-13837.

<sup>730</sup> Goran Stoparić, Exhibit P493, paras 11, 41-42; K92, T 2819.

<sup>731</sup> Goran Stoparić, Exhibit P493, paras 11, 41; K92, T 2819.

<sup>732</sup> Goran Stoparić, Exhibit P493, para 41; K92, T 2819.

<sup>733</sup> Goran Stoparić, Exhibit P493, para 41.

<sup>734</sup> Aleksandar Vasiljević, T 5663-5664, 5668; K89, T 8410-8411.

<sup>735</sup> Nike Peraj, Exhibit P313, para 95; Miloš Došan, T 11418.

<sup>736</sup> Aleksandar Vasiljević, T 5669.

<sup>737</sup> Aleksandar Vasiljević, T 5669-5670.

<sup>738</sup> Aleksandar Vasiljević, T 5669.

<sup>739</sup> Aleksandar Vasiljević, T 5669-5670.

<sup>740</sup> Aleksandar Vasiljević, T 5668.

that he accepted 30 of them on the condition that they wore uniforms.<sup>741</sup> John Crosland saw that Arkan's men were brought to Kosovo from Montenegro and were housed near Mitrovica/Mitrovicë.<sup>742</sup> The group was also based in the Grand Hotel in Priština/Prishtinë for a time.<sup>743</sup>

210. Witnesses claimed to have seen members of Arkan's Tigers or men dressed in a uniform similar to that worn by the group in the following locations in Kosovo during the Indictment period: from 25 March 1999, in the area between Orahovac/Rahovec and Đakovica/Gjakovë;<sup>744</sup> on 8 April 1999, in Srbica/Sërbica;<sup>745</sup> on 24 March 1999, in Priština/Prishtinë;<sup>746</sup> in February or March 1999 in the Đakovica/Gjakovë municipality;<sup>747</sup> on 27-28 April 1999, in Meja/Mejë, Đakovica/Gjakovë municipality;<sup>748</sup> on or around 25 March 1999 in the area around the village of Vladovo/Lladovë, municipality of Gnjilane/Gjilan;<sup>749</sup> and on 13 April 1999, in the village of Vata/Vataj, Kačanik/Kaçanik municipality.<sup>750</sup> The Chamber's specific findings with regard to the presence of Arkan's Tigers in these locations are discussed in Section VI of the Judgement. However, the Chamber is satisfied from the evidence as a whole that Arkan's Tigers were present in Kosovo during the Indictment period, were associated with the RDB, and played an active part in joint operations of the MUP and VJ.

211. Arkan's Tigers mostly wore green camouflage uniforms, with a unique insignia on the sleeve which featured the face of a tiger, but it was not uncommon to see them wearing mixed civilian and military clothing during the Indictment period. In particular, Arkan's Tigers often mixed civilian trousers with military jackets.<sup>751</sup> The Tigers were normally without headgear, but they occasionally wore black bandannas or tied red ribbons around their heads.<sup>752</sup> They often wore red ribbons around their shoulders and on their sleeves.<sup>753</sup> The Tigers also wore vests with many pockets, which were used to carry ammunition, grenades and knives.<sup>754</sup> Many of Arkan's Tigers wore chains 60 to 70 centimetres long. The knives carried by the Tigers were large hunting models.

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<sup>741</sup> Aleksandar Vasiljević, T 5681; Exhibit P884, p 1.

<sup>742</sup> John Crosland, Exhibit P1400, para 15.

<sup>743</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6092, 6133.

<sup>744</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9127, 9224-9225; K89, 8457, 8467-8468.

<sup>745</sup> Halil Morina, Exhibit P283, p 4.

<sup>746</sup> Baton Haxhiu, T 6226; Adnan Merovci, T 2210-2211; Adnan Merovci, Exhibit P416, para 44.

<sup>747</sup> Nike Peraj, Exhibit P313, para 38; Nike Peraj, T 1266.

<sup>748</sup> Nike Peraj, Exhibit P313, para 80; Nike Peraj, T 1211.

<sup>749</sup> K81, Exhibit P791, statement of 30 May 1999, p 2; Exhibit P793 (*Milutinović* transcript), T 7086.

<sup>750</sup> Sada Lama, Exhibit P661, pp 2-3; Sada Lama, T 3698

<sup>751</sup> Nike Peraj, T 1270-1273.

<sup>752</sup> Nike Peraj, T 1270-1273; Martin Pnishi, Exhibit P1033, p 5.

<sup>753</sup> Martin Pnishi, Exhibit P1033, p 5.

<sup>754</sup> Nike Peraj, Exhibit P313, para 42.

Their other weaponry consisted mostly of handheld revolvers, automatic rifles and hand-grenades.<sup>755</sup>

### 3. White Eagles

212. Evidence indicates that the paramilitary group known as the “White Eagles” or “Šešelj’s men” were present and active in Kosovo during the Indictment period. This paramilitary group was associated with Vojislav Šešelj, deputy prime minister of Serbia.<sup>756</sup> Nike Peraj, a Captain in the 52<sup>nd</sup> Rocket Artillery Brigade of the VJ, gave evidence that the White Eagles operated jointly with the MUP and also with the “Territorial Defence”, *i.e.* the Military Territorial Detachment,<sup>757</sup> on an *ad hoc* basis.<sup>758</sup> In particular, he testified that members of this group took part in Operation Reka in the Carragojs Valley in Đakovica/Gjakovë municipality on 27-28 April 1999.<sup>759</sup> Peraj personally witnessed MUP forces coordinating their actions with the White Eagles and other paramilitary groups in Meja/Mejë in the course of that operation.<sup>760</sup> The presence of the White Eagles during this operation was confirmed by Martin Pnishi, a villager from Meja/Mejë, who described in detail the uniform worn by the “White Eagles” from among those worn by the several different military and police units in the area at the time, as being all black with three stripes yellow, black and green colour ribbons on their sleeves and patches with the white “Šešelj” two headed eagle, as well as black “berets” with white two headed eagles on the side.<sup>761</sup>

213. Other witnesses also claimed to have seen members of the “White Eagles” or described uniforms worn by paramilitary members that matched those worn by this group. On 28 March 1999, in Dušanovo/Dushanovë, Prizren municipality, Hysni Kryeziu saw men wearing black uniforms with an emblem with the words “Beli Orlovi” translated as “White Eagles” written on it on their left upper arm.<sup>762</sup> The men also wore black caps, described by the witness as “the kokardas of Chetniks”, with black cockades.<sup>763</sup> On 29 March 1999, in Priština/Prishtinë, Nazlie Bala observed men in black uniforms with white eagle patches on their shoulders.<sup>764</sup> On or about 4 or 5 June 1999, in Zvečan/Zvečane, Kosovska Mitrovica/Mitrovicë municipality, Shukri Gerxhaliu saw men wearing grey uniforms with a white eagle insignia on the arm which he

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<sup>755</sup> Nike Peraj, T 1270-1273.

<sup>756</sup> Nike Peraj, Exhibit P313, paras 12 and 95.

<sup>757</sup> *See infra*, para 552.

<sup>758</sup> Nike Peraj, Exhibit P313, para 12.

<sup>759</sup> Nike Peraj, T 1258.

<sup>760</sup> Nike Peraj, T 1258.

<sup>761</sup> Martin Pnishi, Exhibit P1033, p 5.

<sup>762</sup> Hysni Kryeziu, T 5608; Exhibit P878 (*Milutinović* transcript), T 7548-7549.

<sup>763</sup> Hysni Kryeziu, T 5607; Exhibit P878 (*Milutinović* transcript), T 7548. *See* Exhibit P1301, p 13, photograph 26 (depicting the old JNA cap, which matches the description given by Kryeziu).

<sup>764</sup> Nazlie Bala, Exhibit P420, p 4.

believed to be the uniform of “Šešelj’s men”.<sup>765</sup> Bedri Hyseni gave evidence that by 1 April 1999, paramilitary soldiers had moved into the houses of 12 or 13 Serbian or Montenegrin families in Staro Selo/Fshati-i-Vjeter village, Uroševac/Ferizaj municipality.<sup>766</sup> He thought they were “Šešelj’s group” but the Chamber cannot make this finding. Bajram Bucaliu also testified about the occupation of Staro Selo/Fshati-i-Vjeter by paramilitaries in April 1999. He described the paramilitary members as wearing “irregular clothing”, and on their heads, the “Kokarda”, the “hats used by the Chetniks”.<sup>767</sup>

214. The Chamber is satisfied that the evidence as a whole establishes that members of the “White Eagles” participated in coordination with the MUP in operations in Kosovo in 1999.

215. The White Eagles most typically wore black uniforms and black headwear, usually described by witnesses as the “kokarda”, or “the hat worn by the Chetniks”, which is similar to the caps worn by JNA<sup>768</sup> soldiers during World War II.<sup>769</sup> During operations, they wore striped yellow, black and green ribbons on their sleeves.<sup>770</sup> Their insignia was worn on their headgear and sleeves, and depicted two white eagle heads, with the words “Beli Orlovi” in Cyrillic translated as “White Eagles” written on it on their left upper arm.<sup>771</sup>

#### 4. Pauk Spiders

216. The paramilitary unit the Pauk Spiders, led by Yugoslav Petrusić and also known as “Petrusić’s group”, was absorbed into the VJ. The group circumvented the regular recruiting procedure for volunteers.<sup>772</sup> Evidence indicates that a colonel from the General Staff had intervened on their behalf and gave them uniforms and weapons. The group, numbering 25 persons, was sent to the 125<sup>th</sup> Brigade of the Priština Corps and deployed in Košare/Kosharë, Đakovica/Gjakovë municipality, from 15 April 1999 to 5 May 1999.<sup>773</sup> They wore regular VJ uniforms.<sup>774</sup> In the meeting of the Supreme Command held on 17 May 1999 mentioned above, General Pavković stated there was no problem with this particular group.<sup>775</sup> The group was

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<sup>765</sup> Shukri Gerxhaliu, Exhibit P512, para 35.

<sup>766</sup> Bedri Hyseni, Exhibit P809, pp 4-5; Bedri Hyseni, T 4885.

<sup>767</sup> Bajram Bucaliu, T 5054.

<sup>768</sup> JNA refers to *Jugoslovenska Narodna Armija*, the Yugoslav People’s Army, the military of the Socialist Federal Republic of Yugoslavia.

<sup>769</sup> Hysni Kryeziu, T 5608; Exhibit P878 (*Milutinović* transcript), T 7548-7549; Bajram Bucaliu, T 5054. See Exhibit P1301, p 13 (depicting the old JNA cap).

<sup>770</sup> Martin Pnishi, Exhibit P1033, p 5.

<sup>771</sup> Hysni Kryeziu, T 5608; Exhibit P878 (*Milutinović* transcript), T 7548-7549; Martin Pnishi, Exhibit P1033, p 5. See Exhibit P327, p 2, number 11 (depicting the White Eagles insignia); K73, T 1515.

<sup>772</sup> Aleksandar Vasiljević, T 5663, 5908.

<sup>773</sup> Aleksandar Vasiljević, T 5663; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19778.

<sup>774</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19780.

<sup>775</sup> Exhibit P884, p 1. See Aleksandar Vasiljević, T 5680 (noting that reference in the document to “Petronijević’s group” was an error and should refer to “Yugoslav Petrusić’s group”).

disarmed and withdrawn from the field after it was believed that there was a French agent amongst its ranks<sup>776</sup> and that the group was going to make an attempt on the life of President Milošević.<sup>777</sup>

#### **D. Civil defence and protection**

217. The FRY Law on Defence provided for participation in civilian defence and protection, which consisted of all citizens from the age of 15, except for persons serving the VJ or the MUP and pregnant women or mothers of young children. Citizens were obliged to carry out specific duties in units and organs formed for the protection and rescue of the civilian population and material resources from wartime destruction and natural and other disasters or threats.<sup>778</sup>

218. Civilian protection units, intended for the protection and rescue of the population and material and other resources from wartime destruction, could be formed by state organs in accordance with the Plan for the Defence of the Country, or could be formed by citizens on a voluntary basis.<sup>779</sup> They followed instructions issued by the “organs competent for these affairs”.<sup>780</sup>

219. Civilian defence units, manned by citizens who were not military conscripts and not assigned to units of civilian protection, could be organised by the local population only in a state of war or imminent threat of war, in order to protect the population and property from attack, secure public buildings (schools, hospitals, and others) and other civilian buildings and resources.<sup>781</sup> The Federal Ministry of Defence decided on the organisation, work, equipment and training of units of civilian defence.<sup>782</sup> Members of such units were authorised to be armed with small arms solely for “maintaining order and for self-defence”.<sup>783</sup> The civilian defence units were under the command of the state organs responsible for civilian defence and protection. A VJ officer holding the position of battalion commander or higher was able to issue tasks concerning the defence and protection of the civilian population and material resources to units in his area of responsibility.<sup>784</sup> In Kosovo in 1998 and 1999, only citizens of non-Albanian ethnicity were part of the civilian defence and civilian protection units.<sup>785</sup>

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<sup>776</sup> Aleksandar Vasiljević, T 5663, 5921; *see also* Exhibit P884, p 1; Aleksandar Vasiljević, T 5680.

<sup>777</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19779.

<sup>778</sup> Exhibit P44, Article 22

<sup>779</sup> Exhibit, P44, Article 59.

<sup>780</sup> Exhibit P44, Article 59.

<sup>781</sup> Exhibit P44, Article 61.

<sup>782</sup> Exhibit P44, Article 61.

<sup>783</sup> Exhibit P44, Article 62.

<sup>784</sup> Exhibit P44, Article 63.

<sup>785</sup> Milan Đaković, T 8137. *See also* Exhibit P889, p 4 (order of the Priština Corps Command of 16 February 1999 referring to engaging the “non-Šiptar” population to secure military facilities and defend places with “non-Šiptar” populations).

220. An order of the FRY Priština Defence Administration, signed by Petar Ilić, to Defence Departments and Sections dated 28 July 1998 referred to the organisation of civilian protection units pursuant to the Joint Command Instructions for the defence of inhabited areas and ordered them to fully implement the order.<sup>786</sup> The order tasked “general purpose” civilian protection units with providing first-aid treatment, rescue from ruins, extinguishing fires, clearing up barricades and washing streets, while “specialised” civilian protection units were tasked, in addition, with the destruction of unexploded ordnance and “clearing the terrain and maintaining order”. Municipal staffs were responsible for coordinating the work of the civilian protection units with VJ and MUP units and municipal defence staffs.<sup>787</sup>

221. Despite the fact that the law limited the use of arms by the civilian defence to what was necessary to “maintain order” or in self defence, the evidence at trial reveals that both civilian defence units and civilian protection units were used in combat operations in 1998 and 1999 as a supportive or supplementary reinforcement of the VJ and MUP units. For example, a report entitled “Analysis of the tasks executed on the territory of Kosovo and Metohija”, of the 3<sup>rd</sup> Army of the Forward Command Post, dated 2 October 1998 referred in Item 3 to “Experiences gained”. Under “positive experiences”, the last item read:

The distribution of weapons to citizens loyal to the FRY (of Serbian and Montenegrin ethnicity) has made it possible for large scale resistance against the terrorists to be organized.<sup>788</sup>

At a meeting of the “Operations Inter-Departmental Staff for the Suppression of Terrorism in KiM”, chaired by Slobodan Milošević in Belgrade on 29 October 1998, attended by Milutinović, Minić, Šainović, Matković, Stojiljković, Anđelković, Perišić, Dimitrijević, Samardžić, Pavković, the Accused Đorđević, Marković, Stevanović and Lukić, Pavković informed the members that 48,000 guns would be distributed to the “local population”, “as envisaged in the Plan”.<sup>789</sup> The Minutes of the Collegium of the VJ General Staff of 2 February 1999 record Dušan Samardžić as saying that commanders of armed Serbs had been sent out with combat sets of ammunition with the role to defend their villages and “participate with army units in any operations in the immediate vicinity”. He commented that military and police operations could not function any other way.<sup>790</sup> An order of the 3<sup>rd</sup> Army Command on 27 January 1999 “for the use of the 3<sup>rd</sup> Army in preventing the forceful introduction of a NATO Brigade, its routing and the destruction of *Siptar* terrorist forces in Kosovo and Metohija” engaged not only the forces of the regular VJ, but also the “armed non-*Siptar*

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<sup>786</sup> Exhibit P1223; Exhibit P1224.

<sup>787</sup> Exhibit P1224.

<sup>788</sup> Exhibit D340, p 4.

<sup>789</sup> Exhibit P87, p 10.

<sup>790</sup> Exhibit P1333, p 23.

population”.<sup>791</sup> The Priština Corps was ordered to engage the regular forces and the “armed non-*Siptar* population” in its work, and in particular to secure military features and communication routes as well as for the defence of populated sites “with non-*Siptar* population”.<sup>792</sup>

222. A document from Dragan Ilić, the Chief of Defence Administration, to the Chiefs of Defence Departments and Heads of Defence Sections, dated 22 July 1998, indicates that the homes of ethnic Serbs and Montenegrins were used as municipal observation and reporting centres, facilitating the OUP communication centres.<sup>793</sup> The Chamber considers Milan Đaković’s explanation that the order refers only to the homes of Serbs and Montenegrins because “Šiptars” refused to be involved with anything that had to do with defence, including the civilian protection and civilian defence,<sup>794</sup> to be obscuring the fact that the order fits within a pattern of the Ministry of Defence, VJ and MUP arming those who were not Kosovo Albanians and setting them against their Kosovo Albanian neighbours.

223. The civilian protection and civilian defence units in Kosovo were armed by the 3<sup>rd</sup> Army.<sup>795</sup> Members of the civilian protection wore uniforms similar to that worn by army members, except that they wore patches stating that they were members of the civilian protection and defence.<sup>796</sup> Sometimes they only wore parts of uniforms.<sup>797</sup>

## **E. Relationship and coordination of Serbian forces in Kosovo**

### **1. Joint Command**

224. A strongly contested issue in this trial, about which there was much conflicting evidence, is whether there existed and functioned a body called the “Joint Command”, which was said by the Prosecution to operate as a high-level body which coordinated the operations of VJ, MUP and civilian units in Kosovo.<sup>798</sup> The Prosecution submits that the Joint Command was established in June 1998 and continued operations until at least June 1999.<sup>799</sup> Conversely, the Defence argues that the Joint Command was created as a “working group” in 1998, and ceased to exist after October 1998.<sup>800</sup> It contends that no orders were given at Joint Command meetings.<sup>801</sup> At trial, Vlastimir Đorđević denied the existence of the Joint Command, although he noted that the term was

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<sup>791</sup> Exhibit D343, p 5.

<sup>792</sup> Exhibit D343, p 6.

<sup>793</sup> Exhibit P1225.

<sup>794</sup> Milan Đaković, T 7912.

<sup>795</sup> Exhibit P1345, p 2.

<sup>796</sup> Milan Đaković, T 7902.

<sup>797</sup> John Crosland, Exhibit P1400, para 19.

<sup>798</sup> Ljubinko Cvetić, T 6627-6628; Aleksandar Vasiljević, T 5660.

<sup>799</sup> Prosecution Final Brief, para 256.

<sup>800</sup> Defence Final Brief, paras 23, 322, 327; Closing Arguments, T 14475, 14476.



used by the army to refer to coordination meetings with MUP organs.<sup>802</sup> In this respect, he stated that he frequently attended these meetings when he was in Priština/Prishtinë.<sup>803</sup> In his evidence, the meetings were used solely to exchange information between the MUP and VJ; opinions were offered, but no decisions were made in an operational sense.<sup>804</sup>

225. Defence expert witness Radomir Milašinović gave evidence that although he had come across the term “Joint Command” during the research of his report on the “Position and Role of the Chief of the Public Security Department in the Ministry of the Interior of the Republic of Serbia in Anti-Terrorist Activities in Kosovo and Metohija in 1998 and 1999”,<sup>805</sup> he did not understand the substance of the term<sup>806</sup> and he was not aware of any orders given by such a body.<sup>807</sup> After considering the report prepared by Milašinović and his evidence at trial, the Chamber is not prepared to rely on his knowledge or opinions in this regard. As noted earlier, the expert status of his report was rendered doubtful by the lack of appropriate reliable means for compiling the report. The fact that Milašinović claims never to have come across any orders of the Joint Command, and that his report omits all reference to such a body, demonstrates either or both the incompleteness and unreliability of the factual basis relied on by Milašinović, or the lack of credibility of Milašinović as an impartial expert witness on whose knowledge or opinions the Chamber could reasonably rely.

(a) Establishment of the Joint Command

226. A letter of the FRY Federal Ministry of Justice to the ICTY Office of the Prosecutor of 12 July 2002 indicates that the Joint Command was established in June 1998 on the order of the FRY President, Slobodan Milošević, and operated until October 1998.<sup>808</sup> No witness at trial was in a position to affirm or dispute this action by President Milošević in June 1998.<sup>809</sup> However, the Chamber notes the evidence of Ljubinko Cvetić, which it accepts, that at a meeting of the MUP Staff in Priština/Prishtinë held in the morning on 22 July 1998, the Accused Vlastimir Đorđević declared that a command had been established at the highest level and it was to be called the Joint Command.<sup>810</sup> Notably, the first Joint Command meeting took place that evening.<sup>811</sup> In the

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<sup>801</sup> Defence Final Brief, paras 323, 326.

<sup>802</sup> Vlastimir Đorđević, T 9576, 9859-9860.

<sup>803</sup> Vlastimir Đorđević, T 9847.

<sup>804</sup> Vlastimir Đorđević, T 9605.

<sup>805</sup> Exhibit D933.

<sup>806</sup> Radomir Milašinović, T 14335.

<sup>807</sup> Radomir Milašinović, T 14336-14337.

<sup>808</sup> Exhibit P1245.

<sup>809</sup> See Milan Đaković, T 8111.

<sup>810</sup> Ljubinko Cvetić, T 6627-6628; Exhibit P768.

<sup>811</sup> Exhibit P886, p 2.

Chamber's view, this is confirmatory of the information given by the FRY Federal Ministry of Justice.

227. Milan Đaković, at the relevant time head of operations and training of the VJ Priština Corps,<sup>812</sup> testified that he first heard the term “Joint Command” when it was mentioned in a conversation he had with General Pavković in May 1998.<sup>813</sup> An order of 7 July 1998 from the brigade commander of the 125<sup>th</sup> motorized brigade, Colonel Dragan Zivanović, to his subordinates is entitled “A ban on operations without knowledge and approval of the Joint Command for Kosovo and Metohija”, is a strong indication that the Joint Command was in existence at least from this time. Order 1104-6 is cited in the document as the authority for the order.<sup>814</sup> Đaković, who drafted the Order of 7 July 1998, sought to suggest in his evidence that the term Joint Command was merely a notion to express joint coordination between the MUP Staff and the army.<sup>815</sup> However, in order to make coordination decisions between the MUP and VJ official, the documents would refer to the “KiM Joint Command” but, nevertheless, required approval by the MUP and the army command, respectively. Đaković explained that in July 1998, the Joint Command was qualified to carry out the “Grom” operation in the area of the Pec/Pejë-Djakovica/Gjakovë-Prizren road, which had been directed by an inter-departmental staff of the MUP,<sup>816</sup> after which the Joint Command took over because the inter-departmental staff was disbanded. From this time, in the evidence of Đaković, documents were made with the title “Joint Command”.<sup>817</sup> The Chamber is unable to accept this explanation for the establishment of the use of the term “Joint Command”. It does not take account of the order of President Milošević to establish the Joint Command. Further, as conceded by Đaković, he was not present at the meeting in June 1998, to be discussed in the next paragraph, when Milošević ordered the establishment of the Joint Command.<sup>818</sup> Therefore his explanation as to the use of the term “Joint Command” appears to be based on incomplete information and partially on assumption on his part. The Chamber also formed the distinct impression that, in his testimony, Đaković sought to minimise the import of the Joint Command in a way that was favourable to the Accused.

228. As discussed elsewhere in this Judgement, the Plan for Suppressing Terrorism, which involved the coordinated use of VJ and MUP units, had been drawn up by the VJ on 9 June 1998, and was adopted at a meeting held by President Slobodan Milošević on 21 July 1998, at which all

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<sup>812</sup> Milan Đaković, T 7872.

<sup>813</sup> Milan Đaković, T 7874.

<sup>814</sup> Exhibit P1216.

<sup>815</sup> Milan Đaković, T 7874.

<sup>816</sup> Milan Đaković, T 7990-7991.

<sup>817</sup> Milan Đaković, T 7991.

<sup>818</sup> Milan Đaković, T 8111.

the senior MUP and VJ staff were present, including the Accused Vlastimir Đorđević.<sup>819</sup> At a meeting of the MUP Staff in Priština held the next day, Vlastimir Đorđević declared that a command had been established at the highest level and it was to be called the Joint Command.<sup>820</sup>

229. The first meeting of the Joint Command was held in the evening of 22 July 1998 and was attended by Milomir Minić (President of the Assembly), Nikola Šainović (Deputy Prime Minister/Vice-President in the FRY), Zoran Anđelković (Minister for Sports and Youth in the government of the Republic of Serbia),<sup>821</sup> Nebojša Pavković (VJ Priština Corps Commander), the Accused Vlastimir Đorđević (Chief of the RJB), Sreten Lukić (Head of the MUP Staff for Kosovo), David Gajić (Assistant Chief of the RDB) and Milan Đaković.<sup>822</sup> Thereafter, as evidenced by the minutes taken of the meetings, the members of the Joint Command met frequently until late October 1998.<sup>823</sup>

230. On the basis of the above, the Chamber finds that the Joint Command was established pursuant to an order of President Milošević in June 1998 and began operating on 22 July 1998. The evidence of the Accused Vlastimir Đorđević denying the existence of the Joint Command and suggesting the term was used by the army to refer to coordination meetings with MUP organs is rejected.

231. The Joint Command was not a body contemplated by the Constitutions of the FRY or of Serbia. The FRY legal structure pursuant to which the VJ functioned, and the Republic of Serbia legal structure pursuant to which the MUP functioned, were quite distinct. There was no legal authority for a Joint Command of the VJ and the MUP. Because of this the Defence has maintained at all times that there could not have been a Joint Command. However, what is crystal clear, in the Chamber's finding, is that despite the constraints of the existing constitutional and legal regimes, a Joint Command was created and functioned for about a year, by decisions and actions at the very highest political, military and police levels, so as to coordinate and jointly command the operations of the Federal VJ and the Provincial MUP, with some other Serbian forces, in anti-terrorist and defence measures in Kosovo. As will be seen as this Judgement continues, in this and other matters, the constraints of the existing legal structures were ignored and overridden by those at the highest levels of power in an attempt to achieve desired political and social outcomes.

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<sup>819</sup> See *supra*, paras 288.

<sup>820</sup> Ljubinko Cvetić, T 6627-6628; Exhibit P768.

<sup>821</sup> Milan Đaković, T 8042.

<sup>822</sup> Exhibit P886, p 2; Milan Đaković, T 7880; Vlastimir Đorđević, T 9577; Ljubinko Cvetić, T 6628.

<sup>823</sup> Exhibit P886.

(b) Period of operation of the Joint Command

232. From 22 July 1998 to late October 1998, the Joint Command met at least two or three times per week, depending on the influx of information or the level of combat activities.<sup>824</sup> The first meeting was held in the MUP building in Priština/Prishtinë, but for the most part, they were held in the provisional executive council building in the centre of Priština/Prishtinë.<sup>825</sup>

233. While, according to the FRY Federal Ministry of Justice, following October 1998 only “several unofficial meetings were held where the current security situation was analysed”, notes of Joint Command meetings taken by Milan Đaković indicate that, although the end of October 1998 signalled the end of the first phase of the work of the Joint Command, it was decided that the Joint Command should continue to function as the most effective means to coordinate the operations of the VJ and MUP.<sup>826</sup> At the Joint Command meeting of 26 October 1998, Nikola Šainović stated that “[t]his section of combat operations should be closed”.<sup>827</sup> On 28 October 1998, Minić is recorded as saying that “I think that this command should remain unchanged and work until the end of the year, meeting when necessary”.<sup>828</sup> The minutes of a meeting of 29 October 1998, chaired by President Slobodan Milošević at the Beli Dvor Palace, record that “President Milutinović supported the proposal for consideration of the continued status of the Joint Command”<sup>829</sup> and Šainović suggested that the composition of the Joint Command should be re-evaluated.<sup>830</sup> Milošević himself referred to “the need for the continuing functioning of the Joint Command”.<sup>831</sup> In the Chamber’s finding it is clear that it was decided to continue the functions of the Joint Command.

234. Hence, at a meeting of the MUP Staff on 5 November 1998, President Milutinović summarised the decisions that had been reached when he stated that, in spite of the international October Agreements, by which the FRY and the Republic of Serbia had agreed to the reduction in manpower and weaponry of the MUP and VJ in Kosovo, “[w]ith regard to the Yugoslav Army and police, everything will remain the same as it has been up to now, (a joint command, VJ units, will not withdraw and police forces have only been reduced by the number that has already been withdrawn)”.<sup>832</sup> Đorđević attended both of these meetings as recorded in the minutes and notes

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<sup>824</sup> Milan Đaković, T 7879; Exhibit P886.

<sup>825</sup> Milan Đaković, T 7879.

<sup>826</sup> Exhibit P1245.

<sup>827</sup> Exhibit P886, p 139.

<sup>828</sup> Exhibit P886, p 142.

<sup>829</sup> Exhibit P87, p 12.

<sup>830</sup> Exhibit P87, p 13.

<sup>831</sup> Exhibit P87, p 15.

<sup>832</sup> Exhibit P770, p 4; *see supra*, para 357-363.

taken of these meetings.<sup>833</sup> His denial of the continued existence of the Joint Command after October 1998<sup>834</sup> is therefore rejected by the Chamber.

235. A number of operative reports of the Joint Command were issued throughout the month of November 1998, dealing with the engagement of MUP and VJ forces in Kosovo, confirming that the body continued to operate.<sup>835</sup>

236. Documentary evidence further confirms that the Joint Command operated at least until 1 June 1999. The minutes of the VJ Collegium of 21 January 1999 record General Ojdanić's observation that the Račak/Raçak operation had been ordered by the Joint Command.<sup>836</sup> A large number of Joint Command orders received in evidence directing combat operations in Kosovo reveal that the Joint Command played a central role in the planning and commanding of joint VJ and MUP actions during the Indictment period.<sup>837</sup> The orders specify that "The Joint Command for KiM is to command and control all forces from the sector of Priština during the execution of combat operations". The role of the Joint Command was noted in military documents in the same period. A combat report of the Priština Corps of 25 April 1999 stated that "Operations of combing the terrain and breaking up STS continue in line with the decision of the Joint Command for KiM".<sup>838</sup> Similarly, a combat report of the 3<sup>rd</sup> Army Command sent to the VJ General Staff Operations Centre of 29 April 1999 stated that "measures were undertaken to block the above sectors and carry out tasks in line with the joint KiM command decision".<sup>839</sup>

237. Aleksandar Vasiljević gave evidence about a meeting of the Joint Command in Priština/Pristinë on 1 June 1999 that he attended along with Pavković, Lazarević, the Accused Đorđević, Stevanović, Lukić and Stojanović.<sup>840</sup> Vasiljević took detailed notes of this meeting.<sup>841</sup> While Momir Stojanović denied that this was a Joint Command meeting, or that Đorđević was present,<sup>842</sup> the Chamber does not consider Stojanović's evidence to be reliable or credible in this regard. It takes into consideration the unsupported assertion by Stojanović that Vasiljević did not take notes,<sup>843</sup> despite these notes having been tendered into evidence and examined in court with Vasiljević. The Chamber finds no reason to question the authenticity of the notes. The Chamber is

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<sup>833</sup> Exhibit P886, p 140-141; Exhibit P87, p 1; Exhibit P770, p 3.

<sup>834</sup> Vlastimir Đorđević, T 9893.

<sup>835</sup> Exhibits P1218, P1219, P1399.

<sup>836</sup> Exhibit P902, p 11.

<sup>837</sup> Exhibits P973, D104, P972, P350, P971, P970, P1235, P1382, P766, P1383, P1384, P1385, P969, P767, P1386, D105.

<sup>838</sup> Exhibit P1393, p 2.

<sup>839</sup> Exhibit P1394, p 2.

<sup>840</sup> Aleksandar Vasiljević, T 5691-5696; Exhibit P885.

<sup>841</sup> Exhibit P885.

<sup>842</sup> Momir Stojanović, T 11790-11791.

<sup>843</sup> Momir Stojanović, T 11978-11979.

also convinced that Vasiljević properly recalled that Đorđević was present at the meeting, since this was the first time that Vasiljević had met Đorđević in person<sup>844</sup> and therefore there was good reason for his memory, and his notes, to be accurate in this regard.

(c) Composition of the Joint Command

238. The Joint Command was composed of senior political figures and senior MUP and VJ leaders in Kosovo. It was headed by Nikola Šainović, at the time the Vice-President of the federal government.<sup>845</sup> According to Aleksandar Vasiljević, Šainović attended the meetings “as a person representing Slobodan Milošević in Kosovo”.<sup>846</sup>

239. Other members of the Joint Command included Duško Matković, charged with the economic development of Kosovo; Milomir Minić, President of the Federal Assembly, who was charged with “political issues of working with different organisations and political activities in Kosovo”; Zoran Andjelković, Minister for Sports and Youth in the government of the Republic of Serbia, who was tasked with coordinating the work of municipalities and districts in Kosovo; General Pavković, representing the VJ, General Lukić, representing the MUP Staff for Kosovo, David Gajić, representing the RDB, and Vlastimir Đorđević, representing the RJB.<sup>847</sup> General Samardžić, Commander of the 3<sup>rd</sup> Army attended a meeting on 27 July 1998.<sup>848</sup> General Lazarević from the 3<sup>rd</sup> Army and General Obrad Stevanović of the MUP also attended meetings on occasions.<sup>849</sup>

(d) Status and operation of the Joint Command

240. Joint Command operative reports were issued daily, which were the result of an exchange of information between the RJB, the RDB and the Priština Corps.<sup>850</sup> At the meetings, there would be a discussion of current and future operations of the VJ and MUP.<sup>851</sup> For example, the minutes of the Joint Command meeting of 4 September 1998 record Vlastimir Đorđević as saying that “all inhabitants are to be returned to the village tomorrow with the use of force”.<sup>852</sup> Although it is not entirely clear from the minutes which village he was referring to, evidence indicates that the MUP did forcibly return villagers to their homes as a response to negative reports about operations in the

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<sup>844</sup> Aleksandar Vasiljević, T 5691-5692; 5695-5696.

<sup>845</sup> Ljubinko Cvetić, T 6627; Exhibit P1329, pp 2-3.

<sup>846</sup> Aleksandar Vasiljević, T 5699-5700.

<sup>847</sup> Exhibit P886, p 2; Ljubinko Cvetić, T 6627-6628; Milan Đaković, T 7880.

<sup>848</sup> Milan Đaković, T 7999.

<sup>849</sup> Milan Đaković, T 7999.

<sup>850</sup> Milan Đaković, T 7892. See Exhibits P1218; P1219; P1220, P1221, P1222, P1399, P1462.

<sup>851</sup> Exhibit P886, p 14; Milan Đaković, T 8008-8011.

<sup>852</sup> Exhibit P886, p 73.

international press.<sup>853</sup> It is therefore of significance that in the meeting of 2 September 1998, just two days before Đorđević made this statement, Sreten Lukić had told the Joint Command that humanitarian organisations had announced their intended passage the next day and that a Russian representative and a representative of the “Hague Tribunal” wanted to go to the village of Klecka/Kleqkë, in Lipljan/Lipjan municipality.<sup>854</sup>

241. The VJ General Staff was informed of decisions taken by the Joint Command.<sup>855</sup> The Joint Command for Kosovo issued orders for the VJ Priština Corps in coordination with MUP units to conduct combat operations against specific villages.<sup>856</sup> The orders specified that the “Joint Command for KiM shall command and direct all forces during combat operations from the Priština area”.<sup>857</sup>

242. Consistently with the theme of his earlier evidence (which the Chamber did not accept) that the Joint Command was merely a notion expressing coordination between the MUP and the army, Milan Đaković suggested further that the term Joint Command did not mean that organs could act on the basis of a Joint Command order in the absence of a corresponding order from a superior command within the respective chain of command of the MUP and the VJ.<sup>858</sup> He maintained that the Joint Command did not meet any of the criteria required for commanding bodies, *i.e.* a superior body issuing orders, being part of a system of command, a commander, and the use of a stamp.<sup>859</sup>

243. In the Chamber’s finding the evidence of Đaković may be affected by his possible lack of knowledge of the order of President Milošević. Whether that is so, or not, the Chamber has the distinct impression that he strained to play down the nature and the role of the Joint Command. The Chamber finds that Đaković’s explanation that the term “Joint Command for KiM” on orders issued to VJ and MUP units was merely the result of the wrong use of a template is simply not credible. It further is unable to accept the explanation that the use of the heading “Joint Command for KiM” on orders merely signified that there was a need for coordination between the MUP and the VJ. The detailed instructions of the orders, the tenor and specific wording used, and the fact that the orders were carried out by the relevant units, attest to the fact that the Joint Command was a body which issued commands and did so on a regular basis during the Indictment period.

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<sup>853</sup> Shaun Byrnes, Exhibit P1214, p 27.

<sup>854</sup> Exhibit P886, p 71.

<sup>855</sup> Aleksandar Vasiljević, T 5660.

<sup>856</sup> Exhibits D104; D105; P1232; P1235.

<sup>857</sup> See Exhibit D104, p 8; Exhibit P1235, item 13.

<sup>858</sup> Milan Đaković, T 7931, 7949.

<sup>859</sup> Milan Đaković, T 8001.

244. Minutes written by Milan Đaković of meetings of the Joint Command reveal that decisions for joint operations of the VJ and MUP in Kosovo were made and implemented. At the meeting of 26 July 1998, the Accused, Đorđević, gave the following instructions: “finish off Priština-Kijevo tomorrow, approach Mališevo as soon as possible, put Crnoljevo, Suva Reka and Zborce on hold and move onto Junik and Rudnik” and “we must finish off Kijevo tomorrow and regroup part of the units in the direction of Kijevo”.<sup>860</sup> The minutes of the meeting of 27 July 1998 record further discussion about an operation in Mališevo/Malishevë. Samardžić stated, “the main goal is Mališevo and we must not back away” and “Mališevo must be crushed”.<sup>861</sup> As a further example of an order, at the same meeting, Milomir Minić is recorded as saying “Continue the plan at 0700 as agreed”.<sup>862</sup> The following day, an operation involving VJ and MUP forces working in coordination took place in Mališevo/Malishevë.<sup>863</sup> Đorđević, who was on the ground in Kosovo on 28 July overseeing the operation,<sup>864</sup> called the MUP Staff by radio to report that “Mališevo is free”.<sup>865</sup> Furthermore, an operation in Junik, Dečani/Deçan municipality, took place in late July and early August 1998.<sup>866</sup>

245. Further, at a meeting of 10 September 1998, Milomir Minić is recorded as saying:

Go into Dubovik and Radovic villages and see what the situation is like. Go to Prapacan village and have the police occupy it. [...] Go into all villages and pressure them into handing over weapons. Secure the roads and control the territory. The army will adopt a plan on the arrangement of the territory on Monday. The MUP should do the same.<sup>867</sup>

246. At the Joint Command meeting on 20 September 1998, General Pavković ordered a blockade and diversionary operation in Budakovo/Budakovë, Suva Reka/Suharekë municipality and General Lazarević added “at the same time on Monday block Budakovo”.<sup>868</sup> At a meeting the next day, General Pavković noted that preparations for the “Ćičavica” operation to begin on 22 September were underway, and that “diversionary” operations would take place from 21-22 September 1998 from Suva Reka/Suharekë to Budakovo/Budakovë and from Peć/Pejë to Vrelo/Vrellë. Operations in the municipalities of Peć/Pejë and Suva Reka/Suharekë subsequently took place in September 1998.<sup>869</sup>

247. At the Joint Command meeting of 22 September 1998, General Pavković informed the group that the “Ćičavica” operation had begun that day, Đorđević noted the engagement of PJP

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<sup>860</sup> Exhibit P886, p 12.

<sup>861</sup> Exhibit P886, p 14.

<sup>862</sup> Exhibit P886, p 15.

<sup>863</sup> See *infra*, paras 317-318.

<sup>864</sup> Radislav Stalević, T 13790.

<sup>865</sup> Ljubinko Cvetic, T 6621, 6644.

<sup>866</sup> See *infra*, para 319.

<sup>867</sup> Exhibit P886, p 84.

<sup>868</sup> Exhibit P886, p 104.

<sup>869</sup> See *infra*, paras 341-343.



units, and specifically, that two companies had “come out west of Žilivoda village”, and Šainović ordered “to continue the operation tomorrow”.<sup>870</sup> An operation involving several villages in Vučitrn/Vushtrri municipality (Kolo/Kollë, Dubovac/Duboc, Brusnik, Galica/Galicë, Becic/Beçiq, Ošlanje/Oshlan, and Žilivoda/Zhilivodë) and several villages in Srbica/Skenderaj (Ljubovac/Lubavec and Mikušnica/Mikushnicë) took place in late September 1998, commencing on 22 September 1998.<sup>871</sup>

248. At the Joint Command meeting of 26 September 1998, Pavković and Lukić both reported that the operation in the area of Gornje Obrinje/Abria r Eperme had been completed.<sup>872</sup> As found elsewhere in this Judgement, this operation involved Serbian security forces. 21 members of the Delijaj family were killed, including six women and five children. The village of Gornje Obrinje/Abria r Eperme was largely destroyed.<sup>873</sup> The reporting to the Joint Command about the completion of the operation confirms, in the Chamber’s finding, that the Joint Command ordered the operation.

249. At the meeting of 5 October 1998, Nikola Šainović is recorded as saying, “we should go to minor or small-scale actions”, and then “[t]he leaders should be liquidated now that we have enough information. Go with everything in order to deal with individuals”.<sup>874</sup> Đaković suggested that this discussion concerned some individuals who were members of the command personnel of the KLA, in particular, a “sultan” from Ovcarevo and Ramush Haradinaj in the area of Baranski Lug in the Junik mountains.<sup>875</sup> In the same meeting, Šainović is recorded as saying “DB operatives – liquidate individuals”.<sup>876</sup> Đaković confirmed that “DB” referred to the RDB.<sup>877</sup> The Minutes indicate several other instances in Joint Command meetings where it is apparent that orders have been issued.<sup>878</sup> Notably, the minutes of 4 September 1998 record the Accused Đorđević detailing the following instructions, apparently in regard to the Drenovac sector: “1. return all inhabitants to the village by force tomorrow; 2. search the terrain; 3. seize weapons; 4. carry out operations

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<sup>870</sup> Exhibit P886, p 108.

<sup>871</sup> See *infra*, paras 336-337, 340.

<sup>872</sup> Exhibit P886, p 112.

<sup>873</sup> See *infra*, para 339.

<sup>874</sup> Exhibit P886, p 120.

<sup>875</sup> Milan Đaković, T 8123.

<sup>876</sup> Exhibit P886, p 121.

<sup>877</sup> Milan Đaković, T 8124.

<sup>878</sup> Exhibit P886, p 130 (13 October 1998, Mr Šainović); p 128 (11 October 1998, Mr Šainović); p 125 (8 October 1998, Mr Šainović); p 124 (7 October 1998, Mr Šainović); p 112 (26 September 1998, Mr Šainović); p 113 (29 September 1998, Mr Minić); p 108 (22 September 1998, Mr Šainović); and p 27 (1 August 1998, Mr Matković).

against terrorists”.<sup>879</sup> The following day, General Sreten Lukić reported to the Joint Command that this had been complied with.<sup>880</sup>

250. In addition, the decisions taken in Joint Command meetings were relayed by those present to their respective units for implementation. For example, Nebojša Pavković informed the Priština Corps Command on 22 September 1998 following a meeting of the Joint Command on 10 September 1998, that

During the briefing on the course of implementing stage five of the Plan which was given at the meeting of the ZK<sup>881</sup> for KiM on 10 September 1998, the other Command organs pointed out that the VJ had not carried out two of its duties under the Plan, namely: (1) it had not formed rapid intervention helicopter units as the SRJ president had ordered at the meeting on 31 August 1998 and (2) two BGs had not been moved down to KiM.<sup>882</sup>

A document sent to the 3<sup>rd</sup> Army Command Forward Command Post (General Samardžić) from the Priština Corps Command (Nebojša Pavković), dated 5 October 1998 stated that

The plan to smash the DTS<sup>883</sup> on the territory of KiM, authorised by the President of the FRY, stipulated that when the DTS on the territory of KiM have been smashed by MUP and VJ forces, rapid-intervention forces shall be formed to be at full readiness, with the engagement of MI-8 helicopters, to intervene at threatened sectors and features, as ordered by the President. On my return from the reporting session with the ZK for KiM on 19 and 20 September 1998, I informed you personally by telephone of the decision to form rapid-intervention forces. As part of the conclusions from the ZK for KiM meeting, I sent you the decision to form rapid-intervention forces.<sup>884</sup>

These documents indicate that decisions on the use of VJ and MUP forces were made at Joint Command Meetings and were implemented by the relevant organs. Đaković’s explanation that Nikola Šainović must have contacted President Milošević in order to have the authority to make such decisions<sup>885</sup> does not accord with the accumulated evidence in the Minutes of the meetings of the Joint Command or the documents of the respective VJ and MUP organs referring to the Joint Command.

251. Other evidence confirms that the Joint Command was a body with operational capability. For instance, in a work plan prepared by the Communications Station for units in the field to facilitate their ability to communicate via radio, the Joint Command was given the call sign Pastrik, while the 125<sup>th</sup> Motorised Brigade had the call sign IBAR-40 and the 37<sup>th</sup> Detachment of the MUP,

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<sup>879</sup> Exhibit P886, p 73.

<sup>880</sup> Exhibit P886, p 75.

<sup>881</sup> “ZK” is variously translated as “Joint Command” or “Joint Commission”.

<sup>882</sup> Exhibit P1229.

<sup>883</sup> “DTS” is translated in the document as “sabotage forces”, a term commonly used by Serbian authorities to refer to Kosovo Albanian terrorist groups.

<sup>884</sup> Exhibit D212.

<sup>885</sup> Milan Đaković, T 8133.

headed by Colonel Mitrović, stationed in the Prizren SUP, had the call sign Cegar 1.<sup>886</sup> Had the Joint Command merely been a coordinating body, there would be no need to assign a call sign for radio communication purposes.

252. The Chamber is entirely convinced that the objective of the Joint Command went far beyond merely enabling an exchange of information between the MUP and the VJ, but was to plan and coordinate joint military operations of, *inter alia*, MUP and VJ forces in Kosovo. The Chamber observes that the established legal order of the FRY and the Republic of Serbia, and of the functioning of the VJ of the FRY and the MUP of the Republic of Serbia, did not authorise the functioning of a Joint Command. What President Milošević ordered, and what was done by Ministers and at the highest levels of the VJ and the MUP in the implementation of this order, were without legal authority. Clearly, out of necessity, the Joint Command was an extraordinary measure established by the President in conjunction with the political, VJ and MUP leadership to provide, in a period of crisis, a more effective means to carry out the agenda of the Serb leadership for Kosovo.

## 2. Coordination of VJ and MUP operations in 1998 - 1999

253. The FRY Law on Defence specified that in cases of imminent threat of war, a state of war or a state of emergency, the units and organs of Internal Affairs could be used to carry out “combat assignments, engage in combat or offer armed resistance”. In carrying out such combat assignments, the organs and units were to be “subordinate to the officer of Armed Forces of Yugoslavia who is commanding combat operations”.<sup>887</sup>

254. In 1998 and 1999 in Kosovo, the VJ and MUP conducted co-ordinated anti-terrorist operations together. From mid 1998 the broad scale of these operations were pursuant to orders of the Joint Command. The actual drafting of the orders was usually undertaken by the VJ.<sup>888</sup> During these anti-terrorist operations, the field commander would in theory be a VJ officer.<sup>889</sup> As discussed below, however, in practice the formal relationship of subordination of MUP units to VJ command was not always reflected in actions on the ground. Orders to the units conducting the operation would usually consist of a map with marked unit deployments, and an accompanying narrative describing the tasks of the unit.<sup>890</sup> At the request of the MUP unit to the VJ ground commander, or of the VJ Commander directly to the VJ, the VJ would typically provide any fire support requiring artillery or tanks.<sup>891</sup> The command of the specific MUP units reported to the

<sup>886</sup> Exhibit P1061; Ljubinko Cvetić, T 6732.

<sup>887</sup> Exhibit P1061; Ljubinko Cvetić, T 6732.

<sup>888</sup> Žarko Braković, Exhibit P759, para 23; Žarko Braković, T 4098.

<sup>889</sup> Žarko Braković, Exhibit P759, para 20.

<sup>890</sup> Žarko Braković, Exhibit P759, para 17; Žarko Braković, T 4146-4147.

<sup>891</sup> Žarko Braković, Exhibit P759, para 22.

command of the VJ Brigade during the conduct of anti-terrorist operations.<sup>892</sup> Žarko Braković, concurrently chief of the Priština SUP and commander of the 124<sup>th</sup> PJP detachment during the relevant time,<sup>893</sup> was aware of subordination orders issued by the Priština Corps to subordinate MUP units to the VJ Brigades for combat operations.<sup>894</sup> Examples of such orders include an Order issued by the Joint Command on 13 April 1999 for the destruction of Kosovo Albanian terrorist forces in the area of Žegovac.<sup>895</sup> In the field, copies of these orders were provided from the VJ, or at other times, they would be delivered in envelopes from the MUP Staff.<sup>896</sup> An order of 27 May 1999 from the Command of the Priština Corps to the Command of the MUP tasked the VJ 27<sup>th</sup> Motor Brigade with the 36<sup>th</sup> PJP unit of the MUP to attack along the axes of several villages in the Prekaze area in order to, *inter alia*, “crush and destroy the ŠTS”.<sup>897</sup> Another unit of the PJP was ordered to take part in similar activities with a VJ brigade in another area.<sup>898</sup> As well as giving combat tasks to PJP units, the order stated that “[a]rmed non-shiptar population shall take part in securing facilities of vital importance and roads, as well as in defending and protecting the population”.<sup>899</sup> As discussed in detail elsewhere in this Judgement, the Joint Command made liberal use of the Serb civilian population in Kosovo as vital support to the joint operations of the VJ and MUP.<sup>900</sup>

255. Orders and other official documents attest to the close cooperation between VJ and MUP forces in 1998-1999. An order to the Command of the Priština Corps from the 3<sup>rd</sup> Army Forward Command Post dated 7 August 1998 directed the VJ to support the MUP by using “direct fire on individual targets with weapons of the OMJ,<sup>901</sup> artillery and others, and artillery fire up to 120 mm calibre weapons”.<sup>902</sup> A regular combat report of the 3<sup>rd</sup> Army Forward Command Post, dated 9 August 1998 provided, in Item 3, that “Part of the Army forces supported MUP forces in accordance with the decision on engagement” and in Item 5, paragraphs 2 and 3: “Support MUP forces in routing DTS in the sectors of Gramocelj, Prilep and Glodane villages, with the aim of pushing DTS away from the Đakovica – Dečane – Peć - main road”.<sup>903</sup> A 14 August 1998 decision of the Priština Corps Command directed VJ forces to support MUP forces in breaking “Šiptar”

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<sup>892</sup> Žarko Braković, Exhibit P759, para 25.

<sup>893</sup> Žarko Braković, Exhibit P759, p 2; Žarko Braković, T 4083, 4088, 4091, 4092.

<sup>894</sup> Žarko Braković, Exhibit P759, para 23.

<sup>895</sup> Exhibit P766; Žarko Braković, T 4145-4146.

<sup>896</sup> Žarko Braković, T 4148, 4210.

<sup>897</sup> Exhibit P961, p 4. “ŠTS” refers to Kosovo Albanian Terrorist Forces.

<sup>898</sup> Exhibit P961, p 5.

<sup>899</sup> Exhibit P961, p 2.

<sup>900</sup> See *infra*, paras 1910-1915.

<sup>901</sup> “OMJ” referred to Armoured Mechanised Units.

<sup>902</sup> Exhibit D213, Item 2.

<sup>903</sup> Exhibit D331. See Milan Đaković, T 8029-8030.

terrorist forces in the Sllupe/Slup and Voksah/Voska (Dečani/Dečan) sector.<sup>904</sup> A regular combat report of the 3rd Army Forward Command Post to the General Staff, dated 14 August 1998 referred to the need to support MUP in various “Šiptar” strongholds.<sup>905</sup> The General Staff ordered the 3rd Army Command on 17 August 1998 to: “...Continue coordination and joint action with MUP forces and in keeping with assessments, support the MUP forces in destroying the DTG/sabotage and terrorist groups...”.<sup>906</sup> An “Analysis of the tasks executed on the territory of Kosovo and Metohija”, of the 3<sup>rd</sup> Army Forward Command Post, dated 2 October 1998 proposed “that, in the future, whenever units of the MUP are engaged together with the Army, an organ be appointed at the Army or Priština Corps Control Post (Forward Command Post) to coordinate the activities of all MUP forces”.<sup>907</sup>

256. General Karol Drewienkiewicz, Deputy Head of Mission for operations for the Kosovo Verification Mission (“KVM”),<sup>908</sup> gave evidence about a number of incidents in which he observed or had reported to him close links between the VJ and MUP in operations in Kosovo, suggesting there was one chain of command. VJ tanks and MUP were observed at the VJ position at Junik on 13 December 1998, as well as VJ seen entering the police station in Peć/Pejë on 15 December 1998.<sup>909</sup> A KVM report covering the period of 13 January 1999 records that the police operation in Gornji Ratiš/Ratish i Epërm east of Dečani/Dečan involved a VJ tank firing between 50 and 60 rounds, evidencing a combined VJ and MUP action.<sup>910</sup> Another combined VJ/MUP operation occurred on 19 January 1999 in Vasiljevo/Vasiljevë, east of Glogovac/Gllogoc.<sup>911</sup>

257. A coordinating link between the VJ and MUP was also apparent in the Račak/Raçak incident on 15 January 1999.<sup>912</sup> When the MUP advanced on foot into Račak/ Raçak, the village was still under VJ bombardment.<sup>913</sup> General Karol Drewienkiewicz observed the VJ on the high ground, overlooking Račak/Raçak at a distance of about a kilometre. As the operation unfolded, there was a considerable amount of firing by the VJ into the village and then the firing switched from the village to the flanks.<sup>914</sup> While this firing was still going on, the MUP entered the village.<sup>915</sup> The close coordination of supporting fire from the VJ and movement in the open by the

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<sup>904</sup> Exhibit P1232.

<sup>905</sup> Exhibit D332, p 4.

<sup>906</sup> Exhibit D333, Item 4.

<sup>907</sup> Exhibit D340, Item 4.3.

<sup>908</sup> Karol Drewienkiewicz, Exhibit P996, para 7; Karol Drewienkiewicz, T 6305, 6429-6430, 6431.

<sup>909</sup> Karol Drewienkiewicz, T 6346-6347; Exhibit P1003.

<sup>910</sup> Exhibit P1006, Item 4, para 1; Karol Drewienkiewicz, T 6364-6365.

<sup>911</sup> Karol Drewienkiewicz, Exhibit P996, para 198; Exhibit P1016, p 3.

<sup>912</sup> Karol Drewienkiewicz, Exhibit P996, paras 180-181.

<sup>913</sup> Karol Drewienkiewicz, Exhibit P996, para 181.

<sup>914</sup> Karol Drewienkiewicz, T 6366; Karol Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7793-7795.

<sup>915</sup> Karol Drewienkiewicz, T 6366.

MUP indicated that the operations of the VJ and MUP were controlled by a single commander on the ground.<sup>916</sup>

258. The incident in Rogovo/Rogovë, Đakovica/Gjakovë municipality, on 29 January 1999 also evidenced the coordination of the chains of command of the VJ and MUP.<sup>917</sup> General Lončar, a retired VJ officer who was the principal VJ liaison to the KVM, was in charge of the scene when General Karol Drewienkiewicz of the KVM arrived. Lončar was controlling both the regular police and the special anti-terrorist MUP units.<sup>918</sup> Lončar gave the police instructions which were obeyed, thereby disclosing that Lončar was effectively in the police chain of command for that operation.<sup>919</sup> This was also suggested by MUP Colonel Miroslav Mijatović's subordination to Lončar, although the former, who was the MUP liaison to the KVM,<sup>920</sup> worked for the police.<sup>921</sup> A KVM Regional Centre Prizren Daily Activity Report dated 29 January 1999 recorded that the VJ informed the OSCE that they performed a supporting function in the MUP operation in Rogovo/Rogovë.<sup>922</sup>

259. It was the evidence of Karol Drewienkiewicz that during Serbian operations in March 1999, the VJ and MUP cooperated together in a practised fashion; the VJ would secure the perimeter of a village or area and offered artillery support if required, while the MUP entered the village or area.<sup>923</sup>

260. In this Judgement the Chamber has recorded details of numerous coordinated joint operations including VJ and MUP forces in the months from March to June 1999. The evidence and findings of the Chamber in respect of the operations consistently confirms the joint involvement, and the close coordination, of VJ and MUP forces.

### 3. Re-subordination of MUP to the VJ in April 1999

261. Despite the work of the Joint Command there seems to have been ongoing friction between VJ and MUP. One reason for this was VJ concern that conduct allowed or condoned by MUP officers, *e.g.* criminal offences of murder, rape, etc., was disrupting VJ discipline and/or leading to allegations that such criminal conduct was being committed by the VJ.<sup>924</sup> By virtue of this friction the scheme of the existing Law on Defence, Article 17, was often advanced or urged by the VJ.

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<sup>916</sup> Karol Drewienkiewicz, Exhibit P996, para 181; Karol Drewienkiewicz, T 6366-6367; Karol Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7793-7794.

<sup>917</sup> Karol Drewienkiewicz, Exhibit P996, paras 165, 180; Karol Drewienkiewicz, T 6370- 6371.

<sup>918</sup> Karol Drewienkiewicz, Exhibit P996, paras 59, 70, 182; Karol Drewienkiewicz, T 6343.

<sup>919</sup> Karol Drewienkiewicz, Exhibit P996, para 182.

<sup>920</sup> Karol Drewienkiewicz, Exhibit P996, para 56.

<sup>921</sup> Karol Drewienkiewicz, Exhibit P996, paras 183-184.

<sup>922</sup> Exhibit P1008, p 1.

<sup>923</sup> Karol Drewienkiewicz, Exhibit P996, para 197.

<sup>924</sup> Exhibits P1240 and P888.

This provided for all MUP units engaged in combat operations to be resubordinated to the VJ officer commanding the combat operation.<sup>925</sup> More than once the VJ, encouraged by their Chief of the General Staff and orders issued by him,<sup>926</sup> and President Milošević<sup>927</sup> on 18 April 1999, purported to make resubordination orders for MUP units engaged in combat operations.<sup>928</sup>

262. To this end, an order dated 8 May 1999 from VJ General Pavković to MUP General Lukić concerning the deployment of VJ and MUP forces in combat and control of the territory<sup>929</sup> apparently attempted to define more specifically the tasks assigned to MUP units and to direct General Lukić to implement the order on resubordination.<sup>930</sup> However, such orders were not fully complied with. Lazarević reported on 24 May 1999 to the 3<sup>rd</sup> Army Command Forward Command Post that the re-subordination of MUP forces to the Priština Corps Command and brigade commands “has not been done in the spirit” of the orders of 18 April 1999, and that commanders and leaders of MUP units had resisted and openly opposed the obligation to re-subordinate “offering as a pretext the alleged lack of a corresponding order from their command”, with the result that the VJ did not have the MUP structures under its command.<sup>931</sup> It noted that one of the principal consequences of this was that there was a lack of coordination in joint actions of the MUP and VJ in combat actions and that the work of the mixed checkpoints of the MUP and Military Police was “fraught with problems and salient issues since the MUP tolerates criminal activities of its members against the Šiptar civilian population – murder, rape, looting, robbery, aggravated theft...”.<sup>932</sup> This was communicated by Pavković to the Supreme Command Staff in a report the following day, noting in particular that “some MUP members and to a considerable extent entire smaller units which ‘operate’ independently on the ground are committing serious crimes against Šiptar civilian population in settlements or refugee shelters-murder, rape, plunder, robbery aggravated, theft, etc., and they then purposefully attribute or plan to attribute those crimes to units and individuals in the VJ”.<sup>933</sup> The report proposed that the Supreme Command should take urgent measures to re-subordinate the units and organs of the MUP or leave the forces of the MUP “in the hands of the Ministry of the Interior - Staff of MUP of the Republic of Serbia for KiM, through the Joint Command, as has so far been the case”.<sup>934</sup> In the view of the Chamber, these statements by senior VJ officials were made with a view to achieving subordination of the MUP; they did not necessarily reflect the full reality in terms of the authors of crimes committed in Kosovo. As

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<sup>925</sup> Exhibit D203.

<sup>926</sup> Exhibit P887.

<sup>927</sup> Exhibit D203.

<sup>928</sup> Exhibits D204, D205 and D206.

<sup>929</sup> Exhibit P1239.

<sup>930</sup> Milan Đaković, T 8100-8101.

<sup>931</sup> Exhibit P1240.

<sup>932</sup> Exhibit P1240.

<sup>933</sup> Exhibit P888.

discussed and described in Chapter VI, the evidence indicates that VJ personnel also took part in crimes against Kosovo Albanian civilians in 1999, though with less frequency than that of MUP personnel. A meeting took place on 9 July 1999 at the General Staff in Belgrade at the request of Slobodan Milošević in order to establish a firm cooperation between the VJ and the MUP.<sup>935</sup> In attendance were Minister Vlajko Stojiljković, Vlastimir Đorđević, Obrad Stevanović and Sreten Lukić, Dragoljub Ojdanić who chaired the meeting, Geza Farkas, Branko Gajić, Branko Krga and Aleksandar Vasiljević.<sup>936</sup> Đorđević reportedly stated at the meeting that in order for both services (*i.e.* MUP and VJ) to perform well they should keep within their own domains.<sup>937</sup>

263. Despite the existing Law on Defence, the MUP appears to have disregarded these orders. Đorđević himself confronted Pavković on 18 April 1999 on the pretext that there would be no MUP resubordination until the MUP received such an order from Minister Stojiljković (which did not occur).<sup>938</sup> Therefore there was some confusion about this, and ill-will. Sometimes MUP units appear to have acted as a unit resubordinated to a VJ Combat Commander, but this was often not the case (despite the suggestion of VJ witnesses such as Đaković<sup>939</sup> and Vasiljević<sup>940</sup>). Nebojša Pavković stated publicly on the VJ website on 14 June 2001 that although “it is true that the national defence law regulated that police units in the responsibility zones were bound to subordinate to the commands of the Yugoslav army”, in reality, “this never came into existence” and that “[t]he police had their own headquarters, headed by their own officers, and the cooperation with the army was coordinated through political actors in Joint Command, formed for that purpose”.<sup>941</sup> While the Chamber acknowledges that Pavković made these remarks in reaction to the publicity surrounding the refrigerated trucks with bodies that had been found in the Danube river and like publicity during the war<sup>942</sup> and therefore was likely to be trying to distance the VJ from any responsibility of the MUP in this regard, the lack of effective re-subordination of the MUP to the VJ is nonetheless well-supported by the evidence.

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<sup>934</sup> Exhibit P888; *see also* Milan Đaković, T 7962.

<sup>935</sup> Aleksandar Vasiljević, T 5690, 5695, 5718-5720, 5746.

<sup>936</sup> Aleksandar Vasiljević, T 5720.

<sup>937</sup> Aleksandar Vasiljević, T 5726. Đorđević further noted that there were numerous possibilities to establish a successful and quality cooperation between the services. For example, he mentioned the area of training, exchange of experience, and resolving the matters of status of those belonging to the army and the MUP, as well as joint supplies. He said that the image of the army being with the people and the MUP being against it is something that should be avoided.

<sup>938</sup> Milan Đaković, T 7964-7966; T 8091.

<sup>939</sup> Milan Đaković, T 8031.

<sup>940</sup> Aleksandar Vasiljević, T 5878-5879.

<sup>941</sup> Exhibit P1241.

<sup>942</sup> Milan Đaković, T 7974.



264. Hence, in fact, the primary means of effective coordination was that established by Milošević, *i.e.* the Joint Command coordinating the distinct chains of command of the VJ and the MUP.

#### F. Use of ribbons

265. The Chamber received differing evidence as to the use of ribbons by MUP and VJ forces. A number of witnesses testified that both VJ and MUP forces, including the PJP, wore coloured ribbons on their shoulders during the Indictment period.<sup>943</sup> Coloured ribbons, yellow, blue, red and white, were worn either one colour at a time or in various combinations. These were usually changed daily.<sup>944</sup> In addition to these ribbon combinations, the JSO and SAJ would wear gold ribbons. Evidence indicates that the gold ribbons were worn in the areas of west Kosovo, whilst the red and white were worn in more central areas, such as Drenica.<sup>945</sup>

266. Evidence of the VJ wearing ribbons is more limited. Certain units, such as the 549<sup>th</sup> Motorised Brigade, did not wear such ribbons.<sup>946</sup> This is consistent with a document of the SUP Priština entitled “Instructions to the police for wearing identification bands” dated May 1999 which noted that “VJ do not have identification bands”.<sup>947</sup> However, Žarko Braković testified that this note was incorrect, and that the VJ did in fact wear matching ribbons.<sup>948</sup> A letter on the subject of armbands worn by the police signed by General Sreten Lukić and sent to all SUPs in Kosovo dated 13 April 1999 also cautioned that VJ members did not currently wear armbands.<sup>949</sup> Further instructions on the wearing of armbands was issued by Sreten Lukić in a letter dated 26 May 1999, addressed not only to the chiefs of the various SUPs in Kosovo but also the 122<sup>nd</sup> and 124<sup>th</sup> Intervention Brigades of the PJP.<sup>950</sup> This letter did not contain a note on the lack of armbands worn by the VJ, possibly suggesting that by this time the VJ did wear armbands. Given the purpose of these coloured bands it is also possible that both VJ and MUP units engaged in a joint operation would use the same coloured ribbons to assist their mutual identification.

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<sup>943</sup> K25, Exhibit P340-A, p 20; K73, Exhibit P331-A, para 13; K73, T 1509-1510; John Crosland, Exhibit P1400, para 38; Žarko Braković, Exhibit P759, para 8.

<sup>944</sup> K25, Exhibit P340-A, p 20; K73, Exhibit P331-A, para 13; K73, T 1509-1510; John Crosland, Exhibit P1400, para 38.

<sup>945</sup> John Crosland, Exhibit P1400, para 38.

<sup>946</sup> K82, Exhibit P1315, para 2.

<sup>947</sup> Exhibit P761.

<sup>948</sup> Žarko Braković, T 4127-4128.

<sup>949</sup> Exhibit P762, p 1.

<sup>950</sup> Exhibit P762, p 4 on e-court; Žarko Braković, T 4129.

267. These ribbons appeared to be worn so that units could more easily distinguish between friendly and enemy forces; which in turn prevented friendly fire and also made enemy infiltration more challenging.<sup>951</sup>

268. The Chamber finds that although the use of ribbons by the VJ was more limited and some units may not have used them, ribbons were used by MUP forces, and to a lesser extent by the VJ forces, during the Indictment period.

### **G. Numbers of Serbian forces in Kosovo**

269. In October 1998, there were an estimated 14,000 MUP personnel in Kosovo.<sup>952</sup> This number was reduced to around 10,000 police officers at the end of October 1998 by virtue of the October Agreements of 1998.<sup>953</sup> Despite the Agreement, the numbers of MUP forces increased to 14,571 in March 1999.<sup>954</sup> In April 1999, there were 15,779 MUP personnel in Kosovo.<sup>955</sup>

270. While the number of Priština Corps soldiers was 17,971 as at 31 March 1999,<sup>956</sup> the total manpower of the VJ in Kosovo under the Priština Corps, including re-subordinated units and volunteers stood at 61,892 according to a combat report dated 13 April 1999 from the Priština Corps to the 3<sup>rd</sup> Army Command and Supreme Command Staff.<sup>957</sup>

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<sup>951</sup> K25, Exhibit P340-A, p 20; K73, Exhibit P331-A, para 13; K73, T 1509-1510; John Crosland, Exhibit P1400, para 38.

<sup>952</sup> Exhibit P1038, p 2; Ljubinko Cvetić, T 6608-6609, 6618-6619. *See also* Exhibit P886, p 23.

<sup>953</sup> Exhibit P769, p 1; Exhibit P87, p 7; Ljubinko Cvetić, T 6608, 6618. *See* Exhibit P837.

<sup>954</sup> Ljubinko Cvetić, T 6609-6610.

<sup>955</sup> Vlastimir Đorđević, T 10043.

<sup>956</sup> Exhibit P1441, p 3.

<sup>957</sup> Exhibit P948, p 2; Exhibit P1331, p 11.

## V. EVENTS IN 1998 AND EARLY 1999

### A. Armed violence in Kosovo in February to May 1998

#### 1. Events in Cirez/Çirez, Likošane/Likoshan and Prekaze/Prekaz

271. On 28 February 1998 fighting between Serbian forces and the KLA took place in the villages of Cirez/Çirez and Likošane/Likoshan, in the border area between the municipalities of Srbica/Skenderaj and Glogovac/Gllogoc, during which some 24 people were killed, many of them members of two families.<sup>958</sup> A MUP helicopter was used in this operation.<sup>959</sup> On 3 March 1998 MUP forces surrounded the family compound of Adem Jashari in the village of Prekaze/Prekaz, Srbica/Skenderaj municipality. Adem Jashari was one of the founders of the KLA and a KLA leader in the area.<sup>960</sup> The MUP forces maintained a siege of the Jashari compound for several days.<sup>961</sup> At least 54 people most of them members of the Jashari family, were killed.<sup>962</sup> The operation in Prekaze/Prekaz was organised and carried out by the RDB and the RJB of the MUP.<sup>963</sup> The unit for special operations, JSO of the RDB, and an SAJ unit carried out the operation while other SAJ units and a PJP unit of the RJB blockaded the surrounding region.<sup>964</sup> John Crosland, the British defence attaché to Belgrade who was touring the region at the time saw over 200 MUP personnel in the area on 5 March 1998.<sup>965</sup>

272. These events in Prekaze/Prekaz led to a rapid growth of the KLA among the Kosovo Albanian population with many young people joining the organisation.<sup>966</sup> The conflict was reaching a new level of intensity.

#### 2. Increase of FRY and Serbian security forces in Kosovo from late March and April 1998

273. On 29 March 1998 John Crosland noted the first obvious indications of a build up of Serbian forces in the Dečani/Dečan area.<sup>967</sup> There were Serbian paramilitary forces based across

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<sup>958</sup> Sabit Kadriu, Exhibit P515, pp 5-6; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5110-5111; Frederick Abrahams, T 3941.

<sup>959</sup> Sabit Kadriu, Exhibit P515, pp 5-6.

<sup>960</sup> Momir Stojanović, T 11693, 11868-11870.

<sup>961</sup> Veton Surroi, T 270.

<sup>962</sup> The evidence as to the number of victims varies. John Crosland testified that there were 54 people killed, John Crosland, Exhibit P1400, para 28. Frederick Abrahams gave evidence that 58 members of the Jashari family were killed, Frederick Abrahams, T 3941-3942, while Sabit Kadriu placed the number of victims at 61, Sabit Kadriu, Exhibit P515, pp 6-7.

<sup>963</sup> Ljubinko Cvetić, T 6613-6615.

<sup>964</sup> Živko Trajković, T 9060-9061, 9070; Ljubinko Cvetić, T 6613-6616; John Crosland, Exhibit P1400, para 28; John Crosland, T 9156-9157. See also Žarko Braković, Exhibit P759, para 39.

<sup>965</sup> John Crosland, Exhibit P1400, para 28.

<sup>966</sup> Baton Haxhiu, T 6263, 6268.

<sup>967</sup> John Crosland, Exhibit P1400, paras 29-30; John Crosland, T 9156-9157.

the border in Montenegro.<sup>968</sup> In March 1998 joint VJ and MUP bases started to appear in all major towns in Kosovo.<sup>969</sup> The Priština Corps of the 3<sup>rd</sup> Army of the VJ was stationed in Kosovo with over 15,000 personnel, commanded by Nebojša Pavković.<sup>970</sup>

274. On 23 April 1998 the FRY border belt facing Albania was extended dramatically to about five kilometres.<sup>971</sup> The border belt was a territory, in which FRY armed forces had responsibility for ensuring security of the border. The depth of the border belt could be expanded to allow for the security forces to be active in broader areas.<sup>972</sup> On 21 July 1998 the border belt facing Albania and the FYROM was extended again.<sup>973</sup> The border belt was extended even further on 5 March 1999.<sup>974</sup> These extensions were made by the General Staff of the VJ at the request of the Priština Corps Command.<sup>975</sup>

275. In Đakovica/Gjakovë municipality, bordering Albania, the number of police and military increased. New equipment was brought in, including tanks, Pinzgauers, APCs, and cannons. Cannons and other military equipment were placed at locations outside the town of Đakovica/Gjakovë.<sup>976</sup>

276. During the whole of 1998 John Crosland saw BOC-3, BOV-M, APCs and other light VJ vehicles being repainted from VJ green to MUP blue throughout Kosovo.<sup>977</sup> The VJ had small and long arms, T-55 and T-84 tanks.<sup>978</sup> Beginning in May 1998 Crosland saw, all over Kosovo, that machine-guns were also being repainted blue. John Crosland understood from this repainting of VJ equipment in MUP colours that the VJ was starting to support operations within Kosovo, the types of equipment being painted indicating the VJ was intending to use not only direct fire, but also indirect fire of heavier weapons such as mortars and artillery.<sup>979</sup> Within Kosovo the role of providing security was the responsibility of the MUP. Hence, the Chamber accepts, VJ equipment was being painted in MUP colours to disguise the operations of the VJ as MUP operations.

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<sup>968</sup> John Crosland, Exhibit P1400, para 29; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9774.

<sup>969</sup> John Crosland, Exhibit P1400, para 30; John Crosland, T 9157.

<sup>970</sup> John Crosland, T 9157-9158.

<sup>971</sup> Rade Čučak, Exhibit D570 (*Milutinović* transcript), T 14877-14880; Rade Čučak, T 10882, 10892, 10939. The belt had previously been 100 metres.

<sup>972</sup> Rade Čučak, T 10874, 10876, 10929.

<sup>973</sup> Exhibit D573; Rade Čučak, Exhibit D570 (*Milutinović* transcript), T 14877-14880; Rade Čučak, T 10882, 10892, 10939.

<sup>974</sup> Rade Čučak, Exhibit D570 (*Milutinović* transcript), T 14877-14878; Rade Čučak, T 10940.

<sup>975</sup> Rade Čučak, Exhibit D569, para 9; Rade Čučak, Exhibit D570 (*Milutinović* transcript), T14835-14837.

<sup>976</sup> Fuad Haxhibeqiri, Exhibit P1068, p 4.

<sup>977</sup> John Crosland, Exhibit P1400, para 33; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9764-9765.

<sup>978</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9764.

<sup>979</sup> John Crosland, T 9165-9166.

277. In early 1998 and throughout the year the KLA continued to smuggle weapons to Kosovo across the border from Albania; it also conducted trainings of Kosovo Albanians.<sup>980</sup> Even at the beginning of 1998, for example, the Prizren SUP were alerted to weapons and ammunition arriving in Kosovo. Automatic weapons, explosives and mines were seized.<sup>981</sup>

### 3. Escalation of tension in Kosovo from March till June 1998

278. Acts of violence, including killings, committed by both Serbian forces and the KLA, became more frequent in 1998.<sup>982</sup>

279. Serb and sometimes Kosovo Albanian civilians in areas under KLA control were harassed or terrorised, by assaults, kidnappings and sporadic killings.<sup>983</sup> There were attacks on members of the MUP and on police stations.<sup>984</sup>

280. In March 1998 PJP forces carried out an operation in the area of Klina/Klinë and Srbica/Skenderaj, the purpose of which was to hold the road between Klina/Klinë and Srbica/Skenderaj.<sup>985</sup> Following this, PJP forces carried out an operation “to free” the road between Peć/Pejë and Dečani/Dečan, which had been sealed off by the KLA.<sup>986</sup> As part of this operation, checkpoints were set up to uncover weapons, drugs and persons wanted by the Serbian authorities.<sup>987</sup>

281. In April 1998 PJP forces carried out an operation with the aim of establishing control over Jablanica/Jabllanicë in Đakovica/Gjakovë municipality, which was a KLA stronghold. PJP forces attempted to take the village for about a day but failed.<sup>988</sup> The exchange of fire was significant.<sup>989</sup>

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<sup>980</sup> Momir Stojanović, T 11695, 11696, 11730-11731; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19703-19704; Exhibit D747. See also Exhibits D244; D430; D431 confirming that weapons held by Kosovo Albanians were handed over to the police.

<sup>981</sup> 6D2, T 12191.

<sup>982</sup> Although incidents against the police in Kosovo had taken place before March 1998, attacks against the police occurred virtually on a daily basis following this date. (Velibor Veljković, T 7102) In the spring of 1998 Rahim Latifi found in a cornfield in Pirane/Piranë, Prizren municipality, the bodies of three of his co-villagers who had been shot dead. The hands of one of the bodies had been tied behind his back. The victims had been working in the field the whole day, Rahim Latifi, Exhibit P778, p 2.

<sup>983</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 10; Danica Marinković, T 12921, 12923-12924, 12928; Danica Marinković, Exhibit D853, paras 12, 13; Danica Marinković, Exhibit D854 (*Milutinović* transcript), T 23495-23498. See also Exhibit D888, p 101, item 255; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19747-19748.

<sup>984</sup> Danica Marinković, T 12928.

<sup>985</sup> K25, Exhibit P340-A, pp 4-5; K25, Exhibit P341-A (*Milošević* transcript), T 7815-7816; K25, T 1584-1585; Exhibit P343.

<sup>986</sup> K25, Exhibit P341-A (*Milošević* transcript), T 7815-7816.

<sup>987</sup> K25, Exhibit P340-A, p 5; K25, Exhibit P342 (*Milutinović* transcript), T 4733.

<sup>988</sup> K25, Exhibit P341-A (*Milošević* transcript), T 7817.

<sup>989</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4716, 4736.

282. On 11 and 12 May 1998 John Crosland observed that the villages in the area of Ponoševac/Ponoshec in Đakovica/Gjakovë municipality, were deserted. He saw slaughtered livestock, houses that had been sprayed with gunfire and empty casings from ammunition used for various weapons, including 40 millimetre grenades. JSO and PJP units of the MUP were present in the area; they carried out patrols using APCs, which were not normally used by the Serbian forces.<sup>990</sup> There was a lot of structural damage to the houses caused by shell fire.<sup>991</sup>

283. A British military report dated 28 May 1998 revealed that the village of Kijevo/Kijevë was in the hands of armed Serb civilians, that there was evidence of recent house burning in two villages north of Dečani/Dečan and that there were witness reports of a Serbian helicopter attack on two villages west of Rudnik/Runik, Srbica/Skenderaj municipality. The British team witnessed the arrival of a large MUP convoy in the area and the withdrawal of the JSO.<sup>992</sup> The KLA were present in the area of Kijevo/Kijevë at the time.<sup>993</sup>

284. The main road between Đakovica/Gjakovë, Dečani/Dečan and Peć/Pejë became the front line between the KLA and the Serbian forces. Most of the villages along this road, including Prilep south of Dečani/Dečan and Gornji Streoc/Strelle-i-Epërm, north of Dečani/Dečan were held by Serbian forces, and were attacked fairly regularly by the KLA.<sup>994</sup> A MUP report suggests that male Kosovo Albanians from the village of Crnobreg/Carabreg had been armed.<sup>995</sup> The KLA held this road, having cut off communications; they were searching people and vehicles and looting.<sup>996</sup>

285. In May 1998, Mališevo/Malishevë was controlled by the KLA.<sup>997</sup> There were displaced persons in Mališevo/Malishevë from other parts of Kosovo who came mainly from villages in Drenica region.<sup>998</sup> This was a region covering parts of the municipalities of Srbica/Skenderaj and Glogovac/Gllogoc. Houses in the area of Orahovac/Rahovec, Mališevo/Malishevë, Komorane/Komorane, and Priština/Prishtinë were burnt to the ground.<sup>999</sup> The houses along the Priština/Prishtinë-Peć/Pejë road and the Lipljan/Lipjan road were burnt.<sup>1000</sup> There were policemen on the Priština/Prishtinë-Peć/Pejë road.<sup>1001</sup>

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<sup>990</sup> John Crosland, Exhibit P1400, para 34; John Crosland, T 9160-9161; Exhibit P1404.

<sup>991</sup> John Crosland, T 9161.

<sup>992</sup> Exhibit P1405; John Crosland, T 9162-9163.

<sup>993</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 10021-10022.

<sup>994</sup> John Crosland, T 9163-9164.

<sup>995</sup> Vukmir Mirčić, T 13246; Exhibit D910, p 3.

<sup>996</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4734.

<sup>997</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6082-6083.

<sup>998</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6083.

<sup>999</sup> Baton Haxhiu, T 6269.

<sup>1000</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6083.

<sup>1001</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6085.

286. On 29 May 1998 the Priština Corps of the 3<sup>rd</sup> Army was commanded to be at full combat readiness “due to the deterioration of the security-political situation in the territory of Kosovo”.<sup>1002</sup> By that time there were combat operations in the border area with suspected KLA forces who were attempting to bring in weapons and equipment to the territory of Kosovo. The KLA were taking positions at major intersections and dominant elevations and were targeting members of the MUP.<sup>1003</sup>

287. From 15 January to 15 May 1998, 20 shooting incidents and 18 incidents of illegal importation into Kosovo of weapons, ammunition and other military equipment were registered by the VJ at the area of the border with Albania.<sup>1004</sup>

## **B. Events from June until September 1998**

### **1. Plan for Suppression of Terrorism and Establishment of Joint Command for Kosovo**

288. On or about 30 May 1998, a meeting took place in the FRY President’s Office in Belgrade. The meeting was attended by the President, Slobodan Milošević; Jovica Stanišić, at the time Chief of the State Security Services; Vlajko Stojiljković, Minister of Interior; Sreten Lukić, Head of the MUP Staff for Kosovo; the Accused Vlastimir Đorđević, Chief of the RJB; Obrad Stevanović, Assistant Minister of Interior in charge of coordination of the police administration; General Perišić, Chief of the General Staff of the VJ; General Dimitrijević, Chief of the Security Administration of the General Staff of the VJ; Nebojša Pavković, at the time, Commander of the Priština Corps; General Samardžić, Commander of the 3<sup>rd</sup> Army of the VJ, and others.<sup>1005</sup> At this meeting the overall situation in Kosovo was discussed and an initiative was launched to make preparations to monitor the situation “in order to avoid any surprises” for the VJ or the MUP in Kosovo, related to activities of the Kosovo Albanian forces.<sup>1006</sup> Following this meeting, Milan Đaković who did not attend, was told by General Nebojša Pavković that on 9 June 1998 the Supreme Defence Council would issue a decision on the use of force.<sup>1007</sup>

289. On 9 June 1998 the Supreme Defence Council held a meeting to deal with the situation in Kosovo. At the proposal of Slobodan Milošević, the meeting determined that should terrorist activities escalate, the VJ “will intervene in adequate measure.”<sup>1008</sup> At this meeting the Chief of the General Staff of the VJ, General Perišić, informed those present of the VJ activities in the border

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<sup>1002</sup> Exhibit D318; Milan Đaković, T 7986.

<sup>1003</sup> Milan Đaković, T 7986.

<sup>1004</sup> Rade Čučak, Exhibit D569, para 9; Rade Čučak, T 10881-10882; Exhibit D571.

<sup>1005</sup> Milan Đaković, T 7914-7915.

<sup>1006</sup> Milan Đaković, T 7914.

<sup>1007</sup> Milan Đaković, T 7915.

belt area and indicated that some forces of the VJ were deployed deep in Kosovo to provide security for the barracks and to be able to be deployed to secure “suddenly endangered” facilities.<sup>1009</sup>

290. In early June 1998 Milan Đaković of the Priština Corps and other senior VJ officers were directed to draft a Plan for Suppression of Terrorism.<sup>1010</sup> To prepare the plan they received information from all the FRY and Serbian structures operating in Kosovo, including the MUP and its State Security Service and various VJ units. The plan was presented to the FRY President Slobodan Milošević and the federal and state political leadership and others at a meeting in Belgrade on 21 July 1998.<sup>1011</sup> This meeting was attended by Milomir Minić, Member of the Yugoslav Assembly; Nikola Šainović, Deputy Prime Minister of the FRY; Zoran Anđelković, President of the Provisional Executive Council in Kosovo; Nebojša Pavković, Commander of the Priština Corps; General Perišić, Chief of General Staff; the Accused, Vlastimir Đorđević, Head of the RJB; General Sreten Lukić, Head of the MUP Staff for Kosovo; Dušan Samardžić, Commander of the 3<sup>rd</sup> Army; Aleksandar Dimitrijević, Chief of the Security Administration of the General Staff of the VJ, Vljako Stojiljković, Minister of Interior; Obrad Stevanović, Assistant Minister of Interior, and other officers of the MUP.<sup>1012</sup> Slobodan Milošević informed those present that the Supreme Defence Council had made a decision to draw up a plan to combat terrorism in response to the further deterioration of the security situation in Kosovo.<sup>1013</sup> General Nebojša Pavković, the Commander of the Priština Corps of the VJ, then presented the plan and showed to those present a map of the expected areas of operation of the army and the police.<sup>1014</sup> The plan was adopted as proposed<sup>1015</sup> and an order was given to implement the plan.<sup>1016</sup>

291. Initially, the plan comprised three stages. The first involved the engagement of border units of the VJ in the border area. The police had no jurisdiction there, except for their regular policing and checking the movement of people and vehicles, and consequently the VJ had a major role in preventing the movement of terrorists across the border.<sup>1017</sup> The second stage involved the engagement of MUP units, with support provided by the VJ, in the breaking up of terrorist forces along the main road between Peć/Pejë-Đakovica/Gjakovë, and Prizren in the area 10 to 15 kilometres from the border. A working map was prepared on which the units of the VJ were plotted

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<sup>1008</sup> Exhibit P683, p 2.

<sup>1009</sup> Exhibit P683, p 1.

<sup>1010</sup> Milan Đaković, T 7913-7916, 7994.

<sup>1011</sup> Milan Đaković, T 7916.

<sup>1012</sup> Milan Đaković, T 7916-7918; Vlastimir Đorđević, T 9563-9564.

<sup>1013</sup> Vlastimir Đorđević, T 9564, 9831.

<sup>1014</sup> Vlastimir Đorđević, T 9564-9565, 9566.

<sup>1015</sup> Milan Đaković, T 7996.

<sup>1016</sup> Exhibit P1226.

<sup>1017</sup> Milan Đaković, T 7923-7924, 7995.



roughly.<sup>1018</sup> Once information about MUP units was received from the MUP Staff for Kosovo this information was also included in the plan.<sup>1019</sup> The third stage involved VJ support to MUP forces in lifting the blockade of the Kosovska Mitrovica/Mitrovicë-Rudnik/Runik-Peć/Pejë road, the Priština/Prishtinë-Klina/Klinë-Đakovica/Gjakovë road, and the Štimlje/Shtime-Suva Reka/Suharekë-Prizren road.<sup>1020</sup> Subsequently, in October and November 1998, two additional stages were added.<sup>1021</sup> The fourth stage involved breaking up KLA forces in Srbica/Skenderaj, Mount Čičavica/Qiqavica, Mount Jablanica/Jabllanicë and the broader area including the village of Glodjane/Gllogjan, as well as in the area of Jezero/Liqej Mountains and Dulje/Dühel.<sup>1022</sup> The fifth stage, which was developed following the October Agreements, to be discussed below<sup>1023</sup>, involved sending seven combat groups to provide security on the roads in the border belt and three mixed companies in the area of the Volujak/Volljakë Mountains. The MUP was tasked with setting up patrols and checkpoints.<sup>1024</sup>

292. One of the immediate actions envisaged by the plan was the joint participation of both MUP and Priština Corps units in the blockade of Junik and Jasić/Jasiq villages, and in de-blockading the Priština/Prishtinë-Peć/Pejë road in the sections between Komorane/Komoran, Kijevo/Kijevë and Klina/Klinë, and between Štimlje/Shtime, Crnoljevo/Carralevë and Dulje/Duhël. On 22 July 1998 the command of the Priština Corps requested clarification from the 3<sup>rd</sup> Army on the Priština Corps's involvement in the implementation of this part of the plan.<sup>1025</sup> Authorisation to act in accordance with the plan was given to the Priština Corps by the 3<sup>rd</sup> Army command on 23 July.<sup>1026</sup> The acts of these forces on the ground in implementation of the plan, will be discussed below.

293. The Chamber has found elsewhere in this Judgement that in June 1998, approximately at the same time as the Plan for Suppression of Terrorism was conceived, a Joint Command of the VJ and MUP forces in Kosovo was established. Its structure and functions are discussed elsewhere in this Judgement.<sup>1027</sup>

## 2. Establishment of Kosovo Diplomatic Observer Missions

294. The deteriorating security situation in Kosovo quickly became a matter of international concern. On 31 March 1998 the United Nations Security Council, acting under Chapter VII of the

<sup>1018</sup> Milan Đaković, T 7924, 7995-7996.

<sup>1019</sup> Milan Đaković, T 7996.

<sup>1020</sup> Milan Đaković, T 7924.

<sup>1021</sup> Milan Đaković, T 7923.

<sup>1022</sup> Milan Đaković, T 7924, 8051.

<sup>1023</sup> See *infra*, paras 351-363.

<sup>1024</sup> Milan Đaković, T 7925.

<sup>1025</sup> Exhibit P1226. See also Exhibit P1227.

<sup>1026</sup> Exhibit P1228.

United Nations Charter, passed Resolution 1160 which prohibited the sale or supply of weapons and related materials to the FRY, including Kosovo.<sup>1028</sup> The resolution called upon the FRY to take measures to achieve a political solution to the situation of Kosovo through dialogue and urged the KLA to condemn terrorist actions and to pursue their goals by peaceful means.<sup>1029</sup>

295. In June 1998, the President of the FRY Slobodan Milošević and the President of Russia, Boris Yeltsin met in Moscow. At this meeting it was agreed that foreign diplomatic representatives would have broader powers to monitor the situation in Kosovo.<sup>1030</sup> On 17 June 1998 Vljako Stojilković, the Minister of Interior, sent a dispatch to all SUPs in Kosovo containing the text of the joint statement of Slobodan Milošević and Boris Yeltsin.<sup>1031</sup> The statement made specific references to facilitating the return of displaced persons and refugees, reduction of the presence of security forces outside their permanent bases in proportion with the reduction of terrorist activities, and announced the readiness of the FRY to start negotiations with the OSCE about receiving its mission in Kosovo and about the renewal of the FRY membership in the organisation.<sup>1032</sup> Subsequently, the US Special Envoy for the Balkans Richard Holbrooke met with Slobodan Milošević in Belgrade.<sup>1033</sup> It was accepted that the monitoring of the situation in Kosovo would no longer be left to foreign diplomatic missions in Belgrade and that formal observer missions would be established in Priština/Prishtinë. These missions became known as Kosovo Diplomatic Observer Missions or KDOMs. It was agreed that three KDOMs would be established: Russian KDOM, EU-KDOM and US-KDOM.<sup>1034</sup>

296. In early July 1998 the first of the three missions, the EU-KDOM was established.<sup>1035</sup> The US-KDOM was established in late July 1998 and quickly became the largest.<sup>1036</sup> The Russian

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<sup>1027</sup> See *supra*, paras 224-252.

<sup>1028</sup> Exhibit P1074; Knut Volleback, T 7204-7206; Živadin Jovanović, T 10192-10196.

<sup>1029</sup> Exhibit P1074, p 2.

<sup>1030</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12129-12130; Shaun Byrnes, T 8162; Živadin Jovanović, Exhibit D454 (*Milutinović* transcript), T 13991-13992; Živadin Jovanović, T 10202. There were expectations in the international community that greater international observation in Kosovo would lead to a calming down of the situation and would permit a political solution to be found, Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12130, 12133.

<sup>1031</sup> Ljubinko Cvetić, T 6793-6794; Exhibit D233.

<sup>1032</sup> Exhibit D233.

<sup>1033</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12130, 12133-12134.

<sup>1034</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12130, 12134; Shaun Byrnes, T 8163; Jan Kickert, T 2617-2618; Karol John Drewienkiewicz, Exhibit P996, paras 40, 41; Karol John Drewienkiewicz, T 6459; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7734.

<sup>1035</sup> Shaun Byrnes, T 8164. A European Community Monitoring Mission ("ECMM") existed in Kosovo since April 1998; this mission took over the functions of the EU-KDOM, Shaun Byrnes, T 8164; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12134. See also Jan Kickert, T 2576. The EU-KDOM had its inauguration trip in Kosovo on 6 July 1998, Jan Kickert, T 2577; Exhibit P482.

<sup>1036</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12134; Shaun Byrnes, T 8164. In December 1998 and January 1999 the US-KDOM had about 300 US officers and 600 to 700 local (Albanian and Serbian) staff, Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12135.

KDOM was established in early September 1998. It had only five or six officers, and it did not have vehicles suited for travel outside Priština/Prishtinë.<sup>1037</sup>

297. The mandate of the KDOMs was to provide the international community with accurate and independent information about the situation in Kosovo which would be collected by international observers present on the ground in Kosovo.<sup>1038</sup> The KDOMs reported to their respective diplomatic missions in Belgrade.<sup>1039</sup> In addition to the relevant authorities in the USA, the US-KDOM also provided information about the situation on the ground to the Contact Group on the Balkans<sup>1040</sup> through the US Embassy in Belgrade.<sup>1041</sup>

298. In the late summer and autumn of 1998 the KDOMs ran daily missions to various parts of Kosovo. The US-KDOM would send a team of two American officers and a Serb or Albanian interpreter to areas where there was information of clashes or in areas that were contested.<sup>1042</sup> The three missions coordinated their activities and worked closely together.<sup>1043</sup> The missions had frequent contacts with representatives of the MUP in Priština/Prishtinë.<sup>1044</sup>

299. With the establishment of the OSCE Kosovo Verification Mission (“KVM”), to be discussed below, various KDOM contingents were absorbed by the KVM.<sup>1045</sup> The EU and the USA retained small representation in Priština/Prishtinë, to serve their respective diplomatic missions in the region.<sup>1046</sup> The remaining 15 member staff of the US-KDOM, also ran missions and provided unclassified reporting to Washington, Brussels and to the US Mission in Belgrade on the general situation on the ground. This continued until the end of March 1999.<sup>1047</sup>

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<sup>1037</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12134-12135; Shaun Byrnes, T 8164.

<sup>1038</sup> Jan Kickert, T 2576, 2624; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11200.

<sup>1039</sup> Karol John Drewienkiewicz, Exhibit P996, paras 40, 41; Karol John Drewienkiewicz, T 6459; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7734. The US-KDOM was established as an entity of the US embassy in Belgrade and the head of the US-KDOM reported directly to the chief of the US mission in Belgrade, Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12132. See also Jan Kickert, T 2577; Exhibit P482.

<sup>1040</sup> The Contact Group on the Balkans comprised France, Germany, Italy, Russia, the United Kingdom, and the United States, Jan Kickert, T 2576.

<sup>1041</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12132; Shaun Byrnes, T 8162, 8163.

<sup>1042</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12135-12136; Shaun Byrnes, T 8165.

<sup>1043</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12136-12137; Shaun Byrnes, T 8166.

<sup>1044</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12140-12141. The MUP sent regularly reports to the US-KDOM, Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12206.

<sup>1045</sup> See *infra*, paras 253-356.

<sup>1046</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12169-12170; Shaun Byrnes, T 8261-8262; Karol John Drewienkiewicz, Exhibit P996, paras 42, 46; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7735-7736, 7830, 7966.

<sup>1047</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12171-12172. See also Shaun Byrnes, T 8261-8263.

### 3. Armed violence in Kosovo from June to September 1998

300. In June or by July 1998 the KLA held up to 50 per cent of the territory of Kosovo.<sup>1048</sup> Three main roads had been closed by the KLA by June 1998 which cut off the supply lines for the Serbian forces.<sup>1049</sup> Nevertheless, the KLA did not have any artillery at their disposal.<sup>1050</sup> In July 1998 the KLA had gained control of the Belacevac coal mine, which was a major source of power supply. MUP forces launched one or more actions to retake the mine and eventually took control of the plant.<sup>1051</sup>

301. There were frequent attacks by the KLA on the police and the army.<sup>1052</sup> Incidents of kidnapping by the KLA of ethnic Serbs and Albanians perceived as collaborators also increased<sup>1053</sup> as did incidents of intimidation, harassment and killings by the KLA.<sup>1054</sup> In June 1998 an armed attack was carried out against the police station in Suva Reka/Suharekë.<sup>1055</sup> One policeman was wounded.<sup>1056</sup> In the night between 12 and 13 June the police station in Rudnik/Runik in Srbica/Skenderaj municipality was attacked; it had previously come under sniper and infantry fire for days. 11 houses belonging to Serb families were also set on fire that night in the nearby village of Leocina/Leçinë. In a nearby village a Serb civilian was killed, and his house subsequently was set on fire.<sup>1057</sup>

302. In June 1998 armed clashes between the KLA and Serbian forces took place in the Drenica region, which encompasses the border areas of the municipalities of Srbica/Skenderaj and Glogovac/Glllogoc. Villages in the region were shelled by the VJ. As a result, some 40,000 people

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<sup>1048</sup> Mialn Đaković, T 7913; John Crosland, Exhibit P1400, para 36; 6D2, T 12192; Vlastimir Đorđević, T 9558.

<sup>1049</sup> Milan Đaković, T 7913; John Crosland, T 9207-9208; Exhibit D382; 6D2, T 12192-12193. Baton Haxhiu testified that in June 1998 the traffic between Priština/Prishtinë and Prizren was interrupted by the KLA and that the village of Kijevo/Kijevë was blocked for a month, Baton Haxhiu, T 6269-6270. Branko Mladenović testified that in June 1998 the Priština/Prishtinë-Prizren road was controlled entirely by the KLA, Branko Mladenović, T 12452-12454.

<sup>1050</sup> John Crosland, Exhibit P1400, para 36.

<sup>1051</sup> Žarko Braković, T 4256; Exhibit P688, p 7.

<sup>1052</sup> Radomir Mitić, T 12638. For example, in the summer of 1998 a police patrol was attacked in the outskirts of Kačanik/Kaçanik and in Nerodimlje/Neordime, Uroševac/Ferizaj municipality, Radomir Mitić, T 12644. See also Vlastimir Đorđević, T 9549.

<sup>1053</sup> Radomir Mitić, T 12638.

<sup>1054</sup> Exhibit D888, p 602, item 152, referring to the discovery of the bodies of a mother and a daughter on 23 August 1998 on the Priština/Prishtinë-Prizren road in Suva Reka/Suharekë municipality. Although the police report of the incident indicates that the perpetrator of this crime was unknown, 6D2 believed that the murder was caused by the KLA, 6D2, T 12265-12267.

<sup>1055</sup> Velibor Veljković, T 7104-7105.

<sup>1056</sup> Velibor Veljković, T 7104. In 1998 there were six or seven terrorist attacks in the town of Suva Reka/Suharekë, 6D2, T 12270-12271.

<sup>1057</sup> Exhibit D729, p 2; Momir Stojanović, T 11702.

fled from the region and moved to the municipalities of Vučitrn/Vushtrri and Kosovska Mitrovica/Mitrovicë.<sup>1058</sup>

303. In June a number of operations by the Serbian forces were carried out in the municipalities of Dečani/Deçan and Đakovica/Gjakovë, located in western Kosovo along the border with Albania. In late May or early June 1998, Austrian diplomats travelled to Peć/Pejë and Dečani/Deçan. The trip was organised by the FRY Ministry of Foreign Affairs.<sup>1059</sup> French, Greek and British defence attachés were also present.<sup>1060</sup> Clashes between the Serbian security forces and the KLA had taken place in Dečani/Deçan and when the diplomats visited the town they saw there houses that had been burned or destroyed.<sup>1061</sup> The town appeared deserted.<sup>1062</sup>

304. In June or July 1998 MUP PJP forces carried out an operation in the area of the villages Prilep, Junik and Babaloc/Babbaloq, in Dečani/Deçan municipality. The operation involved holding the road from Đakovica/Gjakovë and Dečani/Deçan and securing the communication lines.<sup>1063</sup>

305. On 24 June 1998 a combat unit of the VJ carried out an operation in the village of Damjane/Damjan, Đakovica/Gjakovë municipality.<sup>1064</sup> On orders of their commander VJ soldiers went from house to house telling people that they had one hour to leave.<sup>1065</sup> The village was emptied within three days.<sup>1066</sup> Once the village was “cleared” of residents the VJ set up guards to secure the area. Soldiers entered the houses and looted valuables.<sup>1067</sup>

306. A report of the Austrian Embassy in Belgrade to the Austrian Ministry of Foreign Affairs documents that on 30 June 1998, Serbian authorities officially confirmed for the first time the involvement of VJ units in inland operations. According to a press report by Veljko Odalović, the prefect of Priština/Prishtinë, to Reuters, this happened in the area of Belacevac.<sup>1068</sup>

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<sup>1058</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5070; Sabit Kadriu, Exhibit P515, p 7.

<sup>1059</sup> Jan Kickert, Exhibit P478, p 2; Jan Kickert, T 2572; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11192.

<sup>1060</sup> Jan Kickert, Exhibit P478, p 2.

<sup>1061</sup> Jan Kickert, Exhibit P478, p 2; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11194-11196.

<sup>1062</sup> Jan Kickert, T 2573-2574.

<sup>1063</sup> K25, T 1585; Exhibit P343.

<sup>1064</sup> K54, T 4366-4367, 4406; K54, Exhibit P782, p 2.

<sup>1065</sup> K54, Exhibit P782, p 2; K54, T 4366-4367.

<sup>1066</sup> K54, Exhibit P782, p 2.

<sup>1067</sup> K54, Exhibit P782, p 2; K54, T 4367.

<sup>1068</sup> Jan Kickert, T 2575; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11198; Exhibit P481.

307. In early July 1998 fighting between Serbian forces and the KLA took place in the village of Loda/Loxhë in Peć/Pejë municipality. During the fighting police officers were injured and some were abducted. The body of one of them was found a month later, mutilated.<sup>1069</sup>

308. A number of incidents occurred in the border area. A report of the Chief of the General Staff of the VJ General Perišić to the Minister of Defence dated 16 July 1998 lists over 60 incidents along the border with Albania between 1 January 1998 and 30 June 1998, mainly concerning illegal border crossing and the smuggling of weapons.<sup>1070</sup> A report dated 15 June 1998 indicates that the entry of a “large group” of Albanian terrorists was prevented.<sup>1071</sup>

309. In July 1998 the road between Glogovac/Gllogoc and Srbica/Skenderaj in central Kosovo was cut off by the KLA. There were frequent KLA attacks in the area between Glogovac/Gllogoc and Komorane/Komoran, on the Priština/Prishtinë-Peć/Pejë road.<sup>1072</sup> The KLA also held the town of Orahovac/Rahovec, and the villages of Zocište/Zoqishtë, Velika Hoca/Hoçë-e-Madhe and Retimlje/Retiljë in Orahovac/Rahovec municipality.<sup>1073</sup> At the time the KLA controlled the area in the direction of Mount Čičavica/Qiqavica and the Drenica region, including Lipljan/Lipjan.<sup>1074</sup> The KLA were establishing themselves on the outskirts of Podujevo/Podujevë, but there was no increase in their activities.<sup>1075</sup> The road to Suva Reka/Suharekë from Uroševac/Ferizaj had been blockaded by the KLA.<sup>1076</sup> There were few attacks on police personnel in Priština/Prishtinë and in neighbouring villages.<sup>1077</sup>

310. On 17 July 1998 the KLA carried out an attack on the village of Retimlje/Retijë in Orahovac/Rahovec municipality. They collected ammunition and guns belonging to the residents of Retimlje/Retijë as well as some valuables. 11 members of one Serb family were kidnapped and one member of the family was killed during the attack.<sup>1078</sup>

311. Around mid July 1998 the Serbian forces started a heavy offensive against the KLA in Kosovo.<sup>1079</sup> This lasted until the end of September 1998.<sup>1080</sup>

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<sup>1069</sup> Žarko Braković, T 4246; Exhibit D110.

<sup>1070</sup> Exhibit D320.

<sup>1071</sup> Exhibit D730; Momir Stojanović, T 11703.

<sup>1072</sup> Žarko Braković, T 4260-4261.

<sup>1073</sup> Velibor Veljković, T 7108.

<sup>1074</sup> Žarko Braković, T 4261; Exhibit P768, p 1.

<sup>1075</sup> Exhibit P768, p 1.

<sup>1076</sup> Exhibit P768, p 2.

<sup>1077</sup> Žarko Braković, T 4261. *See also* Exhibit P768, pp 1, 2.

<sup>1078</sup> Exhibit D888, p 529, item 47; 6D2, T 12315. 6D2 testified that the bodies of the kidnapped persons were found subsequently in a mass grave, 6D2, T 12207-12208.

<sup>1079</sup> John Crosland, Exhibit P1400, para 37; Ljubinko Cvetić, T 6611.

<sup>1080</sup> Ljubinko Cvetić, T 6611.

312. On 17 July 1998 Serbian forces launched an attack on the town of Orahovac/Rahovec. A PJP unit was sent to Orahovac/Rahovec in order “to liberate” the town.<sup>1081</sup> PJP, SAJ, and VJ units took part in the operation.<sup>1082</sup> A few days earlier there had been an attack on a VJ vehicle, one officer was killed and VJ soldiers were taken prisoner.<sup>1083</sup> A VJ unit was located outside Orahovac/Rahovec and held the town in encirclement.<sup>1084</sup> The VJ unit had tanks, Pragas and self propelled anti-aircraft guns.<sup>1085</sup> Some of the KLA members wore uniforms, some were in civilian clothes, and some wore blue camouflage uniforms.<sup>1086</sup> KLA members in the town had automatic weapons. The KLA also had 12.7 millimetre Browning machine-guns in the hills. Shortly after the fighting started the KLA began withdrawing into the hills overlooking Orahovac/Rahovec.<sup>1087</sup> A witness observed that in the course of the operation some 30 members of the SAJ had surrounded a Kosovo Albanian man. The man was shot dead by an SAJ member with a pistol.<sup>1088</sup> At the exit of the town, in the Serbian part of Orahovac/Rahovec a witness observed approximately 30 dead bodies of men under 40 years of age and one woman lying on the road. Two of the bodies had green camouflage uniforms, the rest were in civilian clothes. Some wore KLA insignia.<sup>1089</sup>

313. The Serbian forces continued on foot towards Vran-Stena, a hill overlooking Orahovac/Rahovec from where the KLA forces were shooting. The Serbian forces took over the hill killing four KLA members during the operation. A few members of the Serbian forces were wounded. The operation lasted three days.<sup>1090</sup>

314. The Chamber notes that in evidence are a police and an army report referring to this event. A report of the Prizren SUP suggests that on 17 July a terrorist attack was carried out on the town of Orahovac/Rahovec, that some 2,000 to 3,000 terrorists took part in this operation, that they erected barricades in the centre of town, that they attacked several specific facilities, and that they abducted 55 ethnic Serbs, 20 of whom were taken to a KLA prison in the village of Semetište/Semetisht, Suva Reka/Suharekë municipality and 35 to Malishevo/Malishevë.<sup>1091</sup> A report of the Priština Corps Command dated 18 July also refers to a terrorist attack on the town of Orahovac/Rahovec carried out during the night between 17 and 18 July 1998. It describes events similar to those contained in the Prizren SUP report and states in addition, that about 260 members of the MUP

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<sup>1081</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9591.

<sup>1082</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9592, 9594.

<sup>1083</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9726.

<sup>1084</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9726-9727, 9594; K79, T 8306.

<sup>1085</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9594-9595.

<sup>1086</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9604. A witness testified that some of the KLA fighters wore civilian clothes underneath their uniform and could easily change into civilian clothes, K79, T 8306.

<sup>1087</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9604.

<sup>1088</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9595, 9601-9603.

<sup>1089</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9605; K79, T 8307-8308.

<sup>1090</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9606, 9696.

<sup>1091</sup> Exhibit D786, pp 8, 9, 10. See also 6D2, T 12206-12207; Exhibit D888, pp 580-581, item 50.

withdrew to the building of the police station and a hotel during the attack. It also states that on 18 July 1998 MUP units launched an action to lift the blockade of the town from the direction of the village of Zrze/Xërxë. The Priština Corps Command report refers to the kidnapping of “about 30” Serbs during the terrorist attack in the night of 17/18 July 1998.<sup>1092</sup>

315. The Chamber is not fully satisfied with the reliability of some parts of these reports. While the SUP report includes a great deal of detail about the movement and the activities of the terrorist forces, the report makes no mention of any action in response by the MUP forces or of the strength of the MUP forces participating in or affected by the operation even though such information is contained in the Priština Corps Command report. The Prizren SUP report makes no reference to the presence of VJ forces. While the Priština Corps Command report contains a fairly detailed description of the events during the night, it does not contain any information about the location or the activities of the VJ forces during the operation. It is unclear on the basis of either of the reports what made the “terrorists” withdraw from Orahovac/Rahovec. Despite the fact that according to the Prizren SUP report some 2,000 to 3,000 “terrorists” participated in the attack, a fact suggesting a relatively large-scale operation, the report does not contain any information about injuries or other casualties suffered by either party. The Chamber is not able to accept that the information contained in Prizren SUP report and the Priština Corps Command report cited above represents an accurate and complete picture of the events occurring in Orahovac/Rahovec on 17 and 18 July 1998.

316. On or about 25 to 28 July 1998 the VJ conducted a mopping-up operation in eastern Đakovica/Gjakovë, in the area of the villages Meca/Meqe and Rakovina/Rakovinë. En route, in the corn fields near Rakovina/Rakovinë, VJ troops captured two Kosovo Albanian civilians, interrogated them briefly and shot them in the back of their heads. In the village of Meca/Meqe a VJ tank fired several shots which caused women and children to run out of their homes towards the woods.<sup>1093</sup> There was no firing from the village or any sign of KLA presence in the village.<sup>1094</sup> VJ infantry troops were ordered to move on foot into the forest to “clean up” and search for terrorists.<sup>1095</sup> The same VJ combat unit then moved to the village of Rakovina/Rakovinë, Đakovica/Gjakovë municipality where there were already houses on fire.<sup>1096</sup> A PJP unit from Đakovica/Gjakovë and regular police were in the village.<sup>1097</sup> There were no civilians in the

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<sup>1092</sup> Exhibit D733, p 1. See also Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19699-19700; Momir Stojanović, T 11706.

<sup>1093</sup> K54, Exhibit P782, p 3; K54, T 4368-4369; K54, Exhibit D114 (*Milutinović* transcript), T 10500-10501.

<sup>1094</sup> K54, Exhibit P782, p 3; K54, Exhibit D113 (*Milutinović* transcript), T 10500-10501.

<sup>1095</sup> K54, T 4369-4371, 4409.

<sup>1096</sup> K54, Exhibit P782, p 3.

<sup>1097</sup> K54, Exhibit P782, p 3; K54, T 4433; K54, Exhibit D114 (*Milutinović* transcript), T 10501-10502.



village.<sup>1098</sup> During the night an exchange of fire between the PJP and KLA forces took place during which a policeman was shot.<sup>1099</sup>

317. During a trip to Kosovo on 28 and 29 July 1998 John Crosland saw about 150 SAJ, PJP and VJ forces with six tanks on the main road Peć/Pejë-Mališevo/Malishevë<sup>1100</sup> going towards Mališevo/Malishevë in central Kosovo, which was considered a KLA stronghold.<sup>1101</sup> The forces were also all wearing red and white ribbons on their epaulettes, which suggested that they were acting in coordination.<sup>1102</sup>

318. On an unspecified day near the end of July 1998 diplomats from EU countries visited Mališevo/Malishevë.<sup>1103</sup> Mališevo/Malishevë had been abandoned by its inhabitants and the KLA and was described as an “empty city”, apart from some Serbian police and elderly people.<sup>1104</sup> The diplomats observed destruction in Mališevo/Malishevë and saw policemen looting shops and a policeman setting fire to a house.<sup>1105</sup> On their way back they saw unharvested fields burning. Kosovo Albanians had been the majority inhabitants in the area.<sup>1106</sup>

319. In late July and in August 1998 a PJP unit conducted an operation to take control of Junik in Dečani/Deçan municipality.<sup>1107</sup> The area around Glodjane/Gllogjan and Junik, was a KLA stronghold under the command of Ramush Haradinaj.<sup>1108</sup> KLA attacks had been launched from Junik.<sup>1109</sup> During this operation, the PJP unit received support from Lake Radonjić by the VJ, who were using tanks and howitzers.<sup>1110</sup> The role of the VJ was to provide support with heavy weaponry, artillery and tanks, but not to use these weapons against civilians.<sup>1111</sup> The operation lasted 21 days.<sup>1112</sup>

320. A report to the VJ General Staff from the Priština Corps Command dated 1 August 1998 based on interviews with “terrorists” who had escaped the village of Junik during the operation, but were arrested by MUP forces, states that the women and children had fled the village as had “a

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<sup>1098</sup> K54, Exhibit P782, p 3.

<sup>1099</sup> K54, Exhibit P782, p 4; K54, Exhibit D114 (*Milutinović* transcript), T 10501, 10611; K54, T 4433.

<sup>1100</sup> John Crosland, Exhibit P1400, para 38.

<sup>1101</sup> Exhibit P1407; John Crosland, T 9166-9167.

<sup>1102</sup> John Crosland, Exhibit P1400, para 38.

<sup>1103</sup> Jan Kickert, Exhibit P478 p 3; Jan Kickert, T 2578-2579.

<sup>1104</sup> Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11206.

<sup>1105</sup> Jan Kickert, T 2579-2580.

<sup>1106</sup> Jan Kickert, Exhibit P478, p 3; Jan Kickert, T 2578; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11202.

<sup>1107</sup> K25, T 1585.

<sup>1108</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9812-9814, 10017; K25, Exhibit P342 (*Milutinović* transcript), T 4751.

<sup>1109</sup> K25, Exhibit P341-A (*Milošević* transcript), T 7819; K25, T 1585.

<sup>1110</sup> K25, Exhibit P341-A (*Milošević* transcript), T 7818; K25, Exhibit P340-A, p 6; K25, Exhibit P342 (*Milutinović* transcript), T 4662-4663.

<sup>1111</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4716.

<sup>1112</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4751-4752.

number of terrorists” and that there were at the time some 700 “terrorists” in Junik. The report also indicates that the “terrorists” in Junik possessed automatic weapons, 10 Browning machine-guns, 10 hand held launchers, two 82 millimetre guns and about 1,000 hand grenades.<sup>1113</sup> The report refers to “a reliable source” according to which the civilian population in the villages of Prekaze/Prekaz, Lauša/Laushë, Poljance/Polac, Poluža/Polluzhë and Srbica/Skenderaj had been evacuated, presumably by KLA forces or other Kosovo Albanians, because of an expected MUP attack.<sup>1114</sup>

321. In July and August 1998 foreign diplomats noticed an increasing amount of destruction in Kosovo.<sup>1115</sup>

322. It was the conclusion of the British defence attaché, based on his observations in Kosovo, that the operations during the summer offensive were conducted by members of the RJB of the MUP and a unit for special operations of the RDB.<sup>1116</sup> VJ units provided support to the MUP units in certain operations.<sup>1117</sup> John Crosland saw clear evidence of coordination between VJ and MUP forces. A British military report dated 30 July 1998, based on a trip Crosland took to Kosovo on 28 and 29 July 1998, stated:

Met assault force of SAJ, PJP and VJ at Cijevo. Ongoing (operations) in Bulje, Blace, firing all day. Junik under artillery/tank and mortar fire from 1300 onwards. Unanswered question where is the civilian population from Orahovac. Malisevo (approximately) 30,000 missing.<sup>1118</sup>

The report also indicates that every village from Lapušnik/Llapushnik westwards had suffered deliberate damage by heavy-machine gun fire and cannons.<sup>1119</sup>

323. Crosland subsequently found out that the civilian population in Orahovac/Rahovec and Mailševo/Malishevë referred to in his report cited above had all gone to the Pagaruša/Pagarushë valley, north of Suva Reka/Suharekë.<sup>1120</sup> Shelter and assistance to these people was provided by the UNHCR and other organisations.<sup>1121</sup> Crosland also had information that there were about 50,000 Kosovo Albanians from Kosovo in Montenegro and that others had gone to Albania and the

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<sup>1113</sup> Exhibit D328; Milan Đaković, T 8026.

<sup>1114</sup> Exhibit D328, p 2.

<sup>1115</sup> Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11206-11207, 11270-11271; Jan Kickert, T 2580-2581; Exhibit P483, p 2.

<sup>1116</sup> Ljubinko Cvetić, T 6612-6613.

<sup>1117</sup> Ljubinko Cvetić, T 6612-6613.

<sup>1118</sup> Exhibit P1407; John Crosland, Exhibit P1400, para 37; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9808-9809.

<sup>1119</sup> Exhibit P1407; John Crosland, T 9170-917.

<sup>1120</sup> Exhibit P1407; John Crosland, Exhibit P1400, para 37; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9808-9809.

<sup>1121</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9837.

FYROM.<sup>1122</sup> It was estimated in the British military report of 30 July that the number of displaced persons in Kosovo at the time could exceed 100,000.<sup>1123</sup>

324. While from the beginning of 1998 arms were distributed by Serbian authorities to the Serb population in many parts of Kosovo,<sup>1124</sup> this process intensified in June and July 1998. At a meeting of the MUP Staff held in Priština/Prishtinë on 28 July 1998 it was reported that the police had formed 243 reserve police stations with citizens from local villages and towns who were organised to defend them, that weapons had been issued to 54,683 persons, that the MUP had issued weapons to 12,170 persons and the VJ to 34,716, and that 7,797 of these persons had been issued with weapons earlier.<sup>1125</sup> It was reported also that the MUP had brought another 5,070 weapons to Kosovo which were being issued. It was estimated that after this process some 60,000 individuals would have been issued with weapons.<sup>1126</sup> At the same meeting, the Head of the MUP Staff Sreten Lukić stated that the MUP was also arming citizens in towns and that plans for defending towns have been drawn up. He stated further that chiefs of SUPs had the duty to organise the defence of towns in agreement with the VJ, reserve police stations and other bodies.<sup>1127</sup>

325. A British military report based on a visit to Kosovo on 5 and 6 August 1998 stated that villages on either side of the road from Grebnik/Gremnik, Klina/Klinë municipality eastwards to Komorane/Komoran, Glogovac/Gllogoc municipality, had been “completely trashed”.<sup>1128</sup> There appeared to be no obvious military purpose for which this operation would have been conducted. Throughout the whole Kosovo in 1998 Crosland observed a constantly increasing number of internally displaced persons fleeing westwards towards Albania and Montenegro and refers to observing a total of about 400,000 internally displaced persons in Pagaruša/Pagarushë valley alone.<sup>1129</sup>

326. From August 1998 to 1999 the VJ shelled the villages in Đakovica/Gjakovë municipality. Before the shelling the police and military would go in the villages asking for KLA members. Many people from these villages had told a witness that after the shelling police and what they

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<sup>1122</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9810.

<sup>1123</sup> John Crosland, T 9170-9172; Exhibit P1407.

<sup>1124</sup> Witnesses testified to seeing a number of Serb civilians, whom they knew personally, in uniforms and carrying weapons, Hazir Berisha, T 4671; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3093, 3117; Bedri Hyseni, T4883, 4907-4908, testifying in particular about armed Serbian civilians from Staro Selo/Vshat-i-Vjetër, Uroševac/Ferizaj municipality.

<sup>1125</sup> Exhibit P688, p 7; Žarko Braković, T 4168-4169.

<sup>1126</sup> Exhibit P688, p 7.

<sup>1127</sup> Exhibit P688, p 8.

<sup>1128</sup> Exhibit P1408; John Crosland, T 9173-9174.

<sup>1129</sup> John Crosland, T 9175-9176.

believed were paramilitaries would enter the village and arrest or threaten the men, thus forcing the families to leave.<sup>1130</sup>

327. In August 1998, near Glodane/Gllogjan, between Đakovica/Gjakovë and Dečani/Deçan, Crosland observed elements of the VJ, the SAJ, the JSO, and the PJP, still torching, burning, and firing into houses.<sup>1131</sup> The troops were engaged in these activities despite the presence of the British and American defence attachés.<sup>1132</sup> From a distance of about two kilometres John Crosland personally observed fire by Serbian forces for four hours in the area of the villages Junik, Prilep, Rznic/Irznik, and Glodjane/Gllogjan, in Dečani/Deçan municipality.<sup>1133</sup> The village of Prilep, had been bulldozed.<sup>1134</sup> The police point at Prilep had been attacked previously by the KLA from the village of Rznic/Irznik in the east.<sup>1135</sup> On 2 and 9 August 1998 the KLA had launched two attacks on the police in Prilep killing six members of the MUP. The village was considered a stronghold of the KLA.<sup>1136</sup>

328. In August or September 1998 British and American military teams were taken to a canal leading to Lake Radonjić near the village of Glodjane/Gllogjan where they were shown six bodies alleged to have been Serbs killed by the KLA.<sup>1137</sup> There were gunshot marks on the walls of the canal and empty casings, which, it was established subsequently, were of Chinese made ammunition.<sup>1138</sup>

329. In August 1998 a delegation including Ambassador Petritsch and Emma Bonino, the European Commission Commissioner for Humanitarian Aid, visited Kosovo. They travelled to Mališevce/Malishevë, Banja/Bajë and other parts of Kosovo but were not allowed to proceed to some of these areas by the KLA because of the large media presence with the group.<sup>1139</sup> In

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<sup>1130</sup> Fuad Haxhibeqiri, Exhibit P1068, p 5.

<sup>1131</sup> John Crosland, Exhibit P1400, para 41; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9812.

<sup>1132</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9812.

<sup>1133</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9782-9783; 9804, 9928-9929; John Crosland, T 9203. The villages of Junik, Prilep, Rznic/Irznik and Glogjane/Gllogjan are located between Đakovica/Gjakovë and Dečani/Deçan. (John Crosland, Exhibit P1400, para 41) In evidence are the minutes of a “meeting between army command organs at the forward command post and commanders of subordinated units” held on 17 August 1998 at which the “Army commander” is recorded stating that Junik had not been destroyed, that there were no civilian casualties and that there were no mass graves.” (Exhibit D391) The Chamber has considered this document and is satisfied that it does not change its findings made above. The “army commander” who is recorded to have made this statement is not named in the document and there is no indication of the factual basis for his view recorded in the document.

<sup>1134</sup> John Crosland, Exhibit P1400, para 42; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9768.

<sup>1135</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 10017-10018.

<sup>1136</sup> Vukmir Mirčić, T 13258, 13280-13282; Exhibit D921, p 3.

<sup>1137</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9863; John Crosland, Exhibit P1400, para 41. Vukmir Mirčić testified that bodies were found in a canal floating into Lake Radonjić; he believed that the persons had been tortured and shot dead by the KLA, Vukmir Mirčić, T 13278-13279.

<sup>1138</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9863, 9811-9812.

<sup>1139</sup> Jan Kickert, Exhibit P478, p 4.

Cirez/Çirez, Srbica/Skenderaj municipality, the delegation encountered a large number of internally displaced persons.<sup>1140</sup>

330. In August 1998 representatives of the Austrian Embassy travelled to the area of Đakovica/Gjakovë to follow-up on claims that the Serbs had established a local Albanian police force. The group did not see any evidence of such a force. Their assessment was that there had been some attempts to set up a “local” police force but in reality not much had occurred.<sup>1141</sup>

331. Reports submitted by the US-KDOM and the EU-KDOM contained information about intensified activity of the PJP forces from August to September 1998. According to the US-KDOM reports only police were involved in this kind of activity and not the VJ. The US-KDOM saw the consequences of this type of activities on the ground--burning of villages, destruction of crops, and killing of farm animals.<sup>1142</sup> Shaun Byrnes, the Head of the US-KDOM, brought information about such activities to the attention of Sreten Lukić, the Head of the MUP Staff and sometimes also to the attention of Veljko Odalović, the prefect of Priština/Prishtinë.<sup>1143</sup> Lukić’s response was either to deny that this was happening or to acknowledge that this was happening but in response to attacks by the KLA.<sup>1144</sup>

332. On 27 August 1998, at a briefing to the Defence Attachés Association Dragoljub Ojdanić presented a change in the role of the VJ to the effect that the VJ was now responsible for the protection of the lines of communication, garrisons, and defence of exercise areas, thus practically expanding the area where it could operate to include the whole of Kosovo.<sup>1145</sup> Ojdanić explained at the briefing that the MUP could no longer hold the situation together with the forces they had available.<sup>1146</sup> It was clear to Crosland from his observations on the ground that the MUP were heading the operations, while the VJ were giving heavy support. He believed that operational decisions were probably being reached at a coordination centre in Priština/Prishtinë.<sup>1147</sup> Later, at a meeting with John Crosland held on 6 November 1998 General Dimitrijević, the Chief of the Security Administration of the General Staff of the VJ, admitted that the VJ had overstepped the

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<sup>1140</sup> Jan Kickert, Exhibit P478 p 4; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11210.

<sup>1141</sup> Jan Kickert, Exhibit P478, pp 3-4; Jan Kickert, T 2587-2589; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11216-11219, 11243; Exhibits P485; P486; P487.

<sup>1142</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12149-12150, 12152.

<sup>1143</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12151-12152; Shaun Byrnes, T 8169-8170.

<sup>1144</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12153.

<sup>1145</sup> John Crosland, Exhibit P1400, paras 49, 50; John Crosland, T 9158, 9240.

<sup>1146</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9803.

<sup>1147</sup> John Crosland, Exhibit P1400, para 55.

mark during the summer offensive and indicated that the VJ had to step in, in order to salvage the MUP.<sup>1148</sup>

333. In the meantime incidents of kidnappings of ethnic Serbs continued to take place. In the beginning of September 1998 two Serb members of the same family were kidnapped in Dečani/Deçan municipality.<sup>1149</sup>

334. On 10 September 1998 representatives of the Austrian Embassy in Belgrade accompanied Ambassador Parak of the European Community Monitoring Mission (“ECMM”) in a visit to the area southeast of the town of Peć/Pejë.<sup>1150</sup> It was observed during this trip that the Albanian villages along the Priština/Prishtinë-Peć/Pejë road were deserted while the Serbian villages were still inhabited.<sup>1151</sup> The village of Junik still appeared almost completely deserted.<sup>1152</sup>

335. From 10 to 15 September 1998 MUP forces carried out an operation in the area of Bajgora/Bajgorë, a known KLA stronghold, and Stari Trg/Stantërg in Kosovska Mitrovica/Mitrovicë municipality. Members of the MUP unit entered Stari Trg/Stantërg on foot and searched houses.<sup>1153</sup> In one of the houses a witness saw members of the police raping a young woman and killing two older women and two men. The house was subsequently set on fire.<sup>1154</sup> In the village of Bajgora/Bajgorë a witness saw a police commander killing civilians in a house where the police had stayed overnight and setting the house on fire.<sup>1155</sup>

336. A PJP unit participated in the operations in the area Bajgora/Bajgorë and Mount Čičavica/Qiqavica, which stated purpose was to expel the KLA, and later in operations in the area of Drenica.<sup>1156</sup> Mortars were fired, following which PJPs entered the villages to “clean” the area.<sup>1157</sup> In KLA strongholds PJP units set fire to houses.<sup>1158</sup> The PJP units operated with the assistance of tanks and Pragas which were under the command of the VJ. The PJP detachment commander would communicate with the VJ commander who would then issue orders to the soldiers operating the tanks and the Pragas.<sup>1159</sup>

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<sup>1148</sup> John Crosland, T 9180; Exhibit P1411, p 2, point 5.

<sup>1149</sup> Vukmir Mirčić, T 13258-13259; Exhibit D914.

<sup>1150</sup> Jan Kickert, Exhibit P478, p 4.

<sup>1151</sup> Jan Kickert, T 2582-2583; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11211; Exhibit P484.

<sup>1152</sup> Jan Kickert, Exhibit P478, p 4; Jan Kickert, T 2583; Jan Kickert, Exhibit P479 (*Milutinović* transcript), T 11213.

<sup>1153</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9716-9717.

<sup>1154</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9626-9629, 9697, 9705; K79, T 8309-8311.

<sup>1155</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9631-9632, 9707-9708.

<sup>1156</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9617-9619; *see also infra*, para 337.

<sup>1157</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9607, 9609-9610.

<sup>1158</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9611, 9615, 9617.

<sup>1159</sup> K79, T 8314.

337. An offensive by the Serbian security forces took place in the Drenica region, in the municipalities of Srbica/Skenderaj, Glogovac/Gllogoc and Klina/Klinë at the end of September 1998.<sup>1160</sup> On 26 September 1998 when a witness visited the area, the village of Dobra Voda/Ujmirë was completely burned and was still burning. The village of Pločice/Pllaquicë<sup>1161</sup> and Gornje Obrinje/Abri-e-Epërme were also burning.<sup>1162</sup> Property, including livestock and food stores were destroyed.<sup>1163</sup> A mosque located in the Drenica region was damaged during the offensive in September 1998.<sup>1164</sup>

338. At approximately the same time representatives of the US-KDOM observed PJP units boarding buses and departing from a village near Mališevo/Malishevë, a few kilometres south of Kijevo/Kijevë, Klina/Klinë municipality. The village was in flames after the PJP units had left. Observers from the US-KDOM noted that while the regular police served in control functions at checkpoints and providing security, the PJP units were used in combat operations.<sup>1165</sup>

339. On 26 September 1998 Serbian security forces killed 21 members of the Delijaj family in the village of Gornje Obrinje/Abri-e-Epërme in Glogovac/Gllogoc municipality where members of the police (the evidence is inconsistent as to their number) had died during the fighting. 14 of the victims were killed in a nearby forest where they had been hiding, and seven in the Delijaj family compound.<sup>1166</sup> Among the victims were women, one of whom was pregnant, children, and elderly.<sup>1167</sup> In December 1998, following a meeting with a Finnish forensic team, the president of the district court in Priština/Prishtinë, agreed that exhumation of the bodies would be conducted. Investigative judge Danica Marinković was appointed for the task and the assistance of the MUP Staff and SUP Priština/Prishtinë with security during the exhumation was requested.<sup>1168</sup> However, this exhumation did not take place, after the Finnish forensic team requested that the investigative

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<sup>1160</sup> Frederick Abrahams, Exhibit P740 (*Milutinović* transcript), T 806.

<sup>1161</sup> Frederick Abrahams, T 3957; Frederick Abrahams, Exhibit P740 (*Milutinović* transcript), T 805.

<sup>1162</sup> Frederick Abrahams, Exhibit P738, Statement of 11 March 1999, p 7; Frederick Abrahams, Exhibit P740 (*Milutinović* transcript), T 805.

<sup>1163</sup> Frederick Abrahams, T 3957-3959.

<sup>1164</sup> Frederick Abrahams, T 3964-3965, 4031.

<sup>1165</sup> Shaun Byrnes, T 8171-8172.

<sup>1166</sup> Exhibit P753; Frederick Abrahams, Exhibit P738, Witness Statement of 24 January 2002, p 12; Witness Statement of 11 March 1999, p 8; Frederick Abrahams, T 3949, 3953; Žarko Braković, T 4290-4291. An unsuccessful attempt to carry out an exhumation was made by the police in December 1998, Žarko Braković, T 4241-4243; Exhibit D61.

<sup>1167</sup> Exhibit P753; Frederick Abrahams, Exhibit P738, Witness Statement of 24 January 2002, p 12; Witness Statement of 11 March 1999, p 8; Frederick Abrahams, T 3949, 3953, 3955-3956, 4015-4016; Frederick Abrahams, Exhibit P740 (*Milutinović* transcript), T 806; Exhibit P751.

<sup>1168</sup> Exhibit D61; Danica Marinković, Exhibit D854 (*Milutinović* transcript), T 23526, 23609; Danica Marinković, T 12992, 13116.

judge enter the village without heavy police escort, in order to avoid potential clashes with the KLA. On the investigative judge's recommendation they all returned to Priština/Priştinë.<sup>1169</sup>

340. In late September 1998 Serbian security forces surrounded several villages in Vučitrn/Vushtrri municipality, including the villages of Kolo/Kollë, Dubovac/Duboc, Galica/Galicë, Becic/Beçiq, Ošlanje/Oshlan, and Žilivoda/Zhilivodë as well as the villages Ljubovac/Lubavec and Mikušnica/Mikushnicë in Srbica/Skenderaj municipality.<sup>1170</sup> A witness who visited these villages after the offensive observed that most of the houses in the villages had been shelled or burnt.<sup>1171</sup> In one of the villages, the witness found 11 dead bodies, which were naked and appeared to have been mutilated.<sup>1172</sup> 14 dead bodies were found in the village of Ošlanje/Oshlan and three further bodies were found in nearby villages.<sup>1173</sup> The village of Brusnik, Vučitrn/Vushtrri municipality was surrounded on 22 September 1998.<sup>1174</sup> Serbian security forces dressed in green camouflage uniforms and blue camouflage uniforms with helmets and bullet-proof vests, identified by a witness as MUP forces, searched houses in the village and forced people outside their homes.<sup>1175</sup> VJ units were positioned further away from the village.<sup>1176</sup>

341. In September 1998 MUP forces launched an operation against a number of villages located southeast of the town of Peć/Pejë.<sup>1177</sup> Fighting took place in the village of Lodje/Loxha, a predominantly Kosovo Albanian village southeast of the town of Peć/Pejë. Considerable damage was caused.<sup>1178</sup> The village was subsequently destroyed by bulldozers knocking out the front pillars of the houses causing them to crumble.<sup>1179</sup> The village of Lodja/Loxha had been taken by the KLA in July 1998 and the operation by the Serbian security forces in September 1998 had been aimed at retaking the village.<sup>1180</sup>

342. As a result of these operations, many Kosovo Albanians were driven out of their villages. Following a reaction in the international press the Serbian police sent forces to the area where the villagers had gathered and effectively herded them home.<sup>1181</sup> The US-KDOM teams reported that a

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<sup>1169</sup> Exhibit D61.

<sup>1170</sup> Sabit Kadriu, Exhibit P515, p 8.

<sup>1171</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5070; Sabit Kadriu, Exhibit P515, p 8.

<sup>1172</sup> Sabit Kadriu, Exhibit P515, p 8; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5119; *see* Sabit Kadriu, T 3215-3216.

<sup>1173</sup> Sabit Kadriu, Exhibit P515, p 9.

<sup>1174</sup> Sabit Kadriu, Exhibit P515, p 8; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5068.

<sup>1175</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5068-5070.

<sup>1176</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5068.

<sup>1177</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12153-12154.

<sup>1178</sup> Frederick Abrahams, T 3962-3963, 4023.

<sup>1179</sup> Frederick Abrahams, Exhibit P738, Statement of 11 March 1999, pp 10-11.

<sup>1180</sup> Frederick Abrahams, T 4025.

<sup>1181</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12153-12154.



number of Kosovo Albanians did not return to their homes.<sup>1182</sup> The US-KDOM observers saw and reported on evidence of use of heavy weapons including tanks and shell fire. As neither the MUP, nor the KLA had such weapons this was accepted as evidence of involvement of the VJ.<sup>1183</sup>

343. On 27 September 1998 the village of Vranić/Vraniq, Suva Reka/Suharekë municipality was shelled. The residents of the village fled to a valley where they spent the night. On the following day the police sent an elderly Albanian man to tell the people that the village was safe for them to come back while the police and military were waiting in the village. When the people returned to the village the police separated men from women. Some 250 men were detained and sent to Prizren. Two men of this group were killed in Vranić/Vraniq, others were beaten. The police then set the houses of the village on fire. The UNICEF and the International Management Group conducted surveys on the damage inflicted on the village and established that of the 300 houses in the village, 280 had been affected by the fire.<sup>1184</sup>

344. In September 1998 an operation was conducted also in Orahovac/Rahovec municipality. The villages of Pusto Selo/Pastasellë and Drenovac/Drenoc were shelled with large calibre artillery and “Katusha” ground to ground rockets.<sup>1185</sup> The residents of Pusto Selo/Pastasellë left their village and went to the hills of Koznik/Kaznik. There were some 2,000 to 3,000 people from the surrounding villages there, including from Ratkovac/Ratkoc, Radoste/Radostë, and Dobri Dol/Dobridol in Orahovac/Rahovec municipality.<sup>1186</sup> The Serbian forces were also shelling the hills. The villagers were unarmed and not resisting.<sup>1187</sup> VJ units were also present in the villages.<sup>1188</sup> After two days, the Serbian forces surrounded the villagers in the hills and took them back to Pusto Selo/Pastasellë, near the school where they were video taped.<sup>1189</sup> There the villagers were provided with some food.<sup>1190</sup> The recording was shown on a Prizren TV channel as an example of dealing with the KLA.<sup>1191</sup> Some young men, three or four, were taken inside the school, beaten up and some of them taken to Prizren, to serve a prison term.<sup>1192</sup> On the way to the school members of the Serbian security forces were telling the villagers “that this was Serbia” and were swearing at Kosovo Albanian political leaders. Following their return from the hills, the residents of Pusto Selo/Pastasellë found three quarters of their village destroyed by fire. The part of the

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<sup>1182</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12228-12229.

<sup>1183</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12150-12151.

<sup>1184</sup> Frederick Abrahams, Exhibit P738, Statement of 11 March 1999, pp 9-10.

<sup>1185</sup> Avdyl Mazreku, Exhibit P987, p 2.

<sup>1186</sup> Avdyl Mazreku, T 6183; Avdyl Mazreku, Exhibit P987, p 2.

<sup>1187</sup> Avdyl Mazreku, Exhibit P987, p 2; Avdyl Mazreku, T 6180-6181.

<sup>1188</sup> Avdyl Mazreku, T 6182.

<sup>1189</sup> Avdyl Mazreku, Exhibit P987, p 2; Avdyl Mazreku, T 6183-6184.

<sup>1190</sup> Avdyl Mazreku, T 6184-6185.

<sup>1191</sup> Avdyl Mazreku, T 6187.

<sup>1192</sup> Avdyl Mazreku, T 6184, 6191.

village that remained undamaged was videotaped by the Serbian police.<sup>1193</sup> Four or five persons were killed in the village of Drenovac/Drenoc during this operation.<sup>1194</sup>

345. The number of internally displaced persons in Kosovo in September 1998 was very high. A British military report based on a visit to Kosovo on 6 and 7 September 1998 refers to “IDP concentration between 5,000 and 15,000 seen moving” towards the villages around Suva Reka/Suharekë. These were believed to be the people who had gathered in Pagaruša/Pagarushë valley in July, returning to their villages.<sup>1195</sup> A large number of displaced persons, a witness believed they may have been from 5,000 up to 20,000, were seen in the region of Drenica, Mount Čičavica/Qiqavica, and Bajgora/Bajgorë in September 1998.<sup>1196</sup> Policemen searched the displaced persons and took money and valuables from them.<sup>1197</sup> A British military report estimated that there were some 171,000 internally displaced persons within Kosovo at the time.<sup>1198</sup> According to other evidence, the UNHCR’s estimates were that there were some 250,000 internally displaced persons in Kosovo in September 1998.<sup>1199</sup>

346. On 23 September 1998 the United Nations Security Council passed Resolution 1199 demanding that all parties, groups and individuals immediately cease hostilities and maintain ceasefire in Kosovo.<sup>1200</sup> The resolution called upon the authorities in the FRY and the Kosovo Albanian leadership to enter immediately into a meaningful dialogue.<sup>1201</sup> The resolution further demanded the FRY to cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression and to enable effective and continuous international monitoring in Kosovo. Resolution 1199 further urged States and international organisations represented in the FRY to make available personnel to carry out effective and continuous international monitoring in Kosovo.<sup>1202</sup>

347. On 3 October 1998 a meeting between representatives of the British Embassy, including Ambassador Donnelly, the British Ambassador to the FRY and John Crosland, the British defence attaché, and General Dimitrijević, the Chief of the Security Administration of the General Staff of the VJ took place.<sup>1203</sup> During this meeting John Crosland raised the issue of what he believed to be

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<sup>1193</sup> Avdyl Mazreku, Exhibit P987, p 2; Avdyl Mazreku, T 6168, 6183.

<sup>1194</sup> Avdyl Mazreku, T 6205.

<sup>1195</sup> Exhibit P1413; John Crosland, T 9177-9179.

<sup>1196</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9634.

<sup>1197</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9635-9637, 9713.

<sup>1198</sup> Exhibit P1413; John Crosland, T 9177-9179.

<sup>1199</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12163; Shaun Byrnes, T 8175.

<sup>1200</sup> Exhibit D160; Živadin Jovanović, T 10214-10219.

<sup>1201</sup> Exhibit D160.

<sup>1202</sup> Exhibit D160.

<sup>1203</sup> John Crosland, Exhibit P1400, para 52; Exhibit P1410.

a misuse by the VJ of anti-aircraft artillery weapons to shell villages. He indicated that the use of these weapons was excessive force, against the Geneva Conventions.<sup>1204</sup>

### C. Establishment of the Kosovo Verification Mission

348. In October 1998 three international agreements were concluded which laid the foundation for the establishment and functioning of an OSCE monitoring mission in Kosovo, the Kosovo Verification Mission or KVM.

#### 1. KVM Agreement

349. On 12 or 13 October 1998 talks between the President of FRY Slobodan Milošević and the US Special Envoy Richard Holbrooke took place in Belgrade at which a political agreement was reached.<sup>1205</sup>

350. Following this political agreement, on 16 October 1998, the Chairman of the OSCE at the time, Bronislaw Geremek, and the Minister of Foreign Affairs of the FRY Živadin Jovanović signed an agreement establishing the OSCE Kosovo Verification Mission (“KVM Agreement”).<sup>1206</sup> As stated in this agreement, the purpose of the KVM was to verify compliance by all parties in Kosovo with United Nations Security Council Resolution 1199 and to report instances of progress and/or non-compliance to the OSCE Permanent Council, the United Nations Security Council and other organisations. The KVM reports were also to be provided to the authorities of the FRY.<sup>1207</sup>

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<sup>1204</sup> John Crosland, Exhibit P1400, para 53. The witness believed that the weapons in question were 20, 30, and possibly 40 millimetre cannons which are used against aircraft or armoured vehicles but not against personnel. John Crosland saw empty casings of this type of weapons outside Mališevo/Malishevë, around Ponoševac/Ponoshec, although he was not certain whether there had been 40 mm cannons, John Crosland, Exhibit P1402 (*Milutinović* transcript, T 9935-9936).

<sup>1205</sup> Živadin Jovanović, Exhibit D454 (*Milutinović* transcript), T 14006-14008; Živadin Jovanović, T 10223-10224. The witness could not confirm the existence of a signed agreement, Živadin Jovanović, T 10223, 10224.

<sup>1206</sup> Exhibit P835; Knut Vollebaek, Exhibit P1073, p 3; Knut Vollebaek, T 7207, 7209; Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9517; Richard Ciaglinski, T 5254-5255; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6816; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3140; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12155; Karol John Drewienkiewicz, T 6314, 6316; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7863; Živadin Jovanović, Exhibit D454 (*Milutinović* transcript), T 14006-14008; Živadin Jovanović, T 10227.

<sup>1207</sup> Exhibit P835, item II (1). The Chamber notes the evidence of Kosta Novaković of the VJ liaison team that his liaison team (*see infra*, para 369) did not receive such reports, Kosta Novaković, T 11098. The Chamber notes that a variety of liaison bodies existed within the authorities of the FRY and Serbia and on the evidence is unable to make a conclusion as to whether such reports were sent to this particular liaison team. The Chamber refers here to its later findings that a number of meetings between the Head of the KVM, the Deputy Head and other KVM representatives and high ranking FRY and Serbian officials took place in the autumn of 1998 and in early 1999 and concludes that observations made by the KVM in relation to the security situation in Kosovo were brought to the attention of the authorities of the FRY and Serbia. The Chamber also notes Živadin Jovanović’s evidence that the KVM did not adhere to its obligation under the KVM Agreement to forward reports to the authorities of FRY and Serbia (Živadin Jovanović, Exhibit D454 (*Milutinović* transcript), T 14043) and finds that irrespectively of whether or not such reports were sent, in light of the meetings and communications between the KVM representatives and senior FRY and Serbian representatives, information about KVM’s conclusions with respect to events in Kosovo were made known to the FRY and Serbian authorities.

Pursuant to the KVM Agreement the KVM was to be staffed by 2000 unarmed verifiers from OSCE member states.<sup>1208</sup> The KVM was also to establish permanent presences at as many locations throughout Kosovo as necessary and to maintain close liaison with the FRY, Serbian, and other Kosovo authorities, as well as with political parties and international and non-governmental organisations.<sup>1209</sup> The agreement effectively gave KVM personnel access to locations throughout Kosovo at all times, thus including barracks, garrisons, installations, and police stations.<sup>1210</sup>

## 2. Setting up of the KVM

351. In October 1998 a meeting took place in Priština/Prishtinë in Hotel Grand attended by William Walker, Michael Phillips and General Drewienkiewicz representing the OSCE, Nicholas Turnbull from the EU-KDOM, Shaun Byrnes from the US-KDOM, Nikola Šainović, the Accused Vlastimir Đorđević, and Veljko Odalović, at which the arrival and the establishment of the KVM was discussed.<sup>1211</sup>

352. The first KVM officials were appointed in early November 1998 and the KVM staff started arriving in Kosovo.<sup>1212</sup> Ambassador William Walker was appointed Head of Mission for the KVM and General Karol John Drewienkiewicz from the UK, was appointed a Deputy Head.<sup>1213</sup> Other Deputy Heads of Mission were Ambassador Keller from France, Ambassador Borchardt from Germany, Ambassador Ivanovski from Russia, Major General Nygaard from Norway, and Judge Kessler from Italy.<sup>1214</sup>

353. By mid November the KVM was about 50 strong.<sup>1215</sup> In early December 1998 KVM became fully operational.<sup>1216</sup> When it evacuated from Kosovo on 20 March 1999 it had 1,379 staff.<sup>1217</sup>

354. Throughout December 1998 and in January 1999 various KDOM contingents were absorbed by the KVM.<sup>1218</sup> In addition, a large number of additional personnel and vehicles were to be brought into Kosovo.<sup>1219</sup>

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<sup>1208</sup> Exhibit P835, items (IV)(1), (2), and (3); Živadin Jovanović, T 10227.

<sup>1209</sup> Exhibit P835, items II (1) and (2).

<sup>1210</sup> Richard Ciaglinski, T 5255, 5348; Živadin Jovanović, Exhibit D454 (*Milutinović* transcript), T 14022-14023.

<sup>1211</sup> Shaun Byrnes, T 8186-8187, 8243-8244; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12145. *See also* Karol John Drewienkiewicz, Exhibit P996, paras 11-15, 19-21; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7730-7732; Karol John Drewienkiewicz, T 6309-6310, 6433-6434.

<sup>1212</sup> Karol John Drewienkiewicz, Exhibit P996, para 7; Karol John Drewienkiewicz, T 6305, 6429-6430, 6431; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12156-12157; Shaun Byrnes, T 8174-8175.

<sup>1213</sup> Karol John Drewienkiewicz, Exhibit P996, paras 7, 32, 34; Karol John Drewienkiewicz, T 6305, 6311-6312, 6429-6430-6431, 6448; Joseph Maisonneuve, Exhibit P851, paras 8-9; *see also* Knut Vollebaek, T 7214, 7245.

<sup>1214</sup> Karol John Drewienkiewicz, Exhibit P996, para 34. *See also* Joseph Maisonneuve, Exhibit P851, paras 8-9.

<sup>1215</sup> Karol John Drewienkiewicz, Exhibit P996, para 39.

<sup>1216</sup> Karol John Drewienkiewicz, T 6313, 6315.

<sup>1217</sup> Karol John Drewienkiewicz, T 6447.

355. The KVM established five regional centres in Kosovo. These were Regional Centre 1 (Prizren), headed by Brigadier General Joseph Maisonneuve, Regional Centre 2 (Kosovska Mitrovica/Mitrovicë), headed by Leif Windmar, Regional Centre 3 (Peć/Pejë), headed by Edward Sziagzek, Regional Centre 4 (Gniljane/Gjilan), headed by Richard Heaslip, and Regional Centre 5 (Priština/Prishtinë), headed by Matti Teraveinen.<sup>1220</sup> Each regional centre had a head, a deputy head, and three liaison officers for the MUP, the VJ, and the KLA, respectively<sup>1221</sup> and a small contingent of KVM verifiers.<sup>1222</sup> In 1998 Regional Centre 1 had 130 international and over 100 local staff. It was divided into coordination centres based in Orahovac/Rahovec, Prizren, and Suva Reka/Suharekë.<sup>1223</sup> The daily work of the centres consisted of patrolling the respective area by teams in armoured vehicles during daylight hours. Teams met with villagers, visited police stations and other locations.<sup>1224</sup>

356. Reports on events in Kosovo were sent through the KVM regional centres to the KVM headquarters in Priština/Prishtinë where KVM staff would review the incoming information, inform those involved in the immediate action, and compile an interim or daily report of the events in the preceding 24 hours.<sup>1225</sup> The information from all regional liaison officers was compiled by coordinating liaison officers for the VJ, the MUP, and the KLA. Richard Ciaglinski was the KVM coordinating liaison officer for the VJ, Guy Sands for the MUP and David Wilson and subsequently David Meyer, for the KLA.<sup>1226</sup> This information was then sent to the KVM Fusion Centre, a KVM body responsible for compiling of information and analysis, which was subordinated to the Deputy Head of Mission General Drewienkiewicz, in order to determine what occurred in the previous night and to identify trends.<sup>1227</sup> KVM daily reports were sent to the OSCE headquarters in

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<sup>1218</sup> Karol John Drewienkiewicz, Exhibit P996, para 42; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7830; Karol John Drewienkiewicz, T 6448; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12169-12170; Shaun Byrnes, T 8261-8262; Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11155; Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5818. The KVM absorbed the KDOMs' staff and vehicles but not their archives, Karol John Drewienkiewicz, T 6459-6460.

<sup>1219</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12169-12170; Shaun Byrnes, T 8261-8262; Karol John Drewienkiewicz, T 6459-6460.

<sup>1220</sup> Karol John Drewienkiewicz, Exhibit P996, paras 44, 49; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7741. *See also* Michael Phillips, T 8698.

<sup>1221</sup> Karol John Drewienkiewicz, Exhibit P996, para 50; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7749.

<sup>1222</sup> Michael Phillips, T 8698.

<sup>1223</sup> Joseph Maisonneuve, Exhibit P851, para 14; Exhibit P855, para 15.

<sup>1224</sup> Joseph Maisonneuve, Exhibit P851, para 14.

<sup>1225</sup> Karol John Drewienkiewicz, T 6363-6364, 6403-6404, 6442-6443; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7746, 7747-7748. These reports were referred to as "Interim Reports" until the KVM got full coverage over certain areas which was about 20 November 1998, after which they were referred to as "Daily Reports", Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7752.

<sup>1226</sup> Karol John Drewienkiewicz, Exhibit P996, paras 51, 53; Karol John Drewienkiewicz, T 6428, 6487-6488.

<sup>1227</sup> Karol John Drewienkiewicz, T 6400-6401, 6404, 6443, 6446; Karol John Drewienkiewicz, Exhibit P996, para 58; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7739; Exhibit P1029. In addition to information contained in the interim or daily reports the KVM Fusion Centre also analyzed information available in the media and direct reports from individual coordination centres, and the KVM MUP, VJ, and KLA liaison

Vienna,<sup>1228</sup> the NATO headquarters in Kumanovo, FYROM<sup>1229</sup> and the European Union Monitoring Mission.<sup>1230</sup>

### 3. October Agreements

357. On 24 and 25 October 1998 meetings between international representatives and representatives of the FRY and Serbia took place in the White Palace in Belgrade.<sup>1231</sup> The purpose of the meetings was to discuss steps to be taken to achieve full compliance by the FRY with the requirements of the United Nations Security Council Resolution 1199.<sup>1232</sup> The meetings focused on the role and responsibility of the VJ and the size of its presence in Kosovo and on the role and responsibility of the police in Kosovo. These meetings had been arranged by General Clark and Slobodan Milošević. The international delegation included General Clark, Supreme Allied Commander Europe, General Naumann, Chairman of the Military Committee of NATO, and Shaun Byrnes, Head of US-KDOM. The delegation of the FRY and Serbia included Milan Milutinović, President of the Republic of Serbia, who presided over the plenary, Colonel General Perišić, Chief of the General Staff of the VJ, and the Accused Vlastimir Đorđević, in his capacity as Chief of the RJB of the MUP.<sup>1233</sup> General Aleksandar Dimitrijević, Chief of the Security Administration of the VJ General Staff, General Obrad Stevanović, Assistant Minister of Interior, and Sreten Lukić, Head of the MUP Staff were also present.<sup>1234</sup>

358. After the plenary session the participants broke into two groups, one focusing on the responsibilities of the police and one dealing with the responsibilities of the VJ.<sup>1235</sup> Shaun Byrnes, General Naumann and two US military officers participated on the international side in the negotiations on the role of the police. Vlastimir Đorđević led the Serbian delegation and was the main negotiator for the Serbian side.<sup>1236</sup> Obrad Stevanović, Sreten Lukić, Chief of the MUP Staff,<sup>1237</sup> and his deputy Colonel Mijatović were also present during these negotiations.<sup>1238</sup>

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officers, Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7748-7750, 7753. See also Michael Phillips, T 8752, 8756.

<sup>1228</sup> Karol John Drewienkiewicz, T 6363-6364, 6419; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7750; Exhibits P1006; P1008; Knut Vollebaek, T 7210-7212; Exhibit P1075. If the OSCE office in Vienna was not clear about a certain piece of information, they would request more detailed information, Karol John Drewienkiewicz, T 6364.

<sup>1229</sup> Karol John Drewienkiewicz, T 6419; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7728.

<sup>1230</sup> Karol John Drewienkiewicz, T 6419.

<sup>1231</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12156-12157; Shaun Byrnes, T 8174-8175.

<sup>1232</sup> Exhibit P837, p 1.

<sup>1233</sup> Exhibit P837; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12156-12157; Shaun Byrnes, T 8174-8175.

<sup>1234</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12156-12157; Shaun Byrnes, T 8174-8175.

<sup>1235</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12157-12158; Shaun Byrnes, T 8175, 8239.

<sup>1236</sup> Shaun Byrnes, T 8178.

<sup>1237</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12157-12158; Shaun Byrnes, T 8175, 8177.

<sup>1238</sup> Shaun Byrnes, T 8175. For Colonel Mijatović's position, see Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12146; Shaun Byrnes, T 8168.

359. It was the impression of Shaun Byrnes that during the talks Vlastimir Đorđević demonstrated clear knowledge about the facts on the ground in Kosovo, including the location and deployment operations of the Serbian police. This became particularly obvious during the discussions on the specific locations in Kosovo where observation points should be placed.<sup>1239</sup> The number of MUP personnel in Kosovo was also discussed during the negotiations.<sup>1240</sup>

360. After discussions lasting for one day and most of the following night, the negotiators on the role and responsibility of the police reached an agreement.<sup>1241</sup> A document entitled “Understanding between KDOM and Ministry of Interior of the Republic of Serbia” was signed by Shaun Byrnes, for the international delegation and by Vlastimir Đorđević, for the Serbian side (“Byrnes-Đorđević Agreement”).<sup>1242</sup> Pursuant to this agreement, all police checkpoints in Kosovo were to be dismantled and in their place 27 observation points were to be established.<sup>1243</sup> However, only one third of the observation points were to be manned at any one time.<sup>1244</sup> As the checkpoints were roadblocks and in fact physical barriers on the roads, the dismantling of the checkpoints was considered necessary to allow for the displaced persons to return to their homes.<sup>1245</sup>

361. The negotiations on the role and responsibility of the VJ, led by General Clark on the international side and Colonel General Perišić on the FRY side were also successful and an agreement was reached.<sup>1246</sup>

362. A document entitled “Record of Meeting in Belgrade, 25 October 1998” signed for the FRY authorities by Nikola Šainović, Deputy Prime Minister of the FRY, for the Republic of Serbia by Vlastimir Đorđević, Chief of the RJB of the MUP, and for NATO by General Klaus Naumann and General Wesley Clark (“October Agreement”), incorporates all the undertakings agreed to during the negotiations. As indicated in the document special police units deployed to Kosovo after February 1998 were to be withdrawn from Kosovo and the strength of the police forces in Kosovo was to be reduced to their February 1998 duty level.<sup>1247</sup> Heavy weapons and equipment brought to Kosovo or transferred to the police from the VJ after February 1998 were also to be withdrawn

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<sup>1239</sup> Shaun Byrnes, T 8180-8181, 8237.

<sup>1240</sup> Shaun Byrnes, T 8181.

<sup>1241</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12158-12160; Shaun Byrnes, T 8177.

<sup>1242</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12158-12160; Shaun Byrnes, T 8177-8178, 8239; Exhibit P836.

<sup>1243</sup> Exhibit P836; Shaun Byrnes, T 8179-8180; Richard Ciaglinski, T 5261; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3142; Joseph Maisonneuve, T 5452; Vlastimir Đorđević, T 9649.

<sup>1244</sup> Exhibit P836, para 1; Richard Ciaglinski, T 5262; Karol John Drewienkiewicz, T 6324, 6449.

<sup>1245</sup> Shaun Byrnes, T 8179-8180; Richard Ciaglinski, T 5261-5262.

<sup>1246</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12160-12164.

<sup>1247</sup> Exhibit P837; Shaun Byrnes, T 8182-8183. The date February 1998 was chosen because after March 1998 there was a big build-up of Serbian security forces, police and army, in Kosovo, Shaun Byrnes, T 8182-8183. See also Richard Ciaglinski, Exhibit P837, para 3; Richard Ciaglinski, T 5265.

from Kosovo or returned to the VJ.<sup>1248</sup> Further, all VJ units and additional equipment brought to Kosovo after February 1998 were to be withdrawn from Kosovo except for those VJ units that were augmenting the border guards, and all VJ elements remaining in Kosovo were to return to garrison, except for three company size units which would remain deployed to protect the following three communication lines: Peć/Pejë-Lapušnik/Lapushnik-Priština/Prishtinë, Đakovica/Gjakovë-Klina/Klinë and Prizren-Suva Reka/Suharekë-Priština/Prishtinë.<sup>1249</sup> The withdrawal and deployment of the MUP and VJ forces was to be completed by 27 October 1998. The VJ and the MUP were to provide KDOM/OSCE with detailed weekly reports of manning, weapons, and activities of their forces, and were to provide immediate notification to KDOM/OSCE of any deployment contrary to these provisions.<sup>1250</sup>

363. The Byrnes-Đorđević Agreement and the October Agreement (“October Agreements”) were intended in part to allow displaced Kosovo Albanians to return to their homes before the winter.<sup>1251</sup> The October Agreements provided the basis for the KVM verification work on the ground.<sup>1252</sup>

#### 4. Position of the FRY and Serbian authorities on the October Agreements

364. On 25 October 1998 a meeting of the heads of the SUPs in Kosovo, the chiefs of police sections and commanders of the PJP detachments was held in Priština/Prishtinë. The meeting was chaired by Assistant Minister Obrad Stevanović who informed those present of the KVM Agreement and the October Agreements.<sup>1253</sup> The conclusions of the meeting called, *inter alia*, for a plan starting on 27 October 1998 to reduce the number of police by 4,500.<sup>1254</sup> From July 1998 until the end of September 1998 there were some 14,570 policemen in Kosovo.<sup>1255</sup> After the reduction was completed, 10,021 members of the police were to remain in Kosovo of which 8,000 were active-duty and reserve police from Kosovo and 2,021 were from SUPs outside Kosovo.<sup>1256</sup> The conclusions of the meeting also called for reinforcement of Serb villages with reservists, “as required.”<sup>1257</sup> Other conclusions of the meeting include withdrawal of weapons bigger than seven millimetre calibre and all armoured combat vehicles to base and lifting of all traffic control

<sup>1248</sup> Exhibit P837; Shaun Byrnes, T 8134. The special police units had been observed in the field with heavy weapons not normally associated with police activities. This issue was discussed with Đorđević during the negotiations, Shaun Byrnes, T 8134.

<sup>1249</sup> Exhibit P837; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12160-1264; Shaun Byrnes, T 8175.

<sup>1250</sup> Exhibit P837.

<sup>1251</sup> Shaun Byrnes, T 8175.

<sup>1252</sup> Karol John Drewienkiewicz, Exhibit P996, para 33.

<sup>1253</sup> Žarko Braković, T 4165-4166; Exhibit P769; Radomir Mitić, T 12655-12656; Vlastimir Đorđević, T 9651-9652.

<sup>1254</sup> Žarko Braković, T 4166; Exhibit P769, item 1.

<sup>1255</sup> Ljubinko Cvetić, T 6608.

<sup>1256</sup> Žarko Braković, T 4166; Exhibit P769, item 2; Ljubinko Cvetić, T 6608-6609, 6618; Exhibit P1038.

<sup>1257</sup> Žarko Braković, T 4166; Exhibit P769, item 13.



checkpoints by 26 October.<sup>1258</sup> As recorded in the conclusions of this meeting the police were to make a list of the numbers of personnel and armoured vehicles that were to be withdrawn, as well as routes and times of movement, to be notified to KDOM representative Shaun Byrnes.<sup>1259</sup> However, as it will be discussed below, KVM verifiers were not provided with this information.

365. At a meeting of the MUP Staff held in Priština/Prishtinë on 2 November 1998 the KVM Agreement and the October Agreements were discussed. The meeting was attended by all chiefs of SUPs and commanders of PJP detachments in Kosovo.<sup>1260</sup> As reflected in the conclusions of the meeting, a scheme was devised to keep members of the KVM as busy as possible by sending them information on terrorist activities every day and requesting them to remove terrorists from the field and to stop the terrorists' activities, and also to send them information about armed (Kosovo Albanian) villages and to request KVM to disarm them. It was also decided to move vehicles and weapons with a calibre larger than 7.9 millimetre.<sup>1261</sup> The conclusions of the meeting also called on those present to make sure that Serbs and members of the Reserve Police Squads (RPO) did not misuse weapons, or carry or show them in public in the presence of members of the KVM and to make sure that Serbs and members of the RPO do not state that Serbs were armed. If it became necessary to give an explanation about the weapons, the instruction was to state that only members of the guards were armed.<sup>1262</sup>

366. On 5 November 1998 a meeting was held at the MUP Staff in Priština/Prishtinë, attended by Milan Milutinović, the President of the Republic of Serbia, Vljeko Stojiljković, Minister of Interior; the Accused, Vlastimir Đorđević, Head of RJB; Rade Marković, Head of RDB; Sreten Lukić, Head of the MUP Staff; Nikola Šainović, Deputy Prime Minister of the FRY; Zoran Anđelković, President of the Executive Council of Kosovo and commander of the civil protection; Nebojša Pavković, commander of the 3<sup>rd</sup> Army of the VJ; all SUPs, OUPs, police station chiefs and all PJP detachments in Kosovo, RDB commanders from Kosovo and 13 VJ representatives from the Priština Corps.<sup>1263</sup> Sreten Lukić opened the meeting by briefing those present on the security situation in Kosovo and informing them of the readiness of police units to continue to carry out their duties and tasks.<sup>1264</sup> The floor was then given to Milan Milutinović who informed those present that he had attended a meeting with the President of the FRY Slobodan Milošević on 29 October 1998, during which the situation in the army and the police was discussed. Milutinović conveyed Milošević's words that the FRY were entering a difficult phase in the resolution of the

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<sup>1258</sup> Exhibit P769, items 4, 9, 10.

<sup>1259</sup> Exhibit P769, item 12.

<sup>1260</sup> Žarko Braković, T 4167; Exhibit P690.

<sup>1261</sup> Exhibit P690, items 4, 5, 6.

<sup>1262</sup> Exhibit P690, item 8; Žarko Braković, T 4168.

<sup>1263</sup> Exhibit P770, p 3; Žarko Braković, T 4170.

Kosovo issue and that a long and difficult political struggle laid ahead. Milutinović then conveyed Milošević's view that with regard to the VJ and the police everything would stay the same as it had been up to that moment, clarifying that this meant the Joint Command would continue, VJ units would not withdraw, and that police forces would only be reduced by the number that had already been withdrawn.<sup>1265</sup> Milutinović also conveyed to the meeting Milošević's instruction with respect to the OSCE representatives in Kosovo, namely that the security forces should act wisely, "in an organised manner and in coordination" and that the VJ, the police and the politicians must agree as to who should be in contact with the OSCE and how. It was also said that the KVM verifiers did not have access to VJ and police facilities.<sup>1266</sup> It will be appreciated from what was said by Milutinović that the terms of the KVM Agreement and the October Agreements were being significantly ignored.

5. Meetings between representatives of the KVM and representatives of the FRY and the Serbian authorities

367. To facilitate the functions of the KVM, an FRY Commission on Cooperation with the OSCE was established on 18 October 1998.<sup>1267</sup> It was decided that the Commission would meet regularly and that Serbian representatives from the civil administration, the MUP, and the VJ would attend these meetings.<sup>1268</sup> Nikola Šainović was the chairman of the Commission, the Minister of Interior Vljeko Stojiljković and the Chief of the General Staff of the VJ were among its members.<sup>1269</sup> Later in 1998 General Dušan Lončar was appointed coordinator for the FRY in the Commission on Cooperation.<sup>1270</sup> Colonel Mijatović from the MUP Staff, Colonel Kotur from the VJ and other MUP and VJ officers would be present at the meetings of the Commission.<sup>1271</sup> On the KVM side, Karol John Drewienkiewicz, Richard Ciaglinski, occasionally the MUP or the KLA liaison officer and an interpreter would attend.<sup>1272</sup> General Drewienkiewicz testified that the Commission on Cooperation did not meet very often as neither side called many meetings and the

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<sup>1264</sup> Exhibit P770, p 3.

<sup>1265</sup> Exhibit P770, p 4; Žarko Braković, T 4172.

<sup>1266</sup> Exhibit P770, p 4.

<sup>1267</sup> Exhibit D388; Živadin Jovanović, T 10237. See also Kosta Novaković, T 11092, testifying that at the FRY level there was a team dealing with the OSCE KVM and NATO.

<sup>1268</sup> Karol John Drewienkiewicz, Exhibit P996, para 33; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6864; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3271.

<sup>1269</sup> Exhibit D388.

<sup>1270</sup> Karol John Drewienkiewicz, Exhibit P996, paras 59, 70; Karol John Drewienkiewicz, T 6343; Richard Ciaglinski, T 5222, 5253; Exhibit P834 (*Milutinović* transcript), T 6815; Živadin Jovanović, T 10237. See also Joseph Maisonneuve, Exhibit P851, para 8.

<sup>1271</sup> Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6864; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3271; Karol John Drewienkiewicz, Exhibit P996, para 56. See also Joseph Maisonneuve, Exhibit P851, para 8.

<sup>1272</sup> Richard Ciaglinski, Exhibit P832, p 3; Richard Ciaglinski, T 5252-5253.

system fell into disuse.<sup>1273</sup> Good working relations, however, existed between the Deputy Head of the KVM, Karol John Drewienkiewicz and the FRY coordinator in the Commission, General Lončar.<sup>1274</sup>

368. Regular meetings between KVM representatives and Serbian officials were held in Priština/Prishtinë. These meetings were attended by Nikola Šainović, General Lončar and Sreten Lukić on the Serbian side and by Ambassador Walker, his Chief of Staff and special adviser Michael Phillips, and General Drewienkiewicz.<sup>1275</sup> At these meetings the KVM representatives raised the issue of excessive use of force by the Serbian forces in response to activities of the KLA. A common observation of the KVM verifiers was that the KLA were using small calibre weapons to which the Serbian security forces were responding with heavy weapons such as artillery.<sup>1276</sup>

369. At a VJ level, a team for liaison with the OSCE and NATO was appointed on 22 October 1998. This team was headed by General Obradović, Assistant Chief of the General Staff.<sup>1277</sup> There were VJ liaison teams also in the 2<sup>nd</sup> and 3<sup>rd</sup> Army, the air-force and the anti-aircraft defence. The liaison teams for the 3<sup>rd</sup> Army were mainly within the Priština Corps and the border battalions.<sup>1278</sup> The 3<sup>rd</sup> Army liaison team sent regular weekly reports to the VJ General Staff and the VJ liaison team. The VJ liaison team prepared its own reports based on these reports of the 3<sup>rd</sup> Army and similar reports from the air-force and the anti-aircraft defence, which it then sent to NATO and OSCE on a weekly basis.<sup>1279</sup>

370. Daily coordination meetings for the VJ were held at 1000 hours at which the KVM representatives would raise issues of which they have been informed by their regional centres and would communicate reports and information they had obtained. These meetings were also a chance for the FRY and Serbian representatives at the Commission to brief the KVM about the situation on the ground and to express concerns or requests.<sup>1280</sup>

371. A special representative was designated by the MUP Staff who was to liaise with the KDOMs and the KVM.<sup>1281</sup> The KVM liaison for the MUP attended daily briefings at 0900 hours at

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<sup>1273</sup> Karol John Drewienkiewicz, Exhibit P996, para 22.

<sup>1274</sup> Karol John Drewienkiewicz, Exhibit P996, paras 21, 59, 185; Karol John Drewienkiewicz, T 6343.

<sup>1275</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11829-11831; Michael Phillips, T 8687, 8692.

<sup>1276</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11845-11846.

<sup>1277</sup> Kosta Novaković, T 11081-11082; Exhibit D582.

<sup>1278</sup> Kosta Novaković, T 11085.

<sup>1279</sup> Kosta Novaković, T 11089, 11100, 11115-11116, 11137; Exhibit D590, pp 5-6.

<sup>1280</sup> Richard Ciaglinski, T 5270.

<sup>1281</sup> Vlastimir Đorđević, T 9652-9653.

the police station in Priština/Prishtinë at which police officers recounted events from the previous day.<sup>1282</sup>

372. On or about 24 November 1998 a meeting between Slobodan Milošević, Nikola Šainović and Milan Milutinović, representing the authorities of the FRY and Serbia, and Ambassador Walker and Michael Phillips of the KVM and Mr Miles, Charge d'Affairs for the US Embassy in Belgrade took place at the White Palace in Belgrade.<sup>1283</sup> During the meeting, Ambassador Walker delivered a letter to Slobodan Milošević outlining the KVM's understanding of their mission and the type of cooperation that KVM were looking for from the Serbian authorities.<sup>1284</sup> The KVM representatives also put forward some requests with respect to security aspects of the mission.<sup>1285</sup> The meeting was friendly but inconclusive.<sup>1286</sup>

373. On 12 December 1998 the KVM Head of Mission Ambassador Walker sent a letter to Nikola Šainović expressing the concern of the KVM that these meetings did not include details on Serbian manpower and weapons and therefore did not provide the detail required by the October Agreements.<sup>1287</sup> At a meeting on 16 December 1998 the MUP agreed to provide full details regarding movement, including times, numbers, and locations.<sup>1288</sup> However, the MUP never provided such information.<sup>1289</sup>

374. On 15 December 1998 Ambassador Walker of the KVM and his Chief of Staff Michael Phillips attended a meeting at the White Palace in Belgrade with Slobodan Milošević. Richard Holbrooke, Wesley Clark and Nikola Šainović were also present. At the meeting non-compliance issues that were prohibiting and hindering the KVM were discussed.<sup>1290</sup>

## 6. General issues regarding implementation of the October Agreements

375. Pursuant to the October Agreements the VJ was supposed to reduce the number of troops and equipment in Kosovo to the level of February 1998; this was the baseline for verification for the KVM.<sup>1291</sup> The KVM made many requests to the FRY and Serbian authorities to be provided with information about the February 1998 level. Eventually, overall figures of heavy weapons, the units they belonged to, and their locations were provided but no further detail concerning the VJ was

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<sup>1282</sup> Karol John Drewienkiewicz, Exhibit P996, para 55.

<sup>1283</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11945, 12003; Michael Phillips, T 8690.

<sup>1284</sup> Michael Phillips, T 8688; Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 12003-12005.

<sup>1285</sup> Michael Phillips, T 8688-8689; Exhibit P838.

<sup>1286</sup> Michael Phillips, T 8689-8690.

<sup>1287</sup> Karol John Drewienkiewicz, T 6340-6341; Exhibit P1001.

<sup>1288</sup> Karol John Drewienkiewicz, T 6344; Exhibit P1002.

<sup>1289</sup> Karol John Drewienkiewicz, T 6345.

<sup>1290</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11841, 11843-11846, 11946; Michael Phillips, T 8691.

provided.<sup>1292</sup> Neither was the KVM provided with baseline figures for police forces.<sup>1293</sup> Further, it was more difficult for the KVM to verify the figures of the MUP forces on the ground in Kosovo, because the MUP often went around in smaller groups, not always in uniforms, and because the MUP structure in Kosovo was obscure.<sup>1294</sup> The KVM itself had not sufficient staff until late January 1999.<sup>1295</sup>

376. Despite the provisions of the October Agreements, in reality, if an area was declared to be an operational area or a training area for the VJ or the MUP, it would be sealed off and access of KVM verifiers would be restricted.<sup>1296</sup> KVM staff were denied access by Serbian forces to specific areas or buildings on a number of occasions,<sup>1297</sup> and were often denied access to barracks, even if prior notice had been given.<sup>1298</sup> At a meeting at the KVM headquarters in Priština/Prishtinë on 9 December 1998 attended by General Drewienkiewicz, Ambassador Walker, the Deputy Prime Minister of Serbia Šainović and General Lončar, Šainović stated that the inspections proposed by the KVM were intrusive, that he would not allow the KVM to carry out such inspections, or that the FRY and Serbia would not, as requested by the KVM, reduce police presence in Mališevo/Malishevë or set up an office in Priština/Prishtinë to expedite the issuance of visas.<sup>1299</sup> No official protests against limitation of movements were filed by the KVM or the OSCE.<sup>1300</sup>

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<sup>1291</sup> Karol John Drewienkiewicz, T 6317-6318, 6326-6327; Karol John Drewienkiewicz, Exhibit P977 (*Milutinović* transcript), T 7729-7730, 7858, 7863.

<sup>1292</sup> Karol John Drewienkiewicz, T 6327; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7888-7889.

<sup>1293</sup> Joseph Maisonneuve, T 5457-5458.

<sup>1294</sup> Karol John Drewienkiewicz, Exhibit P996, para 43; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7997-7998; Joseph Maisonneuve, T 5457-5458.

<sup>1295</sup> Karol John Drewienkiewicz, Exhibit P996, para 36; Karol John Drewienkiewicz, T 6315-6316.

<sup>1296</sup> Richard Ciaglinksi, T 5255; Richard Ciaglinksi, Exhibit P834 (*Milutinović* transcript), T 6818.

<sup>1297</sup> Karol John Drewienkiewicz, T 6347; Exhibit P1003. On 9 and 10 December 1998 Karol John Drewienkiewicz was denied access to the Priština Brigade Barracks and to the Prizren Brigade Barracks, respectively. (Karol John Drewienkiewicz, Exhibit P996, paras 80, 84) This happened despite the fact that on 27 November 1998 General Drewienkiewicz and other OSCE officials had a meeting at the Ministry of Defence in Belgrade with General Dragoljub Ojdanić, at the time Chief of the General Staff of the VJ and other senior VJ officers informing them of the intention of the KVM to carry out inspections in the VJ barracks and other locations, necessary to verify the number of personnel, heavy weapons and other equipment, Karol John Drewienkiewicz, Exhibit P996, paras 63, 67; Exhibit P998, p 2, item 2.

<sup>1298</sup> Richard Ciaglinksi, T 5255. The Chamber notes the evidence of Kosta Novaković that the KVM had absolute freedom of movement, except for entry to barracks (Kosta Novaković, T 11099; *see also* Kosta Novaković, T 11121, 11172-11173) but in light of the consistent evidence of several KVM representatives, it accepts that KVM's access to areas and facilities in Kosovo was restricted. Access to barracks appears to have been particularly controversial as the interpretation of the FRY authorities and the KVM of the relevant terms of the October Agreements differed, *see* Kosta Novaković, T 11099-11100, 11121; Exhibit D594, p 3. *See also* Exhibit P770, p 2, discussed above.

<sup>1299</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7779, 8007, 8008. Mališevo/Malishevë, an entirely Albanian village and one of the routes for smuggling of weapons into Kosovo, had endured particularly heavy fighting and was a tense area where the KLA were active; the KVM considered that the heavily fortified police station in the town was worsening the situation and had proposed that the KVM could step in to reduce the tension in return for a reduction of police, Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7779-7780, T 7988-7989. *See also, infra*, para 384.

<sup>1300</sup> Živadin Jovanović, T 10230.

377. The VJ and the MUP did not provide the KVM with detailed weekly reports and their notifications of deployment were not in accordance with the October Agreements.<sup>1301</sup> The KVM were occasionally informed verbally and on an ad hoc basis of events that were about to happen. This notification was always last minute and lacked detail.<sup>1302</sup>

378. One of KVM's main complaints was the disproportionate use of force by the Serbian forces.<sup>1303</sup> When KVM members observed disproportionate activities by FRY or Serbian forces they would report what they saw and would attempt to make contact with the commanders on the ground while the staff in Priština/Prishtinë would attempt to contact their counterparts in the VJ or the MUP.<sup>1304</sup> As discussed in the preceding section, the excessive use of force by the Serbian forces in response to KLA activities was raised regularly by KVM representatives at meetings with Serbian officials.<sup>1305</sup>

379. The issue of disproportionate use of force was raised by John Crosland in conversations with Generals Perišić and Dimitrijević throughout 1998 and in early 1999. John Crosland made the point that while accepting that there was an insurgency in Kosovo the force used against it was disproportionate.<sup>1306</sup>

#### **D. Implementation of the October Agreements and armed violence in Kosovo from October to December 1998**

##### **1. Events in October and November 1998**

380. The US-KDOM carried out a number of verifications of VJ weaponry without objections from the VJ.<sup>1307</sup> The KVM also confirmed that at the end of October 1998 FRY authorities had acted to comply with measures set out in the October Agreement<sup>1308</sup> and that the heavy weapons and equipment remaining under MUP control had been returned in accordance with the Agreement.<sup>1309</sup> Ljubinko Cvetić testified that after the October Agreements and the arrival of the KVM, one part of the police forces were withdrawn from the territory of Kosovo.<sup>1310</sup>

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<sup>1301</sup> Karol John Drewienkiewicz, T 6320; Exhibit P837.

<sup>1302</sup> Karol John Drewienkiewicz, T 6321-6322.

<sup>1303</sup> Richard Ciaglinski, T 5280.

<sup>1304</sup> Karol John Drewienkiewicz, T 6322.

<sup>1305</sup> *See supra*, para 368.

<sup>1306</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9851-9852.

<sup>1307</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12200-12201.

<sup>1308</sup> Karol John Drewienkiewicz, T 6450, 6454; Karol John Drewienkiewicz, Exhibit P837, pp 2-3; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7884-7885.

<sup>1309</sup> Richard Ciaglinski, T 5266.

<sup>1310</sup> Ljubinko Cvetić, T 6813.

381. A reduction of violent activity on both sides was observed by international verifiers in Kosovo in the first weeks after the signing of the October Agreements.<sup>1311</sup>

382. In certain sectors of Kosovo, where there was a significant KLA presence, the activities of the KLA seemed to increase after the signing of the October Agreements.<sup>1312</sup> Shaun Byrnes believed that the KLA saw the October Agreements as an opportunity to regroup and reform. The US-KDOM saw KLA training camps in the Pagaruša/Pagarushë valley in central Kosovo, between Mališevo/Malishevë and Suva Reka/Suharekë.<sup>1313</sup> The KLA in the Llap zone was moving to former VJ positions.<sup>1314</sup> After the October Agreements the KLA came to hold more territory.<sup>1315</sup>

383. At a meeting with John Crosland on 6 November General Dimitrijević expressed concern that locations, vacated by VJ and MUP forces were being filled by KLA units. He felt that if this situation continued there would be a forceful reaction by the MUP. He also indicated that General Perišić, at the time still Chief of the General Staff of the VJ, was visiting the troops in Kosovo making them aware of their responsibility not to respond to provocations.<sup>1316</sup>

384. On 8 November 1998 an armed attack was carried out by the KLA on the police station in Mališevo/Malishevë. The bodies of two policemen from the Priština/Prishtinë SUP who had been kidnapped earlier were recovered.<sup>1317</sup> In mid and late November 1998 Mališevo/Malishevë was besieged by heavy MUP activity. The village had been burned to the ground and its residents had fled to the hills. OSCE representatives brought the situation to the attention of Slobodan Milošević and Nikola Šainović in an attempt to get the MUP forces out of the village and to bring the residents back to their homes before the winter. Milošević and Šainović refused to pull out the MUP forces indicating their concerns that if they did the KLA would filter back into the village.<sup>1318</sup> The

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<sup>1311</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12242. The KLA was not party to the October Agreements. It was the task of the international representatives to persuade the KLA to respect the Agreements, and the KLA had an interest in doing so as means to keep the international community and the USA in particular in Kosovo, Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12242.

<sup>1312</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12209. See also Ljubinko Cvetić, T 6813.

<sup>1313</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12242-12243; Shaun Byrnes, T 8249.

<sup>1314</sup> Shaun Byrnes, T 8248-8249. 6D2 testified that in the general area of Prizren there were 118 violations of the ceasefire by the KLA, although the time period is not specified, 6D2, T 12265. The witness gave examples of abductions by the KLA of persons perceived as friend of or spies for the Serbs, 6D2, T 12265-12667. See also Exhibits D308; D801; D736; D744; D745.

<sup>1315</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12210; Ljubinko Cvetić, T 68136; D2, T 12265; Radomir Mitić, T 12657; Momir Stojanović, T 11722.

<sup>1316</sup> John Crosland, Exhibit P1400, para 56; Exhibit P1411; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9964.

<sup>1317</sup> Exhibit D888, p 632, item 397; 6D2, T12317-12318; Danica Marinković, T 12936; Exhibit D853, p 4.

<sup>1318</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11876.

problem was resolved by a joint initiative of the FRY and the KVM reducing the number of MUP forces and by increasing the number of KVM observers in Mališevo/Malishevë.<sup>1319</sup>

385. At the end of November and in early December 1998 the security situation in Mališevo/Malichevë, Glogovac/Gllogoc and Podujevo/Podujevë was considered by the MUP Staff to be graver than in earlier periods.<sup>1320</sup> Towards the end of 1998 and early 1999 the area of Podujevo/Podujevë was also a serious concern for the MUP. The KLA had built trenches and kept certain areas under control.<sup>1321</sup> The minutes of a MUP Staff meeting on 2 December 1998 reflect that the KVM was perceived as siding with the Kosovo Albanians and the police were urged to be very cautious when communicating with the mission.<sup>1322</sup>

386. At a meeting held in Belgrade on 27 November 1998 Minister Stojiljković, the Chief of the RJB Vlastimir Đorđević, the Chief of the RDB Rade Marković, Assistant Ministers, Nikola Šainović and the Head of the MUP Staff, Sreten Lukić discussed the security situation in Kosovo and defined the further engagement of the police in Kosovo.<sup>1323</sup>

## 2. Events in December 1998

387. On 14 December 1998 a fire-fight between Serbian forces and the KLA took place near the Albanian border, five to seven kilometres from Prizren. KVM patrols invited by the VJ to inspect the scene observed dead bodies and a large amount of military equipment which appears to have been intended for distribution to KLA units.<sup>1324</sup> 34 or 35 KLA members were killed and nine were taken prisoner. Most of the KLA soldiers were wearing KLA uniforms.<sup>1325</sup>

388. On 18 December 1998 US-KDOM and KVM verifiers saw a company size battle group comprising VJ soldiers and PJP members being deployed from the Marshal Tito Barracks in

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<sup>1319</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11876. KVM had the obligation to make sure that the Albanians who returned to Mališevo/Malishevë were peaceful and were not members of the KLA, Michael Phillips, T 8809.

<sup>1320</sup> Exhibit P689; Žarko Braković, T 4267. See also Danica Marinković, T 12939; Exhibit D853, p 4, testifying to an attack against the MUP in Glogovac/Gllogoc on 11 November 1998.

<sup>1321</sup> Žarko Braković, T 4266-4267.

<sup>1322</sup> Žarko Braković, T 4263.

<sup>1323</sup> Minutes of a meeting of the MUP Staff held on 2 December 1998 in Priština/Prishtinë record that the Head of the MUP Staff, Sreten Lukić stated that on 27 November 1998 he had attended a meeting at the MUP in Belgrade with Minister Stojiljković, the Chief of the RJB, Đorđević, the Chief of the RDB, Assistant Ministers and Nikola Šainović at which the security situation in Kosovo was discussed and the further engagement of the police in Kosovo were defined, Exhibit P689, pp 3-8.

<sup>1324</sup> Karol John Drewienkiewicz, Exhibit P996, paras 85-86. See also Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11128; Joseph Maisonneuve, Exhibit P851, para 13; Exhibit P854, pp 1-2.

<sup>1325</sup> Karol John Drewienkiewicz, Exhibit P996, para 87; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7782, 7929.



Priština/Prishtinë to an area near Podujevo/Podujevë.<sup>1326</sup> This deployment was in violation of the October Agreement.<sup>1327</sup> The KVM brought the issue to the attention of the FRY authorities on 19 December 1998 at a meeting in Priština/Prishtinë. Colonel Kotur of the VJ stated that an armoured unit was there for the purpose of a tank driver training.<sup>1328</sup> The KVM had not been informed of this. The “training area” included an area with heavy KLA presence west of Podujevo/Podujevë which created a risk of clashes between the KLA and the Serbian forces. General Drewienkiewicz proposed to the VJ that such training take place east of Podujevo/Podujevë to prevent clashes but was told that the VJ would train where they considered it appropriate.<sup>1329</sup> A US-KDOM daily report of 21 December 1998 indicates that the same Serbian battle group was still in the area.<sup>1330</sup> Indeed, it remained in the Podujevo/Podujevë area at least until the end of March 1999, despite the objections raised by the KVM,<sup>1331</sup> confirming that the presence of this battle group was not for training as had been falsely suggested.

389. In December 1998 the security situation in Podujevo/Podujevë municipality had deteriorated significantly and was continuing to deteriorate. The KLA had blockaded almost half of the territory of the municipality. There was an effort to recruit more soldiers into the KLA.<sup>1332</sup> The KLA commander of the area was acting aggressively.<sup>1333</sup> There were reports that the Serbian population was leaving the area.<sup>1334</sup> The Serbian police and army held the road Niš-Podujevo/Podujevë but there were several occasions when the KLA shot at Serbian civilian vehicles which triggered a response by the Serbian security authorities. The Serbian police increased patrols which was consistent with the October Agreements. The main railroad from Priština/Prishtinë north to Niš, which ran parallel to this road was of enormous strategic importance because it was the route for army reinforcement from Niš in Serbia to Kosovo.<sup>1335</sup> It was the conclusion of international observers present in Kosovo at the time that the VJ and MUP deployment west of

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<sup>1326</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12165-12169, 12235; Shaun Byrnes, T 8189, 8991-8193; Karol John Drewienkiewicz, Exhibit P996, para 95; Karol John Drewienkiewicz, T 6349; Exhibits P1246; P1247; John Crosland, Exhibit P1400, para 66. The KVM maintained observer posts in proximity to the garrisons and monitored the movement in and out the garrisons. Later US-KDOM placed a vehicle close to the battle group’s encampment, Shaun Byrnes, T 8189, 8991-8193. This battle group was equipped with 15 T-55 tanks, six Pragas and associated vehicles, John Crosland, Exhibit P1400, para 66.

<sup>1327</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12165-12169, 12235; Shaun Byrnes, T 8189, 8991-8193.

<sup>1328</sup> Karol John Drewienkiewicz, Exhibit P996, paras 94-95; Karol John Drewienkiewicz, T 6351; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12165-12169, 12235; Shaun Byrnes, T 8189, 8991-8193; Exhibit P1246.

<sup>1329</sup> Karol John Drewienkiewicz, Exhibit P996, para 97; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7783, 7878; Karol John Drewienkiewicz, T 6354. See also Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11847-11848; Michael Phillips, T 8710, 8726.

<sup>1330</sup> Exhibit P1248.

<sup>1331</sup> Shaun Byrnes, T 8206.

<sup>1332</sup> Shaun Byrnes, T 8256.

<sup>1333</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12192; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9948-9949.

<sup>1334</sup> Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6911; Momir Stojanović, T 11734; Exhibit D752. See also Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12194-12196.

<sup>1335</sup> Shaun Byrnes, T 8246-8248; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6823.

Podujevo/Podujevë was to protect the strategically important road from Podujevo/Podujevë to Priština/Prishtinë, linking Kosovo with Serbia, which was not included in the October Agreements as a road along which the VJ could deploy forces.<sup>1336</sup>

390. On 24 December 1998, a column of two VJ companies and one MUP company left Priština/Prishtinë and entered the village of Gornja Lapaštica/Llapashticë-e-Epërme, located three to four kilometres northwest of Podujevo/Podujevë.<sup>1337</sup> A KVM report covering the events on 24 December 1998 records that on that day, around the Podujevo/Podujevë area, Serbian tank and mortar rounds were fired in addition to small arms during a confrontation between the KLA and the MUP/VJ.<sup>1338</sup> VJ and MUP forces were travelling in mixed units and not separately. MUP forces and their vehicles were spread throughout the column alongside the VJ.<sup>1339</sup> Exchanges of fire at the time took place in more than one village in the Podujevo/Podujevë area.<sup>1340</sup> In the morning of 24 December 1998 General Drewienkiewicz communicated to Sreten Lukić, the Chief of the MUP Staff, that the ongoing VJ and MUP operations around Podujevo/Podujevë constituted a serious breach of the cease-fire and that any casualties would be attributed directly to the FRY government.<sup>1341</sup>

391. On 26 December 1998 an elderly Serbian man was shot in the village of Obrandža/Obrance near Podujevo/Podujevë.<sup>1342</sup> Negotiations took place between General Lončar, Colonel Kotur and Ambassador Walker of the KVM on how to remove the body from this predominantly Kosovo Albanian village without causing clashes with KLA operating in the area. While the negotiations were still ongoing a MUP unit entered the village and a fire-fight ensued.<sup>1343</sup> General Lončar claimed that the operation was carried out without the knowledge of the army, which was not accepted by the KVM as credible.<sup>1344</sup> Indeed, a US-KDOM report confirmed that on 26 December 1998 VJ armoured units and a Serbian police unit engaged the KLA in a fire-fight in the village of Obrandža/Obrance which continued approximately two hours and included Serbian fire from heavy machine guns and 120 millimetre mortars.<sup>1345</sup>

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<sup>1336</sup> Shaun Byrnes, T 8193-8195; Exhibit P1247.

<sup>1337</sup> Karol John Drewienkiewicz, Exhibit P996, para 99; Karol John Drewienkiewicz, T 6351.

<sup>1338</sup> Karol John Drewienkiewicz, T 6350; Exhibit P1004.

<sup>1339</sup> Karol John Drewienkiewicz, Exhibit P996, para 102; Karol John Drewienkiewicz, T 6349-6350.

<sup>1340</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7786.

<sup>1341</sup> Karol John Drewienkiewicz, T 6358; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7786; Exhibit P1005.

<sup>1342</sup> Karol John Drewienkiewicz, Exhibit P996, para 109; Karol John Drewienkiewicz, T 6359; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7787; Exhibit P1249.

<sup>1343</sup> Karol John Drewienkiewicz, Exhibit P996, paras 110-111; Karol John Drewienkiewicz, T 6359-6360; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7787.

<sup>1344</sup> Karol John Drewienkiewicz, Exhibit P996, para 111; Karol John Drewienkiewicz, T 6359-6360.

<sup>1345</sup> Exhibit P1249; Shaun Byrnes, T 8199-8200.

392. On 26 December 1998 KLA members killed the last Serb who lived in Podujevo/Podujevë.<sup>1346</sup>

393. On 27 December 1998 at a meeting with General Lončar, Richard Ciaglinski was informed that a Serbian farmer had been abducted by KLA forces in the Podujevo/Podujevë area and that a MUP patrol had gone to rescue him but had come under fire and had sustained heavy injuries. At this meeting General Lončar stated that the VJ had ordered tanks to go in, that the MUP would lead the attack and that the VJ would supply the heavy armour.<sup>1347</sup> He said the KLA were bringing in additional forces and ammunition, and that there were some 1,000 to 2,000 KLA members there.<sup>1348</sup> Serbian forces began to amass.<sup>1349</sup> However, it was agreed that KVM representatives would intervene. A group of KVM representatives including Richard Ciaglinski and a representative of the Red Cross went to the area and succeeded in recovering the hostage, with a wounded MUP member and a wounded Kosovo Albanian.<sup>1350</sup>

#### **E. Events from January to March 1999**

394. On 8 January 1999 eight VJ soldiers were taken prisoner by the KLA at the village of Stari Trg/Stantërg, Kosovska Mitrovica/Mitrovicë municipality. KVM representatives entered into negotiations with the KLA and the VJ authorities and managed to obtain the release of the soldiers in exchange for nine KLA prisoners.<sup>1351</sup>

395. On the same day, 8 January 1999 the KVM started to receive reports about roadblocks set up by Serb civilians south of Priština/Prishtinë.<sup>1352</sup> General Drewienkiewicz observed armed Serbian civilians in Kosovo Polje/Fushë Kosovë driving around in black cars who appeared to be organising and inciting people.<sup>1353</sup> The police, who were usually present even when no disturbances occurred, were absent.<sup>1354</sup>

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<sup>1346</sup> Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6893-6894.

<sup>1347</sup> Richard Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, p 4; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6821-6822; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3164, 3191.

<sup>1348</sup> Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6911; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3164.

<sup>1349</sup> Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6821-6822.

<sup>1350</sup> Richard Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, p 4; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6824-6826; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3288.

<sup>1351</sup> Karol John Drewienkiewicz, Exhibit P996, paras 116, 122-125, 130, 137; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7742-7745; Richard Ciaglinski, T 5366-5367; Exhibit D163; Michael Phillips, T 8712, 8837. See also Jan Kicker, Exhibit P478, p 4. See also Živadin Jovanović, Exhibit D454 (*Milutinović* transcript), T 14115-14120, testifying to his involvement in the release of eight VJ soldiers in January 1999.

<sup>1352</sup> Karol John Drewienkiewicz, Exhibit P996, para 117.

<sup>1353</sup> Karol John Drewienkiewicz, Exhibit P996, para 118; Karol John Drewienkiewicz, T 6361, 6362.

<sup>1354</sup> Karol John Drewienkiewicz, Exhibit P996, para 119; Karol John Drewienkiewicz, T 6362.

## 1. Events in Račak/Raçak

### (a) Findings

396. Extensive, and often conflicting, evidence about the events that occurred in Račak/Raçak on 15 January 1999 and the following days was presented in the trial by both parties. The Chamber has carefully considered and weighed this evidence to make the findings set out in the paragraphs below.

397. In the early morning of 15 January 1999, at about 0630-0700 hours, shooting was heard near the village of Košare/Koshare<sup>1355</sup>, located some 10 minutes driving from Štimlje/Shtime.<sup>1356</sup> Traffic police had blocked the road from Uroševac/Ferizaj town to Štimlje/Shtime diverting traffic going to Štimlje/Shtime and Račak/Raçak. Račak/Raçak was an entirely Kosovo Albanian village located about a kilometre away from the Štimlje/Shtime police station.<sup>1357</sup> There were most unusual events at the police station in Štimlje/Shtime that morning. All active duty and reserve police had been called in.<sup>1358</sup> There was also one platoon of PJP members in green camouflage uniforms and about 10 to 12 SAJ members.<sup>1359</sup> They were under the command of Goran Radosavljević, aka Guri, an SAJ commander.<sup>1360</sup> Other evidence confirms that Goran Radosavljević, aka Guri, was assistant head for special police units at the MUP Staff.<sup>1361</sup> Also unusually, the Chief of the SUP and the chief of the police department in Uroševac/Ferizaj were present at the Štimlje/Shtime police station.<sup>1362</sup> It was said in the police station that there was an action underway in Račak/Raçak to arrest the persons responsible for the killing of a policeman who had died on 12 January 1999, two days after being shot on the road from Štimlje/Shtime to Uroševac/Ferizaj.<sup>1363</sup> On 8 January 1999 three other policemen had been killed in a KLA attack on a MUP patrol between Suva Reka/Suharekë and Štimlje/Shtime.<sup>1364</sup> From early in the morning on 15 January 1999 until 1500 or 1600 hours sporadic shooting could be heard in Štimlje/Shtime coming from the direction of Račak/Raçak.<sup>1365</sup>

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<sup>1355</sup> The village of Košare/Koshare located at the border between the municipalities of Uroševac/Ferizaj and Štimlje/Shtime should not be confused with the village of Košare/Koshare located in Đakovica/Gjakovë municipality. Events occurring in the latter village are discussed elsewhere in this Judgement.

<sup>1356</sup> K86, T 5123-5124.

<sup>1357</sup> K86, T 5127, 5147.

<sup>1358</sup> K86, T 5123-5124.

<sup>1359</sup> K86, T 5124-5125, 5129-5130, 5132, 5225-5227.

<sup>1360</sup> K86, T 5129-5130.

<sup>1361</sup> Exhibit P57.

<sup>1362</sup> K86, T 5125.

<sup>1363</sup> K86, T 5126, 5160-5164; Exhibits D138; D139.

<sup>1364</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5777; Joseph Maisonneuve, Exhibit P851, para 53; John Crosland, T 9183; Richard Ciaglinski, T 5366; Velibor Veljković, T 7114-7115; 6D2, T 12267-12268; Exhibits D308, D162.

<sup>1365</sup> K86, T 5126, 5127.

398. Despite the denial of the Accused, in the Chamber's finding, at about 0830 or 0900 hours on 15 January the Accused Vlastimir Đorđević arrived at the Štimlje/Shtime police station. This was a remarkable occurrence. He stayed there over one hour, most of the time in an office with the Chief of SUP and the chief of the police department in Uroševac/Ferizaj. While Đorđević was there a person, who introduced himself as Nikola Šainović, in the Chamber's finding the Deputy Prime Minister, telephoned twice and spoke to Vlastimir Đorđević. The two telephone calls were some 30 minutes apart. Each call lasted for about two minutes.<sup>1366</sup>

399. The Chief of SUP and the chief of the police department in Uroševac/Ferizaj had instructed the police in Štimlje/Shtime to direct KVM representatives to SUP Uroševac/Ferizaj, if they inquired about the events in Račak/Račak. The police in Štimlje/Shtime were not authorised to provide the KVM with information.<sup>1367</sup> The KVM was being kept out of the picture.

400. On 15 January 1999 the KVM started receiving reports from verifiers who were in the area, of a major operation taking place in Račak/Račak.<sup>1368</sup> General Drewienkiewicz asked Brigadier General Maisonneuve to take command of the KVM activities relating to Račak/Račak.<sup>1369</sup> Maisonneuve dispatched to Račak/Račak two additional KVM patrols who were able to observe the operation from the heights surrounding the village.<sup>1370</sup>

401. From their position on the heights, on 15 January 1999 the KVM verifiers observed VJ Pragas and T-55 tanks on the hills overlooking Račak/Račak firing into the village and into the surrounding hills, thus preventing the civilians from leaving the village safely.<sup>1371</sup> MUP armoured vehicles and infantry were seen entering the village and undertaking a house to house search.<sup>1372</sup> During the operation there was no outgoing fire from the village<sup>1373</sup> although prior to the operation, there had been a KLA presence in Račak/Račak, including, it was thought, a KLA headquarters.<sup>1374</sup>

402. The VJ and MUP, both of which had been located in the hills overlooking Račak/Račak for weeks prior to the incident<sup>1375</sup>, coordinated their activities.<sup>1376</sup> It was a planned joint VJ and MUP

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<sup>1366</sup> K86, T 5127-5129, 5131.

<sup>1367</sup> K86, T 5133.

<sup>1368</sup> Joseph Maisonneuve, T 5463-5464; Joseph Maisonneuve, Exhibit P851, para 34.

<sup>1369</sup> Joseph Maisonneuve, T 5464; Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5778; Karol John Drewienkiewicz, Exhibit P996, para 138.

<sup>1370</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5779; Joseph Maisonneuve, Exhibit P851, para 45; Exhibit P870.

<sup>1371</sup> Joseph Maisonneuve, Exhibit P851, para 36; Karol John Drewienkiewicz, Exhibit P996, para 141; Exhibit P1250.

<sup>1372</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5781; Joseph Maisonneuve, Exhibit P851, para 45.

<sup>1373</sup> Joseph Maisonneuve, T 5466-5467; Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5782, 5863.

<sup>1374</sup> K86, T 5165-5166.

<sup>1375</sup> Exhibit P1029, pp 9, 11, 15, 16.

<sup>1376</sup> Joseph Maisonneuve, Exhibit P851, para 36; Karol John Drewienkiewicz, Exhibit P996, para 141; Shaun Byrnes, T 8205-8206. On 16 January 1999 Joseph Maisonneuve met with the liaison officer of the VJ 243<sup>rd</sup> brigade who confirmed that while the MUP were the main force involved in the operation, the VJ had provided support, Joseph

operation. The VJ provided long-range fire support around the village for the operation carried out by the MUP.<sup>1377</sup> The heavy weaponry used in this operation was not ordinarily used in counter-insurgency operations, but in major combat engagements.<sup>1378</sup>

403. After the end of the shooting the KVM verifiers brought some of the injured civilians from the village to the local hospital.<sup>1379</sup> Villagers informed the KVM that people had been killed and injured and that some were arrested.<sup>1380</sup> Police insisted on the KVM verifiers leaving the village.<sup>1381</sup> They did, but Joseph Maisonneuve instructed the verifiers to return to the village on the following morning. Two more patrols from the KVM were also sent to the area.<sup>1382</sup>

404. In the evening hours of 15 January 1999 General Drewienkiewicz called Colonel Kotur. He expressed concern about the events during the day and warned Colonel Kotur that firing of anti-aircraft weapons into a village in which there were women and children could not be accepted as a police operation. General Drewienkiewicz requested that this action be ceased.<sup>1383</sup>

405. On 16 January the KVM began investigations in Račak/Raçak. In addition to the KVM patrols who had been in the village from 0700 hours, Joseph Maisonneuve, the Head of Regional Centre 1 arrived there at 0900 hours. He was informed by verifiers that there were over 25 bodies of civilians in the village, most of whom seemed to have been executed, and not to have died as a result of fighting. Maisonneuve observed the body of an elderly man who had been shot at close range. A number of media representatives had arrived in the village.<sup>1384</sup>

406. At 1115 hours on 16 January General Drewienkiewicz and Colonel Ciaglinski of the KVM met VJ General Lončar to inquire about the events in Račak/Raçak.<sup>1385</sup> At this and subsequent meetings with VJ representatives, the KVM officials were informed that the events in Račak/Raçak had occurred as a result of a firefight between MUP and KLA; they were also told that there were MUP casualties.<sup>1386</sup> General Lončar denied that the VJ had been involved. It was General

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Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5786-5787; see also Joseph Maisonneuve, Exhibit P851, para 33; Exhibit P864. John Crosland believed that the operation in Račak/Raçak was a coordinated action between the MUP and the VJ because coordination between the various elements of the security forces was necessary for such action, John Crosland, T 9186-9187.

<sup>1377</sup> Joseph Maisonneuve, Exhibit P851, para 36; Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5781; Karol John Drewienkiewicz, Exhibit P996, para 142.

<sup>1378</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5782.

<sup>1379</sup> Joseph Maisonneuve, T 5467; Joseph Maisonneuve, Exhibit P851, para 34.

<sup>1380</sup> Karol John Drewienkiewicz, Exhibit P996, para 142.

<sup>1381</sup> Joseph Maisonneuve, Exhibit P851, para 34.

<sup>1382</sup> Exhibit P870.

<sup>1383</sup> Karol John Drewienkiewicz, Exhibit P996, para 221; Karol John Drewienkiewicz, T 6367-6268; Exhibit P1007.

<sup>1384</sup> Exhibit P870, p 1.

<sup>1385</sup> Karol John Drewienkiewicz, Exhibit P996, paras 144-145; Richard Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, p 8. See also Exhibit P1026.

<sup>1386</sup> Richard Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, p 8; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6845.

Drewienkiewicz's impression that General Lončar knew more about the events in Račak/Raçak than he indicated at the meeting.<sup>1387</sup> As it can be appreciated from what was happening on the ground as discussed in the Chamber's findings, Serbian denials of VJ involvement were false.

407. The Head of the KVM Mission, Ambassador Walker, the Deputy Head, General Drewienkiewicz and Michael Phillips, arrived in Račak/Raçak at 1330 hours on 16 January.<sup>1388</sup> As they were approaching the village they saw police and the press everywhere.<sup>1389</sup> On the hillside, VJ forces could be seen with heavy weapons, artillery and tanks.<sup>1390</sup> On arrival they were led to a farmhouse where they were shown the decapitated body of an elderly man.<sup>1391</sup> The KVM representatives continued their inspection in the village. They noticed a newly dug trench that did not appear to have been previously occupied or fought from.<sup>1392</sup> In a gully or a trail, they discovered over 20 dead bodies lying in a line.<sup>1393</sup> The bodies appeared to have been shot at close range in the head.<sup>1394</sup> 10 of the bodies appeared to have been mown down.<sup>1395</sup> The victims were all male, and were about 50-60 years old, some had traditional Albanian caps. They did not have uniforms.<sup>1396</sup> The bodies were covered in dew, which indicated that they were already there in the morning.<sup>1397</sup> A KVM representative videotaped the bodies.<sup>1398</sup> Further into the village KVM

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<sup>1387</sup> Karol John Drewienkiewicz, Exhibit P996, para 145. Subsequently, the events in Račak/Raçak were discussed at a collegium of the General Staff of the VJ on 21 January 1999. (Exhibit P902, pp 7-13) General Dimitrijević raised the question whether the VJ was involved in the operation and if not why it was not reacting to statements of international organisations suggesting the opposite. He also pointed out that daily operation reports from the Priština Corps did not contain information about VJ involvement in Račak/Raçak (Exhibit P902, pp 7, 9; see also Branko Krga, T 10547-10548). In the Chamber's finding, the absence of information about VJ involvement in the operation in Račak/Raçak in official VJ reports and the fact that members of the Collegium of the Chief of the General Staff were not provided with such information indicates an attempt on behalf of members of the VJ leadership to conceal evidence of VJ involvement. At the meeting General Ojdanić admitted that "if this joint staff, command, or whatever decided that the operation in Račak village could not be carried out without the assistance of the Yugoslav Army, we know very well who must be asked for approval, if the FRY President orders, in spite of all the risk, that the Army be used, this decision must be carried out [...]". (Exhibit P902, p 11) In the Chamber's finding, the operation in Račak/Raçak was a joint MUP/VJ operation ordered by the Joint Command. See also *supra*, para 236 and, *infra*, para 2037.

<sup>1388</sup> Exhibit P870, p 1; Karol John Drewienkiewicz, Exhibit P996, para 147.

<sup>1389</sup> Karol John Drewienkiewicz, Exhibit P996, para 146; Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11854.

<sup>1390</sup> Michael Phillips, T 8712; Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11854.

<sup>1391</sup> Karol John Drewienkiewicz, Exhibit P996, para 147.

<sup>1392</sup> Karol John Drewienkiewicz, Exhibit P996, para 147, 148; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7968. See also Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5856.

<sup>1393</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5795; Exhibit P870, p 1; Karol John Drewienkiewicz, Exhibit P996, para 147.

<sup>1394</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5795, 5881; Exhibit P870, p 1; Karol John Drewienkiewicz, Exhibit P996, para 147.

<sup>1395</sup> Exhibit P870, p 1.

<sup>1396</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5795, 5844; Karol John Drewienkiewicz, Exhibit P996, para 147.

<sup>1397</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5796. A few days following the incident, Maisonneuve heard that verifiers had reported to KVM headquarters that during the operation in Račak/Raçak some 20 men had been separated from their wives and taken away, Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5796.

<sup>1398</sup> Karol John Drewienkiewicz, Exhibit P996, para 148; Exhibit P1575.

verifiers observed four more bodies, including the bodies of an 18 year old woman and a 12 year old boy.<sup>1399</sup>

408. The numerous media representatives present in the village pressed Ambassador Walker to make a statement on the spot which he did. He also stated that he would give a statement from Priština/Prishtinë the same evening.<sup>1400</sup> Prior to Ambassador Walker and General Drewienkiewicz leaving, villagers moved the bodies into the mosque. The US-KDOM representatives agreed to remain present in the village overnight.<sup>1401</sup> By that time it had become clear that not less than 45 Kosovo Albanians had been killed during the operation in Račak/Raçak, 23 in close proximity to each other.<sup>1402</sup> Subsequently, the KVM representative Joseph Maisonneuve, became aware that the Serbian forces had suffered one non-fatal injury in the operation.<sup>1403</sup>

409. In the evening hours of 16 January Ambassador Walker gave a press conference in Priština/Prishtinë in which he explicitly condemned the FRY government for the events in Račak/Raçak. He called for the ICTY to be given visas so that a proper investigation could be carried out.<sup>1404</sup> As a result of this press conference, Ambassador Walker was declared *persona non grata* by the FRY government.<sup>1405</sup>

410. In the evening of 16 January General Lončar informed General Drewienkiewicz that there had been an unsuccessful attempt by an investigating judge to carry out an on-site investigation in Račak/Raçak, as described in the following paragraphs, and said that he would arrange for this investigative team to enter the village if the KVM could facilitate this.<sup>1406</sup> On the following morning, 17 January, General Drewienkiewicz met with Investigative Judge Marinković and her team at the police station in Štimlje/Shtime to discuss how the KVM could help her and the team enter the village.<sup>1407</sup> The KLA presence in Račak/Raçak was overt.<sup>1408</sup> General Drewienkiewicz stated that the KVM could not guarantee her safety if the judge insisted on entering with a heavy

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<sup>1399</sup> Exhibit P870, p 1.

<sup>1400</sup> Karol John Drewienkiewicz, Exhibit P996, para 150.

<sup>1401</sup> Karol John Drewienkiewicz, Exhibit P996, para 151.

<sup>1402</sup> Karol John Drewienkiewicz, Exhibit P996, para 152; Exhibit P1250.

<sup>1403</sup> Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5803.

<sup>1404</sup> Karol John Drewienkiewicz, Exhibit P996, para 154.

<sup>1405</sup> Karol John Drewienkiewicz, Exhibit P996, para 154; Knut Vollebaek, Exhibit P1073, p 5; Knut Vollebaek, T 7214, 7254-7255; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7724-7730.

<sup>1406</sup> Karol John Drewienkiewicz, Exhibit P996, para 156.

<sup>1407</sup> Karol John Drewienkiewicz, Exhibit P996, para 158; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7971; Exhibit P871. See also Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3205-3206. See also Danica Marinković, T 12971-12972, 13076, testifying that on 17 January she and her team went to Štimlje/Shtime police station where she met General Drewienkiewicz of the KVM and told him that with proper security measures in place she could go to Račak/Raçak to conduct an on-site investigation.

<sup>1408</sup> Exhibit P871.



MUP presence.<sup>1409</sup> The judge was determined to enter the village with a heavy MUP escort and the KVM withdrew. The investigative team left for the village but returned after being fired upon; no one was injured.<sup>1410</sup>

411. While there is some variation in the evidence about attempts between 15 and 18 January to investigate events in Račak/Raçak, the Chamber records the evidence that on 15 January Investigative Judge Danica Marinković, with others, went to the Štimlje/Shtime police station where she was told by the Chief of SUP Uroševac/Ferizaj that in the early hours of 15 January there had been a clash between the police and terrorists in the village of Račak/Raçak, that the police had already secured the scene and that an on-site investigation could take place.<sup>1411</sup> Judge Marinković and her team arrived in Račak/Raçak at 1400 hours on 15 January, escorted by the police.<sup>1412</sup> They found weapons and military equipment bearing KLA insignia,<sup>1413</sup> but were fired upon, although no one was injured, and at the suggestion of the police left the village.<sup>1414</sup> On the following day, 16 January, at 1000 or 1030 hours Judge Marinković and her team set out again; they noticed that the police station in Štimlje/Shtime was deserted and continued to Račak/Raçak.<sup>1415</sup> On the way fire was opened on them, although again no one was injured, so they returned to Štimlje/Shtime.<sup>1416</sup> As discussed earlier the Judge and her team abandoned a further attempt to enter Račak/Raçak on 17 January.

412. On 18 January Investigative Judge Marinković with the deputy public prosecutor and SUP inspectors entered Račak/Raçak to conduct an on-site investigation.<sup>1417</sup> Judge Marinković was instructed by police that there were bodies in the mosque. There she found 40 bodies, all but one male, arranged in a circular fashion.<sup>1418</sup> The bodies she was shown had shoes which looked like military boots, some had dark grey, others navy blue, military trousers, and they had military belts on.<sup>1419</sup> The director of the Forensic Institute in Priština/Priştinë Slaviša Dobričanin, who had joined Ms Marinković's investigative team, inspected each body visually and immediately stated

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<sup>1409</sup> Karol John Drewienkiewicz, Exhibit P996, para 159; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7792-7793; Exhibit P871. The KVM knew from their discussions with KLA members that a large number of MUP vehicles in the village could spark confrontation, Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3205-3206. See also Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5800. See also Danica Marinković, T 12972, 13076.

<sup>1410</sup> Karol John Drewienkiewicz, Exhibit P996, para 160; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7792-7793; Exhibit D149, p 2; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3205-3206. Danica Marinković, T 12973, 13075-13078.

<sup>1411</sup> Danica Marinković, T 12965-12966; 12969-12970; Radimir Mitić, T 12865-12866.

<sup>1412</sup> Danica Marinković, T 12967.

<sup>1413</sup> Danica Marinković, T 12967; Exhibit D896.

<sup>1414</sup> Danica Marinković, T 12967.

<sup>1415</sup> Danica Marinković, T 12970, 13076.

<sup>1416</sup> Danica Marinković, T 12970.

<sup>1417</sup> Danica Marinković, T 12975-12976 ; K86, T 5211-5212; Exhibit D148.

<sup>1418</sup> Danica Marinković, T 12976, 12112-12113; Exhibit D148.

<sup>1419</sup> Danica Marinković, T 12976, 13114.

that there were no indications that the bodies had been massacred.<sup>1420</sup> When the videotape recorded by the KVM on 16 January 1999 depicting corpses shot in a gully was shown to her, Danica Marinković testified that the bodies she observed in Račak/Raçak were different from the bodies depicted in the video.<sup>1421</sup> She testified that the bodies she was shown in the mosque did not have shots in the head,<sup>1422</sup> and that amongst the 40 bodies she saw there were no corpses that had been decapitated, although one or two of the bodies had some damage to the head which appeared to have been caused by birds or other animals.<sup>1423</sup> The bodies were then placed in body bags, loaded into a refrigerated truck in the presence of the OSCE representatives and taken to the Forensic Institute in Priština/Prishtinë.<sup>1424</sup> Following this, Judge Marinković and her investigative team, accompanied by OSCE representatives whom they had encountered on their way to Račak/Raçak, went through the village looking for other bodies. They came across what was described as a KLA headquarters where they found weapons, uniforms and supplies. They saw trenches in the village.<sup>1425</sup> They looked for the gully depicted in the KVM recording but were unable to find it, nor were they able to find any other casualties or traces of a massacre or blood.<sup>1426</sup>

413. Police transported the 40 bodies that had been shown to Judge Marinković from the mosque in Račak/Raçak to the forensic institute in Priština/Prishtinë.<sup>1427</sup> On 19 January autopsies of the 40 bodies transported from Račak/Raçak began.<sup>1428</sup> The bodies were identified by fingerprints. Paraffin glove tests were conducted according to which there were gunpowder traces on 37 of the bodies. Autopsies were conducted by FRY forensic officers and two from Belarus.<sup>1429</sup> It was concluded that the cause of death in all 40 cases was wounding by projectiles.<sup>1430</sup> Subsequently it was agreed that the OSCE could bring their own forensic team and about a week after the incident a team of forensic experts from Finland arrived in Kosovo.<sup>1431</sup> They prepared an extensive forensic report but stressed that, because of the time that had passed and the state of the evidence, they had

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<sup>1420</sup> Danica Marinković, T 12971, 12976, 13085.

<sup>1421</sup> Danica Marinković, T 13083, 13090; Exhibit 1575; Exhibit D932.

<sup>1422</sup> Danica Marinković, T 13079-13080.

<sup>1423</sup> Danica Marinković, T 12976, 13079-13080.

<sup>1424</sup> Danica Marinković, T 12976, 13114-13115.

<sup>1425</sup> Danica Marinković, T 12977-12978.

<sup>1426</sup> Danica Marinković, T 12978.

<sup>1427</sup> K86, T 5135.

<sup>1428</sup> Danica Marinković, T 13087.

<sup>1429</sup> Knut Vollebaek, Exhibit P1073, p 5; Knut Vollebaek, T 7214; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7652.

<sup>1430</sup> Danica Marinković, T 12988-12989; Exhibit D899.

<sup>1431</sup> Knut Vollebaek, Exhibit P1073, pp 5-6; Knut Vollebaek, T 7214-7215, 7256; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7652 ; Danica Marinković, T 12981-12982; Exhibit D895.

encountered problems.<sup>1432</sup> The 40 bodies were returned to the village and buried in one grave on a hill facing the mosque.<sup>1433</sup>

414. Some of the matters discussed in the preceding paragraphs differ in material respects from what was seen by independent international observers in and around Račak/Račak on 15 January 1999 and the following days. The Chamber was impressed by the honesty and the detailed account given by these international observers in the present trial. Their account is supported by contemporaneous written records and by a video recording depicting the bodies they observed in Račak/Račak on 16 January which the Chamber accepts as authentic. The Chamber sees no reason to reject their evidence and to make contrary findings.

415. What was shown to Judge Marinković in Račak/Račak on 18 January 1999, does not accord with what was seen by international observers on 15 and 16 January 1999 in the village. Judge Marinković was not shown the body of a child or a decapitated body. Her description of the dress of the bodies does not accord with the dress of dead bodies visible in the video film or as described in the oral evidence. She was not shown bodies that had been shot in the head. She was not shown the gully depicted in the film, yet she was shown an apparent KLA headquarters, which the KVM failed to see. As the judge confirmed in her evidence, discussed in the paragraphs above, what she was shown presented a quite different picture from what was seen by the KVM observers on 15 and 16 January. In the circumstances the Chamber finds that on 18 January the judge was shown a staged scene, set up by police, designed to give a false impression of the true events. The Chamber is satisfied that at least some of the bodies observed by Judge Marinković on 18 January were not the bodies observed by the KVM representatives on 16 January as depicted in the video exhibit.

416. In the Chamber's finding, not less than 45 Kosovo Albanians were killed in Račak/Račak on 15 January 1999, including a woman and a child. At least one victim had been decapitated. Most of those killed were over 50 years of age. Many had been shot in the head apparently at close range. Those killed were wearing civilian clothes when killed.

417. On 20 or 21 January 1999 the Chairman of the OSCE, Knut Vollebaek met with the President of FRY, Slobodan Milošević to discuss the expulsion of Ambassador Walker.<sup>1434</sup> Milošević expressed the view that Ambassador Walker's report was a fabrication and that it was likely that the KLA had provoked the events at Račak/Račak.<sup>1435</sup> Knut Vollebaek managed to

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<sup>1432</sup> Knut Vollebaek, T 7215, 7258, 7267; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7652, 7653.

<sup>1433</sup> K86, T 5189-5190.

<sup>1434</sup> Knut Vollebaek, T 7212, 7254-7255; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7645, 7649; Knut Vollebaek, Exhibit P1073, p 5.

<sup>1435</sup> Knut Vollebaek, Exhibit P1073, p 5; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7745.

secure Ambassador Walker's continued presence in Kosovo and his post as the Head of the KVM.<sup>1436</sup>

418. The killings at Račak/Raçak provoked anger in Brussels and Washington as a clear violation of the October Agreements by the Serbian side and raised a serious concern that an outbreak of a widespread conflict was about to happen.<sup>1437</sup> It is also noted by the Chamber that shortly prior to the events Serbian security forces, including the police, had passed through a US-KDOM patrol near Račak/Raçak and had ignored it completely. This caused international observers to believe that what was taking place in the village was in many respects a watershed.<sup>1438</sup> In the Chamber's view, this was correct.

(b) Other evidence considered by the Chamber

419. An account of the events in Račak/Raçak, in material respects different from the findings made above was presented by Defence witnesses. The Chamber does not accept the reliability of aspects of this evidence, which in many respects is not truthful. It is nevertheless set out to indicate the nature of the Defence case concerning these events in Račak/Raçak.

420. According to Defence witnesses, in the evening of 14 January 1999, the Chief of SUP Uroševac/Ferizaj briefed the chief of the police department of SUP Uroševac/Ferizaj, Radomir Mitić, Goran Radosavljević aka Guri, Milan Lecić, a PJP commander and Colonel Jelić of the VJ that arrests would be carried out on 15 January 1999 and that the operation would be led by Goran Radosavljević.<sup>1439</sup> The plan had been worked out by the MUP Staff.<sup>1440</sup> The overall commander of the operation on 15 January was Goran Radosavljević<sup>1441</sup>, a PJP unit from SUP Uroševac/Ferizaj took part in the operation<sup>1442</sup>, but not the VJ even though they were in the area.<sup>1443</sup>

421. There was evidence that Vlastimir Đorđević was in Priština/Prishtinë on 15 January with the Minister, to attend a meeting on the security situation in Kosovo. Following the meeting it is said that he saw Goran Radosavljević who informed him "in passing" that there had been an action against terrorists in Račak/Raçak and that there were terrorists killed.<sup>1444</sup> Đorđević conveyed this information to the Minister and other officials who at that time were having lunch.<sup>1445</sup> Đorđević did

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<sup>1436</sup> Knut Vollebaek, T 7214; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7651-7652.

<sup>1437</sup> Shaun Byrnes, T 8274-8275. See also *infra*, para 2016.

<sup>1438</sup> Shaun Byrnes, T 8201-8206.

<sup>1439</sup> Radomir Mitić, T 12676-12678, 12750, 12799-12800.

<sup>1440</sup> Radomir Mitić, T 12750.

<sup>1441</sup> Radomir Mitić, T 12756.

<sup>1442</sup> Radomir Mitić, T 12844-12845.

<sup>1443</sup> Radomir Mitić, T 12677-12678, 12747, 12748, 12755, 12760.

<sup>1444</sup> Vlastimir Đorđević, T 9666.

<sup>1445</sup> Vlastimir Đorđević, T 9666-9667.

not know anything about this action and did not visit Štimlje/Shtimle or Račak/Raçak on 15 January.<sup>1446</sup>

422. There was also evidence that on 16 January Đorđević flew to Prizren for a series of pre-planned meetings, returned to Priština/Prishtinë, went to Peć/Pejë to attend political talks and meetings and again returned to Priština/Prishtinë.<sup>1447</sup> Đorđević then called Radislav Stalević, an SAJ commander in Priština/Prishtinë and told him that he wished to go to Mount Kopaonik for a skiing trip.<sup>1448</sup> Radislav Stalević personally drove Vlastimir Đorđević to Mount Kopaonik.<sup>1449</sup> It is his evidence that on 16 January Đorđević did not receive any information about events in Račak/Raçak because he left immediately for Mount Kopaonik.<sup>1450</sup> Vlastimir Đorđević said he spent 17 January skiing<sup>1451</sup> with Radislav Stalević,<sup>1452</sup> but around noon he received a phone call from the Minister, who asked him to return to Priština/Prishtinë. He did so, being picked up by a helicopter later that day.<sup>1453</sup>

423. When he arrived at the MUP Staff in Priština/Prishtinë on 17 January, Đorđević was told that there had been attempts in Račak/Raçak to carry out on-site investigations on 16 and 17 January but these attempts were not successful due to ongoing terrorist activities. There is also evidence that the Head of the MUP Staff, Lukić, told Đorđević that on orders of the Minister, it was planned to return to Račak/Raçak and secure the location for an on-site investigation on 18 January.<sup>1454</sup> The chief of the crime police of SUP Uroševac/Ferizaj, Radomir Mitić also was informed by the Chief of the SUP that a de-blockade would be carried out with the participation of the PJP company of Uroševac/Ferizaj in order to enable an on-site investigation to take place on 18 January.<sup>1455</sup>

424. On his own evidence, on 18 January at about 0900 or 1000 hours Đorđević went to the police station in Štimlje/Shtimë to see for himself what the situation was.<sup>1456</sup> At the police station he met the Chief of SUP Uroševac/Ferizaj and his assistants and Judge Marinković's investigation

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<sup>1446</sup> Vlastimir Đorđević, T 9667-9668.

<sup>1447</sup> Vlastimir Đorđević, T 9669.

<sup>1448</sup> Radislav Stalević, T 13792, 13855.

<sup>1449</sup> Radislav Stalević, T 13792.

<sup>1450</sup> Vlastimir Đorđević, T 9670.

<sup>1451</sup> Vlastimir Đorđević, T 9669-9670.

<sup>1452</sup> Radislav Stalević, T 13792.

<sup>1453</sup> Vlastimir Đorđević, T 9670-9671, 9886; Radislav Stalević, T 13792.

<sup>1454</sup> Vlastimir Đorđević, T 9671.

<sup>1455</sup> Radomir Mitić, T 12688.

<sup>1456</sup> Vlastimir Đorđević, T 9672-9673, 9887.

team.<sup>1457</sup> He said he spent about three to four hours at the police station in Štimlje/Shtime following which he returned to the MUP Staff in Priština/Prishtinë.<sup>1458</sup>

425. The account of Vlastimir Đorđević is unacceptable in many respects. It is unclear how Goran Radosavljević, would be able to inform “in passing” Vlastimir Đorđević at a meeting in Priština/Prishtinë attended by the Minister and other senior MUP officers, a few hours after the start of a major operation in Račak/Raçak of which he was the overall commander. Đorđević’s supposed reaction after hearing about this operation, which was to inform the Minister over lunch, is also hard to accept. The Chamber is likewise not persuaded that on 15 and 16 January Đorđević had a series of meetings in Prizren and Peć/Pejë. There was a large media presence in Račak/Raçak on 16 January. The events in the village received extensive media coverage and were the focus of international attention during these two days. It is highly unlikely that the person in charge of crime police and investigation would not act on this matter but instead would continue with pre-planned meetings the subject of which had not been specified. Further, the Chamber cannot accept Vlastimir Đorđević’s and Radislav Stalević’s account of a skiing trip on 16 and 17 January. It is incongruous that, in circumstances as those at the time Vlastimir Đorđević, who was repeatedly described as a professional and reliable police officer, would abandon his duties to go on a skiing trip. In the Chamber’s finding his presence at Štimlje/Shtime police station on at least 15 January 1999 confirms his awareness of the joint VJ and MUP operation in Račak/Raçak on 15 January and its importance, and reveals his ultimate responsibility for what occurred in Račak/Raçak, including the staged misrepresentation of bodies and other circumstances presented to Judge Marinković’s team and the international representatives and the media on 18 January 1999.

## 2. Events in Rogovo/Rogovë

426. On 29 January 1999 MUP forces engaged in an action against KLA members in the village of Rogovo/Rogovë, Đakovica/Gjakovë municipality. There was protracted fighting.<sup>1459</sup> 25 people of Albanian ethnicity were killed in a farmhouse in Rogovo/Rogovë, most of them, KLA members.<sup>1460</sup> General Drewienkiewicz went to the scene and upon arrival was directed to a farm compound with walls three to four metres high; the gate was closed. The General was not allowed to inspect the scene until an investigating judge from Đakovica/Gjakovë had finished an on-site investigation.<sup>1461</sup> Later he entered the compound.

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<sup>1457</sup> Vlastimir Đorđević, T 9673; Radomir Mitić, T 12690-12691, 12760; Danica Marinković, T 12975.

<sup>1458</sup> Vlastimir Đorđević, T 9673-9674, 10155.

<sup>1459</sup> Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11059, 11171.

<sup>1460</sup> Joseph Maisonneuve, T 5489; Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5892, 5895; Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11059, 11170.

<sup>1461</sup> Karol John Drewienkiewicz, Exhibit P996, paras 165, 167; Karol John Drewienkiewicz, T 6372.

427. Two types of police were present at the scene in Rogovo/Rogovë, ordinary police in blue camouflage uniforms and a group wearing light grey coveralls with a slight bluish colour and a shoulder patch of red, white, and blue in vertical wings. This group of police were better equipped.<sup>1462</sup> One member of the special police unit had been killed.<sup>1463</sup> General Lončar was at the scene and appeared clearly in charge of the situation, giving orders to the police.<sup>1464</sup>

428. Inside the courtyard, there was a minibus containing five bodies. There were two bodies outside the minibus, five bodies in a shed nearby, four bodies in a meeting room and one body in a toilet.<sup>1465</sup> It was General Drewienkiewicz's assessment of what he saw at the scene that the compound had been stormed by a special police unit in the morning during which a member of this unit was killed, and that after this initial storming a number of Kosovo Albanians were killed.<sup>1466</sup> A KVM daily activity report of 29 January 1999 records Joseph Maisonneuve's conclusion that the amount of force employed by the Serbian security forces was not proportional, that not all persons killed were members of the KLA, and that there was little evidence of fighting back by the KLA.<sup>1467</sup> The report also indicates that the VJ had informed the OSCE that they had performed a supporting role in the MUP operation.<sup>1468</sup> This was confirmed by Joseph Maisonneuve who observed VJ soldiers in the vicinity providing support.<sup>1469</sup>

### 3. Other acts of violence

429. At the end of January 1999 John Crosland witnessed VJ and MUP units razing the village of Gornje Lapaštica/Llapashticë-e-Epërme and Donja Lapaštica/Llapashticë-e-Pshtme, located west of Podujevo/Podujevë, as well as the villages of Bradaš/Bradash and Dobrotin/Dobratin.<sup>1470</sup> A VJ armoured brigade had held a line about two kilometres west of town and a VJ battalion had been deployed along the Priština/Prishtinë main road.<sup>1471</sup>

430. An inspection of the observation posts carried out by the KVM in January 1999 confirmed that most of the 27 posts were occupied by the MUP, while under the terms of the Byrnes-Đorđević

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<sup>1462</sup> Karol John Drewienkiewicz, Exhibit P996, para 166; Karol John Drewienkiewicz, T 6372-6373, 6481; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7799, 8002-8003; Exhibit P1008, p 3; Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11172.

<sup>1463</sup> Karol John Drewienkiewicz, T 6372; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7974; Joseph Maisonneuve, Exhibit P851, para 43.

<sup>1464</sup> Karol John Drewienkiewicz, Exhibit P996, para 166; Karol John Drewienkiewicz, T 6370-6372. *See also* Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11172; Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5895; Joseph Maisonneuve, Exhibit P851, para 43.

<sup>1465</sup> Karol John Drewienkiewicz, Exhibit P996, para 167.

<sup>1466</sup> Karol John Drewienkiewicz, T 6370, 6478-6479.

<sup>1467</sup> Exhibit P1008; Karol John Drewienkiewicz, T 6370.

<sup>1468</sup> Exhibit P1008; Karol John Drewienkiewicz, T 6370-6371.

<sup>1469</sup> Joseph Maisonneuve, Exhibit P851, para 43.

<sup>1470</sup> John Crosland, Exhibit P1400, para 68.

<sup>1471</sup> John Crosland, Exhibit P1400, para 68; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9843.

Agreement, only nine should have been occupied.<sup>1472</sup> In February 1999 Richard Ciaglinski arranged a spot unannounced verification by sending 40 teams of verifiers to each of the locations identified in the October Agreements as observation posts by the MUP.<sup>1473</sup> It was found that the MUP had established nine or 10 observation posts, additional to the agreed 27. Further, instead of nine, at least 27 observations posts were manned<sup>1474</sup> by the MUP at the time. The operation confirmed that the MUP were acting in breach of the Agreement.<sup>1475</sup> These findings were reported to the Serbian Commission for Cooperation but no follow-up action was undertaken by it.<sup>1476</sup>

431. At the beginning of 1999 KLA attacks on police and army became more frequent.<sup>1477</sup> On 20 January 1999 the police station in Suva Reka/Suharekë was attacked.<sup>1478</sup> In February 1999 KLA forces ambushed a police column between Lipovica/Lipovicë and Magura/Magurë, some 20 kilometres from Priština/Prishtinë, and injured 15 policemen.<sup>1479</sup> On 22 February 1999 the OUP building in Orahovac/Rahovec was attacked.<sup>1480</sup> On 21 March 1999 the police station in Zrze/Xërzë, Orahovac/Rahovec municipality, was attacked with infantry weapons.<sup>1481</sup>

#### 4. Negotiations in Rambouillet and Paris

432. In February 1999, in a further effort to resolve the conflict in Kosovo the international community organised talks in Rambouillet between the FRY government and a delegation from Kosovo, which included Ibrahim Rugova, the President of the LDK, representatives of other civil society organisations and representatives of the KLA.<sup>1482</sup> The negotiations were organised by the French Minister of Foreign Affairs Hubert Védrine and were co-chaired by the British Foreign Secretary Robin Cook.<sup>1483</sup> Representatives of the countries in the Contact Group, *i.e.* United States, France, Britain, Italy, and Russia were heavily involved in the negotiations.<sup>1484</sup> The Chairman of

<sup>1472</sup> Richard Ciaglinski, T 5341-5342; 5343-5344; Exhibit P844, entry for 5 January 1999.

<sup>1473</sup> Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3146.

<sup>1474</sup> Richard Ciaglinski, T 5263.

<sup>1475</sup> Richard Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, p 3; Richard Ciaglinski Exhibit P833 (*Milošević* transcript), T 3147.

<sup>1476</sup> Richard Ciaglinski, T 5263.

<sup>1477</sup> Ljubinko Cvetic, T 6813; Radomir Mitić, T 12670-12675; Exhibit D133 referring to a KLA attack in the village of Račak/Raçak in November 1998; *see also* Exhibit D138 (discussed in the section on Račak/Raçak); Exhibit D841 referring to an attack on a police patrol and a military column on 12 March 1999.

<sup>1478</sup> Exhibit D888, p 655, item 397; 6D2, T12318.

<sup>1479</sup> Richard Ciaglinski, T 5372.

<sup>1480</sup> Exhibit D888, p 669, item 457; 6D2, T12318-12319.

<sup>1481</sup> Exhibit D888, p 691, item 543; 6D2, T12319-12320.

<sup>1482</sup> Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9522; Ibrahim Rugova, Exhibit P285, pp 7-8; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4217-4218, 4324; Veton Surroi, T 283, 345; Adnan Merovci, Exhibit P416, para 33; Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8432.

<sup>1483</sup> Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9521.

<sup>1484</sup> Knut Vollebaek, T 7220; Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9522; Veton Surroi, T 284, 289.



the OSCE was present as observer.<sup>1485</sup> Initially, the procedure agreed upon was shuttle diplomacy, the FRY delegation and the Kosovo delegation did not meet directly but through mediators and legal experts.<sup>1486</sup> The talks lasted for about three weeks but final agreement could not be reached.<sup>1487</sup> The international mediators asked the parties to sign a declaration of intent indicating their willingness to continue and sign the agreement, which they did.<sup>1488</sup> The negotiations were then interrupted and both delegations returned home.<sup>1489</sup>

433. The talks reconvened three weeks later in Paris but broke down immediately because both sides had changed their attitude and the draft agreement was not signed.<sup>1490</sup>

434. In the recess period between the negotiations in Rambouillet and in Paris, Knut Vollebaek, the Chairman of the OSCE met with Slobodan Milošević to discuss an expansion of the KVM to include armed presence. This possibility was rigidly refused by Slobodan Milošević.<sup>1491</sup>

##### 5. Events in Kosovo following the negotiations

435. During the negotiations in Rambouillet there was a substantial reduction of the level of violence in Kosovo.<sup>1492</sup> Following the negotiations, however, international observers noted a change in the strategy of the Serbian forces in Kosovo. While in the beginning of February the MUP and the VJ were responding to incidents in the same way as in December and January, namely by conducting an operation, consolidating their gains and withdrawing, at the end of February they began leaving a platoon size unit of about 30 to 40 men behind on the ground after an operation. These men were permanently out of the barracks and remained in the area.<sup>1493</sup> There was a build up of Serbian troops consisting of both VJ and MUP units on a scale not seen before. There were two additional VJ brigades deployed in the area of Kuršumlija.<sup>1494</sup> By 3 March 1999, the VJ had the equivalent of 15 companies deployed, based on a count of about 2000 personnel and

<sup>1485</sup> Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9521; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7709.

<sup>1486</sup> Ibrahim Rugova, Exhibit P285, p 8; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4217-4218, 4324; Veton Surroi, T 285-286.

<sup>1487</sup> Knut Vollebaek, T 7220-7221, 7268-7269; Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9520; Ibrahim Rugova, Exhibit P285, p 8; Adnan Merovci, Exhibit P416, para 36.

<sup>1488</sup> Ibrahim Rugova, Exhibit P285, p 5; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4217-4220; Exhibit P1501, item 4.

<sup>1489</sup> Knut Vollebaek, T 7220-7221, 7223, 7269; Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9520-9521; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7710; Ibrahim Rugova, Exhibit P285, p 8.

<sup>1490</sup> Knut Vollebaek, T 7220-7221, 7223, 7269; Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9520-9521; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7710.

<sup>1491</sup> Knut Vollebaek, T 7224; Exhibit P1076, p 1.

<sup>1492</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 8019.

<sup>1493</sup> Karol John Drewienkiewicz, Exhibit P996, para 187; Karol John Drewienkiewicz, T 6373-6374. A company sized team would consist of up to 150 soldiers and some 10 to 15 armoured vehicles, Karol John Drewienkiewicz, T 6320.

associated equipment, while under the October Agreement they were only allowed three companies.<sup>1495</sup> The VJ then proceeded to conduct “search and destroy” operations against the KLA on an area-by-area basis using the locations they had secured on the ground.<sup>1496</sup> In early March 1999 a build up of VJ and MUP presence, much more than permitted by the October Agreements, was visible in many parts of Kosovo.<sup>1497</sup>

436. Minutes of a meeting of the MUP Staff held on 17 February 1999 in Priština/Prishtinë attended also by Minister Stojiljković and the Accused Vlastimir Đorđević, RDB Chief Rade Marković, Assistant Minister Obrad Stevanović, all members of the MUP Staff, all chiefs of SUPs and PJP and SAJ commanders, confirm that considerable police and VJ forces had been engaged in the Podujevo/Podujevë area to secure the Priština/Prishtinë-Niš road and that RPOs in nearly all villages inhabited by Serbs were very active.<sup>1498</sup> The minutes also indicated that the RJB had prepared a plan to prevent and thwart the entry of NATO troops into Kosovo.<sup>1499</sup> The minutes record further that the MUP Staff planned, when it was ordered, to carry out three “mopping up” operations in the areas of Podujevo/Podujevë, Dragobilje/Dragobil and Drenica and had allotted for this purpose 4,000 policemen, about 70 policemen of the highly trained OPG (operative pursuit group) and around 900 police reservists.<sup>1500</sup> It was also discussed at the meeting that “Albanian terrorists” were conducting additional training and arming themselves, that their numbers were increasing, and that they had gained control in a number of areas.<sup>1501</sup> At the meeting the police were tasked with approaching and engaging volunteers carefully linking their engagement through the reserve police force when this was assessed to be necessary.<sup>1502</sup>

437. Armed clashes took place in early March 1999 in the area of Podujevo/Podujevë. The Chairman of OSCE, Knut Vollebaek, who visited Kosovo on 2 March 1999, saw that smaller villages surrounding Podujevo/Podujevë were destroyed, that the roofs of the houses had been blown off and that there was evidence of shelling and fighting.<sup>1503</sup> In a telephone conversation with the President of the FRY Slobodan Milošević on 24 March 1999 Knut Vollebaek conveyed his

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<sup>1494</sup> John Crosland, Exhibit P1400, para 69; John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9751, 9833; John Crosland, T 9148.

<sup>1495</sup> Karol John Drewienkiewicz, Exhibit P996, para 187; Karol John Drewienkiewicz, T 6316, 6320, 6374; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7943-7944.

<sup>1496</sup> Karol John Drewienkiewicz, Exhibit P996, para 187.

<sup>1497</sup> Knut Vollebaek, Exhibit P1073, p 9; Knut Vollebaek, T 7284-7285; Exhibit P844, p 9; Exhibit P1071 (*Milutinović* transcript), T 9510, 9552.

<sup>1498</sup> Exhibit P85.

<sup>1499</sup> Exhibit P85; Žarko Braković, T 4174.

<sup>1500</sup> Exhibit P85; Žarko Braković, T 4174, 4268.

<sup>1501</sup> Exhibit P85.

<sup>1502</sup> Exhibit P85, p 3.

<sup>1503</sup> Knut Vollebaek, Exhibit P1073, p 6; Knut Vollebaek, T 7215-7216, 7272-7273, 7259, 7262; Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9510.

observations from his visit to Kosovo.<sup>1504</sup> A KVM spot report covering the period from 26 February to 4 March 1999 indicates that the KLA in the Podujevo/Podujevë area had managed to carry out an attack on the town of Podujevo/Podujevë.<sup>1505</sup> A KLA post was located in close proximity to a position of the Serbian forces, with civilian population being caught between the two fronts.<sup>1506</sup> A number of people on horse-carts and tractor trailers with all their belongings were leaving the area.<sup>1507</sup> On 5 March 1999 Richard Ciaglinski observed shelling of an area south of Podujevo/Podujevë. VJ tanks and artillery were lined up along the main road between Podujevo/Podujevë and Priština/Prishtinë and were shelling the hillside. There were KLA positions there, but they were also shelling villages.<sup>1508</sup>

438. On 16 March 1999 the KVM was informed by General Lončar that the service of conscripts had been extended by 30 days, that the border zone was to be enlarged from five to 10 kilometres, and that the KVM would have to move its personnel out of the widened region.<sup>1509</sup> New conscripts were rotated into Kosovo but the ones due to rotate out had their service extended and remained in Kosovo and, as a result, the number of VJ personnel increased by several thousands.<sup>1510</sup> In March 1999, the KVM found out that newer, more modern and larger, more powerful equipment was being brought into Kosovo by the Serbian forces.<sup>1511</sup> In particular, on 16 March 1999, the KVM reported the introduction of T-72's tanks by rail into Kosovo. Prior to this, the only tanks that were declared as permanently stationed in Kosovo were T-55 tanks, which had much more limited capabilities.<sup>1512</sup> The introduction of this new equipment was a violation of existing agreements.<sup>1513</sup> The MUP brought in a lot of equipment by road, including a completely new generation of APCs.<sup>1514</sup> The reinforcement of the Serbian forces was not occurring by stealth, but overtly.<sup>1515</sup> The extension of the border zone between Kosovo and Albania and FYROM from five

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<sup>1504</sup> Knut Vollebaek, Exhibit P1073, pp 9, 10; Knut Vollebaek, T 7284-7285.

<sup>1505</sup> Knut Vollebaek, T 7259; Exhibit D157, p 2.

<sup>1506</sup> Knut Vollebaek, T 7216.

<sup>1507</sup> Knut Vollebaek, Exhibit P1073, p 9; Knut Vollebaek, T 7216-7217.

<sup>1508</sup> Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3160.

<sup>1509</sup> Karol John Drewienkiewicz, Exhibit P996, para 168, 188; Karol John Drewienkiewicz, T 6529-6530.

<sup>1510</sup> Karol John Drewienkiewicz, Exhibit P996, paras 66, 188; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3147.

<sup>1511</sup> Richard Ciaglinski, T 5267-5268.

<sup>1512</sup> Karol John Drewienkiewicz, Exhibit P996, para 188; Karol John Drewienkiewicz, T 6374. The T-72 tanks were a completely different model tank with a different method of operations and for this reason the witness believes that accompanying these tanks must have been at least one new VJ unit that could operate these tanks, Karol John Drewienkiewicz, Exhibit P996, para 188; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7809-7810. See also Richard Ciaglinski, T 5267; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3147, testifying that new T-84 tanks were being brought into Kosovo in March 1999.

<sup>1513</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7810; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3154.

<sup>1514</sup> Richard Ciaglinski, T 5268.

<sup>1515</sup> Karol John Drewienkiewicz, T 6380-6381; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7810-7811; Exhibit P1010.

to 10 kilometres made the work of the KVM very difficult.<sup>1516</sup> Access to the border area became more difficult.<sup>1517</sup> From that point on, KVM monitors were stopped and harassed more often in the border zone.<sup>1518</sup>

439. In March 1999 the number of policemen in Kosovo increased to over 14,500. As discussed earlier, following the October Agreements this number had been about 10,000. The Head of the MUP Staff urged all SUPs in Kosovo to undertake all necessary measures to mobilize members of the reserve force.<sup>1519</sup>

440. Acts of violence by the KLA continued to occur. On or about 22 March 1999, a Serb civilian was killed in Suva Reka/Suharekë town.<sup>1520</sup> A witness testified that in retaliation the police killed 11 Kosovo Albanians who were unconnected to the murder.<sup>1521</sup>

#### 6. Events in Kačanik/Kaçanik and Vuçitrn/Vushtrri in late February and mid March 1999

441. In late February to mid-March 1999, large operations occurred in the Kačanik/Kaçanik and Vuçitrn/Vushtrri areas. These operations occurred in areas of responsibility of at least two VJ brigades indicating that these operations were planned at least at VJ corps level.<sup>1522</sup> The VJ and MUP conducted an offensive and sealed off the areas where they were conducting operations, denying entry to the KVM.<sup>1523</sup> During the operations in March 1999, the VJ and the MUP cooperated together in a practised fashion: the VJ would secure the perimeter of a village or area and offered artillery support if required, while the MUP entered the village or area.<sup>1524</sup>

442. On 25 February 1999 the KLA attempted to open a new zone of operations in the Kačanik/Kaçanik area.<sup>1525</sup> On 8 March 1999 the VJ commenced a counter operation and pushed the KLA off the high ground, which dominated the main road between Priština/Prishtinë and Skopje, on either side of the gorge. The Chamber will discuss the ensuing events later in this

<sup>1516</sup> Karol John Drewienkiewicz, T 6530; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3182.

<sup>1517</sup> Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3180.

<sup>1518</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 8018-8019.

<sup>1519</sup> Ljubinko Cvetic, T 6608-6609. To achieve this ratio SUP Kosovska Mitrovica had to mobilize some 665 reserve policemen, Ljubinko Cvetic, T 6609.

<sup>1520</sup> Velibor Veljković, T 7115-7116; 6D2, 12270; Exhibit D17; Halit Berisha, T 3389.

<sup>1521</sup> Halit Berisha, T 3389-3390.

<sup>1522</sup> Karol John Drewienkiewicz, Exhibit P996, para 190. See also John Crosland, Exhibit P1400, para 71.

<sup>1523</sup> Karol John Drewienkiewicz, Exhibit P996, para 190; Karol John Drewienkiewicz, T 6375, 6516. KVM verifiers would attempt to follow and track the movement of a convoy of military and police into these areas, but would be denied access for alleged safety reasons, Karol John Drewienkiewicz, T 6375, 6516.

<sup>1524</sup> Karol John Drewienkiewicz, Exhibit P996, para 197.

<sup>1525</sup> Karol John Drewienkiewicz, Exhibit P996, para 191; Karol John Drewienkiewicz, T 6481-6482; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7932. Several days after the operation, the KVM received information that the KLA that were in Kačanik/Kaçanik had crossed the border at Đeneral Janković/Han-i-Elezit, from FYROM, Karol John Drewienkiewicz, T 6484; Karol John Drewienkiewicz, Exhibit P997

Judgement.<sup>1526</sup> Once the gorge was secured, the VJ left platoon-sized units at key locations along the road to the Đeneral Janković/Han-i-Elezit border crossing with FYROM.<sup>1527</sup>

443. In March 1999 the KLA controlled the ground west of and up to the railway parallel to the Kosovska Mitrovica/Mitrovicë-Priština/Prishtinë road going through Vučitrn/Vushtrri municipality.<sup>1528</sup> The KLA held in particular the area between Čičavica/Qiqavica, Slakovce/Sllakoc, Donja Sudimlja/Studime-e-Poshtëme with the exception of the neighbourhood of Rašica/Rashica which was located on a hill, the neighbourhood of Llapzoviq in the village of Samodrezhe/Samodreža and the town of Ceceli/Cecelija.<sup>1529</sup> However, the KLA did not have control over the railway.<sup>1530</sup>

444. On 15 March 1999 VJ and MUP forces launched an offensive in the Vučitrn/Vushtrri area which succeeded in pushing the KLA westwards over the high ground dominating the lines of communication in the area of Vučitrn/Vushtrri.<sup>1531</sup> Special MUP forces arrived from outside Kosovo in large numbers. They had modern Kevlar helmets, better weapons, better radios, different shoulder patches; they behaved like soldiers.<sup>1532</sup> The forces would often remove their insignia which made it difficult for the international monitors observing their action to know where they were from.<sup>1533</sup> Large amounts of smoke rising from burning villages could be seen during the operation.<sup>1534</sup> General Drewienkiewicz, who managed to get into this area himself, testified that associated with these attacks were one or two company sized units of the MUP, each comprising about 100 or more fitter looking personnel who wore green camouflage uniforms with the words “Milicija” on the back and carried rifle-launched grenades on their backs.<sup>1535</sup> As reported to General Drewienkiewicz on 12 March 1999, VJ and MUP forces were already in action in the area of Vučitrn/Vushtrri. Special forces and paramilitary units from Serbia had been observed in the area. The behaviour of the VJ and MUP was encouraging Serb civilians to participate in the operations against civilian Albanians and against the KVM. As reported to General Drewienkiewicz the VJ and MUP were coordinating their activities in a “much better way” and it became obvious that they were planning operations against the Kosovo Albanian population and

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(*Milutinović* transcript), T 7931-7932; Exhibit D157. See also Knut Vollebaek, T 7269-7270. Richard Ciaglinski, T 5382.

<sup>1526</sup> See *infra*, paras 1102-1111.

<sup>1527</sup> Karol John Drewienkiewicz, Exhibit P996, para 191.

<sup>1528</sup> Karol John Drewienkiewicz, Exhibit P996, para 192.

<sup>1529</sup> Shukri Gerxhaliu, Exhibit P512, para 6; Shukri Gerxhaliu, Exhibit P513(*Milutinović* transcript) T 2494-2499, 2532; Shukri Gerxhaliu, T 3107-3109, 3143; Shukri Gerxhaliu, Exhibit P514.

<sup>1530</sup> Shukri Gerxhaliu, T 3138-3139, 3142-3143; Shukri Gerxhaliu, Exhibit D69.

<sup>1531</sup> Karol John Drewienkiewicz, Exhibit P996, para 192; Exhibit P844, p 7.

<sup>1532</sup> Richard Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, pp 9-10; Richard Ciaglinski, T 5279.

<sup>1533</sup> Richard Ciaglinski, T 5279.

<sup>1534</sup> Karol John Drewienkiewicz, Exhibit P996, para 190; Karol John Drewienkiewicz, T 6406-6407; Exhibit P1029.

not, as before, single responses to KLA attacks.<sup>1536</sup> KVM monitors expected that VJ and MUP operations to clear the entire area of KLA would result in the displacement of the Albanian population who lived there as they were suspected of giving assistance to the KLA.<sup>1537</sup>

#### 7. Departure of international organisations from Kosovo

445. The KVM staff was evacuated from Kosovo on 20 March 1999.<sup>1538</sup> The decision to evacuate the KVM was made by the Chairman of the OSCE, Knut Vollebaek, in consultation with the OSCE “troika” leadership, members of the Contact Group and Ambassador Walker.<sup>1539</sup> All KVM staff, by that time some 1379, withdrew to FYROM.<sup>1540</sup> As KVM personnel were leaving Kosovo they saw VJ and MUP forces leaving their positions in columns and heading towards areas known to be KLA strongholds.<sup>1541</sup>

446. The UNHCR withdrew from Kosovo a day later, on 21 March 1999. Their staff observed that after the withdrawal of the KVM the areas where the KVM had been active were subject to attacks by Serbian forces.<sup>1542</sup>

447. On 24 March 1999 at 2020 hours NATO commenced its aerial bombing campaign on the territory of the FRY.<sup>1543</sup>

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<sup>1535</sup> Karol John Drewienkiewicz, Exhibit P996, para 190; Karol John Drewienkiewicz, T 6375-6376, 6377-6379; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7808-7809; Exhibit P316.

<sup>1536</sup> Karol John Drewienkiewicz, T 6378-6379; Exhibit P1009.

<sup>1537</sup> Karol John Drewienkiewicz, T 6378.

<sup>1538</sup> Karol John Drewienkiewicz, Exhibit P996, para 171; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7813.

<sup>1539</sup> Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7667, 7669, 7681; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7951.

<sup>1540</sup> Karol John Drewienkiewicz, Exhibit P996, para 171; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7813.

<sup>1541</sup> Karol John Drewienkiewicz, T 6393-6394; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7814-7815; Exhibit P1027.

<sup>1542</sup> Karol John Drewienkiewicz, T 6393-6394; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7814-7815; Exhibit P1027.

<sup>1543</sup> Veton Surroi, T 291.

## VI. EVENTS IN KOSOVO FROM MARCH 1999 TO 20 JUNE 1999

### A. Orahovac/Rahovec municipality

448. The municipality of Orahovac/Rahovec is in the south-west of Kosovo. It is surrounded by the municipalities of Klina/Klinë to the north, Suva Reka/Suharekë to the east, Prizren to the south and Đakovica/Gjakovë to the west. The main town of Orahovac/Rahovec is in the centre of the municipality and to the south and south-west are the neighbouring villages of Bela Crkva/Bellacërkë, Celina/Celinë, Nogavac/Nagavc, Velika Kruša/Krushë-e-Madhe and Mala Kruša/Krushë-e-Vogël. The municipality is close to Prizren municipality and Đakovica/Gjakovë municipality. To the north-west of Orahovac/Rahovec town is the village of Pusto Selo/Pastasellë. The population of Orahovac/Rahovec was close to 60,000 people and the overwhelming majority were Kosovo Albanians.<sup>1544</sup>

449. In the lead up to the NATO bombing, which commenced 24 March 1999, the KLA had established areas of responsibility in its Pashtrik operational zone, that included the municipality of Orahovac/Rahovec.<sup>1545</sup> The area of Mališevo/Malishevë and Pagaruša/Pagarushë, to the north of Orahovac/Rahovec, was specifically referred to as one of the KLA strongholds and local headquarters were said to be established in Velika Kruša/Krushë-e-Madhe, Brestovac/Brestoc and Donje Retimlje/Retia-e-Poshtme.<sup>1546</sup>

450. On 23 March 1999, the Joint Command for Kosovo issued an order assigning elements of a reinforced VJ Priština Corps, comprised of the 549<sup>th</sup> Motorised Brigade, the 243<sup>rd</sup> Mechanised Brigade and the 202<sup>nd</sup> logistics base, in cooperation with the “armed non-KLA population”, to undertake an operation to provide support in “blocking, crushing and destroying” the KLA forces in the general areas of Orahovac/Rahovec and Velika Kruša/Krushë-e-Madhe.<sup>1547</sup>

451. In line with this Joint Command order, on 23 March 1999, Božidar Delić, commander of the 549<sup>th</sup> Motorised Brigade, and the direct subordinate of Lieutenant-General Vladimir Lazarević who then commanded the Priština Corps, ordered the 37<sup>th</sup> Company of the Niš PJP of the MUP, the 4<sup>th</sup> Company of the Prizren PJP of the MUP and the 4<sup>th</sup> Company of the Đakovica/Gjakovë PJP of the MUP to act in coordination with the 549<sup>th</sup> Motorised Brigade. These combined Serbian forces were

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<sup>1544</sup> Exhibit P983, p 9.

<sup>1545</sup> The following KLA brigades were operating in the Pashtrik zone at the time of the NATO bombing: 121<sup>st</sup>, 122<sup>nd</sup>, 123<sup>rd</sup>, 124<sup>th</sup> and 125<sup>th</sup> brigade, Byslim Zyari, Exhibit P427, para 16; Byslim Zyari, T 2472-2473, 2493-2494, 2500; Exhibit P430; *See infra*, para 1550.

<sup>1546</sup> *See* Exhibit P889, p 1; Exhibit P85, p 2; Exhibit P898; Exhibit P970; Exhibit P350, p 1; Byslim Zyari, T 2491-2493; Exhibit P447, pp 3-4; K25, Exhibit P341-A (*Milutinović* transcript), T 7861; 6D2, T 12217-12218; *see also*, Exhibit D790.

<sup>1547</sup> Exhibit P350, pp 1, 2, 4.

tasked with lifting the blockade of the Suva Reka/Suharekë-Orahovac/Rahovec road and the Prizren-Zrze/Xërxë road, that passes just to the south of the villages of Mala Kruša/Krushë-e-Vogël, Velika Kruša/Krushë-e-Madhe, Celina/Celinë and Bela Crkva/Bellacërkë.<sup>1548</sup> An object of these orders was to break up and destroy KLA in villages including, Celina/Celinë, Velika Kruša/Krushë-e-Madhe and Mala Kruša/Krushë-e-Vogël and to prevent the KLA from withdrawing from the Mališevë/Malishevë area towards the municipality of Prizren.<sup>1549</sup> However, the forces were also to “mop-up” the area and push the KLA back towards Mališevë/Malishevë and to “gather up the civilian population” as they came out of the operation.<sup>1550</sup> It was also intended that the forces establish control of the territory between Bela Crkva/Bellacërkë and Nogavac/Nagavc, which covers the area of Celina/Celinë, and from Velika Hoca/Hoçë-e-Madhe to Mala Hoca/Hoçë-e-Vogël.<sup>1551</sup> The Joint Command for Kosovo was in command and control of all Serbian forces during the combat operation. The operation was ordered to begin at 0500 hours on 25 March 1999.<sup>1552</sup>

452. On the evening of 24 March 1999, there was a lot of movement in the Orahovac/Rahovec area by VJ and MUP forces. Trucks and armoured vehicles were seen moving along a road between Zrze/Xërxë and Orahovac/Rahovec and along the main road in the south of the Orahovac/Rahovec municipality.<sup>1553</sup> The KLA took up defensive positions to follow the movement of Serbian forces in the area.<sup>1554</sup>

453. At around 0500 hours on 25 March 1999, the operation ordered by the Joint Command began. The 549<sup>th</sup> Motorised Brigade was deployed along numerous axes, including, an axis to the south east of Orahovac/Rahovec town, incorporating the villages of Velika Hoca/Hoçë-e-Madhe and Donje Retimlje/Retia-e-Poshtme, and an axis to the south west of Orahovac/Rahovec town, the line of attack passing through Bela Crkva/Bellacërkë to Mala Hoca/Hoçë-e-Vogël and down to Velika Kruša/Krushë-e-Madhe, bypassing the villages of Celina/Celinë and Nogavac/Nagavc.<sup>1555</sup> The Serbian forces had also been tasked with continuing the attack and breaking through the KLA defence line from Mala Kruša/Krushë-e-Vogël to Nogavac/Nagavc and into the municipalities to the north-east of Prizren and Suva Reka/Suharekë.<sup>1556</sup> Following the initial attack on 25 March 1999, additional Joint Command orders were issued, dated 28 and 29 March 1999, that

<sup>1548</sup> Exhibit P1316, p 2; Exhibit P1317, p 3.

<sup>1549</sup> Exhibit P350, pp 1-3; Exhibit P1316, p 3.

<sup>1550</sup> K25, Exhibit P340-A, p 8.

<sup>1551</sup> Exhibit P1316, p 3.

<sup>1552</sup> Exhibit P350, p 3.

<sup>1553</sup> Sabri Popaj, Exhibit P1082, p 2.

<sup>1554</sup> Byslim Zyberi, Exhibit P428 (*Milutinović* transcript), T 5991-5993.

<sup>1555</sup> The 243<sup>rd</sup> Motorised Brigade was also deployed to the area surrounding Orahovac/Rahovec in the municipality of Suva Reka/Suharekë, Exhibit P350, pp 2-3.

<sup>1556</sup> Exhibit P350, pp 1-3.



tasked the VJ and MUP forces with continuing the operation ordered on 25 March 1999 of “blocking, routing and destroying the KLA” in the general area of Mališevo/Malisheva, including into Orahovac/Rahovec municipality.<sup>1557</sup> It was reported that the cooperation between the VJ and MUP forces functioned well.<sup>1558</sup>

454. Following the initial Serbian attacks on 25 and 26 March 1999, it was reported to the former Chief of the General Staff of the KLA, Byslim Zypari, that Serbian forces had surrounded villages in Orahovac/Rahovec with tanks, armoured vehicles and heavy machine guns.<sup>1559</sup> All KLA units in the area were ordered to consolidate and organise a line of defence.<sup>1560</sup> The line of defence went through Brestovac/Brestoc, Mala Hoca/Hoçë-e-Vogël, Nogavac/Nagavc and Mala Kruša/Krushë-e-Vogël and into the municipality of Đakovica/Gjakovë.<sup>1561</sup> As Serbian forces began attacking villages within Orahovac/Rahovec from 25 March 1999, the KLA began to withdraw along with the civilian population.<sup>1562</sup> KLA members threw away their weapons, changed into civilian clothes and fled.<sup>1563</sup>

455. Following the operational activity throughout the Orahovac/Rahovec municipality, as will be discussed below, reports to the Priština Corps Command were received that confirmed that VJ and MUP forces were present in the municipality between 25 March 1999 and 3 April 1999.<sup>1564</sup> The presence of these forces was also confirmed by the evidence of members of the Serbian forces who were deployed, or involved in the deployment of forces, to various areas in the Orahovac/Rahovec municipality.<sup>1565</sup> It was recorded that during the operation that took place in the municipality from 25 March 1999 around 2000 members of the Serbian forces were deployed, some 1020 of which were members of the MUP.<sup>1566</sup> VJ units involved in the operation (in the municipality of Orahovac/Rahovec) included: the 101<sup>st</sup> Military Territorial Detachment,<sup>1567</sup> the 243<sup>rd</sup> Motorised Brigade,<sup>1568</sup> the 15<sup>th</sup> Armoured Brigade,<sup>1569</sup> the 120<sup>th</sup> Mortar Company,<sup>1570</sup> and the

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<sup>1557</sup> Exhibit P970, p 3; Exhibit P898, p 2.

<sup>1558</sup> Exhibit P1317, pp 3, 5.

<sup>1559</sup> Specifically, the witness referred to the territory under the command of the 124<sup>th</sup> and 125<sup>th</sup> brigade. Byslim Zypari, T 2439.

<sup>1560</sup> Byslim Zypari, T 2440.

<sup>1561</sup> Byslim Zypari, T 2473, 2448.

<sup>1562</sup> Byslim Zypari, Exhibit P428 (*Milutinović* transcript), T 5991-5992.

<sup>1563</sup> Exhibit D37, p 4; Exhibit P1317, pp 2, 5; Exhibit P944, p 2.

<sup>1564</sup> See, Exhibit P1317; See also, Exhibit P944.

<sup>1565</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9644-9651; See, K25, Exhibit P340-A; See also, Exhibit D37.

<sup>1566</sup> See, Exhibit P1317; See also Exhibit P944.

<sup>1567</sup> The 101<sup>st</sup> military territorial detachment was deployed as of 27 March 1999 to act in coordination with 549<sup>th</sup> Motorised Brigade in the area of Zrze/Xërxë, Orahovac/Rahovec, Velika Hoca/Krushë-e-Vogël and Opteruša/Optershë. Exhibit P896, p 5.

<sup>1568</sup> See, Exhibit P350; See also, Exhibit P898; See also, Exhibit P1316.

<sup>1569</sup> Exhibit P898, p 2.

<sup>1570</sup> See Confidential Annex.

2<sup>nd</sup> Motorised Battalion.<sup>1571</sup> The MUP forces deployed in the area of the operation as of 25 March 1999 included: the 37<sup>th</sup> Niš PJP detachment,<sup>1572</sup> the 23<sup>rd</sup> PJP detachment,<sup>1573</sup> the 5<sup>th</sup> Company of the Priština/Prishtinë PJP<sup>1574</sup> and the 4<sup>th</sup> Company of the Đakovica PJP detachment.<sup>1575</sup> Evidence of the activities of these PJP detachments and VJ forces in specific villages will be discussed further below when dealing with events and villages scheduled in the Indictment.

### 1. Bela Crkva/Bellacërkë

456. The evidence of Isuf Zhuniqi and Sabri Popaj dealt with the events in Bela Crkva/Bellacërkë as charged in paragraph 72(a)(i) and 75(b) of the Indictment. Despite Defence challenges to their credibility, in particular in regards to KLA presence in the village and the area at the time, the Chamber is satisfied that the general evidence provided by these two witnesses about events in and around the village of Bela Crkva/Bellacërkë is reliable.

457. Bela Crkva/Bellacërkë is located about 10 kilometres from Orahovac/Rahovec.<sup>1576</sup> In 1999 the population of Bela Crkva/Bellacërkë was approximately 3,000 people and the village was made up of about 350 houses.<sup>1577</sup> All of the inhabitants were Kosovo Albanian.<sup>1578</sup>

458. As early as about 18 March 1999, about 40 Serbian police and soldiers arrived in Bela Crkva/Bellacërkë. They had trucks, armoured vehicles and APCs.<sup>1579</sup> The police wore blue camouflage uniforms and the VJ soldiers green camouflage uniforms.<sup>1580</sup> The Serbian forces dug bunkers overlooking the village.<sup>1581</sup> A villager who lived close to these bunkers was told by members of the Serbian forces to leave his house.<sup>1582</sup> Other villagers living close to the army and police positions also left their homes out of fear for their safety. On the evening of 24 March 1999, there was a substantial amount of movement by the police and army forces and trucks and armoured

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<sup>1571</sup> See, Exhibit D37.

<sup>1572</sup> Exhibit P1316, p 4; Exhibit P1317, p 3.

<sup>1573</sup> Exhibit P1317, p 3.

<sup>1574</sup> Exhibit P1317, p 3.

<sup>1575</sup> Exhibit P1316, p 4.

<sup>1576</sup> Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6446.

<sup>1577</sup> Isuf Zhuniqi, Exhibit P1251, p 2; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6460; Sabri Popaj, Exhibit P1082, p 2.

<sup>1578</sup> Sabri Popaj, Exhibit P1082, p 2.

<sup>1579</sup> Sabri Popaj, Exhibit P1082, p 2; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5653.

<sup>1580</sup> Sabri Popaj was challenged in cross-examination about his ability to distinguish the uniforms worn by the Army from the Police. In particular, in the view of the Chamber, Sabri Popaj demonstrated a clear appreciation of the difference in the uniforms and could recall different occasions when he saw the different uniforms being worn. He identified the different uniforms patterns on an exhibit (Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5653; Exhibit D314; Sabri Popaj, T 7402-7404). The Chamber is satisfied and finds that from about 18 March 1999 members of the VJ and MUP were present in Bela Crkva/Bellacërkë. In reaching this finding the Chamber has taken into account the issue of the naming and description of some colours according to the dialect used in that area which initially, at least, caused some confusion (Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5657; Sabri Popaj, T 7402-7405).

<sup>1581</sup> Sabri Popaj, Exhibit P1082, p 2; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5653

vehicles were seen moving along the road between Zrze/Xërxë, which is some two kilometres away from Bela Crkva/Bellacërkë and Orahovac/Rahovec.<sup>1583</sup>

(a) Events on or about 25 March 1999

459. In the early morning of 25 March 1999, at sometime between 0200 hours and 0330 hours, 12 VJ tanks approached Bela Crkva/Bellacërkë from the direction of Orahovac/Rahovec town.<sup>1584</sup> These tanks stopped by the mosque in the centre of the village.<sup>1585</sup> At around the same time, five more VJ tanks entered the village from the direction of Đakovica/Gjakovë and Prizren.<sup>1586</sup> Two of these tanks went to the schoolyard and the other three tanks continued past the mosque and to a position on a hill above Celina/Celinë.<sup>1587</sup> The troops from the tanks in the schoolyard were seen to be dressed in army uniforms.<sup>1588</sup> There were other tanks located on the main road that came from Prizren and Đakovica/Gjakovë towards Zrze/Xërxë and Orahovac/Rahovec.<sup>1589</sup>

460. Shortly after the tanks had positioned themselves on the hill, automatic gunfire was directed at the village from the direction of the bunkers dug by VJ and MUP forces from about 18 March 1999.<sup>1590</sup> This automatic gunfire however was directed over the tops of the houses. The villagers understood this to be a warning to leave their houses and the village.<sup>1591</sup> Many villagers did leave. Sometime around 0400 and 0500 hours, Sabri Popaj decided to flee from the village with his family. As they were heading to the outskirts of the village he saw Serbian forces entering the village and police, dressed in blue camouflage uniforms, who were setting houses in the village on fire with petrol and flamethrowers.<sup>1592</sup> Army and police on foot surrounded Bela Crkva/Bellacërkë.<sup>1593</sup>

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<sup>1582</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5653; Exhibit D314; Sabri Popaj, Exhibit T 7402-7404.

<sup>1583</sup> Sabri Popaj, Exhibit P1082, p 2.

<sup>1584</sup> Isuf Zhuniqi, Exhibit P1251, p 2; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4111; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6448, 6449.

<sup>1585</sup> Isuf Zhuniqi, Exhibit P1251, p 2; Exhibit P1253 (*Milutinović* transcript), T 4100-4101; Exhibit P1254.

<sup>1586</sup> Sabri Popaj, Exhibit P1082, p 3; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5651-5652; Exhibit P1084.

<sup>1587</sup> There was some uncertainty whether all five tanks moved to the hill overlooking Celina/Celinë. A closer analysis of the evidence reveals that only the three that moved initially towards the mosque went on to the hill, while the other two remained at the schoolyard until 4 May 1999, Sabri Popaj, Exhibit P1082, p 3; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5652-5653, 5691-5693; Isuf Zhuniqi, Exhibit P1251, p 2; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4112; Exhibit P1084.

<sup>1588</sup> Sabri Popaj, T 7402-7404; Exhibit D314.

<sup>1589</sup> Sabri Popaj, Exhibit 1083 (*Milutinović* transcript), T 5692.

<sup>1590</sup> Sabri Popaj, Exhibit P1082, p 2; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5654; Isuf Zhuniqi, Exhibit P1251, p 2; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4111; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6449, 6450.

<sup>1591</sup> Sabri Popaj, Exhibit P1082, p 3.

<sup>1592</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5654; Exhibit D314; Sabri Popaj, T 7402, 7404; Isuf Zhuniqi, Exhibit P1251, p 2; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4111; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6449, 6450; Exhibit P1254.

<sup>1593</sup> Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4102; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6450, 6454-6455.

461. Fearing for their safety, Isuf Zhuniqi and his family headed to a stream close to the village. About 700 villagers had gathered there.<sup>1594</sup> The stream was about 900 metres from Isuf Zhuniqi's house and it had steep, high banks which provided shelter and hid them.<sup>1595</sup> These villagers from Bela Crkva/Bellacërkë then moved toward the railway bridge, known as the Belaja Bridge,<sup>1596</sup> because it connected Zrze/Xërxë with Prizren, and since Bela Crkva/Bellacërkë had been surrounded by this time it was the only way to get out of the village and to reach Zrze/Xërxë or Rogovo/Rogovë.<sup>1597</sup> As they moved, gunfire and explosions could be heard coming from Bela Crkva/Bellacërkë.<sup>1598</sup> When the villagers reached the Belaja Bridge they took shelter near the bridge and under the bridge in an irrigation canal.<sup>1599</sup>

462. Meanwhile, after getting his family clear of Bela Crkva/Bellacërkë, Sabri Popaj returned to the village to look after livestock.<sup>1600</sup> From his house he went to investigate what he thought sounded like crying children coming from the direction of the Belaja River, located about 300 metres away.<sup>1601</sup> In the river he saw six members of the Zhuniqi family from Bela Crkva/Bellacërkë, including Clirim Zhuniqi, Lumturie Zhuniqi, Dardane Zhuniqi, Dardan Zhuniqi, Dhurata Zhuniqi and Dibran Zhuniqi. There were also eight members of the Spahiu family from Opteruša/Opterushë. These eight members included Xhemal Spahiu, Marigona Spahiu, Iliriana Spahiu, Lirim Spahiu, Fikrit Spahiu, Labinot Spahiu, Qamile Spahiu and an unidentified Spahiu family member. They were heading in the direction of Rogovo/Rogovë.<sup>1602</sup> Sabri Popaj helped them across the stream and for about 600 metres further until they rested. He then returned towards Bela Crkva/Bellacërkë.<sup>1603</sup> On the way back to Bela Crkva/Bellacërkë, Sabri Popaj heard shooting and bullets were landing on the ground close to him so he crawled for about 100 metres and then hid in a hole.<sup>1604</sup>

<sup>1594</sup> Isuf Zhuniqi, Exhibit P1251, p 3; Exhibit P1084.

<sup>1595</sup> Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4102.

<sup>1596</sup> Although it is not clear from the evidence whether all of them did so. Isuf Zhuniqi, Exhibit P1251, pp 2-3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6454-6455; Isuf Zhuniqi, (*Milutinović* transcript), T 4102-4103, 4113-4114; Exhibit P1085.

<sup>1597</sup> Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6455.

<sup>1598</sup> Isuf Zhuniqi, Exhibit P1251, p 3.

<sup>1599</sup> Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6454; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4102-4103; Exhibit P1255.

<sup>1600</sup> Sabri Popaj, Exhibit P1082, p 3; Exhibit P1084.

<sup>1601</sup> Sabri Popaj refers to the Belaja River as the Belles Stream, but it is the same stream and so for consistency the Belaja River has been used instead of Belles Stream. Sabri Popaj, Exhibit P1082, p 2; Exhibit P1084.

<sup>1602</sup> The witness was unable to name the members of the Spahiu family, however, seven of the eight members were identified following the exhumation of their bodies by the British forensic team, Exhibit P1151, K0138761. The Chamber is satisfied that those bodies exhumed, as discussed below, belonged to the seven members of the Spahiu family that Sabri Popaj identified. The remains of one individual have never been located, Sabri Popaj, Exhibit P1082, p 3; Exhibit P1084 (Photograph with the marking "1" made by the witness to indicate where he assisted the two families).

<sup>1603</sup> Sabri Popaj, Exhibit P1082, p 3.

<sup>1604</sup> Sabri Popaj, Exhibit P1082, p 3; Exhibit P1084 (Photograph with marking of an "x" in the top right corner to indicate where the witness hid).

463. From where Sabri Popaj was hiding, he saw a group of approximately 12 police<sup>1605</sup> approaching on his side of the stream, and many more police on the other side of the stream, coming from the direction of Bela Crkva/Bellacërkë.<sup>1606</sup>

464. The uniforms of the police had a pattern of blue and green camouflage.<sup>1607</sup> They also had headbands of different colours.<sup>1608</sup> Isuf Zhuniqi saw a badge on the sleeve of the uniforms. He was unable to recall what the badge looked like but he also saw that the police had white armbands and wore greenish helmets.<sup>1609</sup> They carried AK47 rifles and had long knives in scabbards attached to their belts; some of them had pistols in holsters attached to their belts.<sup>1610</sup> Isuf Zhuniqi recognised one of the policemen as a Serb regular police officer he had seen in Orahovac/Rahovec prior to the war when he wore a blue uniform.<sup>1611</sup> The Chamber recalls its earlier finding that MUP forces were wearing the described uniforms.<sup>1612</sup> The group of police approached the 14 people Sabri Popaj had helped across the stream.<sup>1613</sup> Sabri Popaj then heard the police swear at them and shout “Ask NATO for help now”.<sup>1614</sup> Isuf Zhuniqi heard a policeman shout “shoot”.<sup>1615</sup> The police then opened fire on the group of 14 people.<sup>1616</sup> The 14 people fell to the ground.<sup>1617</sup>

465. Following this, the police continued along the stream and a few minutes later Sabri Popaj saw them find an old man from the village who was trying to hide; he then heard a short burst of

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<sup>1605</sup> Both Sabri Popaj and Isuf Zhuniqi referred to the police at one stage as “paramilitary forces”. Sabri Popaj explained that what he meant by paramilitaries were just members of the ordinary police, Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5737-5738, 5765-5767; Sabri Popaj, T 7401. Isuf Zhuniqi explained that he called them paramilitaries because he had never seen a policeman with a knife before performing ordinary police duties, Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6442, 6451-6452. The Chamber finds that these comments by the witnesses do not affect their evidence that they identified members of the MUP.

<sup>1606</sup> In *Milutinović*, Sabri Popaj was cross-examined about the direction from which the police came because in a statement he had said they were coming from Rogovo/Rogovë. In this trial he confirmed that the police were coming from the direction of Bela Crkva/Bellacërkë and not Rogovo/Rogovë (Sabri Popaj, Exhibit P1082, p 3-4; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5737-5738, 5765-5767; Exhibit P1084; Sabri Popaj, T 7401). Isuf Zhuniqi also confirmed that the police came from the direction of Bela Crkva/Bellacërkë, Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6442, 6451-6452.

<sup>1607</sup> See *supra*, paras 53-54; Sabri Popaj, Exhibit P1082, p 3; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5657, 5681, 5727, 5753, 5766; Sabri Popaj, T 7402-7404; Exhibit D314; Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4126.

<sup>1608</sup> Sabri Popaj, Exhibit P1082, p 3; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5657, 5681, 5727, 5753, 5766; Sabri Popaj, T 7402-7404; Exhibit D314; See *supra*, para 55.

<sup>1609</sup> Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4126; Exhibit D314.

<sup>1610</sup> Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6452-6453; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4126-4128.

<sup>1611</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4107.

<sup>1612</sup> See *supra*, paras 53-55.

<sup>1613</sup> Sabri Popaj, Exhibit P1082, pp 3-4; Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6442.

<sup>1614</sup> Sabri Popaj, Exhibit P1082, pp 3-4.

<sup>1615</sup> Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6442.

<sup>1616</sup> Sabri Popaj, Exhibit P1082, p 4; Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6442.

<sup>1617</sup> The Chamber notes that the Indictment alleges that 12 people were involved in this incident. Nevertheless, the Chamber accepts based on eyewitness evidence that there were 14 people in the stream.

gunfire. The 12 policemen crossed to the other side of the stream and headed in the direction of the main road between Prizren and Đakovica/Gjakovë.<sup>1618</sup> After the police had left the area Sabri Popaj went to where the 14 people had been shot. He saw blood on their clothes and bullet holes on their bodies.<sup>1619</sup> Of the 14 people who were shot at in the Belaja River, 10 were women and children.<sup>1620</sup> 13 of the 14 people were dead. The 13 dead victims were Clirim Zhuniqui, Lumnie Zhuniqui, Dardane Zhuniqui, Dardan Zhuniqui, Dhurata Zhuniqui<sup>1621</sup>, Xhemal Spahiu, Marigona Spahiu, Iliriana Spahiu, Lirim Spahiu, Fikrit Spahiu, Labinot Spahiu, Qamile Spahiu and an unidentified Spahiu family member.<sup>1622</sup> The only survivor of the incident was Dibran Zhuniqui, a two year old boy.<sup>1623</sup> The bodies of these 13 dead people were later buried by local villagers. In June 1999 a grave containing all but one of these bodies was exhumed at this location by the British forensic team as detailed later in this Judgement.<sup>1624</sup> Based on the totality of the evidence, including eyewitness accounts, the Chamber finds that all 13 people, identified by the eyewitness survivor, were killed at the Belaja River.<sup>1625</sup> They were all Kosovo Albanians and none of the victims were participating in the conflict. The Chamber accepts that they were targeted because they were Kosovo Albanians. Forensic examinations by the British forensic team, discussed later in this Judgement, established that 12 of these people died as a result of gunshot wounds.<sup>1626</sup> The Chamber accepts that, on the basis of eyewitness identification, the only reasonable inference in the circumstances is that the 13<sup>th</sup> victim, an unnamed member of the Spahiu family, also died as a result of gun shot wounds.

466. After identifying these 13 people, Sabri Popaj went to the place where he had seen the old man shot. He found him dead. He identified the old man as Halim Fetoshi, about 66 years old,

<sup>1618</sup> Sabri Popaj, Exhibit P1082, p 4.

<sup>1619</sup> Sabri Popaj, Exhibit P1082, p 4; Exhibit P1084 (Photograph with the marking number “1” to show where he saw the 14 people shot); Isuf Zhuniqui, Exhibit P1252 (*Milošević* transcript), T 6457.

<sup>1620</sup> In his evidence Isuf Zhuniqui appears to refer to 13 people not 14 people, however it appears that this calculation does not include the two year old boy who survived. Therefore, the Chamber is satisfied it was a group of 14 people. Isuf Zhuniqui, Exhibit P1251, p 3; Isuf Zhuniqui, Exhibit P1252 (*Milošević* transcript), T 6442.

<sup>1621</sup> The Chamber notes that the Prosecution listed this victim as a four year old male. The forensic evidence however established that she was female and approximately nine or ten years old, Exhibit P1151, K0138760. The Chamber does not find that this discrepancy impacts upon its finding. These details are reflected in the Victim Chart, related to Bela Ckva/Bellacërkë, annexed to this Judgement.

<sup>1622</sup> Isuf Zhuniqui, Exhibit P1251, p 3; Isuf Zhuniqui, Exhibit P1252 (*Milošević* transcript), T 6456-6457; Exhibit P1088; Sabri Popaj, Exhibit P1082, p 5; Exhibit P1151, K0138761.

<sup>1623</sup> Sabri Popaj, Exhibit P1082, p 4.

<sup>1624</sup> See *infra*, para 1391-1392; Isuf Zhuniqui, Exhibit P1251, p 3; Isuf Zhuniqui, Exhibit P1254 (*Milošević* transcript), T 6456-6457; Exhibit P1088; Sabri Popaj, Exhibit P1082, p 5; Exhibit P1151, K0138792.

<sup>1625</sup> The Chamber notes that the Indictment alleges that 12 people were killed in the stream and not 13. Nevertheless, as stated earlier the Chamber found that 14 people were shot at in the stream and only one two year old boy survived the shooting. Furthermore, the Prosecutions Schedule B to the Indictment listed by name 10 of these victims; the Chamber has listed the additional three victims in the Victims Charts, related to Bela Crkva/Bellacërkë, annexed to this Judgement.

<sup>1626</sup> Exhibit P1151, K0138760-K0138761; see *infra*, para 1393; see *infra*, Schedule: Victim Charts.

from Bela Crkva/Bellacërkë.<sup>1627</sup> Halim Fetoshi is not scheduled as a victim known by name in the schedule to the Indictment and no forensic evidence was received in regards to this victim.

467. The same group of police then approached the Belaja Bridge where Isuf Zhuniqi and a large number of other villagers were hiding. As the police reached the bridge they took up positions on each side of the banks of the stream and another about six or seven policemen arrived and took up a position on the Belaja Bridge.<sup>1628</sup> Villagers were still hiding under or by the bridge. They may have been the same people who had left the village with Sabri Popaj earlier. Isuf Zhuniqi was hiding with them. The police ordered these people to put their hands behind their heads, climb out of the stream and to separate into three groups, one comprising women and children and two groups of men.<sup>1629</sup> It is not clear from the evidence how many people there were.<sup>1630</sup> The men were ordered to undress down to their underwear.<sup>1631</sup> One of the police picked up Isuf Zhuniqi's jacket, took his passport from it and asked "Who is Isuf Zhuniqi?"<sup>1632</sup> He identified himself and then was told by the police that he may as well be dead as there was no life for him in Kosovo.<sup>1633</sup> Following this his passport, identity card and drivers licence were ripped up and 1,200 German marks taken from his jacket by the police officer he had identified as hailing from Orahovac/Rahovec.<sup>1634</sup> At the same time, the other men were also ordered to hand over their identity documents, money and other valuables including jewellery.<sup>1635</sup> The men were then ordered to get dressed and gather in one group. At gunpoint the women and children were ordered to leave and to follow the railway track to Zrze/Xërxë.<sup>1636</sup> They did so.

<sup>1627</sup> Sabri Popaj, Exhibit P1082, p 4; Exhibit P1084; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6457.

<sup>1628</sup> Isuf Zhuniqi, Exhibit P1251, p 4 ; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6452; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4102-4103, 4127; Isuf Zhuniqi, Exhibit P1255 (Photo marked with letter "B" to indicate the direction from which the police approached and a letter "C" to indicate where they positioned themselves); Sabri Popaj, Exhibit P1082, p 4; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5662-5663; P1085 (Photograph marked with the number "2" indicates where the killings took place and where the Belaja Bride crossed the railway line).

<sup>1629</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6452; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4102-4103; Exhibit P1255 (Photo marked with letter "C" to indicate where they were positioned when they ordered Isuf Zhuniqi and the rest of the group out of the stream. The three dots close to, and on, the railway line indicate where the three groups separated); Sabri Popaj, Exhibit P1082, p 4; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5728, 5663.

<sup>1630</sup> It is difficult to establish the number of people present at the time as Isuf Zhuniqi says that original some 700 people walked with him to the stream however he and his family then walked towards the Belaja Bridge (Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, P1252 (*Milošević* transcript), T 6442). Sabri Popaj saw a group of about 50 men getting out of the stream but he said these could have already been separated from other villagers (Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5728).

<sup>1631</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Exhibit P1086.

<sup>1632</sup> Isuf Zhuniqi, Exhibit P1251, p 4.

<sup>1633</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6443.

<sup>1634</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6443; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4105; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5663-5664; Exhibit P1086.

<sup>1635</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Sabri Popaj, Exhibit P1082, p 4; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5663-5664; Exhibit P1086.

<sup>1636</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5664; Exhibit P1086.

468. When the women and children were about 100 metres away, one young man, 17 year old Shendet Popaj, was kicked to the ground by a policeman and then the leader of the police put his boot on his throat. At this point, Nisim Popaj, Shendet Popaj's uncle, said "Leave us alone. We are simple farmers. We are not KLA".<sup>1637</sup> From two metres away, Isuf Zhuniqi saw the man he concluded was the leader of the group shoot Nisim Popaj in the chest, and then shoot Shendet Popaj in the head. It appeared they both died instantly.<sup>1638</sup> Isuf Zhuniqi concluded that this police officer, that he knew from Orahovac/Rahovec, was the leader of the group.<sup>1639</sup> He had three or four stars on his shoulders,<sup>1640</sup> and spoke in Serbian although he also spoke Albanian. He ordered the firing that followed, as described below, in Serbian.<sup>1641</sup> Isuf Zhuniqi was able to describe the man whom he identified from a set of unmarked photographs as the person who shot Nisim and Shendet Popaj.<sup>1642</sup> He was told his name was Nenad Matić.<sup>1643</sup> There is evidence that Nenad Matić was a reserve police member of the SUP in Orahovac/Rahovec.<sup>1644</sup> Sabri Popaj was told by his uncle's son, a survivor of the shootings at the Belaja Bridge, that he recognised two of the police at the Belaja Bridge as Zlatko Bozanić and a man by the name of Dejan. Sabri Popaj did not recognise these two men at the shooting as he was too far away but he knew they were policemen from villages in the Orahovac/Rahovec municipality.<sup>1645</sup> The Defence attempted to challenge the credibility of Sabri Popaj and his identification of the forces as police because Zlatko Bozanić was not a member of the regular or reserve VJ or MUP forces.<sup>1646</sup> The Chamber is unable to verify the presence of Zlatko Bozanić at the Belaja Bridge, however, Sabri Popaj knew he was a policeman in the Orahovac/Rahovec municipality. The Defence provided no evidence to support their contention that Zlatko Bozanić was not a member of the reserve VJ or MUP forces. The Chamber finds no reason to question the credibility of Sabri Popaj in describing the police at the Belaja Bridge.

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<sup>1637</sup> Isuf Zhuniqi, Exhibit P1251, p 4.

<sup>1638</sup> In his earlier evidence Sabri Popaj said he saw these men (his brother and son) shot, however, in *Milutinović* he said that he saw them being taken to where they were executed, heard the gunfire but did not see the shooting. In this case he reaffirmed that he had seen the shooting. Having evaluated these matters and its impression of Sabri Popaj's honesty and credibility, the Chamber accepts Sabri Popaj also saw the shooting of these two people. Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6443-6444, 6456; Sabri Popaj, Exhibit P1082, p 4; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5662, 5665, 5738-5739.

<sup>1639</sup> Isuf Zhuniqi, Exhibit P1251, pp 3, 4; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4107.

<sup>1640</sup> Isuf Zhuniqi, Exhibit P1251, pp 3, 4; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4128.

<sup>1641</sup> See *infra*, para 469; Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6455-6456; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4128.

<sup>1642</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4128.

<sup>1643</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6460.

<sup>1644</sup> A list was requested by the ICTY from the Ministry of Foreign Affairs in Serbia detailing individuals who served in the VJ or MUP and individuals who held MUP reservist status. The list received by the ICTY included Nenad Matić as a reserve member of the SUP Orahovac, Exhibit P1289, p 4.

<sup>1645</sup> Sabri Popaj, Exhibit P1082, p 7.

<sup>1646</sup> Defence Final Brief, para 744.



469. Following the shooting of Nisim and Shedent Popaj, some of the men at the Belaja Bridge were ordered to return to the village. About 65 men<sup>1647</sup> were not allowed to return to the village and were ordered back down into the stream.<sup>1648</sup> The leader of the police then ordered the other police to open fire at the men in the stream. The MUP opened fire at the group of men.<sup>1649</sup> Isuf Zhuniqi, who was among the men ordered into the stream, was hit in the shoulder and fell down. Other men fell on top of him.<sup>1650</sup> He remained conscious and lay very still, pretending to be dead.<sup>1651</sup> After approximately five minutes of continual gunfire, Isuf Zhuniqi heard a voice say “this one is still breathing”, after which a single shot was fired.<sup>1652</sup> A few minutes later he heard a voice say “Well, now everyone is dead let’s go”.<sup>1653</sup> The Chamber accepts that these voices were those of members of the police. The police then left and followed the stream in the direction of Celina/Celinë.<sup>1654</sup> Isuf Zhuniqi pretended to be dead for about another 20 minutes to be sure the police had left.<sup>1655</sup> He then managed to get up and he saw many dead bodies. Some had sustained horrible injuries from the gunfire. He was able to identify by name 41 bodies in the stream.<sup>1656</sup> There were another 11 men lying dead in the stream, but he could not remember their names.<sup>1657</sup> Following this, he made his way to Zrze/Xërxë. In an attack on Nogavac/Nagavc on 2 April 1999, Isuf Zhuniqi was injured and he was taken across the border to Kukës in Albania.<sup>1658</sup>

470. Sabri Popaj confirmed the evidence of Isuf Zhuniqi that after the shooting at the Belaja Bridge on 25 March 1999, the police followed the stream in the direction of Celina/Celinë. After

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<sup>1647</sup> The Chamber notes that following the shooting only 53 men were identified by survivors (Isuf Zhuniqi, Exhibit P1251, pp 4, 5-6; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4104-4105; Exhibit P1088 (Photographs of victims of the Bela Crkva/Bellacërkë massacre); Sabri Popaj, Exhibit P1082, p 5). However, Isuf Zhuniqi estimated that there was “about 65 men” when they were forced down into the stream (Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444, 6456; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5665). The Chamber received evidence that about nine men survived the shootings (Sabri Popaj, Exhibit P1082, p 5) making the number “about 65 men” in the stream.

<sup>1648</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444, 6456; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5665.

<sup>1649</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444.

<sup>1650</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4107; Exhibit P1257; Frederick Abrahams, T 3968-3969, 4032-4033.

<sup>1651</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4097; Exhibit P1257.

<sup>1652</sup> Isuf Zhuniqi, Exhibit P1251, p 4; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444; Sabri Popaj, P1082, p 4.

<sup>1653</sup> Isuf Zhuniqi, Exhibit P1251, p 4.

<sup>1654</sup> Sabri Popaj, Exhibit P1082, p 4.

<sup>1655</sup> Isuf Zhuniqi, Exhibit P1251, p 4.

<sup>1656</sup> The names of these men are detailed below in the list of Kosovo Albanian men killed at the Belaja Bridge. Isuf Zhuniqi, Exhibit P1251, pp 4, 5; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4104-4105; Exhibit P1088; Sabri Popaj, Exhibit P1082, p 5.

<sup>1657</sup> The Chamber accepts that these victims included Ardian Fethoshi, Hysni Fetoshi, Fatmir Fetoshi and Haxhi Popaj. These four victims are not listed in Schedule B of the Indictment. However, there remains were found in the same grave as the other identified Kosovo Albanian men killed at the Belaja Bridge. The Chamber therefore accepts that these were four of the 11 men that were seen by the witness but not identified by name. Isuf Zhuniqi, Exhibit P1251, p 5-6; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4104.

<sup>1658</sup> See *infra*, para 510; Isuf Zhuniqi, Exhibit P1251, p 6. Sabri Popaj saw Isuf Zhuniqi on the other side of the railway shouting and waving his arms and that he then left the scene. Sabri Popaj, T 7362-7364, 7421.

five minutes he heard more gunfire from the direction taken by the police but could not see what was happening.<sup>1659</sup> When he considered it safe, Sabri Popaj joined his remaining family members who were on the railway tracks about 120 metres away from the Belaja Bridge.<sup>1660</sup> After gathering the wounded onto a tractor, Sabri Popaj with family members and a group of other people continued on to Zrze/Xërxë.<sup>1661</sup> The Chamber is satisfied, as discussed later in this Judgement, that these people were forcibly transferred from Bela Crkva/Bellacërkë.<sup>1662</sup>

471. In the evening of 26 March 1999, Sabri Popaj returned with his wife and neighbours to take the bodies from the stream. The next day they placed the bodies in plastic and blankets and buried them during the evening. The witness recalled 38 bodies in total and explained that these were buried in a mass grave approximately 20 metres from the stream and Belaja Bridge.<sup>1663</sup> 35 of the bodies were buried together in a mass grave, lying on their backs next to each other. Isuf Popaj and Mehmet Popaj were buried in a grave together a couple of metres from the mass grave and Hazer Popaj was buried separately in the village.<sup>1664</sup> Sabri Popaj also provided a list of the bodies he buried.<sup>1665</sup>

472. The Chamber notes, as detailed later in this Judgement, that the bodies of the men killed at the Belaja Bridge were later recovered from grave sites that correspond to the description given by Sabri Popaj, in June 1999 by the British forensic team.<sup>1666</sup> The Chamber has not received any evidence of Serbian authorities conducting investigations into these killings.<sup>1667</sup> Based on the eyewitness evidence and forensic examinations that were conducted, it has been established that no less than 41 men were shot by MUP forces on 25 March 1999 at the Belaja Bridge. They were all of Kosovo Albanians and unarmed at the time of the shooting.<sup>1668</sup> It is accepted that they were specifically targeted and killed because they were ethnic Albanians. As detailed later in this

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<sup>1659</sup> Sabri Popaj, Exhibit P1082, p 4.

<sup>1660</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5664.

<sup>1661</sup> Sabri Popaj, Exhibit P1082, p 5; Sabri Popaj, T 7359-7361.

<sup>1662</sup> *See infra*, para 1618.

<sup>1663</sup> Sabri Popaj, Exhibit P1082, p 6; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5673-5674, 5748-5749.

<sup>1664</sup> Sabri Popaj, Exhibit P1082, p 6, addendum; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5673-5674.

<sup>1665</sup> Sabri Popaj, Exhibit P1082, p 7.

<sup>1666</sup> From all the sites in Bela Crkva/Bellacërkë a total of 54 bodies were exhumed; 12 of these bodies remained unidentified. The Chamber did not receive forensic evidence relating to the cause of death of four of the villagers identified by Isuf Zhuniqi as being present at the Belaja Bridge when the men were shot at by MUP forces on 25 March 1999. These four men were, Morina Musa, Alban Popaj, Lindrit Popaj and Muhammet Zhuniqi. Nevertheless, on the basis of eyewitness accounts, and as 12 bodies exhumed remained unidentified, the Chamber finds in the circumstances the only reasonable inference is that these four people were shot and killed by the MUP force in Bela Crkva/Bellacërkë on 25 March 1999. Isuf Zhuniqi, Exhibit P1251, p 3; Isuf Zhuniqi, Exhibit P1254 (*Milošević* transcript), T 6456-6457; Exhibit P1088; Sabri Popaj, Exhibit P1082, p 5; Eric Baccard, Exhibit P1139 (expert report), pp 30-31; Exhibit P1151, K0138792; *see infra*, para 2097.

<sup>1667</sup> *See infra*, para 2097.

<sup>1668</sup> Sabri Popaj, Exhibit P1082, p 6; *see*, Exhibit P477.

Judgement, all 41 Kosovo Albanian men died as a result of gunshot wounds.<sup>1669</sup> Of these 41 men the following 38 were named as victims in the schedule to the Indictment,

Murat Berisha, Fadil Gashi, Musa Morina, Bajram Zhuniqi, Qemal Zhuniqi, Abedin Zhuniqi, Destan Zhuniqi, Ibrahim Zhuniqi, Biladh Zhuniqi, Shemsi Zhuniqi, Muharrem Zhuniqi, Reshit Zhuniqi, Muhamed Zhuniqi, Qamil Zhuniqi, Eshref Zhuniqi, Fatos Zhuniqi, Labinot Zhuniqi, Kassim Zhuniqi, Adulullah Popaj, Alban Popaj, Agon Popaj, Bedrush Popaj, Belul Popaj, Ethem Popaj, Hazer Popaj, Hysni Popaj, Isuf Popaj<sup>1670</sup>, Kreshnik Popaj, Lindrit Popaj, Mehmet Popaj, Mersel Popaj, Nazmi Popaj, Nisim Popaj, Rrustem Popaj, Sahid Popaj, Shendet Popaj, Vehap Popaj, Xhavit Popaj.<sup>1671</sup>

The Chamber also accepts that three other victims, who were not scheduled as victims known by name in the Indictment, were killed by MUP forces at the Belaja Bridge. These persons were: Ardian Fetoshi, Hysni Fetoshi and Fatmir Fetoshi.<sup>1672</sup>

473. The next day, 28 March 1999, at about 0300 hours, Sabri Popaj located the bodies of his two nephews, Sedat Popaj and Irfan Popaj, and four others whom he identified as Hajrullah Begaj,<sup>1673</sup> Hysni Zhuniqi, Mhedi Zhuniqi and Agim Zhuniqi. He described finding these bodies in a channel leading from the Belaja River in the direction of Celina/Celinë, about 70 to 85 metres from the Belaja Bridge in a position which corresponded with that from which he had heard further shooting on 26 March 1999 some five minutes after the police moved on from the Belaja Bridge.<sup>1674</sup> Sabri Popaj then buried these bodies at about 2100 hours.<sup>1675</sup> As discussed later in this Judgement, six bodies were exhumed from this location in June 1999 by the British forensic team.<sup>1676</sup> In the Chamber's findings these six men were shot by the police who had, shortly earlier, killed most of the people at the Belaja stream and bridge on 25 March 1999. The six dead men were all Kosovo Albanians and the Chamber accepts that this is the reason they were killed. There is no evidence to suggest that they were armed at the time of the shootings. Forensic examinations by the British

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<sup>1669</sup> For victim Ardian Fetoshi, the British forensic team stated the cause of death could not be ascertained. Based on eyewitness and forensic evidence the Chamber is satisfied, when regard was had to the circumstances, that the only reasonable inference is the victim died as a result of the shooting by MUP forces at the Belaja Bridge. *See infra*, paras 1393-1394.

<sup>1670</sup> Listed as Haxhi Isuf Popaj in the British forensic report, *see* Exhibit P1151, K0138848.

<sup>1671</sup> Isuf Zhuniqi, Exhibit P1251, pp 4, 5; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4104-4105; Exhibit P1088; Sabri Popaj, Exhibit P1082, pp 5, 7.

<sup>1672</sup> Isuf Zhuniqi, Exhibit P1251, pp 4, 5; Isuf Zhuniqi, Exhibit P1252 (*Milošević* transcript), T 6444; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4104-4105; Exhibit P1088; Sabri Popaj, Exhibit P1082, pp 5, 7.

<sup>1673</sup> The Chamber notes that the name listed in the Indictment is Abdullah Begaj. Based on the evidence, and the fact that this victim was identified as being found with the other six men, the Chamber is satisfied that this is the same person. The difference in spelling does not affect the Chambers findings.

<sup>1674</sup> Sabri Popaj, Exhibit P1082 pp 7-8; Sabri Popaj, T 7412; Exhibit P1085; Exhibit P1087.

<sup>1675</sup> Sabri Popaj, Exhibit P1082, p 5.

<sup>1676</sup> *See infra*, para 1392; Eric Baccard, Exhibit P1151, K0138792.

forensic team found that all six men died as a result of multiple gunshot wounds.<sup>1677</sup> All six men were scheduled as victims known by name in the Indictment.<sup>1678</sup>

474. Following the burial of the six bodies, Sabri Popaj spent time in Celina/Celinë assisting in the burial of other bodies that were found there. He often returned to his property in Bela Crkva/Bellacërkë.<sup>1679</sup> On 13 May 1999, he decided to leave the area and join his family that had gone to Albania.<sup>1680</sup> Sabri Popaj travelled with a group of people from Banja/Banjë and when they reached the border at Morini the Serbian border police demanded identification papers.<sup>1681</sup> In his view the border police were in fact regular policemen because of their uniform and a band on the arm of the uniform that had “policija” written on it.<sup>1682</sup> When the group of people handed over their identification papers, the papers were burnt by the police.<sup>1683</sup> They were then told by the border police to cross over into Albania. They did so.

475. The Defence argued that Sabri Popaj chose to leave Kosovo to go to Albania to meet his family members. The Chamber accepts this argument, however, it does not alter the Chamber’s findings that the other villagers were forced by the MUP forces to leave Bela Crkva/Bellacërkë.<sup>1684</sup>

(b) Destruction of the mosque and other buildings in Bela Crkva/Bellacërkë

476. When Sabri Popaj returned to Bela Crkva/Bellacërkë on 26 March 1999, he found that his house and that of his parents had been completely destroyed by fire. His brother’s house was also damaged. All the houses of his family had been looted.<sup>1685</sup> Isuf Zhuniqi heard from other Bela Crkva/Bellacërkë villagers he met in the mountains around 30 March 1999 that the whole village had been destroyed. Only two of the approximately 350 houses in the village had not been burnt down.<sup>1686</sup>

477. Prior to the war, the mosque in the centre of Bela Crkva/Bellacërkë featured a 46 metre tall minaret and had surrounding walls.<sup>1687</sup> On or about 28 March 1999, Sabri Popaj testified that he was standing on the side of the mountain in his field from where he could see Bela

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<sup>1677</sup> Exhibit P1151, K0138760; *See supra*, paras 1393-1394.

<sup>1678</sup> Schedule B of the Indictment.

<sup>1679</sup> Sabri Popaj, Exhibit P1082, pp 8-10; *See infra*, para 532.

<sup>1680</sup> Sabri Popaj, Exhibit P1082, p 12.

<sup>1681</sup> Sabri Popaj, Exhibit P1082, p 12; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5753.

<sup>1682</sup> Sabri Popaj, T 7364-7366, 7420.

<sup>1683</sup> Sabri Popaj, Exhibit P1082, p 12; Sabri Popaj, T 7365.

<sup>1684</sup> *See supra*, para 470; *see infra*, para 1618.

<sup>1685</sup> Sabri Popaj, Exhibit P1082, p 6, Addendum.

<sup>1686</sup> Isuf Zhuniqi, Exhibit P1251, p 6.

<sup>1687</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5678.

Crkva/Bellacërkë, Celina/Celinë and Rogovo/Rogovë.<sup>1688</sup> He heard an explosion and when he looked to Bela Crkva/Bellacërkë the mosque was no longer standing.<sup>1689</sup> The Chamber notes that the Serbian forces were still present in Bela Crkva/Bellacërkë on 28 March 1999 and that all the local villagers had fled from the area on 25 March 1999.<sup>1690</sup> As discussed in more detail later in this Judgement, the Chamber accepts that the mosque in Bela Crkva/Bellacërkë was substantially destroyed by Serbian forces.<sup>1691</sup>

(c) Serbian forces in the village

478. The 549<sup>th</sup> VJ Motorised Brigade, in cooperation with the 4<sup>th</sup> Company of the Đakovica PJP detachment, the 37<sup>th</sup> Company of the Nis PJP and the 5<sup>th</sup> Company of the Prizren PJP, was tasked with attacking and searching the village of Bela Crkva/Bellacërkë.<sup>1692</sup> The Chamber also notes that “non-KLA armed civilians” were also deployed to the area with these forces.<sup>1693</sup> The War Diary of the 2<sup>nd</sup> Motorised Battalion, records that on 25 March 1999 at 0130 hours, the Serbian forces were marched along a line towards Bela Crkva/Bellacërkë and were tasked to “mop up” the village of Bela Crkva/Bellacërkë.<sup>1694</sup> A report on the operation recorded that on 25 March 1999, the objectives of the operation were met and a PJP force of the MUP had made what was officially reported as a “fierce breakthrough” from the direction of Bela Crkva/Bellacërkë towards Celina/Celinë and Mala Hoca/Hoçë-e-Vogël.<sup>1695</sup> The Chamber notes that this evidence confirms the eyewitness accounts of VJ and MUP forces being present in the villages during the time of the crimes discussed above, although the Chamber does not accept that a “fierce breakthrough” is a reliable description of what occurred.

2. Mala Kruša/Krushë-e-Vogël

479. Mala Kruša/Krushë-e-Vogël is situated on the border of the municipalities of Prizren/Prizren and Orahovac/Rahovec.<sup>1696</sup> The villages surrounding Mala Kruša/Krushë-e-Vogël are

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<sup>1688</sup> Celina/Celinë was located a kilometre and a half from Bela Crkva/Bellacërkë and Rogovo/Rogovë was 800 metres further from the Belaja River. Sabri Popaj testified that he was standing on the side of the mountain that allowed him to see Bela Crkva/Bellacërkë, Celina/Celinë and Rogovo/Rogovë. In cross-examination in *Milutinović* the issue of whether Sabri Popaj was standing in the field or on the side of the mountain was raised. The witness explained that the mountain was part of the field, Sabri Popaj, Exhibit P1082, p 11; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650, 5678-5679, 5729-5730.

<sup>1689</sup> Sabri Popaj states that the Rogovo mosque was also blown up on 28 March 1999. This allegation is dealt with in the Đakovica/Gjakovë municipality. Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5729-5730, 5650, 5678-5679.

<sup>1690</sup> Exhibit P1317, p 1.

<sup>1691</sup> See *infra*, para 1811.

<sup>1692</sup> Exhibit P1316, pp 1-2, 4.

<sup>1693</sup> Exhibit P350, pp 1-2, 4.

<sup>1694</sup> Exhibit D37, p 3.

<sup>1695</sup> Exhibit P1317, p 4.

<sup>1696</sup> Exhibit P301; Mehmet Krasniqi, T 978.

Celina/Celinë, Nogavac/Nagavc, Zrze/Xërxë and Velika Kruša/Krushë-e-Madhe.<sup>1697</sup> Prior to the NATO bombing campaign, the population of the village was around 800 people.<sup>1698</sup> There were about 100 households in Mala Kruša/Krushë-e-Vogël, 73 of which were of Albanian ethnicity, three were Roma and the remaining 24 were Serbian.<sup>1699</sup> Up until March 1999, the different ethnicities had good relations with one another.<sup>1700</sup>

(a) Events on 25 and 26 March 1999

480. At 0400 hours on 25 March 1999, Serbian tanks, APCs, Pragas and anti-aircraft artillery travelled along the Prizren-Đakovica/Gjakovë main road and stopped at the junction which turned into the village of Mala Kruša/Krushë-e-Vogël.<sup>1701</sup> There were about 30 to 40 vehicles parked on the main road. The APCs were the normal blue MUP colour. The Pragas were the normal green VJ colour, they were armed with machine guns and cannons.<sup>1702</sup> The tanks were camouflaged and had steel tracks. The tanks and anti-aircraft artillery were VJ equipment. The tanks positioned themselves on the outskirts of the village almost near Velika Kruša/Krushë-e-Madhe.<sup>1703</sup> The village of Mala Kruša/Krushë-e-Vogël was completely surrounded by Serbian forces.<sup>1704</sup>

481. At around 0500 hours on 25 March 1999, a PJP detachment of the MUP was transported by the VJ to the area of Mala Kruša/Krushë-e-Vogël where it deployed along the Prizren-Đakovica/Gjakovë main road, in the general area of Mala Kruša/Krushë-e-Vogël.<sup>1705</sup> Armoured vehicles provided support to the PJP unit and these were under VJ command.<sup>1706</sup>

482. At approximately 0500 hours, Lutfi Ramadani saw Serbian policemen or militia entering the village; they started shooting and setting homes on fire.<sup>1707</sup> Lutfi Ramadani explained that these forces wore various coloured uniforms. Some wore black uniforms and some wore camouflage

<sup>1697</sup> Exhibit P301; Mehmet Krasniqi, T 978-979.

<sup>1698</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4284.

<sup>1699</sup> Lutfi Ramadani gave evidence that there were 70 Albanian households and 30 Serbian households. Mehmet Krasniqi, T 977; Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285; Lutfi Ramadani, T 1080.

<sup>1700</sup> Mehmet Krasniqi, T 978; Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285-4286; Lutfi Ramadani, T 1081.

<sup>1701</sup> Mehmet Krasniqi, T 980, 1024-1025; Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285; Lutfi Ramadani, Exhibit D29, p 3; Lutfi Ramadani, T 1109, 1161, 1164; K25, Exhibit P340-A, p 13.

<sup>1702</sup> Lutfi Ramadani, Exhibit D29, p 3.

<sup>1703</sup> As discussed elsewhere in this Judgement, corresponding evidence of tanks arriving in the area of Velika Kruša/Krushë-e-Madhe at 0400 hours was heard from witnesses in Velika Kruša/Krushë-e-Madhe (Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4140-4141, 4163). Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285-4286, 4354-4355; Lutfi Ramadani, T 1162-1164.

<sup>1704</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285; Lutfi Ramadani, T 1109, 1161, 1164.

<sup>1705</sup> K25, Exhibit P340-A, p 8-9; K25, Exhibit P341-A (*Milošević* transcript), T 7824; K25, Exhibit P342 (*Milutinović* transcript), T 4656-4657, 4706-4708; K25, T 1596.

<sup>1706</sup> K25, Exhibit P341-A (*Milošević* transcript), T 7824, 7829.

<sup>1707</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4286, 4318; Exhibit P312; Lutfi Ramadani, T 1109-1110.

uniforms. There were others wearing blue camouflage uniforms or green camouflage uniforms.<sup>1708</sup> With the Serbian forces were local Serbians, many in black militia uniforms but some in ordinary clothes and not uniforms.<sup>1709</sup> Some not wearing uniforms had white and red bandannas on their heads.<sup>1710</sup> As discussed earlier in this Judgement, these descriptions of the uniforms and clothing are consistent with the uniforms worn by the Serbian forces, both VJ and MUP.<sup>1711</sup> The Serbian forces were being guided by local Serbian villagers, who would identify which houses were Albanian and then, with members of the Serbian forces, they would set Albanian houses on fire.<sup>1712</sup> There is evidence that these local Serbians had been assigned duties as reserve policemen.<sup>1713</sup>

483. Because the Serbian forces were shooting and setting fire to houses, out of fear, some 400 to 500 Kosovo Albanians fled from the village.<sup>1714</sup> Serb residents remained in their houses.<sup>1715</sup> One group of Albanian villagers, including Lutfi Ramadani, fled to the stream near Adem Isufi's house and from there made their way to Sedj Batusha's house, located on the periphery of the village, arriving there at about 1900 hours.<sup>1716</sup> About 500 Kosovo Albanian people gathered there.<sup>1717</sup> Another group of villagers, including Mehmet Krasniqi and his family, fled to the forest.<sup>1718</sup> From the forest, he was able to see houses on fire in the village.<sup>1719</sup> He also heard what he determined to be "gun-fire coming from military machinery" being fired towards the forest from the direction of the road where Serbian forces had positioned themselves earlier.<sup>1720</sup> Mehmet Krasniqi and his

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<sup>1708</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285-4286, 4318; Lutfi Ramadani, Exhibit D29, p 3; Lutfi Ramadani, T 1122-1124.

<sup>1709</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285-4286, 4318, 4321, 4335; Lutfi Ramadani, Exhibit D29, p3; Lutfi Ramadani, T 1122-1124.

<sup>1710</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4286-4287.

<sup>1711</sup> *See supra*, paras 53-54, 162.

<sup>1712</sup> Lutfi Ramadani recognised the following Serbian villagers taking part in the events in the village at the time, Dimitri Nikolić, Ranko Nikolić, Momcilo Nikolić, Sava Nikolić, Slatko Đorđević, Ranko Petković, Sveta Tasić, Djordje Čvetković (Lutfi Ramadani, T 1103). John Sweeney, a journalist, visited Mala Kruša/Krushë-e-Vogël in June 1999 and came across photographs in the Serbian houses that he then showed to some Kosovo Albanians who had returned to Mala Kruša/Krushë-e-Vogël. From these photographs they identified the following perpetrators they believed to have committed the killings, Dimitri Nikolić, Momcilo Nikolić, Sveta Tasić and Sava Nikolić. He also found a guard rota referring to Sveta Tasić and Sava Nikolić dated 16 and 17 April 1999 and another document listing persons in three shifts including Sava Nikolić and Sveta Tasić (Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4286-4287; Exhibit P312 (List of names of police in the village provided by the witness); Lutfi Ramadani, 1103; Exhibit P298 (documentary video about killings at Mala Kruša/Krushë-e-Vogël); Exhibit P299 (notebook with handwritten lists of names); Exhibit P300 (Handwritten list of names of Serbs who lived in Mala Kruša/Krushë-e-Vogël); John Sweeney, T 897-899, 902, 905-907, 911, 912, 967).

<sup>1713</sup> K25, Exhibit P340-A, p 7.

<sup>1714</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4288; Lutfi Ramadani, T 1081, 1110; Mehmet Krasniqi, T 980, 1025.

<sup>1715</sup> Lutfi Ramadani, T 981.

<sup>1716</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4287-4288; Exhibit P307; Lutfi Ramadani, T 1081, 1087-1088, 1110-1111.

<sup>1717</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4290; Lutfi Ramadani, T 1076, 1112.

<sup>1718</sup> Mehmet Krasniqi, Exhibit P302; Mehmet Krasniqi, T 981-982.

<sup>1719</sup> Mehmet Krasniqi, T 982, 1036

<sup>1720</sup> Mehmet Krasniqi referred in his evidence to gun-fire from the village. However, during cross-examination he clarified this to mean "gun-fire coming from military machinery" such as those he saw attached to the APCs. The Chamber did not accept the Defence assertion that the witness was providing inconsistent evidence about the type

family stayed in the forest until the next morning. Other villagers with small children decided to leave the forest and take refuge with the others at Sedj Batusha's house.<sup>1721</sup>

484. At sometime between 0800 hours and 0900 hours on 25 March 1999, members of the PJP captured men in houses on the road between Prizren and Đakovica/Gjakovë. The first six captured Albanian men wore part KLA uniforms and all had some form of KLA insignia.<sup>1722</sup> The witness, K25, did not see that these captured men had any weapons. These six men were handed over to three local members of the MUP.<sup>1723</sup> About 15 minutes later, these six men were marched towards the Drini River by the local MUP officers and then taken into a house. A short while later automatic gunfire was heard from the house. Following this, two local MUP officers returned and three additional captured Kosovo Albanian men were handed over to them; one of the three men had KLA insignia on his clothes. These three men were taken to another house and shortly thereafter the local MUP officers returned without the captured men.<sup>1724</sup> Later during the day, K25 went to the house where the six men had been taken. There he saw dead bodies. He was unable to confirm whether these were the bodies of the six Albanian men; though he did think they were.<sup>1725</sup> He did not go to the other house where the other three men had been taken. However, later that day the house was burnt down.<sup>1726</sup> A PJP member reported these incidents to his commander; he was told to draft a report.<sup>1727</sup> The evidence does not indicate whether there was ever any inquiry into the incident. Nevertheless, the Chamber is satisfied that these nine men were killed that day by local MUP officers. While they were apparently KLA members, when they were killed they were unarmed captives of the MUP forces, and were unable to take any active part in the fighting. They were *hors de combat*. No further evidence was received about these nine victims nor are they charged as murder in the Indictment.

485. During the day of 25 March 1999, nine Kosovo Albanian villagers, who had refused to leave their homes, were burnt to death inside their own houses by Serbian forces. They were all civilians not taking part in any conflict. The remains of these nine people were found and identified by Lutfi Ramadani.<sup>1728</sup> The bodies were buried in a common grave at the time, but were later exhumed, identified and reburied in individual graves.<sup>1729</sup> The Chamber did not receive any forensic evidence

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of gun-fire, Lutfi Ramadani also provided evidence that the Serbs were shelling on 25 March 1999, Mehmet Krasniqi, D27, p 2; Mehmet Krasniqi, T 982-983, 1027, 1029-1037; See also Lutfi Ramadani, T 1082.

<sup>1721</sup> Mehmet Krasniqi, Exhibit P302; Mehmet Krasniqi, T983.

<sup>1722</sup> K25, Exhibit P340-A, p 13; K25, Exhibit P341-A (*Milošević* transcript), T 7837.

<sup>1723</sup> K25, Exhibit P340-A, p 14; K25, Exhibit P341-A (*Milošević* transcript), T 7837, 7838; K25, T 1609.

<sup>1724</sup> K25, Exhibit P340-A, p 14; K25, Exhibit P341-A (*Milošević* transcript), T 7838; K25, T 1610.

<sup>1725</sup> K25, Exhibit P340-A, p 14; K25, Exhibit P341-A (*Milošević* transcript), T 7838, 7873.

<sup>1726</sup> K25, Exhibit P340-A, p 14; K25, Exhibit P341-A (*Milošević* transcript), T 7838; K25, Exhibit P342 (*Milutinović* transcript), T 4702.

<sup>1727</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4688.

<sup>1728</sup> Exhibit P312; Lutfi Ramadani, T 1135.

<sup>1729</sup> Lutfi Ramadani, T 1114, 1129, 1132.



about these nine victims. Although only three of these victims, Sali Shehu, Demir Rashkaj and Nexhat Shehu, are listed in Schedule C of the Indictment, the Chamber accepts from the evidence that all nine people were burnt to death by Serbian forces that day in the village. The names of the six victims not listed by name in the Schedule of the Indictment are: Dervish Shehu, Raif Shehu, Isnija Rashkaj, Reshat Shehu, Sejdi Emerllahu and Nazmi Rashkaj. These nine people were killed in their homes during the course of the attack in Mala Kruša/Krushë-e-Vogël and charged as murder in the Indictment. The Chamber recalls that these victims were all Kosovo Albanians and it is further accepted that this is the reason that they were targeted and killed. No evidence suggests that they were armed at the time or participating in the conflict. The Chamber accepts that these nine villagers were burnt to death in their houses by Serbian forces during their attack on the village of Mala Kruša/Krushë-e-Vogël on 25 March 1999.

486. At about 0800 hours on 26 March 1999, Serbian forces began shelling and shooting from the Prizren-Đakovica/Gjakovë road towards Mala Kruša/Krushë-e-Vogël.<sup>1730</sup> At this time, the VJ was positioned along the Prizren-Đakovica/Gjakovë road and on the hills. They did not come into the village.<sup>1731</sup> Green VJ tanks climbed the hill behind Mala Kruša/Krushë-e-Vogël and then spread out.<sup>1732</sup> In the village members of the MUP, with the assistance of local Serbs, some in police uniforms and others in civilian clothes, were firing their weapons and looting valuables from Albanian houses in the village.<sup>1733</sup> After houses were looted they were set on fire.<sup>1734</sup> In due course police approached Sedje Batusha's house where many Albanian villagers had gathered. These police were dressed in blue uniforms and they had automatic weapons, pistols and knives.<sup>1735</sup> As discussed earlier in this Judgement, this description is consistent with the uniforms worn by MUP forces, including members of the PJP and local reservists.<sup>1736</sup> As the MUP forces approached the house, a villager, Hysen Ramadani, was shot in his courtyard by police.<sup>1737</sup> There is no evidence as to what happened to his body. The evidence does not indicate that he was armed or dressed in uniform. It is accepted that he was targeted and killed because he was a Kosovo Albanian. Although the killing of Hysen Ramadani is not specifically charged in the Indictment, his name is listed as a victim in Schedule C of the Indictment.<sup>1738</sup> The Chamber finds, based on the specific eyewitness evidence of Lufti Ramadani, that Hysen Ramadani died as a result of being shot by MUP forces in the course of the attack on Mala Kruša/Krushë-e-Vogël on 26 March 1999.

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<sup>1730</sup> Lutfi Ramadani, T 1082.

<sup>1731</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4334; Lutfi Ramadani, T 1085.

<sup>1732</sup> Mehmet Krasniqi, Exhibit D27, p 2.

<sup>1733</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4290; Lutfi Ramadani, T 1082; Mehmet Krasniqi, T 1082.

<sup>1734</sup> Mehmet Krasniqi, Exhibit P306 (*Milutinović* transcript), T 4290-4291; Mehmet Krasniqi, T 1082.

<sup>1735</sup> Lutfi Ramadani, T 1082-1083.

<sup>1736</sup> *See supra*, paras 53-54, 91.

<sup>1737</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4291-4292; Lutfi Ramadani, T 1084.

487. Following the shooting of Hysen Ramadani, the police continued approaching Sedje Batusha's house, setting fire to other houses along the way. They then occupied two houses near to that of Sedje Batusha and aimed their weapons at the group of villagers in Sedje Batusha's house. Aziz Shebu, an elderly villager, was ordered by the police to go and gather the people who had fled to the nearby forest.<sup>1739</sup>

488. Aziz Shedu went to the forest and told the villagers there, including Mehmet Krasniqi and his family, that the police had ordered them to return to the village.<sup>1740</sup> The villagers left the forest and went to the courtyard of Sedje Batusha's house. At approximately 0900 hours, the villagers gathered in the courtyard were ordered out onto the road.<sup>1741</sup> On the road the police separated the men from the women and children.<sup>1742</sup> These police wore dark blue camouflage uniforms with white and yellow bands on their upper arms.<sup>1743</sup> As the men and women were being separated, a policeman Đorđe Čvetković, ordered that boys 13 years and older were to be brought to the men's side.<sup>1744</sup> Lutfi Ramadani's 14 year old son was one of the boys brought to the men's group.<sup>1745</sup> When some of the women initially refused to let their children go, police threatened to kill them. Police then told the women that they had only two options, either to drown themselves in the Drini River or go to Albania.<sup>1746</sup> No woman took the first option. The women and children then left in a column. They were ordered to go to Albania.<sup>1747</sup> The police then ordered an elderly man, Adem Asllani, to collect all the wallets and documents from the male villagers and place them in a pile at the feet of one of the police.<sup>1748</sup> The male villagers were then ordered by the police to form three columns, put their hands above their heads and to walk along the road to Batusha's barn.<sup>1749</sup> As

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<sup>1738</sup> Hysen Ramadani was also known by the name of Hysen Kanjusha. Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4291-4292; Lutfi Ramadani, T 1084.

<sup>1739</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4292; Lutfi Ramadani, T 1084.

<sup>1740</sup> Mehmet Krasniqi, T 983-984, 1040-1041, 1068-1069.

<sup>1741</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4292; Lutfi Ramadani, T 1084; Exhibit P302; Mehmet Krasniqi, T 984, 985, 1044, 1046.

<sup>1742</sup> Exhibit P302 (photo map with the marking number "3" to indicate the road where the villagers were taken); Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4292; Lutfi Ramadani, T 1084; Mehmet Krasniqi, T 984, 985, 1044, 1046.

<sup>1743</sup> Mehmet Krasniqi, T 984, 985, 1044, 1046.

<sup>1744</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4293.

<sup>1745</sup> The men ranged in age from 13 to 75 years old. Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4296; Lutfi Ramadani, T 1087.

<sup>1746</sup> Lutfi Ramadani, P306 (*Milutinović* transcript), T 4293, 4294; Lutfi Ramadani, T 1086; Mehmet Krasniqi, T 984, 1045.

<sup>1747</sup> The Chamber also heard evidence that at this time, a group of men in uniforms with black masks arrived and asked for keys. They then left shortly after without beating any of the group. Mehmet Krasniqi, T 984-985, 1085.

<sup>1748</sup> Mehmet Krasniqi, T 985, 1045; Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4295; Lutfi Ramadani, T 1086.

<sup>1749</sup> Lutfi Ramadani refers to it as Qazim Batusha's barn, however, Mehmet Krasniqi refers to it as Rasim Batusha's barn. This discrepancy in the first name of the owner of the barn does not affect the Chamber's finding that the group of men were forced to walk along the road to the barn, Mehmet Krasniqi, T 984, 1045; Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4295; Exhibit P307; Lutfi Ramadani, T 1086, 1089.

discussed later in this Judgement, the women and children were forcibly transferred from Mala Kruša/Krushë-e-Vogël.<sup>1750</sup>

489. As the group of men were walking along the road, Mehmet Krasniqi recognised three Serbs Dimitrije Nikolić, Zvesdan Nikolić and Sava Nikolić whom he had known since he was a child.<sup>1751</sup> They were wearing police uniforms and were armed with Kalashnikovs. They came from the lower part of the village to the junction leading to the Batusha barn.<sup>1752</sup> As the group of men approached the barn, Lutfi Ramadani also recognised Dimitrije Nikolić, Ranko Nikolić, Momicilo Nikolić, Sava Nikolić, Zlatko Djordević, Ranko Petković, Sveta Tasić and Djorde Cvetković.<sup>1753</sup> These were local villagers who were members of the regular police. Some were dressed in uniforms, while others were in civilian clothes with red and blue armbands.<sup>1754</sup>

490. At about 1100 hours, when the group of male villagers arrived at the Batusha barn, they were forced by the police into two rooms and the corridor of the barn.<sup>1755</sup> The Chamber finds that approximately 114 men and boys were forced into the Batusha barn.<sup>1756</sup> Mehmet Krasniqi went into one of the rooms. It was about 16 square metres and had two windows.<sup>1757</sup> Lutfi Ramadani stood in the corridor.<sup>1758</sup> Sahit Hadjarim, a villager who was disabled and sitting in his wheelchair, was used by the Serbian forces to block the entrance door of the corridor.<sup>1759</sup> When all the village men and boys were inside the barn, the police positioned themselves in the doorways and the windows and shot them with automatic rifles.<sup>1760</sup> Some of the men were killed instantly, while others were screaming. When the shooting stopped, Shefqat Shehu looked out of a window and was then shot. Mehmet Krasniqi could not see by whom he was shot. He could see a machine gun on a box at one of the windows with the barrel of the gun reaching inside the room.<sup>1761</sup> After the

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<sup>1750</sup> See *infra*, para 1620.

<sup>1751</sup> Exhibit P302; Mehmet Krasniqi, 994-996; Exhibit P1288, p 2.

<sup>1752</sup> Exhibit P302; Mehmet Krasniqi, T 994-996, 1051.

<sup>1753</sup> Exhibit P1288 lists the following people that Mehmet Krasniqi saw who were known to have served in the Serbian forces in Kosovo, Dimitrije Nikolić, Ranko Nikolić, Momicilo Nikolić, Sava Nikolić, Zlatko Djordević and Sveta Tasić. He saw these people as he was being lead into the barn on 25 March 1999. Lutfi Ramadani, T 1102-1103; Exhibit P312, p 4; Exhibit P1288, p 2.

<sup>1754</sup> Lutfi Ramadani, T 1103.

<sup>1755</sup> Mehmet Krasniqi, T 986, 996-997, 1051.

<sup>1756</sup> Mehmet Krasniqi gave evidence that the number was about 109 men (Mehmet Krasniqi, T 986). John Sweeney had put the number at 109 of whom six survived from the inquiries he made (John Sweeney, T 970). However, two lists in evidence prepared by survivors, Mehmet Krasniqi and Lutfi Ramadani, satisfies they Chamber that approximately 114 men and boys were forced into the barn. This number includes the 10 men who managed to escape the barn when it was on fire: Adnan Shehu and Refki Rashkaj (who were shot later by the stream), Hysni Hajdari (later found shot in the mountains), Sefer Batusha, Lutfi Ramadani, Agim Asllani, Qamil Shehu, Bajram Zylfiu, Mehmet Krsniqi and Petrit Rashkaj (Mehmet Krasniqi, T 1003-1004, 1007-1010; See, Mehmet Krasniqi, Exhibit P312; See also, Lutfi Ramadani, Exhibit P305).

<sup>1757</sup> Mehmet Krasniqi, T986, 1052.

<sup>1758</sup> Exhibit P309; Exhibit P310; Lutfi Ramadani, T 1093-1095, T 1131.

<sup>1759</sup> Lutfi Ramadani, T 1096-1097; Mehmet Krasniqi, T 986-987, 1052; Exhibit P311.

<sup>1760</sup> Mehmet Krasniqi, T 986; Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4328.

<sup>1761</sup> Mehmet Krasniqi, T 987-988.

initial shooting had finished the police came into the barn and any villager who lifted their head, was shot with a pistol.<sup>1762</sup> The police then poured what was apparently an incendiary liquid over the bodies in the room, maize was placed on top of them, and the barn was set on fire.<sup>1763</sup>

491. Lutfi Ramadani, who was in the corridor of the barn, was still alive. As the barn was on fire, his hands and clothes started to burn. He decided to try to leave the barn. He had to move Sait Hajdari's wheelchair that was blocking the exit.<sup>1764</sup> He managed to leave the barn without being seen. As he did he recognised local Serbs from the village with the police. These included Bosko Stanković, Stanko Nikolić, Rade Nikolić and Bosko Cvetković.<sup>1765</sup> Along with nine other people who were in the barn, Lutfi Ramadani escaped from the inferno.<sup>1766</sup> He took cover close by for a while and then headed to the mountains.<sup>1767</sup> Two of the ten people who fled the Batusha barn were Refki Rashkaj and Adnan Shehu. They headed to the stream close by the village but were seen by Serbian forces. The two youths were asked to put their hands above their heads by the Serbian forces and then they were shot.<sup>1768</sup> The evidence does not identify who shot these men.<sup>1769</sup> These two men had previously been detained by the MUP forces and forced into the Batusha barn; they were unarmed and not taking part in the conflict.<sup>1770</sup> Both of these men were Kosovo Albanians and the Chamber is satisfied that this was the reason they were killed. The bodies of these two youths were later exhumed by the British forensic team in July 1999,<sup>1771</sup> but the autopsy reports were inconclusive as to the cause of death because of the state of the remains. Nevertheless, the Chamber finds from the circumstances that the only reasonable inference is that Refki Rashkaj and

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<sup>1762</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4238; Lutfi Ramadani, T 1092.

<sup>1763</sup> Mehmet Krasniqi, T 987-988, 1055; Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4328; Exhibit P304; Exhibit P310; Lutfi Ramadani, T 1092-1093.

<sup>1764</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4230, 4299-4300, 4313; Lutfi Ramadani, T 1097.

<sup>1765</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4301.

<sup>1766</sup> The Chamber notes that a further two people, who were not identified by Lutfi Ramadani, also escaped from the barn but were identified by Mehmet Krasniqi as discussed below, *see infra*, para 493.

<sup>1767</sup> Lutfi Ramadani stated that he escaped with 6 other people. However the list he provided did not include the two young men, Refki Rashkaj and Adnan Shehu, who were later found dead by the stream. Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T4300-4302; Lutfi Ramadani, T 1097-1098.

<sup>1768</sup> Mehmet Krasniqi testified that at about 1800 hours, when it was dark he saw, Refki Rashkaj and Adnan Shehu, in the forest close by the stream (Mehmet Krasniqi, T 991, 1058). Later that night he came across their dead bodies. He did not know how they were killed (Mehmet Krasniqi, T 1058-1060). As it was dark when Mehmet Krasniqi saw these two young men and because of the traumatic circumstances, the Chamber will rely on the evidence of Lutfi Ramadani who left the Batusha barn with these two men. Mehmet Krasniqi's evidence, that he saw the dead bodies of these two men at the stream, corresponds with the Chamber's finding they were killed at the stream. Lutfi Ramadani, T 1097-1098.

<sup>1769</sup> No details were provided as to who buried these bodies. Lutfi Ramadani however did recover their bodies after the war. Lutfi Ramadani, T 1097-1098.

<sup>1770</sup> *See*, Exhibit P477.

<sup>1771</sup> *See infra*, para 1391; Lutfi Ramadani, T 1097-1098; Exhibit P1160, K0199272-K0199273, K0199309-K0199309, K0199310-K0199310.

Adnan Shehu died on 26 March 1999 as a result of being shot by MUP forces present in the area.<sup>1772</sup>

492. Lutfi Ramadani reached the mountain from where he could see the Serbian forces in the village. He saw that the army vehicles stayed in Mala Kruša/Krushë-e-Vogël for another three days. He recalled the smell of dead bodies and smoke from the burning buildings from this time.<sup>1773</sup> After some 10 days Lutfi Ramadani compiled a list of the persons he knew to have been killed in the barn.<sup>1774</sup> He stayed in the Mala Kruša/Krushë-e-Vogël area for about five weeks and then left for Albania. On arrival in Albania he finalized the list of persons killed and provided it to an investigator.<sup>1775</sup> In June 1999, the remains of 11 male villagers who were among those killed in the barn, were retrieved from the Drini River and identified in Priština/Prishtinë.<sup>1776</sup>

493. When the barn was set on fire, Mehmet Krasniqi, who was also still alive in the barn, found he could no longer breathe. He also managed to get out of the room.<sup>1777</sup> As he moved from under a body on top of him, his face and hands caught fire.<sup>1778</sup> He eventually managed to flee from the barn through one of the windows, without being seen, and went to his uncle's house that was close by.<sup>1779</sup> From the second floor of his uncle's house, that same day Mehmet Krasniqi saw two Serbian policemen and three Serbian civilians, whom he recognised as the two sons of Krsto Nikolić together with Blagoje Nikolić, try to steal his uncle's cars. He recognised one of the police he knew well as a Serbian from his village. He was Sveta Tasić.<sup>1780</sup> From his uncle's house, he also saw two young Serb villagers, Slavisa Petković and Ljubiša Stanović, taking more maize to the barn where the bodies were burning.<sup>1781</sup> He heard one of the police say to these two men that if they saw anyone moving that they should not feel sorry for them; they should simply kill them.<sup>1782</sup> At about 1800 hours, when it was dark, Mehmet Krasniqi left for the mountains. In the mountains he saw the body of Hysni Hajdari, who had also escaped from the Batusha barn. The witness saw he had sustained a gun shot wound.<sup>1783</sup> Hysni Hajdari had previously been detained by MUP forces in the Batusha barn and was unarmed at the time. It is accepted that Hysni Hajdari was targeted

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<sup>1772</sup> See *infra*, para 1399.

<sup>1773</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4304.

<sup>1774</sup> Lutfi Ramadani, T 1130.

<sup>1775</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4285, 4303; Exhibit P312; Lutfi Ramadani, T 1092, 1098-1104, 1129.

<sup>1776</sup> The identification of these 11 villagers was not provided to the Chamber. Lutfi Ramadani, T 1135-1136, 1150.

<sup>1777</sup> Mehmet Krasniqi could not remember the exact time he escaped. Mehmet Krasniqi, T 989, 997.

<sup>1778</sup> Mehmet Krasniqi, T 989.

<sup>1779</sup> Exhibit P302; Mehmet Krasniqi, T 989.

<sup>1780</sup> Mehmet Krasniqi, T 990.

<sup>1781</sup> Mehmet Krasniqi, T 991, 1057-1058.

<sup>1782</sup> Mehmet Krasniqi, T 991.

<sup>1783</sup> Mehmet Krasniqi, T 1009; Exhibit P305, p 14.

because he was of Albanian ethnicity. His remains have never been recovered.<sup>1784</sup> In the circumstances, the Chamber finds that the only reasonable inference is that Hysni Hajdari died as a result of gunshot wounds inflicted by MUP forces whilst he was in the Batusha barn, or as a result of being shot by MUP forces, who were in the area, as he attempted to escape the Batusha barn when it was set on fire by MUP forces.

494. Mehmet Krasniqi positioned himself in the forest. From there he saw that all the houses in the village, except the Serb houses, were on fire.<sup>1785</sup> He remained in the forest for another 3 days until he left for Nagovac/Nagavac.<sup>1786</sup> On 4 April 1999, Mehmet Krasniqi also provided ICTY investigators with a list of names of those who he believed had been killed on 26 March 1999.<sup>1787</sup>

495. The two lists of the Kosovo Albanian men and boys who were last seen alive in the Batusha barn were compared by the Chamber. Based on this information, it was established that at least 104 Kosovo Albanian men and boys were last seen alive in the Batusha barn on 26 March 1999.<sup>1788</sup> None of the remains of any of these 104 people has ever been recovered; as discussed later in this Judgement this is most probably a result of the use of explosives to destroy the Batusha barn. Nevertheless, the Chamber is satisfied from circumstances that the only reasonable inference is that these 104 Kosovo Albanian men and boys were killed by MUP forces.<sup>1789</sup> They died as a result of gun shot wounds or being burnt to death. None of them were armed or participating in the conflict at the time of their death. Based on the totality of the evidence it is accepted by the Chamber that these men and boys were targeted and killed because they were Kosovo Albanians. Schedule C of the Indictment lists 92 of these victims by name, the evidence has provided the Chamber with the names of a further 12 Kosovo Albanian men and boys who were also killed in the Batusha barn. Based on the analysis of evidence the Chamber is satisfied that at least 104 Kosovo Albanian men and young boys known by name were killed by MUP forces at the Batusha barn.

The names of these 92 victims, listed by name in the Schedule of the Indictment, killed in the Batusha barn on 26 March 1999 by Serbian forces are:

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<sup>1784</sup> See, Exhibit P477.

<sup>1785</sup> Mehmet Krasniqi, T 991.

<sup>1786</sup> Mehmet Krasniqi, T 992.

<sup>1787</sup> The witness later explained that when he returned to Mala Kruša/Krushë-c-Vogël on 26 June 1999 he found out that some of the people he had placed on the list had not been killed in the barn; these were Sefer Batusha, Lutfi Ramadani, Agim Asllani, Qamil Shehu, Bajram Zylfiu and Petrit Rashkaj (Mehmet Krasniqi, T 1003-1004, 1007-1010; Exhibit P305). These are not included in the Chamber's murder findings.

<sup>1788</sup> The two young men, Adnan Shehu and Refki Rashkaj, who were shot later by the stream have not been included in those who were killed by MUP forces in the Batusha barn and died as a result of gunshot wounds or being burnt to death. The number of those victims in the Batusha barn also does not include Sefer Batusha, Lutfi Ramadani, Agim Asllani, Qamil Shehu, Bajram Zylfiu and Petrit Rashkaj. (Mehmet Krasniqi, T 1003-1004, 1007-1010; Exhibit P305; See, Exhibit P477).

<sup>1789</sup> See *infra*, para 1401.

Bali Avdyli; Enver Avdyli; Zaim Batusha; Feim Batusha; Son of Zaim Batusha, age 20; Ahmet Batusha; Burim Batusha; Lirim Batusha; Milaim Batusha; Haxhi Batusha; Sedji Batusha; Amrush Batusha; Osman Batusha; Skifer Batusha; Avdi Batusha; Enver Batusha; Asllan Batusha; Beqir Batusha; Njazi Batusha; Muharrem Batusha; Sulejman Batusha; Bekim Batusha; Murat Ramadani; Selajdin Ramadani; Afrim Ramadani; Bajram Ramdadi; Feim Asllani; Adem Asllani; Asim Asllani; Muharremi Asllani; Nisret Asllani; Nexhat Asllani; Perparim Asllani; Limon Limoni; Avdyli Limoni; Nehbi Limoni; Luan Limoni; Kadri Rashkaj; Halim Hajdari; Selajdin Hajdari; Nazim Hajdari; Rasim Hajdari; Vesel Hajdari; Marsel Hajdari; Sahit Hajdari; Shani Hajdari; Halil Hajdari; Qamil Hajdari; Zenun Hajdari; Abaz Hajdari; Abedin Hajdari; Ramadan Ramadani; Asllan Ramadani; Sabit Ramadani; Din Shehu; Sefer Shehu; Fadil Shehu; Xhafer Shehu; Xhelal Shehu; Vesel Shehu; Destan Shehu; Shefqet Shehu; Haziz Shehu; Sami Shehu; Fnu Shehu (Son of Haziz Shehu, age 20); Myftar Shehu; Nehat Shehu; Mehmet Shehu; Shani Shehu; Veli Shehu; Haxhi Shehu; Arben Shehu; Ismail Shehu; Arif Shehu; Ismet Shehu; Mentor Shehu; Bekim Shehu; Sahit Shehu; Xhavit Shehu; Dritan Shehu; Nahit Shehu; Sinan Shehu; Fnu Shehu (Son of Sinan Shehu, age 18); Burim Shehu; Flamur Shehu; Hysen Zylfiu; Afrim Zylfiu; Njazim Zylfiu; Halim Zylfiu; Xhelal Zylfiu (Son of Halim Zylfiu); Hamdi Zylfiu; Hamit Zylfiu.<sup>1790</sup>

Based on the totality of the evidence, the following 12 victims, not listed by name in the Schedule of the Indictment, were also identified as killed in the Batusha barn on 26 March 1999 by Serbian forces:

Islam Batusha; Syle Batusha; Visar Batusha; Mehmet Berisha; Anton Prenkaj; Nikolle Prenkaj; Ajvaz Shehu; Kujtim Shehu; Nuredin Shehu; Selami Shehu; Visar Shehu; Cene Zylfiu.

496. After the NATO bombing campaign, witnesses were able to return to the village. They visited the site of the Batusha barn. It had been destroyed by explosives.<sup>1791</sup> All that was left was a concrete wall. As a result of the explosion houses nearby were also damaged.<sup>1792</sup> There remained two craters filled with water and grass.<sup>1793</sup> John Sweeney, a journalist, interviewed survivors and visited the site of the Batusha barn after the NATO campaign. From what he saw and heard he

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<sup>1790</sup> Exhibit P305; Exhibit P312. The Chamber notes that the Exhibit P312, p 3 referred to the following four victims: Halim Qollaku; Hamdi Qollaku; Hamit Qollaku; and Xhelal Qollaku. These four victims were named and listed in Exhibit P477 and Exhibit P305 as Halim Zylfiu; Hamdi Zylfiu; Hamit Zylfiu; and Xhelal Zylfiu. The age of each of these four victims very closely corresponds. The Chamber does not find the difference in the spelling of these four victims surname effects its finding that Halim, Hamdi, Hamit and Xhelal Zylfiu were killed in the Batusha barn. The variation in the spelling is noted in the Victim Chart related to Mala Kruša/Krushë-e-Vogël and annexed to this Judgement.

<sup>1791</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4311; Exhibit P309; Exhibit P310; Lutfi Ramadani, T 1131, 1093-1095; Mehmet Krasniqi, T 1005; John Sweeney, T 893, 947.

<sup>1792</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4311; Exhibit P309; Exhibit P310; Lutfi Ramadani, T 1131, 1093-1095; John Sweeney, T 893.

concluded that dynamite had been used to blow up the barn and that grenades or mortar grenades caused the two craters.<sup>1794</sup> At the site where the barn had been, he saw a boot and two bones although it was not determined whether the bones were human or animal.<sup>1795</sup> Villagers said they had found bones, a pair of burnt shoes and the wheelchair of Sait Hajdari.<sup>1796</sup> A lorry was found in the vicinity of the former barn at the Drini River, which had blood on the side of it. However, human remains were not found in the river.<sup>1797</sup> ICTY investigators arrived in Mala Kruša/Krushë-e-Vogël in early July 1999. They found the remains of seven other people who had been killed at another site in the village.<sup>1798</sup>

497. When Lutfi Ramadani returned to Mala Kruša/Krushë-e-Vogël sometime around 15 June 1999, he found that all the Albanian houses had been burnt but the Serbian and Roma houses were still intact.<sup>1799</sup> John Sweeney confirmed this and also reported that in June 1999 all the Albanian homes had been gutted or were without roofs, and were burnt.<sup>1800</sup>

498. The Chamber has not received any evidence of Serbian authorities conducting investigations into these killings or events in the village of Mala Kruša/Krushë-e-Vogël.<sup>1801</sup>

(b) Displacement between 24 and 27 March 1999

499. One of the tasks of the VJ and MUP in the operation in Mala Kruša/Krushë-e-Vogël and the nearby village of Velika Kruša/Krushë-e-Madhe, was to “mop-up” the area and “gather up the civilian population as they came out of the area of operation” to place the displaced persons behind the line of blockade.<sup>1802</sup> K25 explained that his PJP detachment handed over about 5,000 civilians from the villages to the local MUP. It was thought that KLA were mixed in with the civilian population and the local MUP were expected to know who the KLA members were.<sup>1803</sup> K25’s unit acted on instructions given by SUP Prizren to take all the displaced persons to the railway station in Mala Kruša/Krushë-e-Vogël.<sup>1804</sup> Hence, between 24 and 27 March 1999, a great number of

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<sup>1793</sup> Lutfi Ramadani, Exhibit P306 (*Milutinović* transcript), T 4311; Exhibit P310; Lutfi Ramadani, T 1131, 1093-1095; Exhibit P304; Mehmet Krasniqi, T 1005-1006; John Sweeney, T 893.

<sup>1794</sup> John Sweeney, T 893, 947.

<sup>1795</sup> John Sweeney, T 893.

<sup>1796</sup> Mehmet Krasniqi, T 1004, 1005.

<sup>1797</sup> John Sweeney, T 907-908.

<sup>1798</sup> The identification of these seven people was not provided to the Chamber. Exhibit P298; John Sweeney, T 908-909.

<sup>1799</sup> The Defence contended that the houses were intact and not burnt to the ground (Exhibit D30). However, the witness explained that after the war the houses were repaired and the photo was taken after this. It was confirmed that the photo had been taken in September 2001 (Lutfi Ramadani, T 1129, 1169-1174; John Sweeney, T 891).

<sup>1800</sup> John Sweeney, T 891.

<sup>1801</sup> See *infra*, para 2097.

<sup>1802</sup> K25, Exhibit P340-A, p 8; K25, Exhibit P341-A (*Milošević* transcript), T 7832.

<sup>1803</sup> K25, Exhibit P340-A, p 9.

<sup>1804</sup> K25, Exhibit P341-A (*Milošević* transcript), T 7836; K25, T 1611.



displaced persons passed through the Mala Kruša/Krushë-e-Vogël railway station and left for Prizren.<sup>1805</sup> However, at the railway station local MUP separated the men from the women and children displaced persons. Transport was provided by SUP Prizren for the women and children. The men had to walk.<sup>1806</sup> Most of the drivers of the transport vehicles wore blue MUP uniforms although some did not wear uniform.<sup>1807</sup>

500. It was K25's evidence that the civilians who were leaving gave various stories how they came to be displaced, for example, that Serbian forces ordered them to leave, that they were attacked by the KLA, or that they were being bombed.<sup>1808</sup> The Defence goes further and submits that the villagers were evacuated from Mala Kruša/Krushë-e-Vogël "for their own safety and security" because of the conflict between the KLA and Serbian forces.<sup>1809</sup> However, apart from isolated incidents in the course of the major operation of the Serbian forces in the village and surrounding areas, the evidence does not provide a basis for a finding that KLA and Serbian forces were engaged in heavy or extensive conflict in the area at that time such that the safety of the civilian population necessitated its evacuation. On the contrary, the evidence is only consistent with the view of the Chamber that the female and young Albanian population left the village because they were ordered and forced to do so by Serbian forces who, at the time, were ruthlessly engaged in the killing of the male villagers and all villagers who did not obey directions of Serbian forces to leave the village. The Serbian forces were also burning all houses in the villages of Kosovo Albanians but not of Serbian villagers. As discussed in more detail later in this Judgement, the Chamber accepts that these Kosovo Albanians were forcibly transferred from Mala Kruša/Krushë-e-Vogël by Serbian forces between 24 and 27 March 1999.<sup>1810</sup>

(c) Serbian forces in the village

501. The evidence of the eyewitnesses about the coordinated joint involvement of the VJ and MUP forces in and around Mala Kruša/Krushë-e-Vogël is confirmed by Serbian records. Combat Group One of the VJ 549<sup>th</sup> Motorised Brigade, in co-operation with the 37<sup>th</sup> Niš PJP Detachment of the MUP together with two other platoons of MUP forces were tasked with "energetically" attacking and destroying major KLA targets in Mala Kruša/Krushë-e-Vogël.<sup>1811</sup> The 23<sup>rd</sup> PJP detachment was also involved in the operation in Mala Kruša/Krushë-e-Vogël.<sup>1812</sup> During the

<sup>1805</sup> K25, Exhibit P340-A, p 11; K25, T 1611.

<sup>1806</sup> K25, Exhibit P340-A, pp 9, 11, 12; K25, Exhibit P341-A (*Milošević* transcript), T 7826-7827, 7834-7835; K25, T 1611.

<sup>1807</sup> K25, Exhibit P340-A, p 12; K25, Exhibit P341-A (*Milošević* transcript), T 7836; K25, T 1613.

<sup>1808</sup> K25, Exhibit P342 (*Milutinović* transcript), T 4757.

<sup>1809</sup> Defence Final Brief, para 741; K25, Exhibit P341-A (*Milutinović* transcript), T 7825.

<sup>1810</sup> See *infra*, para 1620.

<sup>1811</sup> Exhibit P350; Exhibit P1316, p 4; Exhibit P1317, p 3; K25, T 1604-1606.

<sup>1812</sup> Exhibit P1317, p 4.

operation in Mala Kruša/Krushë-e-Vogël, four PJP companies from the Đakovica/Gjakovë SUP were also placed under the command of the Prizren SUP.<sup>1813</sup> The Chamber accepts the eyewitness accounts that local Serbs, some in police uniforms, were serving as reserve members of the MUP<sup>1814</sup> and that they were involved with other MUP units in the Serbian operation in Mala Kruša/Krushë-e-Vogël, with the support of the VJ.

### 3. Velika Kruša/Krushë-e-Madhe and Nogavac/Nagavc

#### (a) Velika Kruša/Krushë-e-Madhe

502. As a result of an influx of displaced persons from surrounding villages, the population of Velika Kruša/Krushë-e-Madhe increased to about 6,000 inhabitants by 25 March 1999. They were housed in about 500 houses.<sup>1815</sup> By that date the inhabitants were all Albanian, the few Serbian families having moved to Serbia. The village is located in the south-west region of the municipality of Orahovac/Rahovec; it is the neighbouring village of Mala Kruša/Krushë-e-Vogël and the surrounding villages of Celina/Celinë and Nogavac/Nagavc.

#### (b) Events in Velika Kruša/Krushë-e-Madhe on 25 March 1999

503. At the same time as Mala Kruša/Krushë-e-Vogël was surrounded by Serbian VJ and MUP forces at 0400 hours on 25 March 1999, the neighbouring village of Velika Kruša/Krushë-e-Madhe was also surrounded by Serbian forces.<sup>1816</sup> Serbian military vehicles, including tanks, APCs, Pragas and other escort vehicles moved along the main road that links Prizren, Đakovica/Gjakovë and Orahovac/Rahovec. This road passes through the middle of the village.<sup>1817</sup> The tanks stationed themselves at about 500 metre intervals in the area of the village.<sup>1818</sup> Because of these events about 3,000 to 4,000 people from Velika Kruša/Krushë-e-Madhe fled out of fear to the hills above the village and to some surrounding valleys.<sup>1819</sup>

504. Ali Hoti was one of the local villagers who decided to flee from Velika Kruša/Krushë-e-Madhe. He positioned himself on a hill above the village from where he observed two buses arrive carrying Serbian forces. The buses came from the direction of Prizren and stopped at the entrance of Velika Kruša/Krushë-e-Madhe.<sup>1820</sup> The men who arrived were wearing green camouflage

<sup>1813</sup> K25, Exhibit P340-A, pp 20-21.

<sup>1814</sup> K25, Exhibit P340-A, p 9.

<sup>1815</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4140.

<sup>1816</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4140-4141, 4163.

<sup>1817</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4141-4142.

<sup>1818</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4141, 4163-4164.

<sup>1819</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4142-4143, 4196.

<sup>1820</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4166, 4197.

uniforms. The men were led by one Boski, who was a Serb civilian, who used to live in Velika Kruša/Krushë-e-Madhe.<sup>1821</sup> The tanks remained in their positions.<sup>1822</sup> About an hour after they had arrived, Boski, and the men he led, entered the village and began setting fire to the houses and looting.<sup>1823</sup>

505. The group of residents who had fled the village was so large that they separated into two groups. One group went to Velika Kruša/Krushë-e-Madhe, and the other group, including Ali Hoti and his family, went in the direction of Nogavac/Nagavc to the valley of Cili.<sup>1824</sup> Gathered in the valley Ali Hoti saw what he estimated as about 20,000 people from other villages in the area including Mala Hoca/Hoçë-e-Vogël, Brestovac/Brestoc, Zocište/Zoqishtë, Opteruša/Optershë and Celina/Celinë.<sup>1825</sup> From there, he was able to see Serbian forces pass by on a secondary road in the direction of Velika Kruša/Krushë-e-Madhe. During the day, he could see Velika Kruša/Krushë-e-Madhe burning and smoke coming from the houses. He also saw tanks still stationed in the village.<sup>1826</sup> Later that night, the Serbian forces in the area moved towards Nogavac/Nagavc on a secondary road and continually shot their weapons in the air, so reinforcing the significance of their continued presence.<sup>1827</sup>

506. Ali Hoti and his family stayed in the valley until the morning of 26 March 1999, when he saw a convoy of villagers pass by, led by an old man, who was waving a white flag. The old man told Hoti someone had told them all to go to Albania.<sup>1828</sup> The old man did not even stop and appeared to Hoti to be frightened. The group of people located in the valley were also frightened. Ali Hoti, with his family and others, decided to join the passing convoy and go to Albania.<sup>1829</sup> This convoy of people numbered about 20,000 people. When they reached the main road that goes either in the direction of Velika Kruša/Krushë-e-Madhe or Nogavac/Nagavc, police were there and told them they could not pass through Velika Kruša/Krushë-e-Madhe to the border of Albania because the village was on fire. They were told by the police to go to the centre of Nogavac/Nagavc and gather in the schoolyard.<sup>1830</sup> They did so, but although they waited for a time in the schoolyard nothing happened. The members of the convoy, including Ali Hoti and his

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<sup>1821</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4166-4168, 4196-4197.

<sup>1822</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4169.

<sup>1823</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4166-4167, 4197.

<sup>1824</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4141-4143, 4167-4177, 4196.

<sup>1825</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4143, Exhibit P629 (map with villages that the displaced people came from circled by the witness). The Chamber did not receive any evidence about what happened to the convoy of people that headed to Velika Kruša/Krushë-e-Madhe.

<sup>1826</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4143-4144, 4169.

<sup>1827</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4144.

<sup>1828</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4144-4145.

<sup>1829</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4144-4145.

<sup>1830</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4144-4145, 4169.

family, found shelter in local houses and remained in Nogavac/Nagavc over the following days. As discussed in more detail later in this Judgement, the Chamber accepts that the offence of forcible transfer has been established with respect to Velika Kruša/Krushë-e-Madhe.<sup>1831</sup>

(c) Destruction of the mosque in Velika Kruša/Krushë-e-Madhe

507. The Chamber heard indirect evidence that the mosque in Velika Kruša/Krushë-e-Madhe was damaged.<sup>1832</sup> No evidence was led which detailed the circumstances of its damage or the forces responsible as charged in the Indictment.<sup>1833</sup> Hence, as discussed in more detail later in this Judgement, the evidence does not enable a finding to be made concerning this allegation.<sup>1834</sup>

(d) Events in Nogavac/Nagavc on 28 and 29 March 1999

508. On 28 March 1999, Ali Hoti was approached on the street in Nogavac/Nagavc by armed Serb men dressed in a blue or black camouflage uniform. At their direction Ali Hoti handed over his identification and money. Two more armed and uniformed men stood by watching.<sup>1835</sup> At their direction, Ali Hoti then took them to the room which he was sharing with some 80 other villagers and, as directed by the Serbian men, he took all the money of the villagers from them for the armed men. The women and children were in the adjoining room. All their money was also taken.<sup>1836</sup> The men, women and children were then ordered into the courtyard. The young men among the villagers were then separated from the group but then all the villagers were sent back inside the house. Some of the armed Serbian men were recognised as former neighbours of some of the people with whom Ali Hoti was travelling.<sup>1837</sup> Also present at this time were other uniformed men wearing bandannas and with faces painted with red, white and blue, which the Chamber notes are the colours of the Serbian flag.<sup>1838</sup> He could not recall any tags on the uniforms.<sup>1839</sup> Ali Hoti was then told by the man who had taken his money “We are in the hills and observing and watching you, every moment, so don’t leave your houses”.<sup>1840</sup> A blue or black camouflage uniform is a description which accords with the standard MUP camouflage uniform, which is predominately dark blue but can appear to be black to some.<sup>1841</sup>

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<sup>1831</sup> See *infra*, para 1622.

<sup>1832</sup> 6D2, T 12307-12308.

<sup>1833</sup> Paragraph 77(d) of the Indictment.

<sup>1834</sup> See *infra*, para 1814.

<sup>1835</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4158.

<sup>1836</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4159.

<sup>1837</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4170.

<sup>1838</sup> See *supra*, para 64.

<sup>1839</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4158-4160.

<sup>1840</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4171.

<sup>1841</sup> See *supra*, paras 53-54.

509. On or about 29 March 1999, Mehmet Krasniqi arrived in Nogavac/Nagavc from Mala Kruša/Krushë-e-Vogël.<sup>1842</sup> In Nogavac/Nagavc there were many people of Albanian ethnicity who had come from the surrounding villages including Celina/Celinë, Velika Kruša/Krushë-e-Madhe and Brestovac/Brestovc.<sup>1843</sup> Mehmet Krasniqi confirmed the evidence of Ali Hoti. He was told that the people in the village had all their valuables taken from them by the Serbian forces, and were told to remain in Nogavac/Nagavc until they were allowed to go to Albania.<sup>1844</sup> Ali Hoti provided medical assistance to Mehmet Krasniqi who had burn injuries from the incident at the Batusha Barn in Mala Kruša/Krushë-e-Vogël. Mehmet Krasniqi recounted to Ali Hoti what had happened on 26 March 1999 in Mala Kruša/Krushë-e-Vogël.<sup>1845</sup>

(c) Events on 2 and 3 April 1999 in Nogavac/Nagavc

510. At about 0200 hours on 2 April 1999, a plane flew over Nogavac/Nagavc. Bombs were dropped.<sup>1846</sup> Isuf Zhuniqi heard three large explosions at three different locations. One bomb landed very close to the witness; he sustained injuries to his head.<sup>1847</sup> At the same time, Sabri Popaj and Ali Hoti heard a plane fly very low over Nogavac/Nagavc.<sup>1848</sup> They heard four explosions.<sup>1849</sup> These two witnesses concluded it was not a NATO plane because it was flying very low and it made a different noise than NATO planes, however, none of the witnesses were able to reliably identify the plane. There is indirect evidence of shells or bomb fragments with Cyrillic inscriptions and that they were taken and inspected by NATO Kosovo Force.<sup>1850</sup> There is also inconclusive evidence that no shells or bomb fragments with Cyrillic letters were found in the area.<sup>1851</sup> The Chamber is unable to establish on the evidence what force bombed Nogavac/Nagavc on 2 April 1999.

511. Following the bomb detonations there was a fire in Nogavac/Nagavc village. Many people were wounded and houses damaged.<sup>1852</sup> Ali Hoti went around the village providing medical

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<sup>1842</sup> Mehmet Krasniqi, T 992.

<sup>1843</sup> Mehmet Krasniqi, T 992, 993.

<sup>1844</sup> Mehmet Krasniqi, T 992.

<sup>1845</sup> See *supra*, paras 479-498; Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4148-4149, 4150-4151.

<sup>1846</sup> Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4122.

<sup>1847</sup> The witness did not wake up till 3 April 1999. From what he was told he was taken over the border into Albania by his relative. He does not remember the journey. As a result of the bombing he sustained lacerations to his head and right arm. Isuf Zhuniqi, Exhibit P1251, p 6; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4107, 4122.

<sup>1848</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4153-4154, 4171-4172; Sabri Popaj, Exhibit P1082, p 10.

<sup>1849</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4153-4154; Sabri Popaj, Exhibit P1082, p 10.

<sup>1850</sup> The NATO Kosovo Force is also referred to as "KFOR". In *Milutinović* Sabri Popaj testified that another villager had the remains of a shell with Cyrillic writing on it. This was followed up afterwards and the OTP investigator was informed that he was not in possession of this material and that he had handed it to KFOR investigators. Isuf Zhuniqi testified that when he returned from Albania he saw parts of bombs that had Cyrillic letters on them. Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5702-5705; Sabri Popaj; T 7414-7416; Isuf Zhuniqi, Exhibit P1253 (*Milutinović* transcript), T 4122.

<sup>1851</sup> Exhibit D317; Sabri Popaj, T 7416-7417.

<sup>1852</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4153-4154.

assistance to the wounded. He saw one person who had been killed and understood that a total of 50 people had been killed in the attack on Nogavac/Nagavc.<sup>1853</sup> A witness who was at Nogavac/Nagavc the following day found that some houses had been badly damaged and one house totally destroyed. A few days later he saw the bodies of three young children carried out of a damaged house; he assumed they had been killed in the bombing. Later he heard that the bodies of another five children and three women were also removed from the same house.<sup>1854</sup>

512. It was the evidence of Ali Hoti that on 3 April 1999, after the sun came up, the people who had been waiting in Nogavac/Nagavc for permission to cross into Albania, scared of another possible bombing attack, collected their belongings and headed on tractors in a convoy of about 20,000 people to the Albanian border.<sup>1855</sup> The convoy passed through Velika Kruša/Krushë-e-Madhe, which was seen to be completely burned.<sup>1856</sup> On this day, or the next, Hamide Fondaj who was travelling in a convoy of displaced persons, saw a green excavator surrounded by soldiers in Velika Kruša/Krushë-e-Madhe. The Chamber notes that she does not describe the appearance of the men she describes as soldiers in her evidence, but that she does appear to be able to distinguish between the police and soldiers when discussing particular events in her statement.<sup>1857</sup> On the way to the border military forces dressed in camouflage uniforms could be seen.<sup>1858</sup> Mehmet Krasniqi who was in the convoy testified that they went to the border crossing point of Qafe Morina.<sup>1859</sup>

513. At the Albanian border Serbian police, dressed in the blue police uniforms, took the identification documents of the displaced people in the convoy and made them remove the licence plates from the vehicles they were using.<sup>1860</sup> The police also confiscated new cars and cars in a better condition; members of the VJ were also present and they insulted and cursed people in the convoy.<sup>1861</sup> Mehmet Krasniqi, who had sustained burn injuries during the Batusha barn incident, in Mala Kruša/Krushë-e-Vogël, was pulled aside by the police. They suspected him of being a KLA soldier, and his injuries as being a result of the shelling; they wanted to know who his commander was. He was taken to a room and tied to a radiator, until darkness fell, and then he was told to go to

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<sup>1853</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4156.

<sup>1854</sup> Sabri Popaj, Exhibit P1082, p 10.

<sup>1855</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4156; Mehmet Krasniqi, T 993.

<sup>1856</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4156.

<sup>1857</sup> No information is provided as to who these soldiers were. From there the witness continued on through other villages and eventually crossed the border into Albania at about 0200 hours on 4 April 1999. The witness's identification card was not taken from her nor were the people she was with beaten. Hamide Fondaj, Exhibit P627, pp 4-5.

<sup>1858</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4157.

<sup>1859</sup> Mehmet Krasniqi, T 993.

<sup>1860</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4157; Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4157; Mehmet Krasniqi, T 994, 1060-1061.

<sup>1861</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4157.

Albania.<sup>1862</sup> The other people in the convoy, including Ali Hoti, crossed over the border into Albania on 3 April 1999. The convoy that crossed over the border into Albania was made up of approximately 20,000 Kosovo Albanians.<sup>1863</sup>

514. Based on the limited evidence before the Chamber no finding could be made as to who was responsible for the bombing of Nogavac/Nagavc and this was the main reason why people left the village. As discussed in more detail later in the Judgement, the Chamber is not satisfied that the offences of deportation and forcible transfer have been established with respect to Nogavac/Nagavc.<sup>1864</sup>

(f) Serbian forces in the village

515. As discussed earlier when dealing with neighbouring villages, it is confirmed by Serbian records that the VJ and MUP, including PJP units, were present in the area of Orahovac/Rahovec in a joint operation, and were deployed to the village of Velika Kruša/Krushë-e-Madhe on the 25 and 26 March 1999.<sup>1865</sup> The Chamber finds accordingly. A report of the Joint Command confirmed that following this operation a defence line was prepared following the direction Velika Kruša/Krushë-e-Madhe to Brestovac/Brestovc.<sup>1866</sup> The War Diary of the VJ 2<sup>nd</sup> Motorised Battalion reports that following the events in Bela Crkva/Bellacërkë, on 26 March 1999, forces of the Battalion, along with the MUP, continued to “mop up” the village of Velika Kruša/Krushë-e-Madhe. It was reported that members of the KLA were throwing away their weapons, changing out of uniform and running away.<sup>1867</sup> The evidence does not specifically mention Serbian forces in Nogavac/Nagavc. However, given the nature of the joint operation in that area, the large number of Serbian forces deployed in the area from 25 March 1999, and the close proximity of the villages, the Chamber finds that forces of the VJ and MUP were in action in and around Nogavac/Nagavc on those days and, apart from the bombing by the unidentified aircraft, were responsible for the incidents dealt with in the evidence of the witnesses discussed above.

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<sup>1862</sup> Mehmet Krasniqi, T 993.

<sup>1863</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4157.

<sup>1864</sup> *See infra*, para 1625. In the Defence Final Brief it was argued that Isuf Zhuniqi who was not conscious because of head injuries from the bombing on 2 April 1999, was not deported from Albania as he was taken over the border, not knowing how he got there, Defence Final Brief, para 743. The Chamber does not accept this argument given that the group of people who had gathered in Nogavac/Nagavc left out of fear of another bombing and Isuf Zhuniqi’s family took him out of this concern.

<sup>1865</sup> *See*, Exhibit P350; K25, T 1604-1606; *See also*, K25, Exhibit P342 (*Milutinović* transcript), T 4706-4708; *See supra*, paras 453-455.

<sup>1866</sup> Exhibit P1317, p 1.

<sup>1867</sup> Exhibit D37, p 3.

#### 4. Celina/Celinë

516. The village of Celina/Celinë is located to the south of Orahovac/Rahovec and the surrounding villages are Bela Crkva/Bellacërkë, Velika Kruša/Krushë-e-Madhe and Nogavac/Nagavc. In March 1999, the village of Celina/Celinë had approximately 2,000 inhabitants living in some 200-250 households.<sup>1868</sup> The ethnicity of all the people living in the village was Albanian.<sup>1869</sup> Houses in the village were set out in rows that were separated from each other by walls of individual family compounds.<sup>1870</sup>

##### (a) Events on 25 March 1999 and days following in Celina/Celinë and the destruction of the mosque

517. At approximately 0500 hours on 25 March 1999, around the same time as Serbian forces commenced actions in the neighbouring villages in Orahovac/Rahovec, Serbian forces with tanks, armoured vehicles and Pragas surrounded the village of Celina/Celinë.<sup>1871</sup> At about 0530 hours a green VJ tank entered the village from the direction of Bela Crkva/Bellacërkë.<sup>1872</sup> In the opposite direction, towards Orahovac/Rahovec and Nogavac/Nagavc, VJ, including tanks, took up positions, and on the main road from Prizren/Prizren to Đakovica/Gjakovë there were APCs.<sup>1873</sup> From about 0530 hours shots were fired from the main road and the VJ started to shell the village. While some houses and other buildings were hit by shells, it was the impression of a witness from the nature and effect of the shelling that it was primarily intended to scare them.<sup>1874</sup>

518. As the shelling progressed many of the inhabitants of Celina/Celinë left their homes and collected at the outskirts of the village.<sup>1875</sup> The elderly, the women and children gathered in one group while the men aged between 18 and 40 years old hid in various locations away from that group.<sup>1876</sup> This was because they feared that, as men, they would be targeted.<sup>1877</sup> Others remained in their homes or family compounds. Agim Jemini and his cousin, Isuf Jemini, hid in the attic of a

<sup>1868</sup> Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4232; Reshit Salihi, Exhibit P632, p 2; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4224-4225.

<sup>1869</sup> Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4232; Reshit Salihi, P632, p 2; Reshit Salihi, T 3461.

<sup>1870</sup> Reshit Salihi, Exhibit P632, p 2; Reshit Salihi, Exhibit T 3490.

<sup>1871</sup> Agim Jemini, Exhibit P635, p 2; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4232; Agim Jemini, T 3593; Reshit Salihi, Exhibit P632, p 2; Reshit Salihi, T 3483, 3487, 3491-3492.

<sup>1872</sup> Agim Jemini, T 3593; Reshit Salihi, T 3484, 3487, 3492.

<sup>1873</sup> Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4234; Agim Jemini, T 3593.

<sup>1874</sup> Agim Jemini, Exhibit P635, p 2.

<sup>1875</sup> Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6556; Reshit Salihi, Exhibit P632, pp 3, 9; Reshit Salihi, T 3469, 3470, 3493-3494, 3518.

<sup>1876</sup> There was some evidence that of the elderly, the women and children who were gathered in the village, 55 were killed on 25 March 1999, during the first attack on the village (Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6551). On the absence of more detailed or forensic evidence the Chamber is unable to make findings whether or how these people were killed or who was responsible.

<sup>1877</sup> Agim Jemini, Exhibit P635, p 2; Agim Jemini, Exhibit P636 (*Milošević* transcript), T6551-6553, 6556; Agim Jemini, T 3598.



house in his family compound from where they could observe most of the village.<sup>1878</sup> The credibility of Agim Jemini was challenged on the basis that he could not have viewed the events he described from his vantage point. Having carefully assessed the witness and all relevant evidence, including photos depicting his vantage point and the views from it, the Chamber is satisfied of the truthfulness and accuracy of Agim Jemini's evidence and accepts it as being descriptive of the events on 25 March 1999, as discussed below.<sup>1879</sup>

519. At approximately 0930 hours on 25 March 1999, about 500 VJ troops approached the village on foot from the four main directions of Bela Crkva/Bellacërkë, Velika Kruša/Krushë-e-Madhe, Orahovac/Rahovec and the main Đakovica/Gjakovë to Prizren road. By about 1000 hours they had surrounded the village.<sup>1880</sup> The uniforms of the VJ were green and brown camouflage with the Yugoslav/Serbian Army white, double-headed eagle on the left shoulder/left upper arm.<sup>1881</sup> They wore the pointed partisan style hats of the VJ and those in command were identified as wearing dark green beret style hats.<sup>1882</sup> All the hats had the same eagle insignia.<sup>1883</sup> Police were also present dressed in blue camouflage uniforms with the police insignia of the double headed eagle on the chest.<sup>1884</sup> At this time Agim Jemini saw about 35 soldiers break open his gate and enter the yard of his family compound. They entered five houses in the compound and looted valuables.<sup>1885</sup> In the view of the Chamber the observation by Agim Jemini of the uniforms worn that morning confirms that he correctly identified the Serbian forces as comprising both VJ and MUP.<sup>1886</sup>

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<sup>1878</sup> Agim Jemini and his cousin moved some roof tiles to better ensure a view of the whole village. Agim Jemini, Exhibit P635, p 2; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6562; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4236, 4256-4259; Exhibit P642/D74 (photo with markings indicating where the witness observed the events in the village); Exhibit P643 (photo from the attic); P639 (photo from the attic); Exhibit D75 (photo marked with a "x" to identify the school that could be seen from the attic by Agim Jemini); Agim Jemini, T 3567, 3584-3585, 3588.

<sup>1879</sup> The markings on Exhibit P642 and Exhibit D74 indicate the attic window from which the witness observed the events in the village, however, no photo was taken to show the view that Agim Jemini would have had after removing the tiles. Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4236, 4257-4259; Exhibit P639 (photo from the attic); Exhibit P640 (marked photo showing where the soldiers were standing on the balcony); Exhibit P641 (photo of Agim Jemini's house); Exhibits P642, D74 (photo marked with an x to indicate where the witness was hiding); Exhibit P643 (Photo from the attic); Exhibit P644 (marked photo showing with a x where the Agim Jemini's family's money was taken and with xx where they were shot); Exhibit D73 (photo taken from where witness was hiding identifying with a number 1 the family house that was burnt down, his uncle's house on the left identified with a 2. The white house marked in P644 is identified with the number 3); Exhibit D75 (photo marked with an x to identify the school that could be seen from the attic by Agim Jemini); Agim Jemini, T 3584-3585.

<sup>1880</sup> Agim Jemini, Exhibit P635, 2.

<sup>1881</sup> Agim Jemini, Exhibit P635, p 2; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4233-4234, 4269.

<sup>1882</sup> Agim Jemini, Exhibit P635, p 2; Agim Jemini, T 4275-4277.

<sup>1883</sup> Agim Jemini, Exhibit P635, p 2.

<sup>1884</sup> See *supra*, para 53; Agim Jemini, Exhibit P635, p 2, Addendum; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4265, 4269-4272.

<sup>1885</sup> Agim Jemini, Exhibit P635, p 2.

<sup>1886</sup> See *supra*, paras 53, 54, 162.

520. The shelling of Celina/Celinë continued, with some interruptions, the entire day of 25 March 1999. The VJ forces would shell the village for a period of time and then stop while MUP forces, wearing blue uniforms, would enter the village.<sup>1887</sup> The police would then withdraw and the shelling by the military forces would recommence.<sup>1888</sup> This pattern was repeated throughout the day.<sup>1889</sup> During the day valuables were looted from houses in Celina/Celinë.<sup>1890</sup>

521. At about 1500 hours, a large number of Serbian police wearing blue uniforms with red ribbons on their right arms, and some with white ribbons, started setting houses on fire in the village.<sup>1891</sup> Following this, a group of police approached Reshit Salihi's family compound from the direction of the school. These police were wearing grey bandannas on their heads.<sup>1892</sup> A witness, Reshit Salihi, saw the police position themselves at a house within his family compound, about 30 metres from his position.<sup>1893</sup> Reshit Salihi, his brothers Bajram Salihi and Faik Salihi, as well as Faik's wife and five children, had stayed in their family compound along with Miftare Zeqiri and 14 members of his family.<sup>1894</sup> From the compound Reshit Salihi had a good vantage point over the village.<sup>1895</sup> Bajram Salihi also looked out to try and observe the police movements. At this time Reshit Salihi heard three gunshots close by and saw that Bajram Salihi had been shot in the abdominal region. The witness believed his brother died immediately.<sup>1896</sup> The Defence challenged the credibility of Reshit Salihi contending that from his position he would not have been able to observe the events he described.<sup>1897</sup> The Chamber accepts, on the basis of all the relevant evidence before it, including the detailed explanation that Reshit Salihi's brother was at a corner of the wall

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<sup>1887</sup> Reshit Salihi, Exhibit P632, p 2; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4212-4213, 4218-4222; Reshit Salihi, T 3490-3491, 3518-3519.

<sup>1888</sup> Reshit Salihi clarified that when he talked of ground forces he was referring to the police, Reshit Salihi, Exhibit P632, p 2; Reshit Salihi, T 3487-3488.

<sup>1889</sup> Reshit Salihi, Exhibit P632, p 2.

<sup>1890</sup> Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4250-4251; Reshit Salihi, Exhibit P632, p 3; Reshit Salihi, T 3461.

<sup>1891</sup> The Chamber has taken into account apparent differences in the colour of the uniforms as described by Reshit Salihi. In his evidence in this trial the witness described the uniforms as blue. However, he has also referred to them as black (Reshit Salihi, Exhibit P632, p 2; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4204-4205). In *Milutinović* the witness described how he saw different colours every 10 minutes and that the uniforms kept changing (Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4212-4213). To this Chamber the witness explained that he called them black because, from a distance, that is what they looked like (Reshit Salihi, T 3490-3491). He was unable to say whether he saw blue, or black uniforms, or blue and black uniforms (Reshit Salihi, T 3519). The Chamber notes that the standard police camouflage uniform has a pattern and colours which are designed to be confusing to a viewer. In the Chamber's view this may well explain the evidence of the witness and his varying description of the uniforms as blue or black. Whether that is the case, or not, the Chamber accepts he saw uniforms which are usually described as blue, and is also confident that he could distinguish between the uniforms worn that day by the police and the uniforms worn by the VJ (Reshit Salihi, T 3518).

<sup>1892</sup> Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4218.

<sup>1893</sup> Reshit Salihi, Exhibit P632, p 3; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4207, 4228-4229; Reshit Salihi, T 3472, 3498-3500.

<sup>1894</sup> Reshit Salihi, Exhibit P632, pp 3, 9; Reshit Salihi, T 3469, 3470, T 3496, 3518.

<sup>1895</sup> Reshit Salihi, Exhibit P632, p 2; Reshit Salihi, T 3475-3478, 3488-3489.

<sup>1896</sup> Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4214-4216, 4228-4229; Reshit Salihi, T 3500, 3501.

on the same side as the witness and the clear description of the police actions immediately following the gun fire, that Reshit Salih was close to his brother and saw him shot.<sup>1898</sup> The Chamber accepts that the shooting came from the location where the police had positioned themselves as described by the witness and that after the shots were fired the police left that house, and a group of five policemen approached the place where Reshit Salih's other family members and the Zeqiri's were hiding.<sup>1899</sup> Although the killing of Bajram Salih is not specifically charged as murder in the Indictment, the Chamber accepts that Reshit Salih saw his brother, Bajram Salih, shot dead by Serbian police who were in the area at the time. Bajram Salih was not armed and was not taking an active part in any armed conflict.

522. After these events, Reshit Salih ran into the adjoining Zeqiri family compound and hid in a one metre deep hole.<sup>1900</sup> From there Reshit Salih heard bursts of automatic gunfire and the screaming of women and children.<sup>1901</sup> He heard a voice say in Serbian "Shoot, there are terrorists there".<sup>1902</sup> The shooting continued for about 15 minutes. The witness remained in the hole until it became dark. He then was able to reach the forest by Mount Pisjak, about two kilometres from the village of Celina/Celinë, where his family and displaced persons from other villages including Velika Kruša/Krushë-e-Madhe, Brestovac/Brestove and Nogavac/Nagavc had gathered.<sup>1903</sup> Reshit Salih learned of the deaths of the people who remained in the compound, including his family members and the Zeqiri family, when he arrived in Albania on or about 28 March 1999.<sup>1904</sup> About three months later, around mid June 1999, when Reshit Salih returned to Celina/Celinë he found their bodies buried in shallow graves in the yard where he had last seen them.<sup>1905</sup> The Chamber accepts that the 20 people who remained in the courtyard, including Bajram Salih, were shot to death by MUP forces who were in the area. The victims were all Kosovo Albanians, unarmed and not taking part in the conflict. The Chamber has not received any evidence of Serbian authorities conducting investigations into these killings. The killing of these people is not charged as murder in the Indictment.

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<sup>1897</sup> The Defence contended that Reshit Salih was on the other side of a 2.20-2.50 metre high wall and therefore could not have witnessed what happened to his brother. Reshit Salih, Exhibit P632, p 3; Reshit Salih, Exhibit P633 (*Milutinović* transcript), T 4207, 4214-4216, 4228; Reshit Salih, T 3500-3503.

<sup>1898</sup> Reshit Salih, Exhibit P633 (*Milutinović* transcript), T 4215-4216; Reshit Salih, Exhibit T 3500-3501.

<sup>1899</sup> Reshit Salih, Exhibit P632, p 3; Reshit Salih, Exhibit P633 (*Milutinović* transcript), T 4207, 4216, 4228-4229; Reshit Salih, T 3500-3501, 3504.

<sup>1900</sup> Reshit Salih, Exhibit P632, p 3; Reshit Salih, Exhibit T 3500, 3501, 3504-3505, 3520.

<sup>1901</sup> Reshit Salih, Exhibit P632, p 3; Reshit Salih, Exhibit T 3504-3505, 3520.

<sup>1902</sup> Reshit Salih, Exhibit P632, p 3.

<sup>1903</sup> Reshit Salih, Exhibit P632, pp 3, 4; Reshit Salih, Exhibit P633 (*Milutinović* transcript), T 4207-4208; Reshit Salih, T 3461, 3462, 3470, 3494, 3504, 3508, 3517, 3518.

<sup>1904</sup> Reshit Salih, Exhibit P632, pp 3, 4; Reshit Salih, Exhibit P633 (*Milutinović* transcript), T 4207-4208; Reshit Salih, T 3461, 3462, 3470, 3494, 3504, 3508, 3514, 3517, 3518.

<sup>1905</sup> Reshit Salih, Exhibit P632, pp 3, 4; Reshit Salih, Exhibit P633 (*Milutinović* transcript), T 4207-4208; Reshit Salih, T 3461, 3465, 3466, 3469, 3470, 3494, 3504, 3508, 3514, 3517, 3518.

523. In the meantime, Agim Jemini, another resident of Celina/Celinë, who was hiding in the attic of a house in his compound, saw Serbian forces occupy the second floor of his house in the same compound.<sup>1906</sup> Agim Jemini saw two men on the balcony of his house carrying handheld radios. From their dress and conversation he understood them to be commanders of the police.<sup>1907</sup> The window at which Agim Jemini was watching was only approximately 10 to 15 metres from the balcony of his house occupied by the commanders.<sup>1908</sup> At approximately 1700 hours Agim Jemini heard a voice on the radio say “Commander 444” from “Prizren” and ask about the situation in Celina/Celinë.<sup>1909</sup> He then heard the commander reply “All is good”; to which “Prizren” responded, “Don’t let it be like in Račak”. The commander answered, “It won’t be like Račak but twice as much”.<sup>1910</sup> At 1900 hours the witness heard another radio call to “Commander 444” to stop the offensive on Celina/Celinë. “Commander 444” answered “Yes, we will stop”.<sup>1911</sup> Following this the Serbian forces moved to take up positions at the entrance to the village towards the school and the village of Velika Kruša/Krushë-e-Madhe,<sup>1912</sup> and the offensive was discontinued.<sup>1913</sup> There were other conversations on the radios by the commanders on the balcony, but as they used what Agim Hemini described as a special code he had difficulty understanding what orders were being given by the Commanders.<sup>1914</sup> Earlier in this Judgement the Chamber has found that the Prizren SUP was directly involved in the joint VJ and MUP operation on that day in the area of Orahovac, which included Celina/Celinë.<sup>1915</sup> The Chamber accepts the evidence of Agim Jemini of radio communications between a person of higher authority in Prizren and a commander known as 444 located on the balcony close to the witness’s position. The essence of those parts of the radio communication is consistent, in the Chamber’s finding, with the joint operation in the area being conducted that day and discloses a reporting of the progress of the operation in Celina/Celinë and that orders were given to MUP forces in Celina/Celinë by a person of higher authority in Prizren. The Chamber has found that the Prizren SUP was responsible for

<sup>1906</sup> The balcony attached to the house was facing the location of where the witness was hiding. Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4234-4237; Agim Jemini, Exhibit P640.

<sup>1907</sup> Agim Jemini, Exhibit P635, pp 2-3; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4277.

<sup>1908</sup> Agim Jemini, Exhibit P635, p 2; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6554-6555; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4235, 4247-4248, 4279; Agim Jemini, T 3586; Exhibit P640.

<sup>1909</sup> Agim Jemini, Exhibit P635, p 3.

<sup>1910</sup> Agim Jemini, Exhibit P635, p 3. The witness, alternatively, remembered this last part of the radio conversation to be a question from “Prizren”, “Is it as well in Račak”, to which the commander replied, “No, it’s twice as much as Račak”, Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6541-6542.

<sup>1911</sup> Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6542; Agim Jemini, T 3607-3608.

<sup>1912</sup> Agim Jemini, Exhibit P635, p 3.

<sup>1913</sup> Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6542; Agim Jemini, T 3609; Reshit Salih, Exhibit P632, p 2.

<sup>1914</sup> Agim Jemini, Exhibit P635, pp 2-3; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6541, 6554, 6555, 6559-6560; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4235; Agim Jemini, T 3607.

<sup>1915</sup> The 23<sup>rd</sup> PJP Detachment was deployed from Zrze/Xërxë to Mala Kruša/Krushë-e-Vogël and Velika Kruša/Krushë-e-Madhe, which goes through Celina/Celinë. The local Prizren MUP was deployed in the same area but from, Zrze/Xërxë to Bela Crkva/Bellacërkë. K25, Exhibit P340-A, p 11.

MUP operations within this area.<sup>1916</sup> It is established that Agim Jemini's compound was used as a base for the Celina/Celinë operation and that the MUP communicated with the Prizren command through the use of handheld radio.<sup>1917</sup> There is other evidence that radio communications were used during operations in the field.<sup>1918</sup>

524. On the following day, by about 0900 hours, there were approximately 200-300 members of the Serbian forces in Celina/Celinë. They wore red or white ribbons on their shoulders and some were wearing headbands that were red in colour or had a pattern on it that was predominately red or black in colour. Agim Jemini described members of the Serbian forces with a long knife on their hip as they went from house to house throughout the village.<sup>1919</sup> In the absence of more detailed descriptions of the dress of these men, or other evidence, the Chamber is not able to determine whether the witness was correct that the Serbian forces on this second day were paramilitary forces.

525. At around 0930 hours, about 30 men of the Serbian forces entered the yard of the family compound of Agim Jemini and searched the houses.<sup>1920</sup> Agim Jemini was still in the attic described earlier and five members of his family were hiding in the house across from him.<sup>1921</sup> Some of the Serbian forces positioned themselves in the house where Agim Jemini was hiding on the level below him.<sup>1922</sup> About seven or eight of these men entered the house where Agim Jemini's five family members were hiding.<sup>1923</sup> The five were taken out into the yard and the Serbian forces collected all their money.<sup>1924</sup> These five family members were then ordered to march towards the gate between the two houses.<sup>1925</sup> At this point, one of the members of the Serbian forces fired his weapon into the air. The other Serbian forces opened fire and the five members of the Jemini family fell to the ground. It appeared to Agim Jemini that they were dead.<sup>1926</sup> They were all unarmed and civilians at the time they were killed by the Serbian forces. The Chamber has not received any evidence of Serbian authorities conducting investigations into these killings.

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<sup>1916</sup> See *supra*, para 47; K25, Exhibit P340-A, pp 20-21

<sup>1917</sup> Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6542; Reshit Salihi, Exhibit P632, p 2.

<sup>1918</sup> Milan Čanković, T 13939-13942.

<sup>1919</sup> Agim Jemini, Exhibit P635, p 4.

<sup>1920</sup> Agim Jemini, Exhibit P635, p 4; Agim Jemini, T 3533-3534.

<sup>1921</sup> Agim Jemini, Exhibit P635, p 4; Exhibit P641 (photo of Agim Jemini's house); Exhibit D73 (photo taken from where witness was hiding identifying with a number 1 the family house that was burnt down, his uncles house on the left identified with a 2 and the white house marked in P644 is identified with the number 3).

<sup>1922</sup> Agim Jemini, Exhibit P635, p 4; Agim Jemini, T 3534.

<sup>1923</sup> These were the witness's parents, uncle, and uncle's wife and son. Their names were Sadri Jemini, Synavere Jemini, Shaip Jemini, Muharrem Jemini, Zade Jemini (Agim Jemini, Exhibit P635, p 4; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4238; Exhibit P644; Agim Jemini, T 3533-3534).

<sup>1924</sup> Agim Jemini, Exhibit P635, p 4, Addendum; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6544; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4238, 4281; Exhibit P644; Agim Jemini, T 3533-3534.

<sup>1925</sup> Agim Jemini, Exhibit P635, p 4, Addendum; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6544, 6566; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4238, 4281; Exhibit P644; Agim Jemini, T 3533-3534.

<sup>1926</sup> Agim Jemini, Exhibit P635, p 4; Agim Jemini, Exhibit P636 (*Milošević* transcript), T 6566-6567.

526. Following the shooting of these five members of Agim Jemini's family, and throughout the rest of the day, Serbian forces looted houses in the village of valuable items and used flame-throwers to set ablaze houses in the village.<sup>1927</sup> Intermittently, during this time, Agim Jemini could hear the sounds of automatic weapons and the screaming of villagers.<sup>1928</sup>

527. The Serbian forces remained in the family compound of Agim Jemini until about 0100 hours on 27 March 1999.<sup>1929</sup> That night, between Celina/Celinë and Zrze/Xërxë, near Bela Crkva/Bellacërkë, Agim Jemini observed about 40 dead bodies, dressed in ordinary civilian clothes, in a riverbed near the railway line.<sup>1930</sup> This is consistent, in the Chamber's view, with its earlier findings in relation to the shooting of Kosovo Albanian men that took place at the Belaja Bridge near Bela Crkva/Bellacërkë.<sup>1931</sup>

528. On or about 28 March 1999, witnesses observed from a distance Serbian police and civilians stealing goods and livestock from the village.<sup>1932</sup> This continued for over a month.<sup>1933</sup> On or about 28 March 1999, Sabri Popaj saw police wearing blue camouflage uniforms arrive at the mosque in Celina/Celinë in an APC; they remained inside for about an hour.<sup>1934</sup> After they left, there was a loud explosion and the mosque was blown up.<sup>1935</sup> That evening another witness saw that the mosque had been completely destroyed.<sup>1936</sup> As also discussed in more detail elsewhere in this Judgement, in the Chamber's finding the destruction of the mosque in Celina/Celinë on 28 March 1999 was by explosives set and detonated by members of the MUP.<sup>1937</sup> The evidence also established, in the Chamber's finding, that all except some 20 houses in the village were burnt

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<sup>1927</sup> Agim Jemini, Exhibit P635, pp 4-5; Reshit Salihi, T 3462.

<sup>1928</sup> Agim Jemini, Exhibit P635, p 5; Reshit Salihi, T 3462.

<sup>1929</sup> Agim Jemini, Exhibit P635, p 5.

<sup>1930</sup> Agim Jemini confirmed that they were civilian bodies and not those of the military because they were dressed in ordinary clothes. Agim Jemini, Exhibit P635, p 5.

<sup>1931</sup> See *supra*, para 472.

<sup>1932</sup> Agim Jemini, Exhibit P635, p 5.

<sup>1933</sup> Agim Jemini, Exhibit P635, p 5; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4266; Agim Jemini, T 3542-3543.

<sup>1934</sup> Sabri Popaj, in his original witness statement said that the mosque was blown up in April, on the day the police returned and buried bodies (Sabri Popaj, Exhibit P1082, p 11). In *Milutinović*, the witness explained that the original date given was incorrect and the mosque was actually blown up on the same day as the other mosques in Bela Crkva/Bellacërkë and Rogovo/Rogovë (Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), 5650, 5678-5682; Sabri Popaj, T 7471). It was suggested to the witness in this case that Agim Jemini had testified that the mosque was blown up on 30 or 31 March 1999 (Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4241-4242; Exhibit P638; Agim Jemini, T 3543-3544). Sabri Popaj explained that this was not correct and that Agim Jemini had not seen the mosque explosion as he was hiding (Sabri Popaj, T 7417-7418, 7422). The Chamber accepts the date given by Sabri Popaj as he actually viewed the destruction of the mosque and the forces involved in the village of Celina/Celinë. The Chamber finds the mosque was destroyed by explosives on 28 March 1999.

<sup>1935</sup> Sabri Popaj, Exhibit P1082, p 11; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5678-5681; Exhibit P1089; Exhibit P1090; Sabri Popaj, T 7417-7418, 7422; Exhibit P634 (pre-war photo of the mosque in Celina/Celinë that identifies the minaret); Exhibit P638; Agim Jemini, T 3542, 3544.

<sup>1936</sup> Reshit Salihi also testified that when he returned from Albania he saw that the mosque in the village had been destroyed. Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4241-4242; Exhibit P638; Agim Jemini, T 3543-3544; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4208-4209; Reshit Salihi, T 3464, 3465, 3468-3469.

<sup>1937</sup> See *infra*, para 1804.

down, along with numerous buildings,<sup>1938</sup> including the school<sup>1939</sup> during the rampage by the MUP (and perhaps paramilitary forces) on 26 March 1999) in the village which had commenced on 25 March 1999.

529. On or about 28 March 1999, at about 0700-0800 hours, a group of approximately 40 police arrived in a forest near Celina/Celinë.<sup>1940</sup> In this forest, by Mount Pisjak, about two kilometres from the village of Celina/Celinë, a large number of displaced persons from Celina/Celinë and other villages including Velika Kruša/Krushë-e-Madhe, Brestovac/Brestovc and Nogavac/Nagavc had gathered.<sup>1941</sup> The police arrived by foot, armed with assault rifles and were dressed in blue camouflage uniforms with white armbands and dark green scarves on their heads.<sup>1942</sup>

530. The police fired their weapons in the air and a large group of displaced persons, assembled at the edge of the forest in a meadow.<sup>1943</sup> The men were separated from the women and children by the police and, at gunpoint, they were searched for money and valuables.<sup>1944</sup> The identity cards of the members of the group were then put in a pile and set on fire.<sup>1945</sup>

531. The men and the women and children were then marched at gunpoint by the police to the village of Celina/Celinë, some men were assaulted with rifle butts along the way.<sup>1946</sup> After arriving in Celina/Celinë, a different group of police, dressed in blue camouflage uniforms and some wearing red berets, marched the displaced persons from the villages along the main road connecting Đakovica/Gjakovë with Prizren. As they marched the police beat villagers and demanded money. Between Velika Kruša/Krushë-e-Madhe and Velika Hoca/Hoça-e-Madhë, the march was stopped. At gunpoint the men were ordered to stand with their hands behind their heads for several hours.<sup>1947</sup> At around 1600 hours on 28 March 1999, numerous trucks arrived and the group of men, including

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<sup>1938</sup> Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4250-4251; Reshit Salihi, P632, p 3.

<sup>1939</sup> Agim Jemini, Exhibit P635, p 3; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4253; Agim Jemini, Exhibit D72; Agim Jemini, Exhibit D75; Agim Jemini, T 3575, 3582, 3587, 4235; Reshit Salihi, Exhibit P632, p 3.

<sup>1940</sup> Reshit Salihi, Exhibit P632, pp 3, 4, Addendum; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4207-4208, 4221-4222; Reshit Salihi, T 3461, 3465, 3466, 3469, 3470, 3494, 3504, 3507.

<sup>1941</sup> Reshit Salihi, Exhibit P632, pp 3, 4; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4207-4208; Reshit Salihi, T 3461, 3465, 3466, 3469, 3470, 3494, 3504, 3508, 3514, 3517, 3518.

<sup>1942</sup> Reshit Salihi, Exhibit P632, pp 3, 9; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4220-4222; Reshit Salihi, T 3507.

<sup>1943</sup> The Chamber was unable to determine the size of the group of people given that Reshit Salihi testified that there were 8,000 people (Reshit Salihi, Exhibit P632, p 3; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4220; Reshit Salihi, T 3507), 10,000 people (Reshit Salihi, Exhibit P632, p 3) or 4000-5000 people (Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4220, 4223).

<sup>1944</sup> Reshit Salihi was forced to hand over 5,000 Deutschmark and one of his daughters told him that she had been robbed of her gold necklace and 6,000 Deutschmark. Reshit Salihi, Exhibit P632, p 3-4; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4206; Reshit Salihi, T 3510, 3512.

<sup>1945</sup> Reshit Salihi, Exhibit P632, p 4; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4207, 4220.

<sup>1946</sup> Reshit Salihi, Exhibit P632, p 4; Reshit Salihi, T 3462-3463.

<sup>1947</sup> Reshit Salihi, Exhibit P632, p 4.

the witness, were ordered onto the trucks by the police.<sup>1948</sup> They were driven to Žur/Zhur, on the border with Albania. Once again their identification documents were demanded by the police but as these had been handed over earlier this demand could not be satisfied.<sup>1949</sup> The men were ordered by the police to walk to Albania, and after walking about five or six kilometres they crossed the border and were taken to a refugee camp in Kukës, Albania.<sup>1950</sup> As discussed in more detail later in this Judgement, it is the finding of this Chamber that the offence of forcible transfer has been established with respect to these events.<sup>1951</sup>

532. Between 25 March 1999, and the end of May 1999, a local villager, Agim Jemini, and Sabri Popaj, a villager from Bela Crkva/Bellacërkë, with others, buried bodies in Celina/Celinë. They would enter Celina/Celinë at night, find dead bodies and bury them. Sabri Popaj buried about 85 bodies.<sup>1952</sup> Agim Jemini buried 78 bodies. As mayor of Celina/Celinë, Agim Jemini was in charge of the group burying the bodies. He kept a list of the names of the people he buried, with their year of birth and the location of burial.<sup>1953</sup> The victims he buried were 74 people from Celina/Celinë, two from Velika Hoca/Hoçë-e-Madhë, one from Brestovac/Brestovc and one from Bela Crkva/Bellacërkë.<sup>1954</sup> Eighteen of the bodies had been burnt; all had been shot.<sup>1955</sup> All the victims were dressed in civilian clothes.<sup>1956</sup> However, all the dead from Celina/Celinë were not buried in this way because, during the day, trucks with policemen, dressed in solid blue uniforms, and “Romas” entered the village and collected bodies.<sup>1957</sup> Agim Jemini saw at least 20 to 30 bodies removed that way.<sup>1958</sup> On or about 12 or 13 April 1999, Sabri Popaj saw police arrive at Celina/Celinë with civilians and an excavator and dug holes and buried bodies.<sup>1959</sup> The excavator first dug a hole in which 5 bodies were buried. This was on the outskirts of Celina/Celinë near the Prizren-Đakovica/Gjakovë road. Following this the excavator moved across the road into

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<sup>1948</sup> The evidence is not clear whether the women and children were also ordered onto these buses, Reshit Salihi, Exhibit P632, p 4.

<sup>1949</sup> Reshit Salihi, Exhibit T 3463, 3469.

<sup>1950</sup> Reshit Salihi, Exhibit P632, p 4; Agim Jemini, T 3463.

<sup>1951</sup> See *infra*, paras 1623-1624.

<sup>1952</sup> Sabri Popaj, Exhibit P1082, p 10; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), 5677.

<sup>1953</sup> Agim Jemini, Exhibit P635, p 5.

<sup>1954</sup> The Chamber was not provided with the evidence identifying these 74 victims. Agim Jemini, Exhibit P635, p 5; Agim Jemini, Exhibit P646; Agim Jemini, Exhibit P647; Agim Jemini, Exhibit P648; Agim Jemini, Exhibit P649; Agim Jemini, T 3535-3540; Sabri Popaj, Exhibit P1082, p 8-10; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5677; Sabri Popaj, T 7413.

<sup>1955</sup> Agim Jemini, Exhibit P635, p 5; Sabri Popaj, Exhibit P1082, pp 12-14; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5677

<sup>1956</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5677-5678.

<sup>1957</sup> Agim Jemini never located the remains of his own family in Celina/Celinë but heard that they were later found in Rahovec. Agim Jemini, Exhibit P635, p 5; Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4266; Agim Jemini, T 3623-3624.

<sup>1958</sup> Agim Jemini, Exhibit P635, p 5.

<sup>1959</sup> He specifically recalled eight bodies including Sefedin Sahani and five members of his family, Hajdar Rexhepi and Sakip Rexhepi. The names of these victims are not listed in the Schedules of the Indictment. Sabri Popaj, Exhibit P1082, p 11; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5682, 5685-5686.



Celina/Celinë and dug another hole in which more bodies were buried. When this second grave was being dug, he also saw that the civilians assisting in the burials were surrounded by police who were holding guns.<sup>1960</sup> The police were dressed in blue camouflage uniforms, but the civilians were dressed in a sort of yellow uniform;<sup>1961</sup> evidence of other exhumations suggests that they might have been hygiene workers.

(b) Serbian forces in the village

533. The VJ 549<sup>th</sup> Motorised Brigade, in cooperation with the 4<sup>th</sup> Company of the MUP Đakovica/Gjakovë PJP Detachment, was tasked with conducting a coordinated action the stated object of which was described as to cut off and destroy the KLA in Celina/Celinë.<sup>1962</sup> On 25 March 1999, following the events in Bela Crkva/Bellacërkë, PJP forces pushed through in the direction of Celina/Celinë.<sup>1963</sup> The follow up report from the Command of the 549<sup>th</sup> Motorised Brigade to the Command of the Priština Corps recorded the success of the operation in Celina/Celinë. It was reported that the KLA were pushed back and control was established in the village.<sup>1964</sup> While the report suggests that control of the village was established, there is no evidence of fighting between the KLA and the Serbian forces in or around the village. On the contrary, the evidence establishes that the Serbian forces were active in the village over several days and that their activities were directed against the people there, men, women and children, and not that they were engaged in fighting an armed force of the KLA.

534. This evidence confirms the description of Serbian forces by eyewitnesses in Celina/Celinë. The Chamber is satisfied that between 25 and 28 March 1999, forces of the VJ and MUP, including PJP, were engaged in a coordinated and joint operation in Celina/Celinë. It was the elements of these forces that were responsible for the offences the Chamber has found to have been committed as set out in this section of the Judgement. Although the Chamber accepts that these forces were present, on the evidence, the events that took place in the village and the offences that were committed by the Serbian forces do not suggest that the aim of the operation was to push back the KLA.

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<sup>1960</sup> Sabri Popaj, Exhibit P1082, p 11.

<sup>1961</sup> Sabri Popaj, Exhibit P1082, p 11; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5686; Exhibit D314 (sheet with samples of different patterns of uniforms. The witness indicated that the police were wearing uniforms with the patten marked with a number “4”); Sabri Popaj, T 7404.

<sup>1962</sup> Exhibit P1316, p 4.

<sup>1963</sup> Exhibit P1317, p 4; *See supra*, para 478.

<sup>1964</sup> Exhibit P1317, p 1.

## 5. Pusto Selo/Pastasellë

535. Pusto Selo/Pastasellë is located about eight kilometres to the north-west of Orahovac/Rahovec town. The surrounding villages include Petkovic/Petkoviq, Koznik/Kaznik and Sanovac/Senoc.

536. Avdyl Mazreku and Beqir Krasniqi gave evidence of the relevant events in Pusto Selo/Pastasellë. Each experienced difficulty when dealing with the colours of uniforms they said were worn by the Serbian forces in Pusto Selo/Pastasellë. It became evident to the Chamber that one significant reason for this difficulty was translation from the local Albanian dialect they used.<sup>1965</sup> There were, however, other difficulties.<sup>1966</sup> Interpretation, confusion as to time and place and other issues may well explain these. But because of the variations in their description of the forces the Chamber is unable to rely upon their evidence alone as to the uniforms worn in the village and at the river by Serbian forces. While the Chamber accepts that tanks and vehicles described by these witnesses were in the hands of members of the VJ, it is unable to make a finding whether the other Serbian forces in the village were VJ or MUP from the descriptions of the two witnesses. In the Chamber's assessment this issue does not detract from the general credibility of these two witnesses on other matters.

537. On or about 26 March 1999, a large number of displaced persons, fleeing from Serbian forces, arrived on tractors, trailers and by foot at Pusto Selo/Pastasellë from neighbouring towns and villages including Klina/Klinë, Grebnik/Gremnik, Dollovë/Dolovo, Josanica/Jashanice and Orahovac/Rahovec.<sup>1967</sup> The displaced persons were housed in the village and at the local school. Beqir Krasniqi was told by some of the displaced persons that Serbian forces had told them to go to Pusto Selo/Pastasellë.<sup>1968</sup>

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<sup>1965</sup> Beqir Krasniqi, T 6031-6033, 6044-6046, 6060-6071.

<sup>1966</sup> In his evidence to the Chamber, Avdyl Mazreku said the Serbian forces wore green uniforms with "policija" written on their backs and arms (Avdyl Mazreku, Exhibit P987, p 2). Later he said it was "milicija" written on the back. However, this could be a matter of misunderstanding as it is not clear if he meant "milicija" was on the uniforms of Serbian forces in the tanks, or Serbian forces advancing on foot in the village. In an earlier statement he said the Serbian forces were in black uniforms (Avdyl Mazreku, Exhibit P987, p 2), but in an addendum he said dark green uniforms, not black (Avdyl Mazreku, Exhibit P989, paras 6-7). In his evidence Mazreku indicated that the black uniforms were worn by Serbian forces in 1998 and when he discusses green uniforms he is talking about Serbs in 1999 (Avdyl Mazreku, T 6170, 6192-6193, 6196-6197). The other witness, Beqir Krasniqi, described Serbian forces in green camouflage uniforms and said none wore face masks but hid their faces with green camouflage caps (Beqir Krasniqi, Exhibit P908, p 3). Later he changed this to black caps with painted faces, adding that many had beards (Beqir Krasniqi, T 6063-6064). He said that all Serbian forces were wearing camouflage and maybe red armbands (Beqir Krasniqi, Exhibit D226, pp 2, 4). However, he identified a blue camouflage uniform as the uniform worn by the Serbian forces when the men were shot at the river (Beqir Krasniqi, Exhibit P910). During cross-examination about the colour of uniforms he often said he could not remember or changed his testimony (Beqir Krasniqi, T 6031-6033, 6044-6046, 6060-6071).

<sup>1967</sup> Beqir Krasniqi, Exhibit P908, p 2; Beqir Krasniqi, Exhibit D226 p 2.

<sup>1968</sup> Beqir Krasniqi, Exhibit P908, p 3; Beqir Krasniqi, T 6076.

538. On or about 31 March 1999, sometime between 1300 hours and 1500 hours, Serbian forces arrived at Pusto Selo/Pastasellë.<sup>1969</sup> They arrived with seven or eight tanks from Poluža/Poluzhë, which is about two kilometres east of Pusto Selo/Pastasellë in the direction of Ciflak/Çifllak.<sup>1970</sup> Avdyl Mazreku observed two tanks in the hills above the village and three others. All had their canons directed towards the village.<sup>1971</sup> The Serbian tanks commenced firing at the village causing panic among the villagers and displaced persons who moved out of the village towards the Prroni-i-Vogel River.<sup>1972</sup> As the villagers and displaced persons left, Beqir Krasniqi saw two tanks about 300 metres from the school and another two tanks just outside the village.<sup>1973</sup> The tanks near the school set about destroying villagers' vehicles that were parked next to the Prroni-i-Vogel River.<sup>1974</sup> Then between 20 and 50 members of the Serbian forces came towards the villagers from the direction of the school.<sup>1975</sup> As they did so tanks also approached the group of villagers. Members of the Serbian army got out of the tanks, surrounded the villagers and separated the women and children from the men.<sup>1976</sup> The men were ordered to sit down "as you do in the mosque", remove their caps and "look down at the soil of Serbia".<sup>1977</sup> In the meantime, all their valuables were taken from the women and children by the soldiers and they were escorted away by some members of the Serbian forces in the direction of Orahovac/Rahovec.<sup>1978</sup> Following this, the men were surrounded and told to empty their pockets.<sup>1979</sup> The Serbian forces took all the valuables and money from these men.<sup>1980</sup> As this was happening, one witness heard the word "streljanje", that he understood to mean "execution", over a communications radio being used by the Serbian forces.<sup>1981</sup> The

<sup>1969</sup> Avdyl Mazreku initially described the date as one week after the NATO bombing began and three or four days after the end of Bajram (Avdyl Mazreku, Exhibit P987, p 3; Avdyl Mazreku, Exhibit P988, para 2; Avdyl Mazreku, T 6188). The Chamber accepts that the events described took place on or about 31 March 1999. This date was confirmed by Beqir Krasniqi. Beqir Krasniqi, Exhibit P908, p 3.

<sup>1970</sup> The witness described the tanks as an olive green or military colour. He did not see any vehicles in the dark blue police colour. (Avdyl Mazreku, Exhibit P987, p 3; Avdyl Mazreku, T 6169-6170, 6192, 6198; Exhibit P318 (the witness identified tank number 6 as the type of tank present in the village on 31 March 1999); *see also*, Beqir Krasniqi, Exhibit D226, p 2).

<sup>1971</sup> The evidence of witnesses differed as to the type of tank each observed. This may be because they saw different tanks, or it may be that they could not reliably identify tank types. In the Chamber's finding, all tanks seen by the witnesses were VJ vehicles painted in the typical green military colour (Avdyl Mazreku, Exhibit P987, p 3; Exhibit P318; Avdyl Mazreku, T 6169; Exhibit D224; Beqir Krasniqi, T 6046).

<sup>1972</sup> Avdyl Mazreku, Exhibit P987, p 3; Beqir Krasniqi, Exhibit P908, p 3; Beqir Krasniqi, Exhibit D226, p 2.

<sup>1973</sup> Beqir Krasniqi, Exhibit P908, p 3.

<sup>1974</sup> Avdyl Mazreku, Exhibit P987, p 3; Beqir Krasniqi, Exhibit P908, p 3.

<sup>1975</sup> *See supra*, para 536.

<sup>1976</sup> Avdyl Mazreku, Exhibit P987, p 3; Avdyl Mazreku, T 6170; Beqir Krasniqi, Exhibit D226, p 2.

<sup>1977</sup> Beqir Krasniqi, Exhibit P908, p 3; Beqir Krasniqi, T 6035.

<sup>1978</sup> One estimate put the number of men at about 130 but this is clearly not accurate. Avdyl Mazreku, Exhibit P987, p 4; Avdyl Mazreku, T 6170-6171, 6199; Beqir Krasniqi, Exhibit P908, p 4; Beqir Krasniqi, Exhibit D226, p 3; Beqir Krasniqi, T 6074, 6077.

<sup>1979</sup> Avdyl Mazreku, Exhibit P987, p 3; Avdyl Mazreku, T 6171, 6199; Beqir Krasniqi, Exhibit P908, p 4; Beqir Krasniqi, Exhibit 909 (Addendum), para 3; Beqir Krasniqi, Exhibit D226, p 3; Beqir Krasniqi, T 6025, 6080.

<sup>1980</sup> Avdyl Mazreku, Exhibit P987, pp 3-4; Avdyl Mazreku, T 6171, 6199; Beqir Krasniqi, Exhibit P908, p 4; Beqir Krasniqi, Exhibit 909 (Addendum), para 3; Beqir Krasniqi, Exhibit D226, p 3; Beqir Krasniqi, T 6025, 6080.

<sup>1981</sup> At another point the witness said he heard the word "shoot" and not "execution". It is unclear if this was a translation problem. The witness explained he was able to identify the word "streljanje" in Serbian as "everyone knows what it meant". The Chamber does not find the discrepancy to be of any significance because the translation

Chamber accepts that the Serbian forces were ordered to kill these men. Avdyl Mazreku believed that the man using the radio was the leader of the Serbian forces and that he was a policeman, but the Chamber is not able to be satisfied of the correctness of his belief.<sup>1982</sup>

539. A group of Serbian forces separated about 15 younger men from the rest of the male villagers. These young men were beaten up by the Serbian forces and then marched to the Prroni-i-Vogel River, that was about 50 metres away.<sup>1983</sup> The members of the Serbian forces were talking in Serbian. As they loaded their weapons they said to the young men that they were going to have a good swim in the river.<sup>1984</sup> The young men were then lined up at the river and some seven or eight members of the Serbian forces opened fire on them.<sup>1985</sup> Avdyl Mazreku saw the young men fall into the river. Blood was visible on their bodies as they fell. Among the victims he recognised Fadil Krasniqi, two men with the same name Shaban Krasniqi, Behlul Krasniqi, Regjup Krasniqi, Salih Krasniqi, Zaim Krasniqi, Isuf Krasniqi and Zymer Kastari.<sup>1986</sup>

540. The Serbian forces then returned to the main group of male prisoners and demanded more money.<sup>1987</sup> The men had no money left to hand over as it had been given earlier.<sup>1988</sup> Another group of men, including Beqir Krasniqi, was then marched by the Serbian forces to the river, about 20 or 40 metres downstream from where the group of young men was shot.<sup>1989</sup> This second group of men was then lined up and shot by members of the Serbian forces.<sup>1990</sup> When the Serbian forces opened fire, Beqir Krasniqi and his cousin, jumped down into the bushes and fell into the river. Other men landed on top of Beqir Krasniqi who remained silent so as not to be detected.<sup>1991</sup> Following this, the remaining group of about 30 men were ordered to go to the river and to line up at a spot between the two sites of the earlier killings.<sup>1992</sup> Bajram Mazreku, the 82 year old uncle of a witness, refused to walk to the river, so the Serbian forces insisted that Avdyl Mazreku and another man carry Bajram Mazreku.<sup>1993</sup> At the river, members of the Serbian forces opened fire again.<sup>1994</sup>

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of “streljanje” means the “killing or executing a person or people, usually using firearms; execution by firing squad or by an individual”. Beqir Krasniqi, Exhibit P908, p 4; Beqir Krasniqi, Exhibit P909 (Addendum), para 3; Beqir Krasniqi, T 6079-6080.

<sup>1982</sup> Avdyl Mazreku, Exhibit P987, p 4.

<sup>1983</sup> Avdyl Mazreku, Exhibit P987, p 4; Beqir Krasniqi, Exhibit P908, p 5; Beqir Krasniqi, Exhibit D226, p 3.

<sup>1984</sup> Avdyl Mazreku, Exhibit P987, p 4; Avdyl Mazreku, T 6172, 6198. Another witness heard them say, “this is Serbian not Albanian land”, Beqir Krasniqi, Exhibit P908, p 5.

<sup>1985</sup> Avdyl Mazreku, Exhibit P987, p 4; Avdyl Mazreku, T 6159.

<sup>1986</sup> Avdyl Mazreku, Exhibit P987, p 4; Avdyl Mazreku, T 6172.

<sup>1987</sup> Avdyl Mazreku, Exhibit P987, p 3; Avdyl Mazreku, T 6172-6173.

<sup>1988</sup> Avdyl Mazreku, Exhibit P987, p 5; Avdyl Mazreku, T 6173.

<sup>1989</sup> Avdyl Mazreku, Exhibit P987, pp 4-5; Avdyl Mazreku, T 6172-6173; Beqir Krasniqi, Exhibit P908, p 5; Beqir Krasniqi, Exhibit D226, p 3.

<sup>1990</sup> Avdyl Mazreku, Exhibit P987, p 5; Avdyl Mazreku, T 6172-6173.

<sup>1991</sup> Beqir Krasniqi, Exhibit P908, p 5; Beqir Krasniqi, Exhibit D226, p 3.

<sup>1992</sup> The number of men in each group was estimated at 30 but on the totality of the relevant evidence those figures are inaccurate. Avdyl Mazreku, Exhibit P987, p 5; Avdyl Mazreku, T 6173.

<sup>1993</sup> Avdyl Mazreku, Exhibit P987, p 5; Avdyl Mazreku, T 6173.

<sup>1994</sup> Avdyl Mazreku, Exhibit P987, p 5.

When Avdyl Mazreku heard the firing he fell down and while lying there he was wounded in his back.<sup>1995</sup> After the shooting ended, one member of the Serbian forces said “Look again they are moving”, to which another replied, “Leave them they are all dead”.<sup>1996</sup> After this the Serbian forces left. Avdyl Mazreku then spoke to his uncle who also was still alive.<sup>1997</sup>

541. Avdyl Mazreku gave evidence which the Chamber accepts that altogether 106 men were killed by the Serbian forces in the village of Pusto Selo/Pastasellë on 31 March 1999, 40 of them were from Pusto Selo/Pastasellë village. Only 13 men survived.<sup>1998</sup> Beqir Krasniqi counted 106 men that were buried after the Serbian forces left the village.<sup>1999</sup> There were over 120 members of the Serbian forces present in Pusto Selo/Pastasellë that day, of whom some 20-25 directly took part in the killings of the men.<sup>2000</sup> The Kosovo Albanian men were all unarmed at the time of the killings and not participating in the conflict. It is further accepted that these men were targeted and killed because they were Kosovo Albanians. The Chamber notes that the murders of the men at Pusto Selo/Pastasellë is not charged in the Indictment. However, they are relevant to other issues and to the charge of Persecution contained in Count 5 of the Indictment, discussed later in this Judgement.<sup>2001</sup>

542. Following the shooting of the men, over the next two or three hours Serbian forces set fire to houses in the village; they then left the village.<sup>2002</sup> Avdyl Mazreku and his uncle then went in search of his family in the direction of Ratkovac/Ratkoc. On their way they met other survivors from the shootings at the Prroni-i-Vogel River and assisted some of the wounded to reach Ratkovac/Ratkoc, before returning to Pusto Selo/Pastasellë at about 2400 hours.<sup>2003</sup> Following the departure of the Serbian forces, Beqir Krasniqi also met other survivors and assisted wounded men to reach Ratkovac/Ratkoc.<sup>2004</sup> Following this, he hid in the forest at Dubosak.

543. The next day, on or about 1 April 1999, having heard that the Serbian forces had left in the direction of Ciflak/Çifllak, Beqir Krasniqi returned at about 1200 hours to the site of the shootings and to the village of Pusto Selo/Pastasellë.<sup>2005</sup> In the village, Beqir Krasniqi found the body of his brother, Pajazit Krasniqi, who had been killed by a shot in his right ear and also the body of his

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<sup>1995</sup> Avdyl Mazreku, Exhibit P987, p 5; Avdyl Mazreku, T 6175.

<sup>1996</sup> Avdyl Mazreku, Exhibit P987, p 5; Avdyl Mazreku, T 6174.

<sup>1997</sup> Avdyl Mazreku, Exhibit P987, p 5.

<sup>1998</sup> Avdyl Mazreku, Exhibit P988, para 13; Beqir Krasniqi, Exhibit P908, p 6.

<sup>1999</sup> Beqir Krasniqi, Exhibit P908, p 7.

<sup>2000</sup> Beqir Krasniqi, Exhibit D226, p 4.

<sup>2001</sup> *See infra*, para 1784.

<sup>2002</sup> Beqir Krasniqi, Exhibit P908, p 6.

<sup>2003</sup> Avdyl Mazreku, Exhibit P987, p 6.

<sup>2004</sup> There is no evidence or indication to suggest that the two witnesses, Beqir Krasniqi and Avdyl Mazreku, met at this stage.

<sup>2005</sup> Beqir Krasniqi, Exhibit P908, p 6.

uncle Shaban Krasniqi.<sup>2006</sup> There he was also told of bodies in a house near the school. Near that house, the witness found 12-13 burned bodies lying on the trailer of a tractor. He was able to identify one body as that of his uncle Hadju Jemin Krasniqi. Inside the house he counted another 18 bodies. The witness explained that it was impossible to identify six of the bodies located at the house.

544. The following day, witnesses and other survivors returned to Pusto Selo/Pastasellë and started burying the dead in the mosque yard.<sup>2007</sup> At around 1000 or 1100 hours they heard Serbian forces coming from the direction of Ciflak/Çifllak in their vehicles. The Serbian forces started to fire at the villagers burying the bodies.<sup>2008</sup> The villagers ran in different directions and hid.<sup>2009</sup> A witness saw one military truck, one APC and one tank arrive from the direction of Ciflak/Çifllak. He could see the APC open fire in the direction of Drenovac/Drenoc. These Serbian forces stayed on the road between Pusto Selo/Pastasellë and Sanovac/Senoc for about an hour, before turning back and passing through Pusto Selo/Pastasellë towards the village of Potok in Podujevo/Podujevë.<sup>2010</sup> These Serbian forces set fire to more houses in Pusto Selo/Pastasellë and in Potok before heading off in the direction of Ciflak/Çifllak.<sup>2011</sup> Some villagers returned after dark to bury the remaining dead.<sup>2012</sup> Following this, Avdyl Mazreku, along with other survivors, fled to Ciflak/Çifllak where they remained for about three months.<sup>2013</sup> Beqir Krasniqi remained in the area and over the next two days he continued to find and bury the remaining bodies. During the time he was burying bodies, he counted the total number of dead to be 106 people, all of them male and aged between 16 and 90 years old.<sup>2014</sup>

545. It is the evidence of witness 6D2 that the Head of the Prizren SUP ordered that investigations be undertaken and photographs verified of Pusto Selo/Pastasellë showing two locations of alleged mass grave sites. A group of police attended the site. At the village two mass grave sites were identified and this was reported to the head of the Prizren SUP.<sup>2015</sup> A report, dated 18 April 1999, was filed with the District Public Prosecutor's office and the Investigative Judge.<sup>2016</sup>

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<sup>2006</sup> Beqir Krasniqi, Exhibit P908, p 6.

<sup>2007</sup> Avdyl Mazreku, Exhibit P987, p 6; Beqir Krasniqi, Exhibit P908, p 6.

<sup>2008</sup> Beqir Krasniqi, Exhibit P908, p 6.

<sup>2009</sup> Avdyl Mazreku, Exhibit P987, p 6; Avdyl Mazreku, T 6200; Beqir Krasniqi, Exhibit P908, p 6.

<sup>2010</sup> Beqir Krasniqi, Exhibit P908, p 6.

<sup>2011</sup> Beqir Krasniqi, Exhibit P908, p 6.

<sup>2012</sup> Avdyl Mazreku, Exhibit P987, p 6; Avdyl Mazreku, T 6200; Beqir Krasniqi, Exhibit P908, p 7.

<sup>2013</sup> Avdyl Mazreku, Exhibit P988, para 9.

<sup>2014</sup> Beqir Krasniqi, Exhibit P908, p 7; Avdyl Mazreku, Exhibit P988, para 13.

<sup>2015</sup> 6D2, T 12288-12290.

<sup>2016</sup> As part of the report of 18 April 1999, 6D2 included a report related to alleged KLA activities in the area from 1997 to 1999 (Exhibit D811, p 15). The Chamber is unwilling to rely upon much of the evidence given by witness 6D2 because it was found to be unreliable, biased and dishonest. The Chamber notes that no further evidence related to these events has been tendered into evidence and therefore, no weight is given to this aspect of the report. 6D2, T 12288-12290; Exhibit D811.

On this date, the Prosecutor ordered the crime police to gather more information and the Investigative Judge instructed that the area be examined and the bodies exhumed.<sup>2017</sup> 6D2 explained that the team located and exhumed 95 bodies from two mass grave sites.<sup>2018</sup> The bodies were exhumed by workers from the “hygiene” public utilities of Prizren and Orahovac/Rahovec. Following the exhumations, the bodies were sent to the Institute of Forensic Medicine in Priština/Prishtinë.<sup>2019</sup> 6D2 explained that the cause of death was not established for any of the victims.<sup>2020</sup> After the forensic examination of the bodies they were then buried in cemeteries in Prizren, Orahovac/Rahovec, Suva Reka/Suharekë and Zrze/Xërxë.<sup>2021</sup> This evidence is confirmed by the witness Ali Gjogaj who explained that, upon the order of the police, he participated in the exhumations of approximately 90 bodies in Pusto Selo/Pastasellë in April 1999, and their subsequent transport to Priština/Prishtinë for autopsies. He also confirmed that some, if not all, of the bodies were later re-buried in the cemeteries mentioned by witness 6D2.<sup>2022</sup>

546. Crime prevention police were also tasked with investigating the broader area to establish where the bodies were from and any additional details related to events in the area.<sup>2023</sup> They did not receive any information from the security organs of the VJ that assisted in the investigation.<sup>2024</sup> They saw two elderly villagers at the site, however, inexplicably, no attempt was made to talk with them or locate other villagers during this investigation, or afterwards, to assist in the investigation and identification of perpetrators.<sup>2025</sup> Investigative measures were undertaken but not a full investigation; exhumations and some operational and tactical measures were performed at the site.<sup>2026</sup> It was not until 18 September 2001 that officials at the Administration of the Crime Police in Belgrade ordered that a draft report be written about these exhumations. It was understood that the request for the report was delayed until September 2001 when the Serbian prosecuting authorities actively processed the Pusto Selo/Pastasellë incident.<sup>2027</sup> The report concluded that there was no evidence to suggest a mass execution, nor did it provide information about where the bodies originated from or their cause of death.<sup>2028</sup> In the view of the Chamber, the adequacy of the investigation alleged to have been undertaken and the explanation for the delay cannot be accepted

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<sup>2017</sup> 6D2, T 12290-12292, 12438-12439.

<sup>2018</sup> 6D2, T 12290-12291.

<sup>2019</sup> Exhibit D811, p 13; Exhibit P1548.

<sup>2020</sup> Exhibit P1548.

<sup>2021</sup> Exhibit D811, p 13; Exhibit P1548.

<sup>2022</sup> Ali Gjogaj, T 559, 563-565 576, 581, 585; Exhibit P280.

<sup>2023</sup> 6D2, T 12290-12291.

<sup>2024</sup> 6D2, T 12291-12292.

<sup>2025</sup> 6D2, T 12376-12378.

<sup>2026</sup> 6D2, T 12373-12376.

<sup>2027</sup> See Confidential Annex.

<sup>2028</sup> The Chamber recalls that a report from 6 May 1999 sent from the Prizren SUP to the district prosecutor of Prizren did provide details of the bodies origin and as a result the bodies were re-buried at different locations (Exhibit D811, p 13). Exhibit P1548, p 2.

as truthful.<sup>2029</sup> In the Chamber's finding there was no genuine investigation of the deaths of the people buried in the mass graves. The Chamber finds no reason to doubt the reliability of the eyewitness accounts of the two survivors of the events in Pusto Selo/Pastasellë. The Chamber finds that not less than 106 men were shot in the village of Pusto Selo/Pastasellë on or about 31 March 1999 by Serbian forces conducting an operation in the village and in that general area. While VJ forces and vehicles were engaged in the operation the Chamber cannot determine whether those who shot the men were VJ or from other Serbian forces.

547. The Chamber further notes that, the account of 6D2, in some regards, is consistent with the account of Beqir Krasniqi, a local villager from Pusto Selo/Pastasellë, that the 106 bodies he had buried in the village were exhumed by Serbian forces on or about 12 or 13 April 1999.<sup>2030</sup> As noted earlier, Beqir Krasniqi observed Serbian forces bring a green excavator and trucks into Pusto Selo/Pastasellë. He saw that the persons actually exhuming were dressed in white and yellow working clothes.<sup>2031</sup> The trucks carrying the bodies then left in the direction of Orahovac/Rahovec; this is the direction in which 6D2 testified they were taken.<sup>2032</sup> Sometime much later Beqir Krasniqi and the villagers were contacted by persons they described as "foreigners", who told them that the exhumed bodies had been reburied in a mass grave in Prizren and in separate graves in Orahovac/Rahovec and Zrze/Xërxë; these are three of the four locations where 6D2 stated that the bodies were later re-buried. Beqir Krasniqi added that not all the bodies of the 106 men that he had buried were found at these three locations; some are still missing.<sup>2033</sup> Although the precise date of the exhumations provided by Beqir Krasniqi does not accord with that of 6D2, in the view of the other matters of agreement, the Chamber accepts that 95 of the 106 bodies of men buried by Beqir Krasniqi and others in the village were exhumed in April 1999 under the supervision of witness 6D2. Some of these 95 bodies were later reburied in Prizren, Orahovac/Rahovec and Zrze/Xërxë and others may have been buried in Suva Reka/Suharekë.

## 6. General overview of events in Orahovac/Rahovec municipality

548. It is argued by the Defence that the Serbian military and police operations in the municipality, which are charged in the Indictment, were in response to KLA criminal and terrorist activities in the municipality of Orahovac/Rahovec; they were part of legitimate anti-terrorist activities.<sup>2034</sup> Some reliance for this argument is placed on the KiM dossier which is a report on criminal offences, and measures undertaken in response to these, throughout Kosovo, including the

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<sup>2029</sup> See Confidential Annex.

<sup>2030</sup> Beqir Krasniqi, Exhibit P908, p 8.

<sup>2031</sup> Beqir Krasniqi, Exhibit P908, p 8; Beqir Krasniqi, T 6037-6038.

<sup>2032</sup> Beqir Krasniqi, T 6037-6038.

<sup>2033</sup> Beqir Krasniqi, T 6038-6039.



Orahovac/Rahovec municipality. Specifically, in relation to Orahovac/Rahovec municipality, it discusses alleged KLA offences committed in 1998 and alleged threats made by the KLA.<sup>2035</sup> The Defence specifically emphasised an alleged “terrorist attack” upon police in Zrze/Xërxë on 21 March 1999.<sup>2036</sup> While there may have been shooting by KLA at Zrze/Xërxë police station the evidence does not indicate that this one event, nor any other KLA related issues were the reason for the VJ and MUP operation in the municipality of Orahovac/Rahovec. The Defence also argues that the Serbian forces were specifically ordered to attack KLA targets and to act in a proper manner.<sup>2037</sup> The evidence does not provide an adequate factual foundation for these arguments and the Chamber rejects them. The Chamber is of the view that what was done by the Serbian forces was not at all what would have been done during a genuine police action to flush out and arrest (or even kill) KLA fighters. On the contrary, the conduct of the MUP and VJ forces was directed at all Kosovo Albanians and was part of a policy of expelling Kosovo Albanians from the area and destroying their property. The actions of these forces, discussed above, belie any anti KLA operation.

549. The evidence demonstrates that the Order of the Joint Command for this attack was in words directed towards clearing KLA fighters from the area, although the language of the Order was indicative of much more, for instance, “mop-up” the area. The Chamber finds that what was actually done in the execution of the written orders revealed the true scope and intention of the order - that is, to remove all Kosovo Albanians, by death or expulsion, and to destroy their villages and homes. KLA fighters became incidental to the operation, not the focus of it. The events detailed in the above sections have established this pattern of attack by Serbian forces as typical during the operation in the area of the Orahovac/Rahovec municipality which commenced on 25 March 1999 and which was ordered on 24 March 1999. The evidence reveals that in many cases preparatory activities by Serbian forces preceded 24 and 25 March 1999, indicating earlier planning and coordination by the Serbian forces so they were ready to act when an order was given on the day the NATO bombing campaign commenced on 24 March 1999.

#### 7. Other events in Orahovac/Rahovec municipality

550. Around 24 March 1999, the VJ 120<sup>th</sup> Mortar Company was deployed to the municipality of Orahovac/Rahovec.<sup>2038</sup> The Chamber has been very cautious about aspects of the evidence of this witness, in particular because of variations in his account of some matters and a convenient

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<sup>2034</sup> Defence Final Brief, paras 734-735, 748.

<sup>2035</sup> Exhibit D888, pp 5, 10, 661.

<sup>2036</sup> The Chamber notes that at para 734 of the Defence Final Brief they refer to Exhibit D999. The sentence earlier discussed the KiM dossier and the Chamber notes that this document is Exhibit D888. Consequently, Exhibit D888 has been referred to, not D999 which is not an exhibit in this case. Exhibit D888, pp 5, 10, 661, 691.

<sup>2037</sup> See, Defence Final Brief, para 735.

<sup>2038</sup> See Confidential Annex.

vagueness about others. The Chamber therefore warned itself and having done so went on to accept his evidence in respect of the following matters.

(a) Searching of houses in Orahovac/Rahovec municipality

551. Commencing from 25 March 1999, and for about 20-23 days thereafter, a VJ unit participated in operations in the area between Orahovac/Rahovec and Đakovica/Gjakovë.<sup>2039</sup> This unit was tasked to follow VJ infantry and provide mortar support for the infantry if it came under fire while searching houses in villages in the area to look for ammunition and weapons. The infantry was armed with automatic rifles and machine-guns.<sup>2040</sup> In addition to the VJ, there were also police, who wore blue uniforms, engaged in these operations.<sup>2041</sup> There were also other forces taking part in the searches of villages he described, dressed in a mixed blue and green camouflage uniforms, not regular VJ style uniforms but like a one-piece boiler suit. They also wore balaclavas and red or blue berets. They were thought to be Arkan's Tigers.<sup>2042</sup> In the Chamber's view, based on the description of the uniforms, it finds that these forces were MUP special forces, SAJ, PJP or JSO (which wore red berets).<sup>2043</sup> K89 also described armed Serb civilians who took part in the searches together with the VJ and MUP.<sup>2044</sup> The Chamber notes that this evidence is consistent with other evidence about the existence and role of armed Serbian villagers assisting Serbian forces, in particular to provide local knowledge. They were typically serving as Reserve or Territorial MUP.

(b) Columns of refugees and killings on 7 or 8 April 1999

552. In the Orahovac/Rahovec municipality in April 1999, a witness observed columns of refugees and saw VJ infantry separating male displaced persons from the women and children.<sup>2045</sup> On one occasion, on or about 7 or 8 April 1999, about 20 men, who were dressed as civilians, were taken away from a column of displaced persons.<sup>2046</sup> These men were lined up and the VJ handed out KLA uniforms to them which they put on.<sup>2047</sup> The uniforms were described as being a lighter green colour than the VJ uniforms; they had KLA insignia. Some of these uniforms were red, however, most of them were a lighter green colour.<sup>2048</sup> Members of the VJ unit then opened fire

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<sup>2039</sup> See Confidential Annex.

<sup>2040</sup> See Confidential Annex.

<sup>2041</sup> See Confidential Annex.

<sup>2042</sup> See Confidential Annex.

<sup>2043</sup> See *supra*, paras 64, 65, 76, 81, 85, 86.

<sup>2044</sup> See Confidential Annex.

<sup>2045</sup> See Confidential Annex.

<sup>2046</sup> See Confidential Annex.

<sup>2047</sup> See Confidential Annex.

<sup>2048</sup> See Confidential Annex.

killing this group of men.<sup>2049</sup> The witness did not know what happened to their bodies following this shooting.<sup>2050</sup>

(c) Loading of bodies from the Orahovac/Rahovec area onto trucks

553. While in the surroundings of Orahovac/Rahovec, a unit was ordered to send two soldiers to report to a superior army officer because some bodies had to be loaded onto trucks. There were approximately 20 bodies some were in plastic bags, the others were not. All of the bodies were dressed in civilian clothing.<sup>2051</sup> The bodies were loaded on a truck and members of a VJ unit accompanied the truck with the bodies to a powerplant in Obilic, which was “somewhere after Priština”.<sup>2052</sup> There they unloaded the bodies. There were other soldiers and civilians at the location. The witness did not know what happened to the bodies.<sup>2053</sup>

(d) Looting by the VJ

554. In April 1999, when a VJ unit withdrew from the Orahovac/Rahovec municipality, what appeared to be civilian cars, tractors and trucks were driven away with them. These vehicles did not have VJ number plates. At the time he assumed that those driving the vehicles were his superiors because ordinary soldiers were not allowed to drive non-military vehicles.<sup>2054</sup> On the basis of this evidence alone, the Chamber is not satisfied that these vehicles had been looted by members of the VJ from civilian persons in the area in which the unit had been engaged in operations.

**B. Prizren municipality**

1. Prizren town

555. At the time of the events established below, about 70 per cent of the population were Kosovo Albanians. The town of Prizren was also populated by Serbs, Turks and Roma.<sup>2055</sup>

556. In late March 1999, regular and special police forces were stationed in a factory in the north-west area of town.<sup>2056</sup> On 23 March 1999, camouflaged army tanks, green in colour, and 105

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<sup>2049</sup> See Confidential Annex.

<sup>2050</sup> See Confidential Annex.

<sup>2051</sup> K89, Exhibit P1274 (public redacted version of *Milutinović* transcript), T 9147-9148, 9175.

<sup>2052</sup> K89, Exhibit P1274 (public redacted version of *Milutinović* transcript), T 9148; K89, Exhibit P1273 (*Milutinović* transcript), T 9206, 9208-9209).

<sup>2053</sup> K89, Exhibit P1274 (public redacted version of *Milutinović* transcript), T 9148-9149; K89, Exhibit P1273 (*Milutinović* transcript), T 9208.

<sup>2054</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9152-9153.

<sup>2055</sup> Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3513.

millimetre artillery pieces were observed at the same factory.<sup>2057</sup> Around that same period of time, policemen and Serbian paramilitary forces were seen all over Prizren town. They manned checkpoints and patrolled the streets.<sup>2058</sup>

557. On 24 March 1999, NATO commenced its aerial campaign in Serbia, including Kosovo. The military barracks located just outside the town of Prizren on the road to Suva Reka/Suharekë were bombed.<sup>2059</sup> Xhafer Beqiraj, a Kosovo Albanian living in the neighbourhood of Jeta-e-Re in the town of Prizren, testified that he stayed indoors during the bombing together with his family and some people that had taken refuge in his home. Approximately 50 people from other villages, including Landovica/Landovicë and Pirane/Piranë in Prizren municipality, as well as Krushë e Madhe/Velika Krušha in Rahovec/Orahovac municipality, had taken refuge in the nearby neighbourhood because of attacks and killings by Serbian forces.<sup>2060</sup>

558. In the evening of 27 March 1999, the military barracks outside Prizren town were once again hit by a NATO air strike. Following this air strike, machine gun firing was heard throughout the night.<sup>2061</sup> In the following days, tens of thousands of Kosovo Albanians, escorted by Serbian forces described as paramilitary and VJ soldiers, were seen passing through Prizren town walking south towards the borders with FYROM and Albania in large columns. They came from the direction of Đakovica/Gjakovë.<sup>2062</sup>

559. On or about 30 March 1999,<sup>2063</sup> a large number of policemen surrounded a neighbourhood of Prizren located in the outskirts of Prizren and fired gunshots. At around 1700 hours, they started expelling the population of that neighbourhood. Three or four uniformed police,<sup>2064</sup> armed with

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<sup>2056</sup> Xhafer Beqiraj, Exhibit P806, p 3; Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3524; Xhafer Beqiraj, T 4796-4797.

<sup>2057</sup> Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4923, 4925, 4038, 4940; Rexhep Krasniqi, T 5417-5418.

<sup>2058</sup> Xhafer Beqiraj, T 4797-4798.

<sup>2059</sup> Xhafer Beqiraj, Exhibit P806, p 2; Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3508-3509, 3521; Hysni Kryeziu, T 5598; Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7555, 7570; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4937; Rexhep Krasniqi, T 5417; K54, Exhibit D114 (*Milutinović* transcript), T 10513. K54 testified that the military barracks in Prizren had been bombed by NATO. Because of the bombing, sometime in late March or early April 1999, residents from a nearby unidentified Albanian settlement were expelled so that the VJ could use their residences, K54, Exhibit P781, p 6.

<sup>2060</sup> Xhafer Beqiraj, Exhibit P806, p 2; Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3509, 3520; Xhafer Beqiraj, T 4792, 4841.

<sup>2061</sup> Xhafer Beqiraj, Exhibit P806, p 3; Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3524-3525; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4937.

<sup>2062</sup> Xhafer Beqiraj, Exhibit P806, p 3; Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3527; Xhafer Beqiraj, T 4799.

<sup>2063</sup> Xhafer Beqiraj, Exhibit P806, p 3; Xhafer Beqiraj, T 4817. Although witnesses' testimony varied about the precise dates of the events, the Chamber finds that the events in Prizren town happened subsequently to the events in Dusanovo/Dushanovë.

<sup>2064</sup> Xhafer Beqiraj, T 4800. Xhafer Beqiraj was not at the door but he saw the arm of a policeman in blue camouflage uniform.

automatic weapons, came to a house in Ulqini Street.<sup>2065</sup> Through the owner of the house, the police told the persons inside, around 50 people including displaced persons, to leave the house within five minutes or all would be shot.<sup>2066</sup> After this, about 30 of the people left in a trailer. As they began moving in a convoy, they had to pass between two lines of police described as regular police and police special forces. The latter wore blue camouflage uniforms and bullet proof vests and some also wore black and red ribbons around their head and black masks or had painted faces.<sup>2067</sup>

560. VJ soldiers were also present with tanks and armoured vehicles.<sup>2068</sup> Other Serbian forces described as paramilitaries wearing green uniforms, green face-nets and bandannas were also used during this operation.<sup>2069</sup>

561. The whole expulsion was well organized.<sup>2070</sup> The people leaving were ordered by the Serbian forces to go to Albania, who also threatened them with gestures indicating the cutting of their throats.<sup>2071</sup> The convoy of displaced people was directed by the Serbian forces at various points around town towards Žur/Zhur and then towards Albania.<sup>2072</sup> As the convoy was moving, Xhafer Beqiraj saw the owner of the house in which he and others had stayed, being stopped by the same police special forces described above, threatened and beaten with rifles by them.<sup>2073</sup> It took the refugees in the column 12 hours to cover the distance of 15 kilometres between Prizren and Albania. The convoy was very long.<sup>2074</sup>

562. Xhafer Beqiraj, who travelled in this convoy, testified that upon his arrival at the Albanian border, the tractor he was on was stopped by several policemen wearing blue camouflage uniforms.<sup>2075</sup> They ordered the persons on the tractor to hand over all their identification documents, and they also took away the licence plates from the tractor.<sup>2076</sup> At the border crossing point, Serbian police separated about 10 young men from the refugee column and took them into a building nearby. The others were ordered to move on across the border into Albania. While Xhafer Beqiraj waited in the refugee column, he also saw two girls being taken out of the line into the

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<sup>2065</sup> Xhafer Beqiraj, Exhibit P806, p 3.

<sup>2066</sup> Xhafer Beqiraj, Exhibit P806, p 3; Xhafer Beqiraj, Exhibit P805 (*Milošević* transcript), T 3528; Xhafer Beqiraj, T 4800.

<sup>2067</sup> Xhafer Beqiraj, Exhibit P806, p 4; *See supra*, paras 53-54.

<sup>2068</sup> Xhafer Beqiraj, T 4801-4803.

<sup>2069</sup> Xhafer Beqiraj, T 4801-4803.

<sup>2070</sup> Xhafer Beqiraj, T 4801-4803.

<sup>2071</sup> Xhafer Beqiraj, Exhibit P806, p 4; Xhafer Beqiraj, T 4801.

<sup>2072</sup> Xhafer Beqiraj, T 4802-4803; Exhibit P807.

<sup>2073</sup> Xhafer Beqiraj, Exhibit P806, p 4.

<sup>2074</sup> Xhafer Beqiraj, Exhibit P806, p 4; Xhafer Beqiraj, T 4806-4807.

<sup>2075</sup> Xhafer Beqiraj, Exhibit P806, p 5; Xhafer Beqiraj, T 4806-4807.

<sup>2076</sup> Xhafer Beqiraj, Exhibit P806, p 5; Xhafer Beqiraj, T 4807-4808.

nearby bushes by police. Later on he was told that another girl was taken to a house nearby by “paramilitaries”.<sup>2077</sup>

563. Evidence reveals that in the period relevant to the Indictment, the VJ 549<sup>th</sup> Motorized Brigade was operating in Prizren municipality.<sup>2078</sup> This is supported by an order signed by the commander of the VJ 549<sup>th</sup> Motorized Brigade, Božidar Delić, dated 23 March 1999, deploying the VJ 549<sup>th</sup> Motorized Brigade in the general area of the village of Donje Retimlje/Reti-e-Poshtme<sup>2079</sup> and along the axis between this village and the main road from Zrze/Xërxë<sup>2080</sup> to Prizren town.<sup>2081</sup> The order tasked the VJ 549<sup>th</sup> Motorized Brigade to act, in coordination with the 4<sup>th</sup> PJP Company from Đakovica/Gjakovë, the 5<sup>th</sup> PJP Company from Prizren and the 37<sup>th</sup> and the 87<sup>th</sup> PJP Detachments from Nis/Niš, to destroy the KLA in the area.<sup>2082</sup>

564. Further evidence reveals that on 27 March 1999, units of the VJ Priština/Prishtinë Military District Command were redeployed in various locations across Kosovo, including in Prizren town. The VJ 108<sup>th</sup> Military Territorial Detachment, in coordination with forces of the VJ 549<sup>th</sup> Motorized Brigade, and MUP forces, were tasked to guard the barracks, the factory and to protect the Serbian population in Prizren.<sup>2083</sup> The order further tasked units to establish combat control of the territory on the axes of Prizren–Sredska/Sredskë (south-east) and Prizren-Suva Reka/Surarekë (north-east).<sup>2084</sup> Other documentary evidence establishes that from December 1998 to April 1999, the 37<sup>th</sup> and 87<sup>th</sup> PJP Detachments of the MUP were deployed to the Prizren SUP for special security tasks.<sup>2085</sup> Other documents indicate that the 37<sup>th</sup> PJP Detachment was still assisting the Prizren SUP in late March 1999 and was instructed to continue to do so for another 40 day period.<sup>2086</sup> The documentary evidence and the eye-witness evidence establish, in the Chamber’s finding, that MUP forces were acting in cooperation with VJ forces for the purpose of this operation. It is possible that paramilitary were also used in this joint operation, although the evidence does not allow positive identification of these forces.

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<sup>2077</sup> Xhafer Beqiraj, Exhibit P806, p 5; Xhafer Beqiraj, T 4790-4791.

<sup>2078</sup> K82, Exhibit P1315, para 2.

<sup>2079</sup> Donje Retimlje/Reti-e-Poshtme is located in Orahovac/Rahovec municipality, nearby the border with Prizren municipality.

<sup>2080</sup> Zrze/Xërxë is located in Orahovac/Rahovec municipality.

<sup>2081</sup> Exhibit P1316, p 2.

<sup>2082</sup> Exhibit P1316, p 2.

<sup>2083</sup> Exhibit P896.

<sup>2084</sup> Exhibit P896.

<sup>2085</sup> Exhibit P1183; Exhibit P134; Exhibit P1190; Exhibit P1188.

<sup>2086</sup> Exhibit P711; Exhibit P1197; Exhibit P1194.

## 2. Dušanovo/Dushanovë

565. Dušanovo/Dushanovë is a suburb of Prizren town, located to the north of the town centre, about five kilometres south-east of Landovica/Landvicë, and about 19 kilometres south-west of Suva Reka/Suharekë.<sup>2087</sup> At the time of the events alleged in the Indictment, there were about 1,200 houses of Kosovo Albanian families, and some 20 to 40 houses of Serb families in Dusanovo/Dushanovë.<sup>2088</sup>

566. On 27 March 1999, an order was given to units of the Priština Military District Command to establish combat control of the territory on the axis of Prizren-Suva Reka/Suhareke.<sup>2089</sup> This axis encompasses Dušanovo/Dushanovë. Other evidence reveals that VJ together with PJP forces, were engaged in a joint operation in the area at the time.<sup>2090</sup>

567. In the afternoon or evening of 27 March 1999, Rexhep Krasniqi and Hysni Kryeziu, who lived in Dušanovo/Dushanovë not far from each other,<sup>2091</sup> saw convoys of displaced people arriving in Dušanovo/Dushanovë from the village of Mamuša/Mamushë, about 15-17 kilometres away.<sup>2092</sup> These displaced people said they had been forced out of their village by Serbian police.<sup>2093</sup> Rexhep Krasniqi and his brother took 60 of these people in their houses.<sup>2094</sup>

568. Around 1700 hours on 28 March 1999, police forces wearing both plain blue and camouflage blue uniforms and other Serbian forces wearing plain colour uniforms surrounded Dušanovo/Dushanovë. The Serbian forces included VJ tanks and armoured vehicles, and fired volleys of fire in all directions.<sup>2095</sup> One witness estimated that over 2,000 Serbian police and army, mostly army members, were in and around Dušanovo/Dushanovë.<sup>2096</sup> Among them there were also men wearing beards, long hair and “Chetnik” hats, a description which is consistent with the presence of Serbian paramilitary forces.<sup>2097</sup> Members of all the Serbian forces present shouted at

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<sup>2087</sup> Hysni Kryeziu, P876, p 2.

<sup>2088</sup> Hysni Kryeziu, Exhibit P876, p 2; Hysni Kryeziu, Exhibit P877, p 2; Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4922; Rexhep Krasniqi, T 5416; Hysni Kryeziu, Exhibit P876, p 2. There were also a few Goranians and Roma in the village.

<sup>2089</sup> Exhibit P896.

<sup>2090</sup> K82, Exhibit P1314, para 2; K82, Exhibit P1315, para 2; Exhibit P1316, p 2. The VJ was deployed in the general area of the village of Donje Retimlje/Reti-e-Poshtme and along the axis between this village and the main road from Zrze/Xërxë to Prizren town.

<sup>2091</sup> Hysni Kryeziu, T 5572. Rexhep Krasniqi was one of the Hysni Kryeziu's neighbours. Their houses were located within about 50 metres of each other on the same street.

<sup>2092</sup> Hysni Kryeziu, T 5603; Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, T 5411, 5423-5424.

<sup>2093</sup> Hysni Kryeziu, T 5603; Rexhep Krasniqi, Exhibit P848, p 2.

<sup>2094</sup> Rexhep Krasniqi, Exhibit P848, p 2.

<sup>2095</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7546, 7563-7564.

<sup>2096</sup> Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7564.

<sup>2097</sup> Hysni Kryeziu, T 5607.

the displaced people that they should go to Albania, and that “Kosovo belongs to Serbia, you belong to Albania”.<sup>2098</sup>

569. At about the same time, police arrived near Rexhep Krasniqi’s house in Dušanovo/Dushanovë.<sup>2099</sup> They were wearing either black combat uniforms or blue camouflage uniforms. Some of them were wearing masks resembling ski-masks.<sup>2100</sup> Other Serbian forces in green camouflage uniforms, believed to be VJ, were also present.<sup>2101</sup> Rexhep Krasniqi saw altogether about 50-60 VJ tanks, green in colour, which had 105 millimetre cannons and anti-aircraft weapons mounted on them.<sup>2102</sup> He also saw armoured police cars with Prizren number plates which were darker in colour than the military vehicles.<sup>2103</sup> Rexhep Krasniqi’s neighbourhood was surrounded and all the streets were sealed off by the police and the military.<sup>2104</sup>

570. As this was happening, police arrived at Rexhep Krasniqi’s house, smashed down the front door and entered the house.<sup>2105</sup> There were about 20 policemen in the front yard.<sup>2106</sup> At this time, Rexhep Krasniqi and his wife and children, as well as about 28 displaced persons who had been staying at the house, were in the yard.<sup>2107</sup> The police ordered them to raise their hands in the air and started to beat them.<sup>2108</sup> A policeman in black uniform told them that they should go to Albania, and that there was no place for them in Kosovo.<sup>2109</sup> The police took Rexhep Krasniqi and his family members out of the house, and while doing so, hit him on the back with a rifle butt, beat the other members of his family, pulled a gold chain from his daughter’s neck and seized his son’s identification documents.<sup>2110</sup>

571. Rexhep Krasniqi saw other members of these Serbian forces, some in camouflage uniforms and others in black uniforms, who were mixed up together, setting Albanian owned houses on fire. This happened in the presence of VJ, who did not intervene.<sup>2111</sup> Some 4,000-5,000 Kosovo

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<sup>2098</sup> Hysni Kryeziu, Exhibit P876, p 3.

<sup>2099</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4949.

<sup>2100</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, T 5419.

<sup>2101</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4923, 4954.

<sup>2102</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4923-4924, 4926-4927.

<sup>2103</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4926, 4951.

<sup>2104</sup> Rexhep Krasniqi, Exhibit P848, p 2.

<sup>2105</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, T 5427, 5431.

<sup>2106</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, T 5431.

<sup>2107</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, T 5432.

<sup>2108</sup> Rexhep Krasniqi, T 5427-5428.

<sup>2109</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4950, 4954.

<sup>2110</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4928.

<sup>2111</sup> Rexhep Krasniqi, Exhibit P848, p 3.



Albanians were forced out of town by the Serbian forces.<sup>2112</sup> It is significant, in the view of the Chamber that members of the Serb households in the area had left a day earlier.<sup>2113</sup>

572. While the description of the Serbian forces involved in Dušanovo/Dushanovë typically included police and VJ, the description of the police is of men wearing black combat uniforms or blue camouflage uniforms. The unit identity of the men wearing black combat uniforms is not clear. Whatever their unit, the evidence discloses they were acting with other police, who wore blue camouflage uniforms, and with VJ forces, and that these combined forces were using MUP and VJ vehicles and were supported by VJ tanks. In the Chamber's findings, the Serbian forces wearing black combat uniforms, whatever their identity, were engaged in a joint coordinated operation with MUP and VJ forces. Other evidence establishes that these joint coordinated operations were ordered by the Joint Command for Kosovo, which as established by the evidence discussed elsewhere in this Judgement, was responsible at the time for the combined operations of both VJ and MUP engaged in Kosovo.<sup>2114</sup>

573. A convoy of displaced Kosovo Albanians formed stretching from the town of Prizren to the Albanian town of Kukës, *i.e.* for some 16 kilometres.<sup>2115</sup> Serbian forces threatened the people that they would kill them if they did not go.<sup>2116</sup> It is clear from the whole evidence, including the threat that the displaced people should go to Albania, which was heard by Rexhep Krasniqi, and the direction the convoy took under Serbian escort all the way to the border, that the displaced Kosovo Albanians of this convoy were directed across the Albanian border close by Morine/Morina, on the road that led to the nearby Albanian town of Kukës.<sup>2117</sup>

574. At about 1700 or 1800 hours on 28 March 1999, Rexhep Krasniqi saw an incident involving two or three young Kosovo Albanian men who had been driving in a convoy on the road to Kukës, in the suburbs of Dušanovo/Dushanovë.<sup>2118</sup> The men jumped off their tractors and tried to run. Rexhep Krasniqi heard automatic gunfire and saw that two of the men had been shot by the police and had fallen on the ground.<sup>2119</sup> The evidence does not allow any more detailed findings to be

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<sup>2112</sup> Rexhep Krasniqi, Exhibit P848, p 2.

<sup>2113</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, Exhibit P850 (*Milutinović* transcript), T 4952; Rexhep Krasniqi, T 5429.

<sup>2114</sup> Exhibit P1316; *See supra*, paras 253-260.

<sup>2115</sup> Rexhep Krasniqi, Exhibit P848, p 2; Rexhep Krasniqi, T 5433.

<sup>2116</sup> Rexhep Krasniqi, Exhibit P848, p 2.

<sup>2117</sup> Rexhep Krasniqi, Exhibit P848, p 2.

<sup>2118</sup> Rexhep Krasniqi, Exhibit P848, p 3; Rexhep Krasniqi, T 5435-5436.

<sup>2119</sup> Rexhep Krasniqi, Exhibit P848, p 3; Rexhep Krasniqi, T 5436.

made of the circumstances in which these deaths occurred. There is also evidence that four persons were killed by Serbian forces in the convoy of displaced people leaving Prizren town.<sup>2120</sup>

575. While this was happening, Hysni Kryeziu, fearing for the safety of his family at the hands of Serbian forces, also collected his family and got into his car to join the convoy of people from Dušanovo/Dushanovë leaving the village.<sup>2121</sup> Hysni Kryeziu testified that at about 500 metres from his house, on the transit road that leads to Prizren, the police, including the local police commander Šćekić who was wearing a brown nylon stocking on his head, stopped him and his family.<sup>2122</sup> Hysni Kryeziu saw other men wearing black stockings on their heads and black “chetnik caps with cockades on them” in the police group.<sup>2123</sup> Hysni Kryeziu and his family were ordered out of their cars, and threatened with knives and guns.<sup>2124</sup> While his wife was trying to get something from the boot of the car, she was hit with an automatic rifle causing her to lose consciousness.<sup>2125</sup> The local police commander, Šćekić, took Kryeziu’s car, the women’s jewellery, and his money.<sup>2126</sup> All of their documentation was also seized before they were allowed to move on.<sup>2127</sup> Hysni Kryeziu also saw masked policemen and soldiers beat and kick two of Šćekić’s neighbours, Abdurrahman Ahmetaj and Besnik Ahmetaj, with their hands and guns,<sup>2128</sup> following which the police set fire to their house.<sup>2129</sup> These circumstances confirm, in the finding of the Chamber, and it accepts that Hysni Kryeziu and his family left Dušanovo/Dushanovë by virtue of the conduct of Serbian forces.

576. Hysni Kryeziu and his family then joined on foot a convoy of people, mainly Kosovo Albanian, on the journey to the Albanian border.<sup>2130</sup> The convoy was directed along the main Prizren-Đakovica/Gjakovë road.<sup>2131</sup> Two to three kilometres along this road, Serbian police and the military, who were in mixed groups, told the Roma and some Goranians in the convoy to go back to their homes.<sup>2132</sup>

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<sup>2120</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7545.

<sup>2121</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, T 5609, 5610.

<sup>2122</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7543-7544, 7565, 7566; Hysni Kryeziu, T 5611, 5616. Hysni Kryeziu testified that he was able to recognize Šćekić despite this stocking because he could see his face through it and recognize his voice as he had lived with him in the same village for 40 years, Hysni Kryeziu, T 5616.

<sup>2123</sup> Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7544-7548; Hysni Kryeziu, T 5607.

<sup>2124</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7544.

<sup>2125</sup> Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7549, 7567.

<sup>2126</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, Exhibit P878 (*Milutinović* transcript), T 7566-7567.

<sup>2127</sup> Hysni Kryeziu, Exhibit P876, p 3.

<sup>2128</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, T 5602.

<sup>2129</sup> Hysni Kryeziu, Exhibit P876, p 3.

<sup>2130</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, T 5568, 5614.

<sup>2131</sup> Hysni Kryeziu, T 5614-5615.

<sup>2132</sup> Hysni Kryeziu, T 5568 – 5569.

577. En route, people in the convoy were occasionally mistreated by Serbian forces.<sup>2133</sup> Where the road turns towards Albania, Hysni Kryeziu observed vehicles passing by with Kosovo Albanian families. Serbian police who were escorting these vehicles appeared to be intimidating the people, for example by breaking their car windows with their automatic rifles.<sup>2134</sup>

578. The people in the convoy continued walking for six hours, passing through the village of Žur/Zhur and other villages in Prizren municipality, before reaching the Albanian border at around 2300 hours.<sup>2135</sup> Before reaching the border at Žur/Zhur, they encountered a police checkpoint, where people were stopped and some were taken out of the convoy.<sup>2136</sup> From Žur/Zhur, they followed the road to Vrmnica/Vrmice and the border crossing point.<sup>2137</sup> At the last checkpoint before the border in Morina/Morine and at the border, Serbian policemen took money, cars, identification documents and licence plates from the refugees in the convoy, before they crossed into Albania.<sup>2138</sup> Once in Albania, they continued to Kükës, the first town of significance on the road.<sup>2139</sup>

579. Based on this evidence the Chamber is satisfied that Serbian forces in Dušanovo/Dushanovë and on the road between Dušanovo/Dushanovë and the Albanian border, forced Kosovo Albanian civilians to leave their houses and cross the border into Albania, by conduct which included burning houses, intimidating, beating and otherwise mistreating the Kosovo Albanian people. It is further satisfied that Serbian forces did so because the victims were Kosovo Albanian.

### 3. Pirane/Piranë

580. Pirane/Piranë is located about 11 kilometres north of Prizren town.<sup>2140</sup> At the time of the events established below, the residents of Pirane/Piranë were predominantly Kosovo Albanians.<sup>2141</sup>

581. The evidence indicates that in March 1999, the municipality of Prizren fell within the KLA Pashtrik operation zone. At the time, several KLA brigades were active in the area and had set up defence lines passing through Pirane/Piranë.<sup>2142</sup> Evidence also reveals that on 23 March 1999, VJ

<sup>2133</sup> Hysni Kryeziu, Exhibit P876, p 3; Hysni Kryeziu, T 5569, 5570, 5598.

<sup>2134</sup> Hysni Kryeziu, T 5570.

<sup>2135</sup> Rexhep Krasniqi, Exhibit P848, p 3.

<sup>2136</sup> Hysni Kryeziu, T 5570.

<sup>2137</sup> Hysni Kryeziu, T 5616.

<sup>2138</sup> Rexhep Krasniqi, Exhibit P848, p 3; Rexhep Krasniqi, T 5401; Hysni Kryeziu, Exhibit P876, pp 3-4; Hysni Kryeziu, T 5570-5571.

<sup>2139</sup> Hysni Kryeziu, T 5614-5615.

<sup>2140</sup> Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4959; Rexhep Krasniqi, T 5412.

<sup>2141</sup> Halil Morina, P284 (*Milošević* transcript), T 874. There were also Roma villagers in Pirane/Piranë.

<sup>2142</sup> Bislim Zyrapi, T 2469-2470, 2473. The KLA 121th, 122th, 123th, 124th and 125th brigades were active in the Pashtrik Operation Zone.

and PJP units were deployed in the general area of the village of Donje Retimlje/Reti-c-Poshtme, located in the vicinity of Pirane/Piranë, with the order to destroy KLA forces.<sup>2143</sup>

582. At 0400 hours on the morning of 25 March 1999, the village of Pirane/Piranë was surrounded by VJ soldiers in olive-grey-green uniforms with tanks, APCs, and Pragas, as well as police in blue and white camouflage uniforms, in Pinzgauers, a truck, and civilian vehicles.<sup>2144</sup>

583. At 0800 hours, VJ began shelling Pirane/Piranë from the village bridge and from Landovica/Landovicë.<sup>2145</sup> At the same time, Rahim Latifi saw police setting fire to a neighbour's home; they continued and using shotguns, set fire to approximately 16 houses in the predominantly Kosovo Albanian village over the next two hours.<sup>2146</sup> At approximately 0900 hours on 25 March 1999, Halil Morina was on a hill close to his house in the village of Landovica/Landovicë, three to four kilometres from Pirane/Piranë, and he could see houses burning in Pirane/Piranë.<sup>2147</sup> No one was killed during the shelling at Pirane/Piranë. A shell fell in the area between the village mosque and the minaret.<sup>2148</sup>

584. The same day, the majority of the population of Pirane/Piranë, an estimated 1,900 people, left in fear for the village of Mamuša/Mamushë<sup>2149</sup> because their houses were being burnt. About 800 villagers, including Rahim Latifi, also left in fear to go to Srbica/Sërbica, a village in Prizren municipality located approximately two and a half to three kilometres away from Pirane/Piranë.<sup>2150</sup>

585. Xhafer Elshani and Mehmet Elshani led the convoy going to Srbica/Sërbica.<sup>2151</sup> They were both shot by a sniper from a Serbian house on the way to Srbica/Sërbica; Xhafer was killed and Mehmet was wounded.<sup>2152</sup> Bullets also flew by Rahim Latifi's head as he fled.<sup>2153</sup> The witness does not identify who fired these shots.

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<sup>2143</sup> Exhibit P1316, p 2.

<sup>2144</sup> Rahim Latifi, Exhibit P778, p 2; Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4960-4962. *See supra*, paras 53, 162-163.

<sup>2145</sup> Rahim Latifi, Exhibit P778, p 2.

<sup>2146</sup> Rahim Latifi, Exhibit P778, p 2; Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4963.

<sup>2147</sup> Halil Morina testified that the burning of homes in the village of Pirane/Piranë caused the villagers to flee towards Srbica e Ulet/Sërbica and Mamuša/Mamushë. Halil Morina, Exhibit P284 (*Milošević* transcript), T 872-874, 908-910.

<sup>2148</sup> Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 5007-5008; Rahim Latifi, T 4353.

<sup>2149</sup> Halil Morina testified that the burning of homes in the village of Pirane/Piranë caused the villagers to flee towards Srbica e Ulet/Sërbica and Mamuša/Mamushë. Halil Morina, Exhibit P284 (*Milošević* transcript), T 872-874, 908-910.

<sup>2150</sup> Rahim Latifi, Exhibit P778, p 3; Rahim Latifi, Exhibit P779 (*Milutinović* transcript), 4985, 4991; Rahim Latifi, T 4348.

<sup>2151</sup> Rahim Latifi, Exhibit P778, p 3; Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4964.

<sup>2152</sup> Rahim Latifi, Exhibit P778, p 3; Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4964.

<sup>2153</sup> Rahim Latifi, Exhibit P778, p 3.

586. The villagers from Pirane/Piranë arrived in Srbica/Sërbica on 25 March 1999.<sup>2154</sup> On that day, Rahim Latifi, using binoculars, saw police continuing to burn houses in Pirane/Piranë, resulting in the entire village being burnt down.<sup>2155</sup>

587. Considering events established elsewhere in the Judgement, insofar as it relates to the presence of the KLA in Pirane/Piranë, the Chamber accepts Rahim Latifi's evidence that there were no KLA fighters in Pirane/Piranë at the material time and that Serbian forces were not engaged in fighting with KLA forces in that village. The Chamber is satisfied that Serbian forces targeted Kosovo Albanian civilians by burning their homes, hence forcing the population to leave.

#### 4. Landovica/Landovicë

588. Landovica/Landovicë is located approximately seven kilometres north of Prizren town on the main road to Đakovica/Gjakovë, in Prizren municipality.<sup>2156</sup> In 1999, there were approximately 120 houses in Landovica/Landovicë, 100 of which were occupied by Kosovo Albanians and the remainder being occupied by Roma.<sup>2157</sup> Landovica/Landovicë had about 1,300 inhabitants in 1999.<sup>2158</sup>

589. At approximately 1000 hours on 26 March 1999, four regular VJ soldiers came to Landovica/Landovicë.<sup>2159</sup> There was an altercation involving the VJ and a civilian man, named Hashim Gashi, resulting in the death of Hashim Gashi and three of the soldiers.<sup>2160</sup> Halil Morina saw the four VJ soldiers, however, he denied having witnessed this incident and having any knowledge of who killed Hashim Gashi and soldiers.<sup>2161</sup> The evidence does not allow any findings to be made of the circumstances in which these deaths occurred.

590. Within one hour of this incident, at approximately 1100 hours, uniformed VJ, with three tanks, APCs and Pragas arrived in Landovica/Landovicë from the direction of Prizren.<sup>2162</sup>

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<sup>2154</sup> Rahim Latifi, Exhibit P778, p 3; Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4992.

<sup>2155</sup> Rahim Latifi, Exhibit P778, p 2.

<sup>2156</sup> Halil Morina, Exhibit P238, p 2; Exhibit P284 (*Milošević* transcript), T 872-873, 908-910; The written statement and the testimony of Halil Morina in the *Milošević* trial, was admitted pursuant to Rule 92*quater*.

<sup>2157</sup> Halil Morina, Exhibit P283, p 2; Exhibit P284 (*Milošević* transcript), T 870-871, 907.

<sup>2158</sup> Halil Morina, Exhibit P283, p 2.

<sup>2159</sup> Halil Morina, Exhibit P283, p 2; Exhibit P284 (*Milošević* transcript), T 874-875.

<sup>2160</sup> Halil Morina, Exhibit P283, p 2; Exhibit P284 (*Milošević* transcript), T 874-876.

<sup>2161</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 874, 877, 916, 920-921. In an earlier statement, Halil Morina explicitly stated the VJ soldiers were killed by KLA. However in *Milošević*, Halil Morina indicated the reference to KLA in his statement about this incident was a mistake and not what he had said.

<sup>2162</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 878. In his testimony in *Milošević*, the witness referred to VJ, police and paramilitaries but he saw only men in army uniforms so that the Chamber does not accept there were also police and paramilitary.

591. The military vehicles did not enter the village of Landovica/Landovicë but remained at its edge, on the paved road that connected Prizren and Đakovica/Gjakovë.<sup>2163</sup> The soldiers began to burn the village.<sup>2164</sup> The military also shelled the village for four hours, from 1100 hours to 1500 hours.<sup>2165</sup> As these events were occurring, many of the villagers left; about one half left through the woods and hills to the northeast, via Prizren, and the other half to the southwest via Tupec village.<sup>2166</sup> The lower half of the village was entirely civilian property and was badly damaged by the shelling. As Landovica/Landovicë was shelled, houses were seen burning.<sup>2167</sup> 13 villagers were killed in the shelling, 11 of whom were women or children.<sup>2168</sup> The victims were identified as Njomza Morina (15 years old), Fatime Morina (44 years old), Ismet Gashi (born in 1952), Dalife Gashi (70 years old), Festime Morina (2 years old), Afrim Gashi (16 years old), Bukurije Qareti (36 years old), Luljeta Qareti (28 years old), Gzim Qareti (13 years old), Nazlije Qareti (15 years old), Dieliza Qareti (18 months old), Kushtrim Selimaj (7 years old) and Kosovare Selimaj (9 years old).<sup>2169</sup>

592. The shelling finished at about 1500 hours, when a witness described that “mixed Serbian forces” entered the village.<sup>2170</sup> Approximately 150 uniformed men arrived by bus.<sup>2171</sup> Infantry troops and police went from house to house”.<sup>2172</sup> Automatic firearms were fired and later, three people, Avdi Morina (65 years old), Avdi Gashi (53 years old) and Hadije Gashi (65 years old) who was handicapped, were found dead in their home.<sup>2173</sup> It is believed that they were shot dead by Serbian police who entered the village after the shelling.<sup>2174</sup> Most houses and the village mosque were burning.<sup>2175</sup> The troops withdrew from Landovica/Landovicë at approximately 1900 hours on 26 March 1999.<sup>2176</sup> Approximately 75 per cent of all properties in the village had been burned by

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<sup>2163</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 883.

<sup>2164</sup> Halil Morina, Exhibit P283, p 2.

<sup>2165</sup> Halil Morina, Exhibit P283, pp 2-3. A witness remained in the village by a stream, near his house, hiding for several hours.

<sup>2166</sup> Halil Morina, Exhibit P283, p 3; Halil Morina, Exhibit P284 (*Milošević* transcript), T 891.

<sup>2167</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 888.

<sup>2168</sup> Halil Morina, Exhibit P283, pp 2-3.

<sup>2169</sup> Halil Morina, Exhibit P283, pp 2-3; Halil Morina, Exhibit P284 (*Milošević* transcript), T 883.

<sup>2170</sup> Halil Morina, Exhibit P283, p 3.

<sup>2171</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 885.

<sup>2172</sup> Halil Morina, Exhibit P283, p 3; Exhibit P284 (*Milošević* transcript), T 885-886.

<sup>2173</sup> Halil Morina, Exhibit P283, p 3; Exhibit P284 (*Milošević* transcript), T 884-885, 893, 895, 925-926. Halil Morina found the bodies of the shelling victims on 27 March 1999, early in the morning. He named the 13 victims, although he could not recall some of the names of the victims during the cross-examination in *Milošević*. These victims are not listed in the Indictment schedules.

<sup>2174</sup> Halil Morina, Exhibit P284, p 3.

<sup>2175</sup> Halil Morina, Exhibit P283, p 3; Exhibit P284 (*Milošević* transcript), T 888, 893-894.

<sup>2176</sup> Halil Morina, Exhibit P283, p 3; Exhibit P284 (*Milošević* transcript), T 893-894.

the actions of the Serbian forces.<sup>2177</sup> Only the Kalimash neighbourhood appeared to be less damaged.<sup>2178</sup>

593. At 1100 hours on the next day, 27 March 1999, 20-30 men dressed in military green uniforms and some in camouflage uniforms arrived in Landovica/Landovicë.<sup>2179</sup> They had a jeep as well as a larger military vehicle.<sup>2180</sup> Three of the soldiers in a Pinzgauer entered the mosque.<sup>2181</sup> A witness suggested that these were VJ soldiers. A few minutes later they left the mosque and, together with the other soldiers, left the village.<sup>2182</sup> Ten minutes later, there was a large explosion and the minaret of the mosque collapsed onto the roof of the mosque.<sup>2183</sup> The wooden fixtures, fittings, and carpets of the mosque had also been burned.<sup>2184</sup> The description of the uniform worn by these men is consistent with the uniforms worn by VJ soldiers and VJ reservists at the material time.<sup>2185</sup>

594. The Chamber accepts from the evidence that on 26 and 27 March 1999, in the village of Landovica/Landovicë, Serbian forces deliberately burnt approximately 90 houses of the village and destroyed the mosque's minaret and partly burnt the mosque. In addition, by virtue of the actions of the Serbian forces, and not of their free will, most of the population, some 1300 civilians, including Kosovo Albanians, left Landovica/Landovicë. With respect to the alleged killings, the Chamber notes that the victims are not named in the Schedule to the Indictment and that no forensic evidence was received in regards to them. However, based on the eyewitness accounts and on documentary evidence,<sup>2186</sup> the Chamber is satisfied that the 16 victims named earlier were killed by VJ forces on 26 March 1999.<sup>2187</sup> Even if there had been a KLA presence in Landovica/Landovicë at the time, (which has not been established) the Chamber finds that the actions of the Serbian forces were manifestly not aimed at fighting the KLA but at forcing villagers, the vast majority of whom were Kosovo Albanian, to leave because they were Kosovo Albanians.

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<sup>2177</sup> Halil Morina, Exhibit P283, pp 3-4; Exhibit P284 (*Milošević* transcript), T 896.

<sup>2178</sup> Halil Morina, Exhibit P283, pp 3-4; Exhibit P284 (*Milošević* transcript), T 896.

<sup>2179</sup> Halil Morina, Exhibit P283, p 4; Exhibit P284 (*Milošević* transcript), T 897-898.

<sup>2180</sup> Halil Morina, Exhibit P283, p 4.

<sup>2181</sup> Halil Morina, Exhibit P283, p 4; Exhibit P284 (*Milošević* transcript), T 896.

<sup>2182</sup> Halil Morina, Exhibit P283, p 4; Exhibit P284 (*Milošević* transcript), T 897.

<sup>2183</sup> Halil Morina, Exhibit P283, p 4; Exhibit P284 (*Milošević* transcript), T 897.

<sup>2184</sup> Halil Morina, Exhibit P283, p 3.

<sup>2185</sup> John Crosland, Exhibit P1400, paras 7, 13, *see supra*, paras 162-163, 176.

<sup>2186</sup> There is documentary evidence that, at the time of the events, the VJ 549<sup>th</sup> Motorized Brigade was operating in Prizren municipality. Exhibit P1316, p 2.

<sup>2187</sup> There is documentary evidence that, at the time of the events, the VJ 549<sup>th</sup> Motorized Brigade was operating in Prizren municipality, in particular in the general area of the village of Donje Retimlje/Reti-e-Poshtme. The Chamber notes that the village of Landovica/Landovicë is located a few kilometres south of Donje Retimlje/Reti-e-Poshtme. Exhibit P1316, p 2.

595. On 30 March 1999, Halil Morina and his family, who had remained in Landovica/Landovicë left and went to Srbica/Sërbica.<sup>2188</sup> In Srbica/Sërbica, there were a number of displaced people from Landovica/Landovicë and some 800 from Pirane/Piranë.<sup>2189</sup>

##### 5. Srbica/ Sërbica

596. Srbica/Sërbica is a village in Prizren municipality located approximately two and a half to three kilometres from Pirane/Piranë.<sup>2190</sup> From 25 March 1999 until 26 April 1999, police came to Srbica/Sërbica on a regular basis.<sup>2191</sup> At 1500 hours on 8 April 1999, Serbian forces entered Srbica/Sërbica with military vehicles and cars.<sup>2192</sup> A witness suggested that the forces included not only military but also paramilitary, using military vehicles. Some had Chetnik-style beards and red bandannas.<sup>2193</sup> While this latter description is consistent with some Serbian paramilitary forces, the evidence is not sufficient to establish this.<sup>2194</sup>

597. Documentary evidence reveals that at the time, the VJ 549<sup>th</sup> Motorized Brigade was acting in coordination with the 4<sup>th</sup> PJP Company from Đakovica/Gjakovë, the 5<sup>th</sup> PJP Company from Prizren and the 37<sup>th</sup> and the 87<sup>th</sup> PJP Detachments from Nis/Niš, to destroy the KLA in the general area of the village of Donje Retimlje/Reti-e-Poshtme, located only a few kilometres from Srbica/Sërbica.<sup>2195</sup>

598. There is evidence that members of the Serbian forces told the local Serbs they were traitors for allowing displaced Kosovo Albanians to stay in Srbica/Sërbica and gave the villagers 24 hours to “evict” the displaced people, but this appears to be based on vague sources.<sup>2196</sup>

599. On a day sometime between 9 and 16 April 1999, the leaders of the village of Srbica/Sërbica informed the displaced persons present there that the Prizren chief of police had ordered everyone not originally from Srbica/Sërbica to leave and go to Albania.<sup>2197</sup> Local Serb civilians organized buses to take the displaced Kosovo Albanians to the border. The displaced Kosovo Albanians got into the buses, not of their own free will but, as one witness described the situation, because they

<sup>2188</sup> Halil Morina, Exhibit P283, p 4; Exhibit P284 (*Milošević* transcript), T 901-902, 953-954.

<sup>2189</sup> Halil Morina, Exhibit P283, p 4; Exhibit P284 (*Milošević* transcript), T 901-902, 953-954.

<sup>2190</sup> Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4992.

<sup>2191</sup> Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4992.

<sup>2192</sup> Halil Morina, Exhibit P283, p 4.

<sup>2193</sup> Halil Morina, Exhibit P283, p 4.

<sup>2194</sup> *See supra*, para 211.

<sup>2195</sup> Exhibit P1316, p 2.

<sup>2196</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 905, 930, 956. Halil Morina testified in *Milošević* that he did not see the army giving the order but that villagers of Landovica/Landovicë told him the displaced people had to leave because the Serbian forces had taken orders to get rid of the them.

<sup>2197</sup> Rahim Latifi, Exhibit P778, p 3; Rahim Latifi, Exhibit P779 (*Milutinović* transcript), T 4964, 4993; Halil Morina, Exhibit P283, p 5; Halil Morina, Exhibit P284 (*Milutinović* transcript), T 903.



“had to”.<sup>2198</sup> Halil Morina stated that buses took the passengers to Žur/Zhur who were then forced to walk some kilometres to the Albanian border where police took their identification documents before they were able to cross the border.<sup>2199</sup>

600. However, 86 displaced Kosovo Albanians could not fit into the buses and remained in Srbica/Sërbica for an additional 10 days, until 26 April 1999,<sup>2200</sup> when some eventually rented a bus and were “accompanied” by local Serbs to the village of Žur/Zhur.<sup>2201</sup> One of the local Serbs asked for and received money from these villagers in exchange for his assistance.<sup>2202</sup> The villagers then continued to the Morine/Morina border crossing, where their identification documents were seized before they crossed the border into Albania.<sup>2203</sup>

601. The Defence argues that Rahim Latifi and other villagers hired a bus and left voluntarily to go to the Albanian border.<sup>2204</sup> While Latifi and his family hired a bus to take them to the village of Žur/Zhur, the Chamber is satisfied they did not leave of their free will.<sup>2205</sup> The Chamber finds from this evidence that in April 1999, Serbian forces caused the displaced Kosovo Albanians then in Srbica/Sërbica to leave the village and to cross the border into Albania. The Chamber accepts that these refugees were expelled because they were Kosovo Albanian.

602. Considering the evidence of eyewitnesses and the documentary evidence discussed above the Chamber is satisfied that MUP, together with VJ forces, were engaged in a joint operation that was coordinated and which involved property destruction and forced displacement of the Kosovo Albanian population in Srbica/Sërbica because they were Kosovo Albanians. Paramilitary forces may also have been involved.

#### 6. Donji Retimjle/Reti e Ulet, Retimjle/Reti, Randobrava/Randubravë

603. On 25 April 1999, unidentified Serbian forces started an offensive in the Srbica/Sërbica area, which involved shelling of the villages of Donji Retimjle/Reti-e-Ulet, Retimjle/Reti and Randobrava/Randubravë.<sup>2206</sup> While the evidence establishes that only the VJ was equipped to undertake such shelling, no other evidence has been led in respect of this offensive or the alleged forcible displacement of Kosovo Albanians from the villages of Donji Retimjle/Reti e Ulet,

<sup>2198</sup> Halil Morina, Exhibit P283, p 5; Halil Morina, Exhibit P284 (*Milošević* transcript), T 903-904.

<sup>2199</sup> Halil Morina, Exhibit P283, p 5; Halil Morina, Exhibit P284 (*Milošević* transcript), T 904.

<sup>2200</sup> Rahim Latifi, Exhibit P778, p 3.

<sup>2201</sup> Rahim Latifi, Exhibit P778, p 3.

<sup>2202</sup> Rahim Latifi, Exhibit P778, p 3.

<sup>2203</sup> Rahim Latifi, Exhibit P778, p 3.

<sup>2204</sup> Defence Final Brief, para 753.

<sup>2205</sup> Rahim Latifi, Exhibit P284, T 872-874, 908-910.

<sup>2206</sup> Rahim Latifi, Exhibit P778, p 3.

Retimlje/Reti and Randobrava/Randubravë that was alleged to be a consequence of it. Hence, the charges in respect of these matters have not been proved.

### C. Srbica/Skenderaj municipality

#### 1. Events in Izbica/Izbicë and the surrounding villages

604. The village of Brocna/Burojë is located in Srbica/Skenderaj municipality.<sup>2207</sup> At the time relevant to the Indictment, the population of Brocna/Burojë was exclusively Kosovo Albanian.<sup>2208</sup>

605. On 25 March 1999, Serbian forces took position in the immediate vicinity of Brocna/Burojë. The young men in the village, having heard rumours that they were in danger at the hands of Serbian forces, went into hiding in the mountains.<sup>2209</sup> The next day, the women, children and elderly of Brocna/Burojë went to the nearby village of Izbica/Izbicë, which was believed to be a safe location.<sup>2210</sup> Serbian forces entered Brocna/Burojë later the same day.<sup>2211</sup>

606. The village of Leocina/Leçine is also located in Srbica/Skenderaj municipality. In March 1999, the composition of Leocina/Leçine was predominantly Kosovo Albanian. There was also a minority of Kosovo Serbs.<sup>2212</sup>

607. On 25 March 1999, shells fell on Leocina/Leçine.<sup>2213</sup> Feeling under threat and in danger, some of the villagers of Leocina/Leçine took shelter in the school in the nearby village of Kladernica/Klladërnice.<sup>2214</sup> On 26 March 1999, Leocina/Leçine was shelled for a second time.<sup>2215</sup> At around 1100 hours, Serbian forces, both VJ and police, were observed less than a kilometre away from Leocina/Leçine. The Serbian forces advanced from the village of Citak/Çitak toward Leocina/Leçine, burning houses on their way.<sup>2216</sup> Fearing for their safety, the residents of Leocina/Leçine left their village and went to Izbica/Izbicë.<sup>2217</sup> At around 1700 hours, Serbian forces entered Leocina/Leçine.<sup>2218</sup> The evidence does not disclose what then happened in Leocina/Leçine. It was only after Serbian forces withdrew from Kosovo in June 1999 that

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<sup>2207</sup> Milazim Thaçi, T 4943.

<sup>2208</sup> Milazim Thaçi, T 5024.

<sup>2209</sup> Milazim Thaçi, T 5001, 5009, 5011-5012.

<sup>2210</sup> Milazim Thaçi, T 4946-4947; Liri Loshi, T 689-690.

<sup>2211</sup> Milazim Thaçi, T 4946-4947.

<sup>2212</sup> Mustafa Dragaj, T 603.

<sup>2213</sup> Mustafa Dragaj, T 604.

<sup>2214</sup> Mustafa Dragaj, T 605; Liri Loshi, T 689.

<sup>2215</sup> Mustafa Dragaj, T 604.

<sup>2216</sup> Mustafa Dragaj, T 661-662.

<sup>2217</sup> Mustafa Dragaj, T 604-605; Liri Loshi, T 689-690.

<sup>2218</sup> Mustafa Dragaj, T 661.

witnesses returned to the village of Leocina/Leçine and found that it had been burnt and destroyed.<sup>2219</sup>

608. Izbica/Izbicë is a Kosovo Albanian village in Srbica/Skenderaj municipality situated in a valley approximately 30 minutes walk from Leocina/Leçine.<sup>2220</sup>

609. On 24 and 25 March 1999, Izbica/Izbicë was shelled from the direction of the village of Rudnik/Runik. Rudnik/Runik was a predominantly Serb populated village located about four or five kilometres from Izbica/Izbicë.<sup>2221</sup>

610. The shelling of villages in this area is supported by a combat report from the Joint Command for Kosovo which states that on 23 March 1999, VJ brigades and PJP were tasked to take part in a two day coordinated action in Srbica/Skenderaj municipality aimed at destroying the KLA. The Chamber notes that the operation was concentrated on the axis of the villages of Tušilje/Tushilë, Turicevac/Turiquec and Izbica/Izbicë.<sup>2222</sup>

611. On or around 26 March 1999, up to 25,000 people from surrounding villages had arrived in Izbica/Izbicë to seek safety.<sup>2223</sup> In addition to people from the villages of Brocna/Burojë and Leocina/Leçine, there were also people from the villages of Kladernica/Klladernicë, Vocnjak/Vajnikë, Klina/Klinë and Likovac/Likoc in Srbica/Skenderaj municipality, and the villages of Jošanica/Jashanicë, Iglarevo/Gllarevë and Krnjince/Kernicë in Klina/Klinë municipality.<sup>2224</sup> The displaced people who had come to Izbica/Izbicë stayed outdoors in a field that straddled a road.<sup>2225</sup> On that day, Serbian forces were seen approaching Izbica/Izbicë from the direction of the nearby villages of Rudnik/Runik and Leocina/Leçine.<sup>2226</sup>

612. On 27 March 1999, early in the morning, Izbica/Izbicë was shelled.<sup>2227</sup> Lorries and tanks were heard approaching from the nearby woods. Fearing the arrival of the Serbian forces, the majority of people in Izbica/Izbicë, particularly the young men, fled towards the village of

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<sup>2219</sup> Mustafa Dragaj, T 620.

<sup>2220</sup> Mustafa Dragaj, T 605, 658; Milazim Thaçi, T 4949.

<sup>2221</sup> Liri Loshi, T 692.

<sup>2222</sup> Exhibit P972, pp 3-4.

<sup>2223</sup> Mustafa Dragaj, T 605-607, 663; Liri Loshi, T 690; Milazim Thaçi, T 4953, 4956; Sadik Januzi, Exhibit P282, p 6.

<sup>2224</sup> Milazim Thaçi, T 4948-4949; Milazim Thaçi, Exhibit P819; Mustafa Dragaj, T 605; Liri Loshi; T 689.

<sup>2225</sup> Mustafa Dragaj, T 605-606, 663; Milazim Thaçi, T 4948.

<sup>2226</sup> Milazim Thaçi, T 4948-4949; Milazim Thaçi, Exhibit P819; Mustafa Dragaj, T 605; Liri Loshi; T 689.

<sup>2227</sup> Milazim Thaçi, T 4949.

Tušilje/Tushilë.<sup>2228</sup> In the course of the day, Serbian forces encircled Izbica/Izbicë.<sup>2229</sup> Shortly thereafter, VJ forces entered the village and set fire to some houses.<sup>2230</sup>

613. On 28 March 1999, at around 0200 hours, Milazim Thaçi, who had come to Izbica/Izbicë a few days earlier, heard gunshots.<sup>2231</sup> Between 0800 hours and 0900 hours, Izbica/Izbicë's residents who had stayed in their houses until then, gathered at the field with the displaced people.<sup>2232</sup> There were about 5,000 people remaining in the field at the time; the rest of them having left towards Tušilje/Tushilë.<sup>2233</sup>

614. Milazim Thaçi, Sadik Januzi and Mustafa Dragaj gave slightly different accounts of the events that took place in the field. Milazim Thaçi stated that at around 0930 hours, three men with painted faces came to the field.<sup>2234</sup> Two of them wore "green or blue-green" standard police uniforms. The third man wore a camouflage uniform with a "green or blue-green" colour pattern. Milazim Thaçi understood the three men to be policemen.<sup>2235</sup> The three men set fire to a haystack and demanded money in exchange for the protection of people's properties.<sup>2236</sup> These three men in uniform spoke Serbian.<sup>2237</sup> Many of the people gave large amounts of money.<sup>2238</sup> Shortly after the arrival of the three men in uniform, Milazim Thaçi observed about 80 other armed men wearing three different types of uniforms arrive at the field from the direction of Leocina/Leçine.<sup>2239</sup> These men were all heavily armed with automatic guns, knives, ammunition belts and hand-grenades.<sup>2240</sup> Approximately 25 men of the group wore what one witness described to be "blue-green" camouflage uniforms with a "milicija" insignia on the shoulder. The witness believed that they were police.<sup>2241</sup> Other evidence establishes that at the time of the events, PJP of the MUP wore a green camouflage uniform.<sup>2242</sup> The presence of PJP is supported by documentary evidence indicating that the 35<sup>th</sup> and 85<sup>th</sup> detachments PJP units were sent by the Accused to the municipality of Srbica/Skenderaj for a period of 40 days from 20 February 1999.<sup>2243</sup> Other forces from the group

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<sup>2228</sup> Liri Loshi, T 691; Milazim Thaçi, T 4947. Liri Loshi is one of the men that went to Tušilje/Tushilë.

<sup>2229</sup> Liri Loshi, T 692.

<sup>2230</sup> Sadik Januzi, Exhibit P282, p 6.

<sup>2231</sup> Milazim Thaçi, T 5039.

<sup>2232</sup> Mustafa Dragaj, T 605, 663; Milazim Thaçi, T 4948, 4956, 5039; Sadik Januzi, Exhibit P282, p 6.

<sup>2233</sup> Sadik Januzi, Exhibit P282, p 6.

<sup>2234</sup> Milazim Thaçi, T 4957, 5033.

<sup>2235</sup> Milazim Thaçi, T 4957.

<sup>2236</sup> Milazim Thaçi, T 4956-4957, 4986.

<sup>2237</sup> Milazim Thaçi, T 4957.

<sup>2238</sup> Milazim Thaçi, T 4957.

<sup>2239</sup> Milazim Thaçi, T 4958.

<sup>2240</sup> Milazim Thaçi, T 4957-4959.

<sup>2241</sup> Milazim Thaçi, T 4957-4958, 4987-4994.

<sup>2242</sup> K79, Exhibit P1260 (*Milutinović* transcript), T9590, 9588-9589; K25, Exhibit P342 (*Milutinović* transcript), T 4664, 4674; K25, Exhibit P341-A (*Milošević* transcript) T 7845; K25, Exhibit P340, p 20; K86, T 5120; Žarko Braković, Exhibit P759, para 7.

<sup>2243</sup> Exhibit P1186.

were wearing green camouflage army uniforms. There were also men wearing a mixed colour camouflage uniform with black scarves on their heads, which is consistent with uniforms worn by some paramilitary units.<sup>2244</sup> If any of these men were from a paramilitary formation, they were clearly operating in conjunction with the other Serbian forces present, in a coordinated operation. In the Chamber's finding, the forces present in Izbica/Izbicë on 28 March 1999 included VJ and PJP units of the MUP executing a coordinated action.

615. Sadik Januzi stated that at around 1300 hours, a group of 40 to 50 soldiers came to the field where people were gathered. He then saw three of them approach the people and threaten to burn the houses in the village unless they were given money.<sup>2245</sup>

616. Mustafa Dragaj testified that around 200 to 300 police and VJ then came to the field.<sup>2246</sup> Dragaj's statement from November 1999 records him as saying that the forces were all members of the police. On cross-examination, Dragaj acknowledged that he did not actually look at the men's uniforms because he feared for his life.<sup>2247</sup>

617. There are discrepancies between the evidence of Milazim Thaçi, Mustafa Dragaj and Sadik Januzi. However, the Chamber finds that the events happened several years ago and that it is not surprising that witnesses recall them differently. The Chamber, therefore, does not consider that these discrepancies undermine the credibility of the witnesses with respect to the events in Izbica/Izbicë.

618. After money was taken from people in the field, an order was given to the Serbian forces to separate the men from the women and children.<sup>2248</sup> The men were taken to a road, a short distance away from the field and were made to sit two abreast.<sup>2249</sup> About a dozen boys aged between 13 and 16 years were made to join the men but were later released in exchange for money.<sup>2250</sup> There were approximately 157 men in the group of men, aged between 45 to 86 years old, one of whom, Hetem Osmanaj, was handicapped.<sup>2251</sup> The men were mocked and asked "Where is America? Where is Clinton? Where is Thaçi?"<sup>2252</sup> They were ordered to take their traditional *plis* hats off, throw them on the ground, and then money was demanded to have the *plis* back.<sup>2253</sup> Some men gave money but

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<sup>2244</sup> Milazim Thaçi, T 4958-4959, 4987-4994.

<sup>2245</sup> Sadik Januzi, Exhibit P282, p 6.

<sup>2246</sup> Mustafa Dragaj, T 606-607, 622-623, 664-665.

<sup>2247</sup> Mustafa Dragaj, T 622-623.

<sup>2248</sup> Sadik Januzi, Exhibit P282, p 6; Milazim Thaçi, T 4959; Mustafa Dragaj, T 607.

<sup>2249</sup> Sadik Januzi, Exhibit P282, p 6.

<sup>2250</sup> Sadik Januzi, Exhibit P282, p 7.

<sup>2251</sup> Milazim Thaçi, T 4960; Mustafa Dragaj, T 612-613, 615; 671-672; *see also* Liri Loshi, T 696, 702.

<sup>2252</sup> Milazim Thaçi, T 4960-4962.

<sup>2253</sup> Milazim Thaçi, T 4960-4961; Mustafa Dragaj, T 607-608.

Mustafa Dragaj, who did not have any, was hit in the eye.<sup>2254</sup> The men were told that they would be slaughtered.<sup>2255</sup>

619. In the meantime, the women and the children had been ordered to raise three fingers, a sign meaning “this is Serbia” and told that they would be sent to Albania.<sup>2256</sup> From Izbica/Izbicë, the women and the children were sent towards Albania. In the course of the next seven days, the women and the children travelled through Brocna/Burojë, Jošanica/Jashanicë, Klina/Klinë and Iglarevo/Gllarevë, in Srbica/Skenderaj municipality.<sup>2257</sup> In Iglarevo/Gllarevë the women and children heard that the war was over and that they could go back to their village.<sup>2258</sup>

620. There is evidence which the Chamber accepts that on or around 28 March 1999, Zoje Osmani (Osmana) (67 years old)<sup>2259</sup> and Ajmone Citaku (81 years old), two of the women in the field in Izbica/Izbicë, were burnt to death when the tractors they were sitting on were set on fire by members of the Serbian forces.<sup>2260</sup> There is also evidence that another woman, Zade Dragaj (71 years old)<sup>2261</sup>, was killed by Serbian forces in the field on the same day. This evidence is corroborated by Liri Loshi’s evidence, that on 31 March 1999, the bodies of the three women were found and buried in Izbica/Izbicë and that burnt tractors were found in the field.<sup>2262</sup> Forensic evidence discussed in more details later in the Judgement, established that the remains of some of the people buried in Izbica/Izbicë were later exhumed from Petrovo Selo PJP Centre, in Serbia. In 2001, the bodies of Zoje Osmani (Osmana) and Zade Dragaj were exhumed from Petrovo Selo PJP Centre and examined by Serbian forensic experts. The autopsy reports concluded that no cause of death could be ascertained for Zoje Osmani (Osmana). However, it was reported that her bones had been exposed to high temperature.<sup>2263</sup> With respect to Zade Dragaj, the autopsy reports revealed that she died of gunshot wounds.<sup>2264</sup> The body of Ajmone Citaku was never found by the forensic experts. The overall evidence satisfies the Chamber that Zoje Osmani, Ajmone Citaku and Zade Dragaj were killed by Serbian forces on 28 March 1999 in Izbica/Izbicë. The Chamber is satisfied that the three victims were unarmed and that they were not taking active part in the hostilities at the time they were killed. The Chamber is further satisfied that the victims were Kosovo Albanian.

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<sup>2254</sup> Mustafa Dragaj, T 607.

<sup>2255</sup> Mustafa Dragaj, T 607.

<sup>2256</sup> Milazim Thaçi, T 4959-4960.

<sup>2257</sup> Mustafa Dragaj, T 609; Milazim Thaçi, T 4959-4960, 4982.

<sup>2258</sup> Milazim Thaçi, T 4982.

<sup>2259</sup> Also identified in the evidence as Zoje Osmana.

<sup>2260</sup> Liri Loshi, T 707; Mustafa Dragaj, T 615.

<sup>2261</sup> Also identified in the evidence as Zada Dragaj (Draga).

<sup>2262</sup> Exhibit P292; Liri Loshi, T 707. Exhibit P288 depicts the area where the civilian population had gathered prior to the massacre and where the men were separated from the women and children. The images show burned tractors and cars. Liri Loshi testified that a woman, Ajmone Citaku, had been burned to death inside one of the tractors, although the body of the woman was not on the film.

621. Several witnesses identified the apparent leader of the Serbian forces in Izbica/Izbicë as a captain of approximately 30 years old, 165 centimetres tall and fat, with dark hair,<sup>2265</sup> wearing a green camouflage VJ uniform with an insignia on the right arm. He carried a pistol, a knife, two items of communication equipment and explosives. This captain gave the order to separate the men into two groups of 70 men each and for them to be taken in opposite directions.<sup>2266</sup> One group of men was escorted by Serbian forces towards a wood in the east. The other main group was led towards the hills to the west and subsequently subdivided into three sub-groups.<sup>2267</sup> Milazim Thaçi was in a sub-group of 33 men who were escorted through a hilly area towards a water creek by a man in a green uniform carrying a machine gun, believed to be a policeman.<sup>2268</sup> As the group reached the creek, the policeman ordered the men to face towards the creek and kneel down.<sup>2269</sup> Almost immediately, a burst of shots was heard for about 30 seconds. Two men fell on top of Milazim Thaçi, knocking him to the ground.<sup>2270</sup> One of them was Uka Thaçi and the other was Isuf Zezeqe Shala.<sup>2271</sup> A few seconds afterwards, Milazim Thaçi heard the policeman say “this one is still breathing”. He then heard abuse being shouted and the sound of a single shot.<sup>2272</sup> As he lay on the ground, Milazim Thaçi saw that Uka Thaçi’s head had been blown off. He also heard moaning from Demush Behrami, who died shortly thereafter.<sup>2273</sup> The policeman, perhaps with others, moved on. Milazim Thaçi, Hazir (Hajzir) Kotorri and Jetish Qallapeki survived the shooting.<sup>2274</sup> Milazim Thaçi identified the following people as amongst those killed on that day: Demush Behrami, Muhamet Behrami, Nuredin Behrami, Avdullah Duraku, Bel A. Duraku, Haliti Haliti (Haljiti/Halit), Hazir (Hajriz) Hoti, Qerim Hoti, Tahir Hoti, Brahim Kotoori (Kotorri), Azem Osmani, Muharrem Osmani, Isuf Shala, Hijraz Shala, Qelaj Regjie, Mehmet Beajruku, Sokol Duraku, Brahim Kotorri, Regje Duraku, Uke Uka.<sup>2275</sup> At the time, these Kosovo Albanian men were in the custody of Serbian forces, unarmed and not taking an active part in hostilities.

<sup>2263</sup> See *infra*, paras, 1511-1513.

<sup>2264</sup> See *infra*, para 1513.

<sup>2265</sup> Milazim Thaçi, T 4964, 5045; Sadik Januzi, Exhibit P282, p 7; Mustafa Dragaj, T 609-610. Mustafa Dragaj, a witness testifying to the same events, stated that the uniform of the man who gave the order had the colours of both police and VJ uniforms.

<sup>2266</sup> Milazim Thaçi, T 4964, 5045; Sadik Januzi, P282, p 7.

<sup>2267</sup> Mustafa Dragaj, T 608-609; Milazim Thaçi, T 5019.

<sup>2268</sup> Milazim Thaçi, T 4963-4965, 4973, 5019.

<sup>2269</sup> Milazim Thaçi, T 4964, 4966.

<sup>2270</sup> Milazim Thaçi, T 4964-4967; see also, Liri Loshi, T 696.

<sup>2271</sup> Milazim Thaçi, T 4967.

<sup>2272</sup> Milazim Thaçi, T 4967; see also Liri Loshi, T 696.

<sup>2273</sup> Milazim Thaçi, T 4967.

<sup>2274</sup> Liri Loshi, T 696; Milazim Thaçi, T 4968-4969, 4971-4972, 4980-4981, 5043.

<sup>2275</sup> Exhibit P821.

622. Meanwhile the other group of about 70 men was escorted towards a wood to the east by members of the Serbian forces.<sup>2276</sup> Before the men had reached the wood, they were told to turn around and they were shot from behind.<sup>2277</sup> One of the men, Hajriz Dragaj (Draga), was hit by a bullet and fell on top of Mustafa Dragaj.<sup>2278</sup> Bodies covered with blood fell on top of Sadik Januzi. After the initial shooting, a member of the Serbian forces looked for survivors and seven or eight more shots were fired. One member of the Serbian forces then said: “Let’s go, our work is over”. Mustafa Dragaj identified the following men from this group as having died in the shooting: Bajram Bajra, Ilaz Bajra, Sali Dervishi, Ilaz Dervishi, Ilaz Devishi, Ali Draga, Cen Draga, Hajriz Draga, Ismet Draga, Murat Draga (Dragaj), Rrustem (Rustem) Draga, Zade (Zada) Dragaj, Fatmir Osmani, Ismajl Qelaj, Rexhep Qelaj, Metush Qelaj, Idriz Shala, Sali (Salih) Shala, Halim Shala, Deshevcu Pajazit, Kujtim Shala, Kajtaz Islami, Hetem Osmanaj.<sup>2279</sup> Two men, Hajriz Dragaj (Draga) and Sadik Sherifi died later that day to the injuries they sustained during the shooting.<sup>2280</sup> The Chamber is satisfied that, at the time of their killing, these men were unarmed, in the custody of Serbian forces and, therefore, they were not taking active part in the hostilities. The Chamber is satisfied that these victims were Kosovo Albanians. The Chamber is further satisfied that from this group, Mustafa Dragaj, Hajrez Draga<sup>2281</sup>, Sheremet Krasniqi, Rrustem Hoti, Hasan Dragaj, Hysen Lnu, Hazir Shaqiri, Musli Kotori, Rustem Malushi and Sadik Januzi, survived the shooting.<sup>2282</sup>

623. Some of the survivors of the different groups lay on the ground for 20 to 40 minutes after the shooting before they crawled to the nearby woods and hills.<sup>2283</sup> As he fled to the woods after the shooting, Mustafa Dragaj observed a number of bodies lying in different locations.<sup>2284</sup> One of the men who initially survived the shooting Hazir (Hajzir) Kotorri (Kotoori), was shot dead by a man speaking Serbian as he ran towards the woods.<sup>2285</sup>

624. Meanwhile, Milazim Thaçi and two other survivors of the shooting, Sheqir Kotorri (Kotoori) and Jetish Qallapeki, made their way to the village of Vocnjak/Vajnikë, adjacent to

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<sup>2276</sup> Mustafa Dragaj, T 608-609, 612, 664. Despite the discrepancies between the evidence of Sadik Jaunzi and Mustafa Dragaj with respect to the circumstances of the shooting and the forces present, the balance of the evidence indicates that the two men were part of this group.

<sup>2277</sup> Mustafa Dragaj, T 608; Sadik Januzi, Exhibit P282, p 7.

<sup>2278</sup> Mustafa Dragaj, T 608-609.

<sup>2279</sup> Mustafa Dragaj, T 608-611.

<sup>2280</sup> Sadik Sherifi was identified by Liri Loshi (Exhibits P291, P292) and Hajriz Dragaj was identified by Mustafa Dragaj (Mustafa Dragaj, T 608-611).

<sup>2281</sup> The Chamber accepts that Hajrez Draga and Hajriz Dragaj (Draga) are two different persons, Mustafa Dragaj, T 610-611.

<sup>2282</sup> Mustafa Dragaj, T 610-611; *see also* Liri Loshi, T 696. Sadik Januzi identified Hasan Draga (Dragaj), Hysen Lnu, Hazir Shaqiri, Musli Kotorri (Kotoori), Rustem Malushi. Mustafa Dragaj identified Hajrez Draga (Dragaj), Sheremet Krasniqi and Rrustem Hoti.

<sup>2283</sup> Milazim Thaçi, T 4967-4969, 5043; Exhibit P820; Mustafa Dragaj, T 609, 613.

<sup>2284</sup> Mustafa Dragaj, T 613.

<sup>2285</sup> Milazim Thaçi, T 5043.



Izbica/Izbicë.<sup>2286</sup> On the way, Milazim Thaçi saw Serbian forces wearing VJ boots.<sup>2287</sup> At 1900 hours, on 28 March 1999, Milazim Thaçi arrived in Vocnjak/Vajnikë and saw that the village was burning.<sup>2288</sup> Two other survivors of the shooting, Sadik Januzi and Hazir Shaqiri went to Kladernica/Klladërnice, where they stayed for seven to eight days.<sup>2289</sup>

625. The Serbian forces left Izbica/Izbicë on 30 March 1999.<sup>2290</sup> The same day, a doctor from the area, Liri Loshi, came to Izbica/Izbicë. He did so because he had been told by women patients who had been in Izbica/Izbicë that Serbian forces had killed a large number of people in the village and he wanted to verify this information.<sup>2291</sup> Liri Loshi arrived in Izbica/Izbicë after dark and he stayed only for a short time. He observed a large number of bodies.<sup>2292</sup> Liri Loshi decided to come back the next day to film the scene to show what had happened.<sup>2293</sup>

626. On 31 March 1999, Liri Loshi returned to Izbica/Izbicë with Sefedin Thaçi, who had a video-camera. Together they went to the bodies, where Liri Loshi gave instructions about the filming to Thaçi because he wanted to show what had happened and help identify the victims. While Thaçi continued with the task of recording the scene, Liri Loshi attended to patients. There was also some filming that day. Liri Loshi explained that the video showed groups of bodies still in the locations where they had apparently been killed.<sup>2294</sup> The Chamber received this video film,<sup>2295</sup> and still photographs of the victims from the film, into evidence.<sup>2296</sup> Also in evidence is a commentary by Liri Loshi on the video film which contains an overview of what is filmed and a description of the victims identified in the video film; the commentary also includes the names of some of the victims, and provides descriptions of the clothing worn by them and, in some instances, other general comments.<sup>2297</sup>

627. Based on an analysis of the above mentioned exhibits, the Chamber accepts that the video film depicts different locations throughout Izbica/Izbicë filmed on 31 March 1999 and 1 April 1999. One of the locations on the video film show where the women and children were separated from the

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<sup>2286</sup> Milazim Thaçi, T 4769, 4971-4972; Exhibit P820.

<sup>2287</sup> Milazim Thaçi, T 4969.

<sup>2288</sup> Milazim Thaçi, T 4972.

<sup>2289</sup> Sadik Januzi, Exhibit P282, p 7.

<sup>2290</sup> Milazim Thaçi, T 4978-4979; Mustafa Dragaj, T 613.

<sup>2291</sup> Liri Loshi, T 696-697.

<sup>2292</sup> Liri Loshi, T 699.

<sup>2293</sup> Liri Loshi, T 699.

<sup>2294</sup> Exhibit P288, Exhibit P289; Exhibit P290.

<sup>2295</sup> Exhibit P288.

<sup>2296</sup> Exhibit P289 (still shots of the groups of bodies found in Izbica/Izbicë); Exhibit P290 (individual photos of victims identified in Izbica/Izbicë).

<sup>2297</sup> Liri Loshi, T 702-710, 717-718; Exhibit P289; Exhibit P290; Exhibit P291. The remaining victims that Liri Loshi could not identify in his commentary (Exhibit P291), were later identified by local villagers, including friends and family members, prior to their burial in Izbica/Izbicë. As will be discussed below, the bodies seen on the video that were buried by the villagers, were recorded by Liri Loshi (Exhibit P292).

men on 28 March 1999 prior to the men being ordered to the east or west of the village.<sup>2298</sup> Footage of burned tractors and cars was also recorded at this location.<sup>2299</sup> Another location filmed shows a group of approximately 40 male bodies in the west of the village.<sup>2300</sup> The average age of this group was estimated to be 70 years and there were walking sticks found next to the bodies.<sup>2301</sup> The body of a 30 year old man who was deaf was also found in this group.<sup>2302</sup> The other location is to the east of the Izbica/Izbicë, where three additional groups of dead men are shown some 20 metres apart.<sup>2303</sup> Among this group Liri Loshi identified three of his relatives, Selman, Jashari and Sami Loshi, and some of his patients, although he did not recall all their names.<sup>2304</sup> Some of the bodies, including that of Sami Loshi, also had cuts on their face, apparently made by knives or razors.<sup>2305</sup> The bodies had large and irregular bullet wounds to their face, torso, hands, arms and legs and they were in a state of decomposition.<sup>2306</sup> All were dressed in civilian clothes.<sup>2307</sup> Also depicted on the video film is the burial of bodies that were found in Izbica/Izbicë on 30 March 1999.<sup>2308</sup> The final location is filmed on 10 June 1999, when Liri Loshi returned to Izbica/Izbicë. It shows the location from which bodies that had been buried on 31 March and 1 April 1999 had been removed. Loshi had been told that Serbian forces had exhumed the bodies.<sup>2309</sup> Planks showing the names of the buried victims and the gloves, Liri Loshi believed, were used by Serbian forces while exhuming the bodies, are also seen in this footage.<sup>2310</sup>

628. The Chamber accepts that the video film (and the photographs) genuinely depicts scenes actually seen by Liri Loshi in Izbica/Izbicë on and following 31 March 1999, as described in his evidence.<sup>2311</sup>

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<sup>2298</sup> Liri Loshi, Exhibit P288 (Video clip 4); Liri Loshi, T 707.

<sup>2299</sup> As discussed earlier in this Chapter, the Chamber found that elderly women named Ajmone Citaku and Zoje Osmana, had been burnt to death on a tractor. Although Liri Loshi explained that Ajmone Citaku is not seen on the video film, the Chamber accepts, on the basis of his explanation, that this was the tractor where Ajmone Ciatku and Zoje Osmana were burnt to death by Serbian forces, Exhibit P288 (Video clip 4); Liri Loshi, T 707-708; Exhibit P291 (Commentary of video film), p 15.

<sup>2300</sup> Liri Loshi, Exhibit P288 (Video clip 1); Liri Loshi, T 702.

<sup>2301</sup> Liri Loshi, Exhibit P288 (Video clip 1); Liri Loshi, T 703.

<sup>2302</sup> Liri Loshi, T 702-703; Exhibit P288.

<sup>2303</sup> The Chamber recalls eyewitness evidence of a group of men being taken to the east of the village and then being taken away in three separate groups and killed. The video footage is consistent with this evidence. Milazim Thaçi, T 4967-4968, 4980, 5043; Liri Loshi, Exhibit P288; Liri Loshi, T 704.

<sup>2304</sup> Liri Loshi, Exhibit P288 (Video clip 2 and 3); Liri Loshi, T 704-705; Exhibit P291 (Commentary of video film), p 20.

<sup>2305</sup> Liri Loshi, T 705.

<sup>2306</sup> Mustafa Dragaj, T 614; Liri Loshi, T 705.

<sup>2307</sup> Liri Loshi, T 706, 780-782, 800-801.

<sup>2308</sup> Liri Loshi, Exhibit P288 (Video clip 5 and 6); Liri Loshi T 708-709.

<sup>2309</sup> Liri Loshi, T 721-722.

<sup>2310</sup> Exhibit P293 (Video clip 7 and 8); Liri Loshi, T 723. The Defence questioned why this video footage had not been provided by the witness during his testimony in the *Milošević* and *Milutinović* case. The Chamber accepts the witnesses explanation that he only provided this at the request of the Prosecution in this case, and had not previously been asked for it (Liri Loshi, T 790-791).

<sup>2311</sup> *See supra*, paras 1412-1417; Liri Loshi, T 702.

629. As mentioned above, and recorded on the video film, on 31 March 1999 and 1 April 1999, bodies of victims who had been killed on 28 March 1999 in Izbica/Izbicë were buried in the village. However, some bodies were taken by family members to be buried elsewhere. Prior to the burial of the bodies, those victims whom Liri Loshi had not been able to identify by name were identified by their relatives.<sup>2312</sup> At the burial site, a wooden plank bearing the deceased's name and date of birth was put on each grave.<sup>2313</sup> At this time, with the assistance of the villagers, Liri Loshi compiled a list of the names of the 127 people buried in Izbica/Izbicë on 31 March 1999 and 1 April 1999.<sup>2314</sup> Having reviewed Liri Loshi's evidence of the video film,<sup>2315</sup> photographs,<sup>2316</sup> commentary<sup>2317</sup> and the list of victims buried in Izbica/Izbicë,<sup>2318</sup> the Chamber accepts that evidence and will rely upon it for the purpose of identifying those victims of the mass killing in Izbica/Izbicë.

630. The Chamber accepts that the persons identified in the video film, photographs, commentary and list of victims buried in Izbica/Izbicë, with the exception of Ajet Beqiri and Sami Bajra, were killed in Izbica/Izbicë on 28 March 1999 by Serbian forces. The Chamber accepts the evidence contained in the commentary that Ajet Beqiri was a member of the KLA and was killed earlier and that Sami Bajra was not killed during the massacre in Izbica/Izbicë on 28 March 1999.<sup>2319</sup> While Liri Loshi's commentary suggests that another person, Sali Shala, may have been killed in the mountains,<sup>2320</sup> the Chamber accepts the evidence of Mustafa Dragaj and Milazim Thaçi who identified him as one of the men killed in Izbica/Izbicë on 28 March 1999. As will be discussed in more detail later in this Judgement,<sup>2321</sup> the Chamber accepts that the video film recorded the victims of the killings in Izbica/Izbicë in the locations where they were killed. The Chamber is therefore satisfied that the bodies filmed, save for the above mentioned victims, were not brought from elsewhere, as contended by the Defence.

631. Some two months after the killings in Izbica/Izbicë, on 28 May 1999, from his position in the surrounding hills, Mustafa Dragaj observed shells falling on Izbica/Izbicë. This was followed by the return to the village of Serbian forces.<sup>2322</sup> In the course of the next four to five days, VJ and

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<sup>2312</sup> Liri Loshi, Exhibit P288 (Video clip 5 and 6); Liri Loshi, T 708-710.

<sup>2313</sup> Liri Loshi, T 709-710; Mustafa Dragaj, T 616-617.

<sup>2314</sup> Liri Loshi also identified Ajet Beqiri and Zaim Beqiri as being buried. The Chamber draws attention to the fact that in the commentary to the video Liri Loshi recorded that these two men were members of the KLA and not part of the massacre in Izbica/Izbicë on 28 March 1999. (Exhibit P291, pp 23, 24; Exhibit P292; Liri Loshi, T 706). Their names have not been included below in the list of villagers killed in the village of Izbica/Izbicë on 28 March 1999.

<sup>2315</sup> Exhibit P288.

<sup>2316</sup> Exhibit P289; Exhibit P290.

<sup>2317</sup> Exhibit P291.

<sup>2318</sup> Exhibit P292.

<sup>2319</sup> Exhibit P291, pp 23, 24; Exhibit P292; Liri Loshi, T 706.

<sup>2320</sup> Exhibit P291, p 22.

<sup>2321</sup> *See supra*, para 1412.

<sup>2322</sup> Mustafa Dragaj, T 617-620.

police exhumed bodies that had been buried in the village on 31 March 1999 and 1 April 1999.<sup>2323</sup> On 10 June 1999, Liri Loshi observed that gloves apparently used in the exhumations and some of the wooden planks bearing names and dates of birth of deceased had been left on a strip of land from where bodies of the victims had been exhumed.<sup>2324</sup> As mentioned above, this was recorded in the video film tendered into evidence. A witness testified that some of the bodies buried in Izbica/Izbičë on 31 March 1999 and 1 April 1999, including that of Fatmir Osmani, were later reburied by Serbian authorities in Kosovska Mitrovica/Mitrovicë, in Suvi Do/Suhadoll in Lipljan/Lipjan municipality, near Vučitrn/Vuchtrri and at the Batajnica SAJ Centre, near Belgrade.<sup>2325</sup> A VJ report on war crimes and other serious crimes committed during the war contains an entry concerning the discovery of 144 "fresh" graves of unidentified persons on 29 May 1999 in Izbica/Izbičë.<sup>2326</sup> Radomir Gojović, the Chief of the Legal Department of the General Staff of the VJ at the time, testified that an investigation was initiated on 29 May 1999 and that this incident was classified as murder.<sup>2327</sup> Gojović testified that in January of 2010, efforts were still being made to identify the perpetrators. No one has been charged and no case has yet been brought to trial.<sup>2328</sup>

632. As it will be discussed in more detail later in this Judgement, the bodies of 29 of these victims, killed in Izbica/Izbičë on 28 March 1999, were exhumed in 2001 from Petrovo Selo PJP Centre.<sup>2329</sup> The Chamber received autopsy reports that established that the cause of death for 17 of these victims was related to gunshot wounds. The evidence did not provide for the cause of death to be ascertained for the remaining victims.<sup>2330</sup> No further evidence has been received by this Chamber as to the location where the remaining 103 victims were exhumed nor have any additional autopsy reports been received. In the absence of forensic reports, based on survivor eyewitness testimony and the accepted evidence of Liri Loshi, the Chamber finds that these remaining 103 victims died as a result of being shot by MUP forces in Izbica/Izbičë on 28 March 1999.

633. Based on the names of victims provided by survivor witnesses, Mustafa Dragaj and Milazim Thaçi, and the analysed list provided by Liri Loshi, the Chamber finds that no less than 132 individuals were killed when shot by Serbian forces in Izbica/Izbičë on 28 March 1999. The names of the victims suggest that they were Kosovo Albanians, which is confirmed by forensic reports for

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<sup>2323</sup> Mustafa Dragaj, T 618-619, 674.

<sup>2324</sup> Liri Loshi, T 723; Liri Loshi, Exhibit P293.

<sup>2325</sup> Mustafa Dragaj, T 619-620; *See supra*, paras 1478-1506.

<sup>2326</sup> Radomir Gojović, Exhibit D510, p 73.

<sup>2327</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16682; Radomir Gojović, T 10335-10336.

<sup>2328</sup> Radomir Gojović, T 10458-10461.

<sup>2329</sup> *See supra*, paras 1507-1514, 1727. This figure does not include the two individuals discussed above who were killed in the fields and their remains were exhumed from Petrovo Selo.

<sup>2330</sup> *See supra*, paras 1511-1513.

the vast majority of them.<sup>2331</sup> The Chamber accepts that the victims were unarmed Kosovo Albanians taking no active part in hostilities and that they were being detained by Serbian forces at the time they were killed. The Chamber finds that the operation carried out by Serbian forces in Izbica/Izbiçë was manifestly aimed at killing and expelling Kosovo Albanian villagers from their home. The Chamber also finds that the villagers were killed and expelled because they were Kosovo Albanians. The following 115 victims were scheduled in the Indictment:

Jetullah Alushi, Asllan Amrush, Asslan Bajra, Bajram Bajra, Bajram C. Bajra, Bajram S. Bajra, Fazli Bajra, Ilaz Bajra, Bislim Bajraktari, Hajdar Bajraktari, Demush Behrami, Muhamet Behrami, Nuredin Behrami, Asllan Dajaku, Sali Dervishi, Bajram Dervishi, Ilaz Dervishi, Musli Doci (Doqi), Hamdi Doqi, Ali Draga, Cen Draga, Hajriz Draga (Dragaj), Ismet Draga, Murat Draga (Dragaj), Rahim Draga, Rustem (Rrustem) Draga, Avdullah Duraku, Bel A. Duraku, Dibran Duraku, Rexhep (Rexhe) Duraku, Muhamet Emra (or Muhamet Kadriu), Lah (Hajrullah) Fetahu, Halil Hajdari, Mehmet Hajra, Haliti (Haljiti/Halit) Haliti, Fajz Haxha, Hazir Hoti, Qerim Hoti, Rifat Hoti, Rrustem Hoti, Tahir Hoti, Muhamet Hoti, Saditk Hoti, Shefqet A. Hoti, Vehbi Hoti, Zenel Isufi, Beqir Jetullahu, Kajtaz Z. Kajtazdi, Bajram Kelmendi, Jetullah Kelmedi, Ram (Rame) Kotoori (Kotorri), Hajzer Kotoori (Kotorri), Deli Krasniqi, Mustaf Krasniqi, Azem Kuqina, Sami Loshi, Jashar (Jasar) Loshi (Ljosaj), Selman Loshi, Halil (Halit) Morina, Sokol H. Murseli, Beqir Musliu, Ilaz Musliu, Shaban Musliu, Halit Musliu, Naim Musliu, Mehmet Musliu, Hazan Mustafa (Mstafaj), Azem Osmani, Fatmir Osmani, Hetem Osmani, Muharrem Osmani, Sabit Qallapeku, Ismajl Qelaj, Rexhep Qelaj, Metush Qelaj, Harmz Qupeva, Ramadan Raci, Halit Ramaj, Muj (Muje) Rexhepi, Mustaf (Mustafa) Sejdiu, Azem Shabani, Hysen A. Shala, Idriz Shala, Isuf Shala, Muj (Muje) Shala, Sali (Salih) Shala, Zymer Shala, Halim Shala, Hijraz Shala, Sadik Sherifi, Zeqir Shpati, Rizah Spahiu, Ram (Rame) Sylja, Brahim Tahiri, Gani Temaj, Hamdi Temaj, Hamit B. Thaçi, Ram (Rame) Thaçi, Ajeta D. Thaçi, Sheremet (Shermet) Thaçi, Uke Uka, Zenel Veliki, Idriz Xhemajli, Qazim Xhemajli, Jahir Zeka, Milazim Zeka, Zyre (Zyhra) Fejza, Brahim Bajra, Dibran A. Dani, Ibrahim Gashi, Ram Gashi, Brahim Kootori, Rrahim Krasniqi, Pajazit Qaka, unidentified male.<sup>2332</sup>

634. The Chamber also accepts, based on the evidence, the killing of the following 17 people not listed by name in the Indictment. They are also listed in the Victim Chart, related to Izbica/Izbiçë, annexed to this Judgement:

<sup>2331</sup> See *supra*, paras 1408-1410, 1727-1729; Eric Baccard, Exhibit P1139, p 44; Exhibit P1163; Exhibit P1164; Exhibit P1165, p 2.

<sup>2332</sup> Although the Chamber notes that this list does not include the names of those victims that the Chamber has already established were killed elsewhere in the village (*see supra*, paras 1727-1729). Liri Loshi, T 717-718; Mustafa Dragaj, T 608-611; Exhibit P291; Exhibit P292; Exhibit P821; See also, Exhibit P477.

Enver Bajra, Qazim Bajrami, Zaim Bajrami, Mehmet Beajruku, Sofijie Draga, Pajazit Deshevc, Sokol Duraku, Islam Haliti, Qerime Haliti, Kajtaž Islami, Rrahim Kelmendi, Florim Krasniqi, Qerime Mulaj, Rabiye Osmani, Aziz Spahiu, Kujtim Shala and Zecir Xhemajli.<sup>2333</sup>

## 2. Expulsion from villages in Srbica/Skenderaj municipality

635. The village of Turicevac/Turiqec is situated in Srbica/Skenderaj municipality. It lies southwest, about 12 kilometres from the town of Srbica/Skenderaj and 13 kilometres from the town of Klina/Klinë.<sup>2334</sup> The other neighbouring villages are Gornji Obilic/Kopiliq-i-Epërm, Donji Obilic/Kopiliq-i-Poshtëm, Brocna/Burojë and Rakitnica/Rakinicë, all located in Srbica/Skenderaj municipality.<sup>2335</sup> Turicevac/Turiqec is divided into the neighbourhoods of Tulan, Fallabogte and Hot-e-Turqevcit.<sup>2336</sup> In March 1999, there were some 100 households and 1,000 residents in Turicevac/Turiqec, of whom less than one hundred had been displaced from the village of Prekaz/Prekaze. Prekaz/Prekaze is located about two kilometres away from Turicevac/Turiqec.<sup>2337</sup> At least a month prior to the relevant events, the KLA had established a headquarters in a school building in Turicevac/Turiqec.<sup>2338</sup> On 24 March 1999, when the NATO bombing campaign started, there were no Serbs in Turicevac/Turiqec or in the neighbouring villages.<sup>2339</sup>

636. On 26 March 1999, in the morning, the houses in Turicevac/Turiqec were shelled from the direction of Brocna/Burojë and gunshots were heard.<sup>2340</sup> The Chamber notes that only VJ had weapons capable of such shelling.<sup>2341</sup> Because of the shelling, at about 0900 hours, people from the village, all Kosovo Albanians, formed a convoy heading towards Tušilje/Tushilë.<sup>2342</sup> Tušilje/Tushilë is a small village, surrounded by hills and forest located about three kilometres from Turicevac/Turiqec, in Srbica/Skenderaj municipality. It was considered to be a safe area.<sup>2343</sup> On the way to Tušilje/Tushilë, the body of one woman and two children were seen near an asphalt road in Turicevac/Turiqec. The dead woman and the children were thought to have been killed when their convoy, going from Izbica/Izbicë to Tušilje/Tushilë, was hit by shells.<sup>2344</sup>

<sup>2333</sup> Exhibit P291; Exhibit P821; Mustafa Dragaj, T 608-611; See also, Exhibit P477.

<sup>2334</sup> Hadije Fazliu, Exhibit P624 (*Milošević* transcript), T 3734; Hadije Fazliu, Exhibit P623, p 2.

<sup>2335</sup> Hadije Fazliu, Exhibit P623, p 2.

<sup>2336</sup> Hadije Fazliu, Exhibit P623, p 2.

<sup>2337</sup> Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1952; Hadije Fazliu, Exhibit P623, p 2.

<sup>2338</sup> Hadije Fazliu, Exhibit P623, p 2; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1968, 1971-1972.

<sup>2339</sup> Hadije Fazliu, Exhibit P623, p 2.

<sup>2340</sup> Hadije Fazliu, Exhibit P623, p 2; Hadije Fazliu, Exhibit P625 (*Milošević* transcript), T 3749, 3751. The vehicles demonstrate the forces to be VJ in the Chamber's finding.

<sup>2341</sup> See *supra*, paras 161, 163.

<sup>2342</sup> Hadije Fazliu, Exhibit P623, p 2.

<sup>2343</sup> Hadije Fazliu, Exhibit P623, p 2; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1952-1953.

<sup>2344</sup> Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1954-1955, 1957.

637. On 26 March 1999, at around 1900 hours, Hadije Fazliu and her family arrived in Tušilje/Tushilë as displaced persons, where they stayed for three nights.<sup>2345</sup> The village was overcrowded with displaced persons from other towns and villages in Kosovo, including Srbica/Skenderaj, Klina/Klinë, Glogovac/Gllogoc and Izbica/Izbicë.<sup>2346</sup> The displaced persons from Klina/Klinë, Glogovac/Gllogoc and Izbica/Izbicë said they fled from their village because they feared for their lives at the hand of Serbian forces or because they had been expelled by them.<sup>2347</sup>

638. On 29 March 1999, at 0800 hours, Serbian forces comprising men wearing different uniforms surrounded Tušilje/Tushilë. As they approached the village they were shooting and they injured a number of people in the village.<sup>2348</sup> The forces entered the village on foot. Some of them wore dark blue camouflage uniforms with helmets and hats. Evidence concerning Serbian uniforms indicates, in the Chamber's finding, that these men were police. Other men on foot had bandannas and painted faces but this evidence is not sufficient to determine if these were police special forces or paramilitary forces. The Serbian forces on foot were followed by VJ who wore green camouflage military uniforms and travelled in VJ tanks and other vehicles. All the Serbian forces were heavily armed and they were acting together in a coordinated manner. They kept the village of Tušilje/Tushilë surrounded for two hours, during which time the people of the village were insulted and forced to sit on the ground.<sup>2349</sup>

639. On the same day, between around 1000 hours and 2100 hours, villagers and displaced people in Tushilë/Tušilje were told by VJ and police to go to Klina/Klinë. They then left Tushilë/Tušilje in successive groups and headed in a convoy on the main road towards the town of Klina/Klinë.<sup>2350</sup> As Hadije Fazliu testified, there was nowhere else to go.<sup>2351</sup> As Fazliu and her family left Tušilje/Tushilë, she observed that Serbian forces separated over 1,500 men from the women and the children in the convoy and took the men away.<sup>2352</sup> The men were taken to a school in the town of Srbica/Skenderaj for questioning. Some were released and others killed.<sup>2353</sup> The convoy of displaced persons continued under police escort towards Klina/Klinë. A large number of VJ in tanks and armoured vehicles were positioned on both sides of the road.<sup>2354</sup> Sometime during

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<sup>2345</sup> Hadije Fazliu, Exhibit P623, pp 2-3.

<sup>2346</sup> Hadije Fazliu, Exhibit P623, pp 2-3; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1953.

<sup>2347</sup> Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1954.

<sup>2348</sup> Hadije Fazliu, Exhibit P623, pp 2-3; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1972.

<sup>2349</sup> Hadije Fazliu, Exhibit P623, p 3.

<sup>2350</sup> Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1958; Hadije Fazliu, Exhibit P623, p 3.

<sup>2351</sup> Hadije Fazliu, Exhibit P623, p 3; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1959-1960.

<sup>2352</sup> Hadije Fazliu, Exhibit P623, p 3.

<sup>2353</sup> Hadije Fazliu, Exhibit P623, p 3; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1958, 1973-1975.

<sup>2354</sup> Hadije Fazliu, Exhibit P623, p 3. The presence of tanks demonstrates the forces to be VJ, in the Chamber's finding.

the day, Hadije Fazliu, members of her family, and others, managed to break away from the convoy to return to Turicevac/Turiqec. As Hadije Fazliu arrived in Turicevac/Turiqec during the course of the evening, she observed that the village had been burnt and was crowded with displaced people.<sup>2355</sup>

640. On 1 April 1999, Serbian forces wearing police uniforms came to Turicevac/Turiqec in civilian cars.<sup>2356</sup> When the villagers saw the police, they ran towards the nearby woods. As they fled, the police ordered them to stop and opened fire in their direction, killing three villagers.<sup>2357</sup> Hadije Fazliu and a group of about 40 women were encircled by police. They were insulted, questioned and ordered by the police to go to Klina/Klinë.<sup>2358</sup> However, they were immediately taken by the police to the school in Turicevac/Turiqec where a large number of women, children and elderly men had already been gathered. The police did not allow the people to go back to their houses, and the people at the school started walking in a convoy towards Klina/Klinë, passing through Brocna/Burojë. On the way, they stopped in the neighbourhood of Bejraktart in Jošanica/Jashanicë village, to spend the night. There were over 1,000 people in the convoy. These were women, children and a few elderly men.<sup>2359</sup> On the road between Turicevac/Turiqec and Jošanica/Jashanicë, Hadije Fazliu observed a number of dead bodies, both men and teenage boys. She also saw that the villages along the road had been burnt.<sup>2360</sup>

641. On 2 April 1999, the convoy of Kosovo Albanian women, children and elderly men attempted to return again to Brocna/Burojë but were turned away by Serbian forces who told them to go to Klina/Klinë. At 1515 hours, the convoy arrived in Klina/Klinë. There was a large Serbian presence in the town; both VJ and police were observed.<sup>2361</sup> Three trucks were provided. They were driven by civilians and took the displaced persons from the convoy from Klina/Klinë, to Volujak/Volljakë, which was located two to three kilometres away. The trucks had to drive back and forth a number of times to transport everyone. VJ were driving up and down the road in tanks as the people were taken in the trucks to Volujak/Volljakë.<sup>2362</sup>

642. From Volujak/Volljakë, the convoy of people again walked in the direction of Đakovica/Gjakovë. They encountered police checkpoints on the road. Approaching Đakovica/Gjakovë, it was observed that the town was burning. Police and VJ stopped the convoy

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<sup>2355</sup> Hadije Fazliu, Exhibit P623, p 3.

<sup>2356</sup> Hadije Fazliu, Exhibit P623, p 3; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1959.

<sup>2357</sup> Hadije Fazliu, Exhibit P623, p 3; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1960-1961: As Hadije Fazliu returned to Turicevac/Turiqec, she saw the bodies of a young man and two old men in Turicevac/Turiqec.

<sup>2358</sup> Hadije Fazliu, Exhibit P623, p 3; Hadije Fazliu, Exhibit P621 (*Milutinović* transcript), T 1959.

<sup>2359</sup> Hadije Fazliu, Exhibit P623, pp 3-4.

<sup>2360</sup> Hadije Fazliu, Exhibit P623, p 4.

<sup>2361</sup> Hadije Fazliu, Exhibit P623, p 4.

<sup>2362</sup> Hadije Fazliu, Exhibit P623, p 4.



from passing through Đakovica/Gjakovë and diverted it along the Prizren road.<sup>2363</sup> As the convoy progressed, Serbian forces told the people in the convoy that the sides of the roads were mined and that they should hurry up.<sup>2364</sup>

643. On the night of 4 April 1999, the convoy arrived at the Albanian border crossing of Qafe e Prushit. Hadije Fazliu observed that tractors and vehicles with no licence plates were parked near the border. Serbian forces there used the vehicles by turning on their ignition with knives.<sup>2365</sup> The convoy passed through the border crossing into Albania. No documents or money were demanded.<sup>2366</sup>

644. In light of this evidence, the Chamber is satisfied that VJ and MUP forces in Turicevac/Turiqec, Tushilë/Tušilje and Klina/Klinë in March and April 1999 took part in joint operations in which Kosovo Albanians were expelled from Kosovo. The Chamber is further satisfied that they were expelled because they were Kosovo Albanians.

### 3. Kladernica/Klladërnice

645. For a number of days in early April 1999, the village of Kladernica/Klladërnice was shelled during the daytime. This drove the residents to seek shelter in the woods but they returned to the village at nightfall as the shelling subsided.<sup>2367</sup> Sadik Januzi, a resident of Brocna/Burojë who had come to Kladernica/Klladërnice for safety, observed that there were more than 40 people staying in each house.<sup>2368</sup>

646. On 12 April 1999 before sunrise, shells fell again on Kladernica/Klladërnice.<sup>2369</sup> Fearing for their safety, some of the young men in the village fled to the nearby woods, while the rest of the people went to the village's school, where between 10,000 and 12,000 people had gathered.<sup>2370</sup> These included women from surrounding villages.<sup>2371</sup>

647. At around 1000 hours that day, Serbian forces wearing dark police uniforms with "police" on their sleeves and other police wearing blue camouflage uniforms surrounded the school

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<sup>2363</sup> Hadije Fazliu, Exhibit P623, p 4.

<sup>2364</sup> Hadije Fazliu, Exhibit P623, p 5.

<sup>2365</sup> Hadije Fazliu, Exhibit P623, p 5.

<sup>2366</sup> Hadije Fazliu, Exhibit P623, p 5; Hadije Fazliu, Exhibit P625 (*Milošević* transcript), T 3756.

<sup>2367</sup> Sadik Januzi, Exhibit P281, p 2.

<sup>2368</sup> Sadik Januzi, Exhibit P281, p 1; Sadik Januzi, Exhibit P 282, p 6.

<sup>2369</sup> Sadik Januzi, Exhibit P282, p 7.

<sup>2370</sup> Sadik Januzi, Exhibit P282, p 7; Sadik Januzi, Exhibit P281, p 2.

<sup>2371</sup> Sadik Januzi, Exhibit P282, p 7.

premises.<sup>2372</sup> The Chamber notes that although police wore solid blue uniforms, this colour sometimes appeared as black. These forces had automatic weapons and some had machine guns with stands.<sup>2373</sup> The Chamber therefore accepts that this description is consistent with MUP forces.<sup>2374</sup> The police separated approximately 300 to 400 young Kosovo Albanian men from the rest of the people and took them away.<sup>2375</sup> The evidence does not disclose what was done with these young men. Meanwhile, the remainder of the approximately 10,000 to 12,000 Kosovo Albanian women, children, elderly and handicapped people were ordered by the Serbian forces to go to Albania.<sup>2376</sup>

648. From Kladernica/Klladërnice, the displaced people travelled in a convoy, estimated to be approximately four kilometres long, through the villages of Obilic/Kopiliq, Turicevac/Turiceq, Brocna/Burojë and Jošanica/Joshanicë, in Klina/Klinë municipality. The convoy travelled by foot and in tractors.<sup>2377</sup> Until the convoy reached Jošanica/Joshanicë, it was escorted by Serbian forces in vehicles. There were VJ on both sides of the road.<sup>2378</sup> The villages along the way were burning and there was no sign of their inhabitants.<sup>2379</sup> The convoy then continued its route to Klina/Klinë, where it arrived at nightfall. At the bridge in Klina/Klinë, the people were questioned by Serbian forces, believed to be VJ, before being allowed to continue under escort toward Volujak/Volljakë, in Klina/Klinë municipality. In Volujak/Volljakë, people stopped for the night in a field. The escorting Serbian forces stayed in the surrounding area.<sup>2380</sup>

649. On 13 April, at around 0500 hours, the convoy left Volujak/Volljakë and travelled on the main road to Đakovica/Gjakovë. On the way, a number of burnt villages and VJ in vehicles and tanks were observed. The convoy arrived in Đakovica/Gjakovë after dark. The town was burning. Both VJ and police were there. The people in the convoy were ordered by Serbian forces to spend the night in a school building. During the night Serbian forces drove past the school in vehicles.<sup>2381</sup>

650. On 14 April 1999, the convoy left Đakovica/Gjakovë. A NATO plane was observed. It was believed to have destroyed the bridge in Đakovica/Gjakovë. The convoy moved on under police escort towards Prizren. A number of VJ posts, and houses occupied by VJ forces, were seen along

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<sup>2372</sup> Sadik Januzi, Exhibit P282, p 7; Sadik Januzi, Exhibit P281, p 2. While Sadik Januzi described the forces in blue camouflage uniform as VJ, in the Chamber's finding the uniform description identifies them as police, although perhaps from the PJP. The dark blue uniforms are consistent with ordinary police from the area.

<sup>2373</sup> Sadik Januzi, Exhibit P281, p 2.

<sup>2374</sup> *See supra*, para 53-54.

<sup>2375</sup> Sadik Januzi, Exhibit P282, pp 7-8; Sadik Januzi, Exhibit P281, p 2.

<sup>2376</sup> Sadik Januzi, Exhibit P282, p 8; Sadik Januzi, Exhibit P281, p 2.

<sup>2377</sup> Sadik Januzi, Exhibit P281, p 2.

<sup>2378</sup> Sadik Januzi, Exhibit P281, p 1.

<sup>2379</sup> Sadik Januzi, Exhibit P281, p 2.

<sup>2380</sup> Sadik Januzi, Exhibit P281, p 3.

<sup>2381</sup> Sadik Januzi, Exhibit P281, p 3.

the road. That night, the police ordered the people from the convoy to stay in a village school approximately 10 kilometres from Prizren.<sup>2382</sup>

651. On 15 April 1999, at around 1100 hours, the convoy arrived in Prizren. There, the people were made to wait in the centre of the town for two to three hours before being driven in buses to Zur/Zhur, in Prizren municipality, where there were Serbian forces. The displaced people from the convoy had to continue from Zur/Zhur to the Albanian border by foot, although the people in at least one bus paid the driver to drive to the border. At the border, VJ collected identification documents and demanded money from the people in the convoy in order for them to be allowed to pass through the border. The people in the convoy crossed to Albania.<sup>2383</sup> The Chamber is satisfied, on the basis of the findings above, that in early April 1999, MUP and VJ forces, taking part in a joint operation expelled Kosovo Albanians from the village of Kladernica/Klladërnice out of Kosovo. The Chamber accepts that they did so because the victims were Kosovo Albanians.

#### **D. Suva Reka/Suharekë Municipality**

652. At the time of the events described below, the population of the entire municipality of Suva Reka/Suharekë, which lies in the southern part of Kosovo, about 20 kilometres to the north-east of Prizren<sup>2384</sup> and within the jurisdiction of the Prizren SUP, was approximately 60,000, of which 8,000 made up the population of the town of Suva Reka/Suharekë itself.<sup>2385</sup> 95 per cent of the population of Suva Reka/Suharekë municipality were Kosovo Albanians, while the remaining five per cent consisted mostly of Serbs and some Roma.<sup>2386</sup> By June 1998, local Serb men in Suva Reka/Suharekë town had been mobilized into the ranks of the Serbian reserve forces and remained mobilized until the end of the war in June 1999.<sup>2387</sup> From June 1998 onwards, members of the Serbian police were stationed in Suva Reka/Suharekë town.<sup>2388</sup> The VJ had troops stationed in the premises of a construction company near the town, although this was not a permanent position.<sup>2389</sup> VJ forces would pass by Suva Reka/Suharekë town regularly to and from their other stations.<sup>2390</sup>

<sup>2382</sup> Sadik Januzi, Exhibit P281, p 3.

<sup>2383</sup> Sadik Januzi, Exhibit P281, p 4.

<sup>2384</sup> Exhibit D3; see also Exhibit P823, p 11; K83, T 372-373.

<sup>2385</sup> Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3605; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7443; Halit Berisha, T 3414.

<sup>2386</sup> Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3605; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7443; Halit Berisha, T 3396.

<sup>2387</sup> Halit Berisha, T 3417-3418; see also T 3393-3394.

<sup>2388</sup> Halit Berisha, T 3405; Hysni Berisha, T 3368.

<sup>2389</sup> Halit Bersiha, T 3405.

<sup>2390</sup> In his testimony in the *Milutinović* trial, the witness stated that the VJ was stationed in Birač/Biraq and Dulje/Duhël, that they would pass through Suva Reka/Suharekë town regularly, but that they were not permanently stationed in Suva Reka/Suharekë town (Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3661).

653. Suva Reka/Suharekë municipality was within the KLA Pashtrik Operational Zone.<sup>2391</sup> In January 1999, KLA's 123<sup>rd</sup> and 121<sup>st</sup> brigades operated in most of the villages in Suva Reka/Suharekë municipality.<sup>2392</sup> In February and March 1999, Serbian forces, being units of VJ and the MUP, were deployed in various locations in Suva Reka/Suharekë municipality.<sup>2393</sup> At this time, the KLA had positions in several villages, including in Pecane/Peqan, Slapuzhane/Sllapuzhan, Semetište/Semetisht, Samodraža/Samadrexhë, Blace/Bllacë, and the mountains of Dobrodeljane/Dobërdelan, in Suva Reka/Suharekë municipality.<sup>2394</sup> Over the course of 20 and 21 March 1999, Serbian forces shelled several villages in Suva Reka/Suharekë municipality, including, *inter alia*, the above named villages where the KLA had positions, as well as Raštane/Reshtan, Studencane/Studençan, Greiçec/Grejcevece and Budakovo/Budakovë.<sup>2395</sup> Members of the 37<sup>th</sup> PJP Detachment were deployed to the area and took part in actions there.<sup>2396</sup> As a result, as will be discussed further below, thousands of Kosovo Albanian people from these villages fled to the villages of Belanica/Bellanicë and Nišor/Nishor in the northwestern part of Suva Reka/Suharekë municipality,<sup>2397</sup> to Banja/Banje in Mališevo/Malishevë municipality,<sup>2398</sup> in a westerly direction to Pagaruša/Pagarushë in Orahovac/Rahovec municipality,<sup>2399</sup> and to the village of Mamuša/Mamushë in Prizren municipality.<sup>2400</sup>

<sup>2391</sup> Bislim Zyrapi, Exhibit P427, paras 16-17.

<sup>2392</sup> Bislim Zyrapi, T 2431-2432; Exhibit P445.

<sup>2393</sup> Exhibit P350, pp 1-2; Exhibit P896, pp 5-6; Exhibit P1234, pp 3-4, 8; Exhibit P1316, pp 1-3; Exhibit P1317.

<sup>2394</sup> Additional KLA positions were in the villages of Kraviserija/Kravasari, Ldroviç/Lldroviq and Guncat/Ngucat, also in Suva Reka/Suharekë municipality, as well as in the village of Pagaruša/Pagarushë in Orahovac/Rahovec municipality, and in the villages of Trpeza/Tërpezë Landrovac/Ladroc, Banja/Banjë and Senik in Mališevo/Malishevë municipality, Shefqet Zogaj, Exhibit P616, p 3; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5858-5859; Shefqet Zogaj, T 3431-3432; Halit Berisha, T 3405. Concerning a KLA presence in Pecane/Peqan, *see* also Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3826-3827, 3844-3846. *See* also Halit Berisha, T 3391-3392, 3405.

<sup>2395</sup> Exhibit P823, pp 10, 11; Shefqet Zogaj, Exhibit P615, p 2; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5879-5880. It is the evidence of Shefqet Zogaj that in addition to the villages that were shelled by Serbian forces in Suva Reka/Suharekë municipality, the villages of Trpeza/Tërpezë in Mališevo/Malishevë municipality and Beriša/Berishë (in Glogovac/Glllogoc municipality), as well as the villages of Dragobilje/Dragobil, Miruša/Mirushë, and Drenovac/Drenoc (in Orahovac/Rahovec municipality) and Ljubižda/Lubizhdë in Prizren municipality, were also shelled from the positions known as "Smonica" and "Orllat", Shefqet Zogaj, Exhibit P615, p 2; Hamide Fondaj, Exhibit P627, p 3.

<sup>2396</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9643-9645. Orders deploying members of, *inter alia*, the 37<sup>th</sup> PJP Detachment to areas throughout the Prizren SUP were issued in March of 1999, Exhibits P346; Exhibit P1190; *see* also Exhibit P1197, report on implementation of a deployment order.

<sup>2397</sup> Shefqet Zogaj, Exhibit P615, p 2; Shefqet Zogaj, Exhibit P616, p 3; Hamide Fondaj, Exhibit P627, p 3.

<sup>2398</sup> Shefqet Zogaj stated that he saw around 10,000 people sheltering in Banja/Banjë, Mališevo/Malishevë municipality, shortly after the start of the Serbian offensive on several villages in the area around 20 or 21 March 1999; he describes the poor conditions in Banja/Banjë, in particular the lack of medical care for the wounded, (Shefqet Zogaj, Exhibit P615, pp 2-3).

<sup>2399</sup> Shefqet Zogaj describes passing by Pagaruša/Pagarushë village, Orahovac/Rahovec municipality, shortly after the start of the Serbian offensive on or about 20-21 March 1999 and seeing some 40,000 displaced persons in this town (Exhibit P615, pp 2- 3).

<sup>2400</sup> Shefqet Zogaj, Exhibit P615, p 2; Shefqet Zogaj, Exhibit P616, p 3.

## 1. Suva Reka/Suharekë town

### (a) Background

654. While the KLA was active in most villages in Suva Reka/Suharekë municipality at the beginning of 1999, the evidence demonstrates that it had no positions in Suva Reka/Suharekë town itself.<sup>2401</sup> In the period leading up to the start of the NATO campaign on 24 March 1999, clashes between the police and the KLA had however taken place on the road towards the village of Raštane/Reshtan, about two or three kilometres from Suva Reka/Suharekë town centre, where the KLA had checkpoints.<sup>2402</sup> There were also occasions on which the police station in Suva Reka/Suharekë town was fired upon, and for this reason, it was secured 24 hours a day.<sup>2403</sup> The evidence reflects, further, that deployment of a PJP unit to the “Suva Reka-Raštane” village axis was envisioned by a MUP Staff Order dated 19 February 1999, to break up and destroy terrorist forces in this sector.<sup>2404</sup> The plan envisioned that the PJP company commander would be based in Raštane/Reshtan village, and for VJ support of the action.<sup>2405</sup> Following the action, this PJP unit was to join the 37<sup>th</sup> PJP detachment in an action on an axis further to the north in Suva Reka/Suharekë, including Suva Reka/Suharekë town.<sup>2406</sup> Several platoons of the 37<sup>th</sup> PJP detachment were deployed to the Prizren SUP by Dispatch of 21 March 1999, signed by the Accused, and they remained on duty for a period of 40 days.<sup>2407</sup> As demonstrated by the evidence set out below, members of the 37<sup>th</sup> PJP detachment were in Suva Reka/Suharekë town on the morning of 26 March 1999; their participation in the action that unfolded in town on this day is described in more detail below.

655. The OSCE had arrived in Suva Reka/Suharekë in 1998, where it was headquartered at the Boss Hotel in Shiroko/Shiroq owned by Milorad Nišavić, aka “Mišković”, before moving its

<sup>2401</sup> Bislim Zyrapi, T 2429-2432, 2469-2474, 2494; *see also* Bislim Zyrapi, Exhibit P427, paras 16-17; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6265; Exhibit P445; Exhibit D56; Hysni Berisha, T 3353, 3370; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4026-4028; Halit Berisha, T 3389. Halit Berisha testified that the KLA controlled the villages of Dobrodeljane/Dobërdolan, Semetište/Semetisht, Pagaruša/Pagarushë, Sllapuzhan/Slapužane, Pecane/Peqan, Halit Berisha, T 3391-3392, 3405. Halit Berisha also saw KLA forces in the village of Savrovo/Savrovë and Budakovo/Budakovë, Halit Berisha, T 3391-3392; Shefqet Zogaj, T 3431-3432; K83, T432-433. K83, when asked about fighting between the KLA and Serbian forces in Suva Reka/Suharekë town, mentions an incident where a member of the state security was shot, although he does not specify the date of this event, K83, T 374-375.

<sup>2402</sup> K83, T 374-375.

<sup>2403</sup> K83 gives this evidence in the context of a question put to him by the Defence concerning the period of time from the summer of 1998 to the end of the war in 1999 (K83, T 432-433).

<sup>2404</sup> This axis included the villages of Raštane/Reshtan, Studencane/Studençan, Samodraža/Samadrexhë, and Dobrodeljane/Dobërdelan, Exhibit P1234, p 8.

<sup>2405</sup> Exhibit P1234, p 8.

<sup>2406</sup> The order envisioned the 37<sup>th</sup> PJP detachment to be deployed along the axis of Dulje/Duhël, Birač/Biraq, Suva Reka/Suharekë and Bela Crkva/Bellacërkë, and Đurdevica, Exhibit P1234, p 8.

<sup>2407</sup> Exhibit P346, p 1; *see also* Exhibit P1190; *see also* Exhibit P1197, confirming the deployment of members of the 2<sup>nd</sup> Company of the 37<sup>th</sup> PJP detachment to the Prizren SUP.

headquarters to the house belonging to Shyhrete Berisha in Suva Reka/Suharekë town on Restanski Put,<sup>2408</sup> which led to the neighbouring village of Raštane/Reshtan.<sup>2409</sup> During this time, Shyhrete Berisha's family went to stay in the nearby village of Mushtisht/Mušutište with her parents.<sup>2410</sup> The OSCE employed local Albanians, Serbs and Roma.<sup>2411</sup> It stayed in this house until 20 March 1999,<sup>2412</sup> when it left Suva Reka/Suharekë town and Kosovo because of the danger of an imminent attack by NATO.<sup>2413</sup> Shyhrete Berisha's family returned to their home on the following day.<sup>2414</sup> In the days following the departure of the OSCE, the streets of Suva Reka/Suharekë town were empty of Albanians, who stayed in their homes.<sup>2415</sup>

656. Passing through the village of Raštane/Reshtan and Studencane/Studenčan on the way to Orahovac/Rahovec on 20 March 1999, Shefqet Zogaj observed a convoy of Serbian VJ and police, consisting of 14 tanks and armoured cars travelling on this road.<sup>2416</sup> Attacks on these and other surrounding villages started soon after.

657. The Chamber notes that two days prior to the start of the NATO aerial bombing campaign on 24 March 1999, a Serb man named Bogdan Lazić was killed in his shop in Cara Dušana street in Suva Reka/Suharekë town;<sup>2417</sup> this was the main road passing through town linking Priština/Prishtinë and Prizren.<sup>2418</sup> It is also the street on which the police station was located, at the crossing with Restanski Put.<sup>2419</sup>

(b) Events on 24 to 26 March 1999 in Suva Reka/Suharekë town

658. When the NATO air-campaign started, on 24 March 1999, Serbian forces travelling in both MUP blue and VJ green vehicles were observed in Suva Reka/Suharekë town on the Priština/Prishtinë–Prizren road, moving in both directions.<sup>2420</sup> People, who were shouting in

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<sup>2408</sup> The Chamber notes that this road is referred to by witnesses variably as “Restanski Put Street”, “Restanski Put Road” and merely “Restanski Put” throughout the evidence. The Chamber shall refer to this road as Restanski Put throughout the Judgement.

<sup>2409</sup> Shyhrete Berisha, T 461, 498-500; K83, T 373-375; Exhibit P823, p 11.

<sup>2410</sup> Shyhrete Berisha, T 461.

<sup>2411</sup> Shyhrete Berisha, T 462, 498-500.

<sup>2412</sup> Shyhrete Berisha, T 462.

<sup>2413</sup> Hysni Berisha, Exhibit P584, p 2; Shefqet Zogaj, Exhibit P615, p 2.

<sup>2414</sup> Shyhrete Berisha, T 462.

<sup>2415</sup> Shefqet Zogaj, Exhibit P615, p 2; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5859.

<sup>2416</sup> Shefqet Zogaj, Exhibit P615, p 2.

<sup>2417</sup> Velibor Veljković, T 7115-7116; K83, T 436-438; 6D2, T 12270, 12360-12362; Exhibit D17. *See also* Hysni Berisha, Exhibit P584, p 2.

<sup>2418</sup> Velibor Veljković, T 7123-7124; Exhibit D309.

<sup>2419</sup> Velibor Veljković, T 7123-7124; Exhibit D309, “x” marking the location of the police station, “2” marking Cara Dušana street with the arrow marked “4” indicating the direction from Priština/Phristinë-Prizren, and “3” marking Restanski Put.

<sup>2420</sup> Shyhrete Berisha, T 464-467, 507; Exhibit P273.

Serbian, wearing headbands and drinking out of bottles, passed by in buses.<sup>2421</sup> In addition to an already large contingent of forces present in the town, the number of Serbian police and military forces, wearing blue camouflage and green camouflage uniforms respectively, increased from this day.<sup>2422</sup> There were also local Serbs wearing police and military uniforms, as well as a number of Roma, who patrolled the streets together with the police and army.<sup>2423</sup> In addition, there were men wearing black clothes and various kinds of bandannas.<sup>2424</sup> The Chamber accepts, on the basis of this evidence, that there were also Serb paramilitary forces present in Suva Reka/Suharekë town. Snipers were situated on buildings throughout the town and two mortars were positioned in front of the police station.<sup>2425</sup>

659. At around 0500 hours on 25 March 1999, three armed men came to the house of Shyrete Berisha situated on the right side of Restanski Put as it led away from the police station towards the village of Raštan/Reshtan.<sup>2426</sup> Shyrete Berisha identified these men as policemen because they were armed and wearing uniforms; she was not able to remember the colour of their uniforms. She added that they had a white insignia on one shoulder.<sup>2427</sup> Neither Shyrete Berisha nor her husband Nexhat recognized any of the armed men who came to her house that morning.<sup>2428</sup>

660. These armed and uniformed men pointed their weapons at her and asked her “[w]here are your guests, the Americans?”<sup>2429</sup> One of these individuals searched the house for valuables and demanded money from Shyrete Berisha in return for the life of her husband Nexhat; she paid him 1,000 German Marks. Another man with his shirt buttoned down and knives strapped on him started running towards her; the man who had taken money from her stopped him, and together they went to another part of the house which had previously functioned as the OSCE office, where her

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<sup>2421</sup> Shyrete Berisha, T 464-465.

<sup>2422</sup> Halit Berisha, Exhibit P598, p 2; Halit Berisha T 3392; Hysni Berisha, Exhibit P584, p 2. The Chamber notes that witness Hysni Berisha used the term “regular police” to include civilian formations that were mobilized in either the police or the Serbian army, Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4017-4018. Shyrete Berisha describes the policemen wearing dark-green uniforms as well as blue camouflage uniforms, Shyrete Berisha, T 463-465.

<sup>2423</sup> Halit Berisha, Exhibit 598, p 2; Halit Berisha, T 3395.

<sup>2424</sup> Halit Berisha, Exhibit P598, p 2; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3646; *see also* Halit Berisha, T 3393-3394.

<sup>2425</sup> Halit Berisha, Exhibit P598, p 2; Exhibit P599 (*Milutinović* transcript), T 3606-3608; Exhibit P613, marking locations where “police or the military” placed snipers throughout the town – “A” is the post-office, “B” is the police station, “C” is the bell-tower, “D” is near the winery, “E” is the old post-office, “F” is the Balkan hotel; *See also* Velibor Veljković, T 7118, testifying about an observation point at the church-bell tower, and T 7128, testifying about a police position at the “Metohija Vino Company”.

<sup>2426</sup> Shyrete Berisha, T 467, 496, 471, 508; Exhibit P274, arrow indicating the location of Shyrete Berisha’s part of the house; Exhibit D20, marking “2” indicating the location of the police station. *See also* Velibor Veljković, T 7124-7125, Exhibit D309, “x” marking the location of the police station, number “3” marking Restanski Put and number “6” marking the Berisha house; *see also* K83, T 373 and Exhibit P823, p 11.

<sup>2427</sup> Shyrete Berisha, T 467-468.

<sup>2428</sup> Shyrete Berisha, T 467-468. 473.

<sup>2429</sup> Shyrete Berisha, T 468, 501-502.

husband Nexhat had already been taken by others.<sup>2430</sup> At this point, Shyhrete Berisha observed a small wheeled armoured vehicle, which she described as a tank, parked in front of the house of her neighbour, Agron Berisha. The cannon of the vehicle was pointed towards her home.<sup>2431</sup>

661. Also parked in front of Shyhrete Berisha's house was a truck in which more armed and uniformed men, likewise believed by the witness to be policemen,<sup>2432</sup> were loading televisions, computers and other items from her home.<sup>2433</sup> They cursed at her and warned her not to come closer.<sup>2434</sup> Nexhat was then returned to the part of the house in which Shyhrete Berisha was. She saw her husband being hit with an automatic rifle and kicked. The armed and uniformed men demanded more money from Nexhat, warning him that the tank outside would blow up their house with their children in it if he did not hand it over. Fearing what would happen to them, Shyhrete Berisha gave these men a further 3,000 German Marks. Money was also demanded and taken from her sister-in-law, Fatime Berisha.<sup>2435</sup>

662. The men then left the Berisha home.<sup>2436</sup> Nexhat later told Shyhrete that in the former office of the OSCE, these men had found pictures of burnt villages that the OSCE had made, upon which they had beaten him, telling him "[n]ow the Americans should come and defend you. You asked for them for help so Father Clinton should come and help you now".<sup>2437</sup>

663. Neither Shyhrete Berisha nor her husband Nexhat recognized any of these armed and uniformed men, but their daughter Majlinda told Shyhrete later that she recognized one of the men as a policeman who boarded the same bus she used to travel between Suva Reka/Suharekë and Mushtisht/Mušutište on a daily basis.<sup>2438</sup> When Shyhrete Berisha later spoke to her father about this and conveyed to him her daughter's description of the man, her father, who lived in the nearby village of Mushtisht/Mušutište, confirmed that this policeman worked at the Mushtisht/Mušutište police station.<sup>2439</sup> The Chamber is, however, not able on this evidence alone to determine that the

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<sup>2430</sup> Shyhrete Berisha, T 469, 503-506.

<sup>2431</sup> Shyhrete Berisha, T 470-471, 504-505; Exhibit P274, marking "1" indicating Agron Berisha's house, marking "2" indicating the location of the tank, and marking "3" indicating the entrance of Shyhrete Berisha's house where she was standing when she observed the tank.

<sup>2432</sup> The witness testified that she believed the men who came to her house that morning to be policemen only because they were wearing uniforms; she was not able to say what the colour of these uniforms was, Shyhrete Berisha, T 467-468.

<sup>2433</sup> Shyhrete Berisha, T 469. Asked how many "policemen" were in an around her home that morning, Shyhrete Berisha testified that there were in total some 15-20 of them (Shyhrete Berisha, T 473). The Chamber finds that this number includes the three men who entered the family home as well as the men the witness observed loading items taken from her home into a truck parked in front of her home.

<sup>2434</sup> Shyhrete Berisha, T 470.

<sup>2435</sup> Shyhrete Berisha, T 472.

<sup>2436</sup> Shyhrete Berisha, T 472-473.

<sup>2437</sup> Shyhrete Berisha, T 471.

<sup>2438</sup> Shyhrete Berisha, T 473, 496.

<sup>2439</sup> Shyhrete Berisha, T 473.



men who came to the Berisha family home on 25 March 1999 were local policemen. Indeed, given that neither Shyhrete nor her husband Nexhat recognized any of these men, the Chamber is of the view that it is unlikely that the group of men that came to their house that morning included local police. One or more may have been from nearby villages. However, in the overall context of the actions in Suva Reka/Suharekë on both 25 and 26 March 1999, described in more detail below, it is satisfied that the armed uniformed men included both regular and reserve policemen, as well as possibly Serb paramilitary forces who were present in town on these days.

664. The evidence reveals that the action early on the morning of 25 March 1999 was not limited to the Shyhrete Berisha's family home. At about 0600 hours on 25 March 1999, shooting could be heard throughout Suva Reka/Suharekë town and flames were seen coming from the houses in the direction of the technical school in town.<sup>2440</sup> Shefqet Zogaj, who was a journalist at the time of the relevant events,<sup>2441</sup> from a distance of about two kilometres away,<sup>2442</sup> was able to see flames coming from the town on this day.<sup>2443</sup> Police in vehicles were moving up the main road through town.<sup>2444</sup> Halit Berisha testified that around 0630 hours, two separate Berisha families came to his house, located behind the municipal building, saying that they had left their homes in the city centre because people had been robbed and killed in that area.<sup>2445</sup> Halit Berisha told his family to join other families who were heading towards the river and the nearby village of Savrovo/Savrovë,<sup>2446</sup> while he remained at home with his wife and brother Jashar Berisha.<sup>2447</sup> Except for the movement of the police, the town of Suva Reka/Suharekë was quiet through the afternoon of 25 March 1999.<sup>2448</sup>

665. A few hours after the men had left Shyhrete Berisha's house on 25 March 1999, the family decided that it would be safer in the house belonging to Vesel Berisha, Nexhat's uncle, situated just behind their own house.<sup>2449</sup> Shyhrete Berisha's family spent the night of 25-26 March 1999 in this house, together with Vesel Berisha's family and that of Faton Berisha.<sup>2450</sup>

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<sup>2440</sup> Hysni Berisha, Exhibit P584, p 2; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4032-4035.

<sup>2441</sup> Shefqet Zogaj, Exhibit P615, p 2; Shefqet Zogaj, T 3433-3434.

<sup>2442</sup> Shefqet Zogaj, P617 (*Milutinović* transcript), T 5882-5883.

<sup>2443</sup> Shefqet Zogaj, Exhibit P615, p 3; Shefqet Zogaj, T 3441-3442.

<sup>2444</sup> Hysni Berisha, Exhibit P584, p 2.

<sup>2445</sup> Halit Berisha, Exhibit P598, p 2; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3600, 3720-3721; Exhibit P612.

<sup>2446</sup> Exhibit P823, p 11.

<sup>2447</sup> Halit Berisha, Exhibit P598, p 3.

<sup>2448</sup> Hysni Berisha, Exhibit P584, p 2.

<sup>2449</sup> Shyhrete Berisha, T 473-474, 511; Exhibit D21, marking "1" indicating the location of Vesel Berisha's house to which Shyhrete Berisha and her husband moved after the events on 25 March 1999; see also Shyhrete Berisha, T 470-471 and Exhibit P274, marking "1" indicating the location of her home.

<sup>2450</sup> Shyhrete Berisha, T 473-474, 506-507; see Exhibit P272 (Berisha family tree). The members of the Berisha family who spent the night in Vesel Berisha's house on the night of 25-26 March 1999 were Shyhrete and her husband Nexhat, their children Majlinda, Heroldina, Altin and Redon, Faton and his wife Sebahate together with their

666. On the morning of 26 March 1999, two large tanks were positioned at the top of the fields above the house of Vesel Berisha, with their cannons pointing in the direction of Shyhrete Berisha's house.<sup>2451</sup> At around 0800 hours, Serbian forces on the hill behind Suva Reka/Suharekë town started shelling surrounding towns, a common occurrence since August 1998.<sup>2452</sup> Some time before noon,<sup>2453</sup> reserve police members K83 and Miroslav "Miki" Petković, together with active police members Radovan Tanović and Sladjan Čukarić,<sup>2454</sup> returned to the Suva Reka/Suharekë police station, where they were based, having carried out patrol duties in the vicinity of the town.<sup>2455</sup> Also present at the police station on 26 March 1999 were the chief of the police station Dobrivoje Vitosević, and other members of his station staff—commander, Radojko Repanović, assistant commander Nenad Jovanović, reserve policeman Ivica Novković, and the driver of the patrol vehicle, Ramiz Papić.<sup>2456</sup> Velibor Veljković, who had an administrative duty within the police station and wore a police uniform, arrived at the station at around noon.<sup>2457</sup> Todor Jovanović was a crime technician of the Suva Reka/Suharekë OUP at the relevant time and although the evidence does not demonstrate that he was present at the police station on the morning of 26 March 1999 as is revealed by the evidence below he appeared there later in the day.<sup>2458</sup>

667. Velibor Veljković testified that soon after his arrival at the station, Repanović ordered him to join Petković, Tanović, and Čukarić to "commit the crime of murder"; it is his evidence that because he considered this order illegal, he did not obey. Instead, he entered the station.<sup>2459</sup> Veljković testified that a Kosovo Albanian detainee by the name of Petrit Elshani was then taken out of the detention room, and that about half an hour later, he heard several gunshots from the courtyard of the station. There, he saw Petković, Tanović, and Čukarić standing next to the dead

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children Ismet and Eron and their parents Ismet and Fatime, as well as Vesel Berisha's wife Hava Berisha, Sedat and Vjollca, Dafina, Drilon, and Gramoz Berisha, Bujar, Flora, Nexhmedin, Lirija, Vlojran, Edon and Dorentina Berisha; a total of 25 members of the Berisha family. Members of these families that were not present that night were Vesel Berisha himself, Faik and Bahrije Berisha, Naim Berisha and Arben Berisha (Shyhrete Berisha, T 474).

<sup>2451</sup> Shyhrete Berisha, T 476-477, 516. Asked to point out the location of these tanks on an aerial photograph depicting the homes on Restanksi Put, Shyhrete Berisha testified that it is not possible to see the location of the tanks on the photographs as they were above the fields that were above the house (Shyhrete Berisha, T 516; Exhibit D9).

<sup>2452</sup> Hysni Berisha, Exhibit P584, p 2; Hysni Berisha, Exhibit P588 (*Milošević* transcript), T 7489-7490.

<sup>2453</sup> K83 testified that he cannot be sure about the exact time but accepts that it might have been around 1100 hours (K83, T 376-377).

<sup>2454</sup> K83, T 376-377, 415, 418; *see also* Velibor Veljković, T 7042, 7075.

<sup>2455</sup> K83, T 372, 376-377, 415, 418.

<sup>2456</sup> Velibor Veljković, T 7038, 7042, 7074-7075, 7065-7066, 7091, 7117-7118. Velibor Veljković testified that in total, there were about 10-15 active force policemen in Suva Reka/Suharekë town that day as well as reserve policemen, although he is not able to state the exact number, Velibor Veljković, T 7116. The Chamber notes that in a portion of Velibor Veljković's statement read out to him during cross-examination, it is said that Ramiz Papić was a member of the reserve police, Velibor Veljković, T 7065-7066; Exhibit D311, para 15; *see also* K83, T 375-376. The Chamber also notes the evidence of Hysni Berisha, referring to an individual named "Ramiz" being amongst the persons who came by his house on 21 May 1999 and ordered him to leave his house; he describes this individual as a member of the regular police, Hysni Berisha, Exhibit P584, pp 5-6. The Chamber is therefore satisfied that Ramiz Papić was a member of the local police.

<sup>2457</sup> Velibor Veljković, T 7041.

<sup>2458</sup> Velibor Veljković, T 7117; *see also* 6D2, T 12365.

body of the detainee Elshani with their automatic rifles. Petrit Elshani was a detainee, and not armed, nor was he taking any active part in hostilities, at the time he was killed. Petković, Tanović, and Čukarić then left the courtyard and the police station. It is the evidence of Velibor Veljković that about 10 minutes later, he heard automatic rifle shots in the close vicinity coming from the direction of Restanski Put.<sup>2460</sup> The Chamber has serious concerns with the veracity of aspects of this witness's evidence because of attempts to limit his own involvement in the events at the police station that morning and, thereafter, on Restanski Put. For this reason, and others discussed below, in making its findings, the Chamber has only relied on this witness's evidence to the extent that it is independently confirmed by that of other witnesses, and on those portions of his evidence which remain internally consistent and for which no apparent motive exists to disguise the truth.

668. Shortly after noon, two camouflage coloured trucks arrived at the police station,<sup>2461</sup> as well as a jeep carrying Radoslav Mitrović, whose call sign was "Cegar 1", commander of the 37<sup>th</sup> PJP detachment which went by the codename "Cegar".<sup>2462</sup> Several companies of this detachment had been deployed to the Prizren SUP in March of 1999.<sup>2463</sup> K83 testified that he had seen Mitrović at the police station several times during the war, when he came there to attend meetings.<sup>2464</sup> Members of Mitrović's unit, the 37<sup>th</sup> PJP detachment, left these trucks and set off in the direction of the houses across the road from the police station, which included Shyhrete Berisha's house.<sup>2465</sup> Commander Mitrović yelled at Nenad Jovanović and said "[w]hat are you staring at? What are you waiting for? Go after these men, who came to assist", a reference to the PJP from the trucks, upon which Jovanović told the members of the local patrol, *i.e.*, K83, Miroslav "Miki" Petković, Radovan Tanović and Sladjan Čukarić, to move.<sup>2466</sup> K83 testified that while the PJP was not under the command structure of the Suva Reka/Suharekë police station and were only temporarily

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<sup>2459</sup> Velibor Veljković, T 7042-7044, 7071-7074, 7153.

<sup>2460</sup> Velibor Veljković, T 7044-7046, 7157-7159.

<sup>2461</sup> The Chamber notes that when asked about these two trucks arriving at the police station, Velibor Veljković testified that he did not see the trucks and that save for the police at the station, he did not see members of any other unit that day (Velibor Veljković, T 7129). The Chamber does not accept this evidence as truthful and relies on the evidence of K83, who it considered to be reliable, in establishing that PJP troops, led by Mitrović, in fact did arrive at the station around noon that day.

<sup>2462</sup> K83, T 378-381, 406, 415, 454; Exhibit P270, marking "A" indicates the location of the trucks, marking "X" the location of K83's patrol, and the arrow indicating the direction into which the police went. *See also* Vlastimir Đorđević, T 9781; *see also* Exhibit P1061; K79, Exhibit P1259 (*Milutinović* transcript), T 9582-9583, 9711; Ljubinko Cvetić, T 6731-6732.

<sup>2463</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9579, 9585-9587.

<sup>2464</sup> K83, T 406.

<sup>2465</sup> K83, T 378, 380-383, 415-417; Exhibit P270, marking "A" indicates the location of the trucks, marking "B" indicates the place where "Cegar 1" was standing, marking "C" indicates the location of the police station, marking "X" the location of K83's patrol, and the arrow indicating the direction into which the police went, marking "D" indicates the location where the witness's patrol went, "E" the place where K83 was, and "L" the place where Miroslav Petković was; Exhibit D10, aerial photograph of the Berisha houses, markings indicate location where members of K83's patrol were standing; Shyhrete Berisha, T 511-514, 519; Exhibit P274, arrow and number "3" marking the location of her house; Exhibit D21, lines indicating the direction in which the police ran from the police station. *See also* Shyhrete Berisha, T 457-458; Exhibit P271, p 8, depicting Shyhrete Berisha's house.

stationed in Suva Reka/Suharekë municipality, the PJP assisted the police in carrying out regular police duties in the municipality.<sup>2467</sup>

669. At around noon, from Vesel Berisha's house, Shyhrete Berisha observed a large group of armed policemen as well as some individuals not wearing uniforms, heading first in the direction of the nearby house of Ismet Kuci<sup>2468</sup> before moving towards her house.<sup>2469</sup> By the time K83's patrol arrived at Shyhrete Berisha's house, members of the PJP unit were already present there.<sup>2470</sup> K83 and Miroslav Petković were ordered by Čukarić and Tanović to go to the house of Vesel Berisha, which was behind that of Shyhrete Berisha, in order to provide the police with cover in case anyone shot at them.<sup>2471</sup> Another individual who was present amongst the group of men who approached the house that day was Milorad Nišavić, aka "Mišković" or "Miško", a member of the state security of the MUP in Suva Reka/Suharekë town,<sup>2472</sup> well known amongst the local Albanians.<sup>2473</sup> Based on the totality of the evidence, the Chamber accepts that members of the MUP, including reserve and local police, approached Vesel Berisha's house.<sup>2474</sup>

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<sup>2466</sup> K83, T 381-382.

<sup>2467</sup> K83, T 413-414. K83 also testified that the PJP unit was not in Suva Reka/Suharekë town itself very often, but mostly in the surrounding villages (K83, T 454). Part of the 37<sup>th</sup> PJP detachment was stationed in Suva Reka/Suharekë, K79, Exhibit P1259 (*Milutinović* transcript), T 9644. Ljubinko Cvetić testified that in 1999, the 37<sup>th</sup> detachment of the PJP was physically stationed in the Prizren SUP area, Ljubinko Cvetić, T 6732.

<sup>2468</sup> Shyhrete Berisha was unable to identify the exact location of Ismet Kuči's house on a map (Shyhrete Berisha, T 511-514). She marked the different directions in which she saw individuals running from the the police station (Exhibit D21).

<sup>2469</sup> Shyhrete Berisha, T 477.

<sup>2470</sup> K83, T 381-383; Exhibit P270, marking "D" as the house where K83's patrol went.

<sup>2471</sup> K83, T 382-383, 418; Exhibit P270, marking "D" as the house where K83's patrol went; marking "E" as the place where K83 stood and marking "L" as the place where Miroslav Petković stood; Exhibit D10, "1" marking location where K83 was standing and "2" marking location where Miroslav Petković was standing.

<sup>2472</sup> Shyhrete Berisha, T 499; Hysni Berisha, T 3371; Shefqet Zogaj, Exhibit P615, p 3; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3781, 3804-3805, 5897-5898, Shefqet Zogaj, T 3441-3442; Halit Berisha, Exhibit P598, p 4; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3617-3618; Halit Berisha, T 3407; 6D2, T 12404). It is also accepted by the Chamber that up until the departure of the OSCE on 20 March 1999, Milorad Nišavić's brother worked as a security guard for the OSCE stationed at Shyhrete Berisha's house, Shyhrete Berisha, T 500-501.

<sup>2473</sup> K83 testified that RDB member Milorad Nišavić was not involved in the events on 26 March 1999, K83, T 417. The evidence has demonstrated, however, that Milorad Nišavić was well known amongst the Albanians in town. Shyhrete Berisha saw him present at her house that day. The Chamber is satisfied that he was in fact present at Shyhrete Berisha's house on 26 March 1999 and shot Nexhat Berisha, as detailed below. The Chamber also notes the evidence of Shefqet Zogaj on the basis of a hearsay account he received on the events in Suva Reka/Suharekë town from a fellow villagers a few days after, who told him that the two persons "directing the police" in Suva Reka/Suharekë town when an "unprecedented massacre" took place, were "Zhika" (whose actual name he does not provide) and Milorad "Mišković", who the Chamber accepts to be Milorad Nišavić. It is his evidence, however that this occurred on 25 March 1999 (Shefqet Zogaj, Exhibit P615, p 3; see also Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3781-3782, 3804-3805, 5897). The Chamber is satisfied, however, that the events he was told about and describes in fact took place on 26 March 1999, as described above.

<sup>2474</sup> Shyhrete Berisha testified that among the men who arrived at the Berisha houses she recognised a Serb named "Zoran" who lived and worked in Suva Reka/Suharekë town and spoke fluent Albanian. Shyhrete Berisha did not specify whether "Zoran" wore a uniform or not. While she had never spoken to "Zoran" personally, she knew his wife and had met him on many occasions (Shyhrete Berisha, T 478-479, 521, 523, 526, 538, 540). She identified the speaker as "Zoran" because of the way he spoke Albanian as she had heard him speak many times before (Shyhrete Berisha, T 540). The witness testified that she heard "Zoran" call for Bujar Berisha to come out, saying "[c]all on the Americans, your friends now, to help you" (Shyhrete Berisha, T 479). The Chamber notes that

670. A member of the MUP forces called for Bujar Berisha to come out, saying “[c]all on the Americans, your friends now, to help you”.<sup>2475</sup> When Bujar Berisha came out of the house, shots were fired, upon which members of the Berisha family who were staying in Vesel Berisha’s house,<sup>2476</sup> fearing what may happen to them if they remained inside, left the house.<sup>2477</sup> As she left Vesel Berisha’s house, Shyhrete Berisha saw the body of Bujar Berisha lying on the balcony.<sup>2478</sup> At the house of Shyhrete Berisha, situated just below that of Vesel Berisha, Milorad Nisavić aka “Mišković”, who was not wearing a police uniform but black clothes, held Nexhat Berisha by the arm, saying “[n]ow the Americans should come and rescue you”, and then shot him twice.<sup>2479</sup> A policeman grabbed Faton Berisha by the arm. Faton’s mother Fatime (wife of Ismet, 48 years old) told the policemen to take her instead of her son. Sedat and Nexhmedin Berisha were also caught.<sup>2480</sup> Voices, in Serbian, were heard saying “[sh]oot, what are you waiting for” and the shooting then became more intense.<sup>2481</sup> The remaining group of the Berisha family members who had left Vesel Berisha’s house, including Shyhrete Berisha and her children as well as Lirija Berisha, the pregnant wife of Nexhmedin, ran away from the house, across the road, in the direction of a shopping centre.<sup>2482</sup> Shyhrete saw Faton and his mother Fatime fall on the ground behind her as she ran from the house.<sup>2483</sup>

671. Velibor Veljković substantially confirms this evidence. He saw a house burning about 100 metres from the police station, civilians running away from a house on Restanski Put, mainly women, children and a few men, and heard rifle shots being fired. Five or six of the civilians who were running away were shot dead, although the witness claims not to have seen who fired these shots.<sup>2484</sup> Hysni Berisha further confirms some of this evidence in that sometime in the late

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Shyhrete Berisha was not able to positively identify Zoran Petković from an identification line up conducted for the purposes of her testimony before the War Crimes Chamber of the district court of Belgrade in Serbia in 2007, she explained that he had “changed a lot”, having lost weight and wearing glasses (Shyhrete Berisha, T 533-534, 540; Exhibit D23). She testified, however, that when Zoran Petković spoke in court, she immediately recognized him (Shyhrete Berisha, T 540). The Chamber accepts the evidence of K83 that Zoran Petković was not with him on 26 March 1999 or at the events that followed at the pizzeria, K83, T 418. The Chamber finds that whilst there are discrepancies in the evidence as to the identity of all police officers present in Suva Reka/Suharekë town on 26 March 1999 this does not effect the Chamber’s finding that members of the local and reserve police were present at Vesel Berisha’s house on this day.

<sup>2475</sup> Shyhrete Berisha, T 479. Whilst the witness testified that she identified the voice as that of Zoran Petković, as discussed above, the Chamber is unable to accept this identification.

<sup>2476</sup> See *supra*, para 665.

<sup>2477</sup> Shyhrete Berisha, T 479-481, 520; see also K83, T 383-386.

<sup>2478</sup> Shyhrete Berisha, T 481, 520. The Chamber notes that the evidence does not establish who fired the shot that killed Bujar Berisha.

<sup>2479</sup> Shyhrete Berisha, T 481-482, 501.

<sup>2480</sup> Shyhrete Berisha, T 481-482.

<sup>2481</sup> Shyhrete Berisha, T 482.

<sup>2482</sup> Shyhrete Berisha, T 482-483. See also K83, T 383-384, 385, 386. See also Velibor Veljković, T 7046, 7125-7127; Exhibit D309, number “6” marking the Berisha house and number, small arrow and number “7” indicating from where the group ran and in which direction.

<sup>2483</sup> Shyhrete Berisha, T 483.

<sup>2484</sup> Velibor Veljković, T 7046, 7049, 7077, 7080, 7125-7126, 7135, 7158.

morning of 26 March 1999, he heard shooting across the street from the police station in the vicinity of the house of Sedat Berisha, Vesel Berisha's son, and saw flames and smoke in this area.<sup>2485</sup>

672. Shortly after his arrival at the Berisha houses, K83 saw local policemen Čukarić and Tanović checking the identifications cards of four men behind Shyhrete Berisha's home, formerly used by the OSCE. K83 testified that these four men were neither armed nor wearing uniforms.<sup>2486</sup> The Chamber accepts that Nexhat, Faton, Sedat and Nexhmedin Berisha are these four men. The Chamber is also satisfied, on the basis of Shyhrete Berisha's testimony and forensic evidence discussed later in this section, that Fatime (wife of Ismet) Berisha was shot outside the house when trying to save her son Faton, who was also shot. K83 and Miroslav Petković were ordered to follow the group of Berisha family members running away to see where they would go. K83 testified that as he set off to follow the group of Berisha family members, Čukarić and Tanović shot the four male members of the Berisha family named above.<sup>2487</sup> K83 also observed an elderly man and woman being injured by shots in their legs while running away from the house; they fell down, unable to continue.<sup>2488</sup> As stated above, according to Shyhrete Berisha, the individual who shot her husband was RDB member Milorad Nisavić aka "Mišković". In the Chamber's finding, Milorad Nisavić participated in the shooting of the men alongside Čukarić and Tanović. The Chamber accepts, confirmed by the evidence discussed above, that the following six members of the Berisha family, all listed by name in the Schedule to the Indictment, were killed by MUP forces, including members of the reserve and regular local police, at the Berisha family compound in Suva Reka/Suharekë town on 26 March 1999: Bujar, Nexhat, Faton, Fatime, Sedat and Nexhmedin. For two of these victims the cause of death was established as gunshot wounds.<sup>2489</sup> The Chamber also accepts that the elderly man and woman, left unnamed by the evidence and therefore not listed in the Schedule to the Indictment, were also killed by MUP forces in Suva Reka/Suharekë town on 26 March 1999. None of these individuals were armed or participating in the conflict. They were all Kosovo Albanian and based on the evidence the Chamber accepts that this is the reason they were killed. As discussed below, remains belonging to some of these Kosovo Albanian shot during

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<sup>2485</sup> Hysni Berisha, Exhibit P584, p 2. The witness states that he heard shooting sometime late in the morning of 26 March 1999 and saw smoke and flames, adding that "[t]his continued until the evening", as a result of which his family was terrified and remained indoors throughout that day.

<sup>2486</sup> K83, T 383-386.

<sup>2487</sup> K83, T 383-386, 419-420; Exhibit D11, photograph indicating the road which K83 took to get to the pizzeria; *see also* Shyhrete Berisha, T 460.

<sup>2488</sup> K83, T 385-386; Exhibit P270, marking "F" indicates the location where the couple was injured.

<sup>2489</sup> *See infra*, para 1405; Schedule: Victims Chart.

these events in Suva Reka/Suharekë town were later exhumed from the Suva Reka/Suharekë cemetery, “Kroji-I-Popit” and/or Batajnica SAJ Centre.<sup>2490</sup>

673. Together with her daughter Herondilja, Shyhrete Berisha ran first to the petrol station owned by Jashar Berisha, her husband’s cousin.<sup>2491</sup> She then saw family members gathered together at the nearby shopping centre and joined them there.<sup>2492</sup> One of her children, Altin Berisha, was wounded on his arm by a shot while running to the shopping centre.<sup>2493</sup>

674. At least 35 members of the Berisha family gathered together at the shopping centre.<sup>2494</sup> It is the evidence of K83 that a group of about 30-35 people had entered a pizzeria and locked themselves in.<sup>2495</sup> The Chamber notes that this location is referred to by witnesses interchangeably as a pizzeria or a café.<sup>2496</sup> In contrast to the evidence of K83 in this respect, Shyhrete Berisha testified that the members of the Berisha family at the shopping centre were told by policemen to enter the café and to sit down.<sup>2497</sup> It could be that Shyhrete Berisha’s recollection is correct but that this did not occur while K83 was present, as for a time, he did move independently of the other police present at the pizzeria. In any event, in light of the events that followed and the charges in the Indictment pertaining to this incident, this discrepancy is not of material significance. In the Chamber’s finding, upon seeing the group of Berisha family members in the pizzeria, K83 then returned to Čukarić and Tanović. He testified that he was frightened and not feeling well. Čukarić told him to go and get them some alcoholic drinks. In doing so, he passed by the elderly couple who he had earlier seen being shot while they were running away from the Berisha house. They were still alive. When he returned from collecting the drinks, the two elderly people were dead. He did not see how they died but heard shots and saw Čukarić about five to six metres from the bodies of the two elderly people. He then saw Čukarić moving towards the pizzeria.<sup>2498</sup> K83 then saw the bodies of the two elderly people had bullet wounds to their heads.<sup>2499</sup> Čukarić, Tanović, Miroslav Petković and K83 then sat around the corner from the pizzeria and had their drinks.<sup>2500</sup> K83

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<sup>2490</sup> See *supra*, para 683.

<sup>2491</sup> Shyhrete Berisha, T 531.

<sup>2492</sup> Shyhrete Berisha, T 483.

<sup>2493</sup> Shyhrete Berisha, T 484.

<sup>2494</sup> Shyhrete Berisha, T 483-484; Exhibit P272.

<sup>2495</sup> K83, T 386-388, 422; Exhibit P270, marking “G” indicates the location of the pizzeria; Velibor Veljković, T 7061, Exhibit P1070, marking “5” indicating the location of the pizzeria / café.

<sup>2496</sup> See for example Velibor Veljković, T 7061.

<sup>2497</sup> Shyhrete Berisha, T 484-485.

<sup>2498</sup> K83, T 386-388, 422-423; Exhibit P270, marking “G” indicates the location of the pizzeria, marking “H” the location where the four policeman had their drinks; Exhibit D12, marking “X” indicates the pizzeria, “I” indicates the location where K83 saw the two elderly wounded individuals, marking “2” indicates the location where K83 went to get the liquor, and “3” where they had the drinks.

<sup>2499</sup> K83, T 388.

<sup>2500</sup> K83, T 388; Exhibit P270, marking “H” indicates the location where they had their drinks.

testified that other than these four individuals, there were no other policemen or other persons outside the pizzeria at this time.<sup>2501</sup>

675. After the four men finished their drinks, Tanović broke the window of the pizzeria with his rifle butt and threw a grenade inside.<sup>2502</sup> Čukarić, Miroslav Petković and K83 were standing around the corner to take shelter from the shattered glass and shrapnel caused by the explosion.<sup>2503</sup> K83 heard crying and moaning coming from inside the pizzeria.<sup>2504</sup> A few minutes later, Čukarić threw in a second grenade.<sup>2505</sup> Čukarić and Tanović then took turns shooting through the window of the pizzeria.<sup>2506</sup> Shyhrete Berisha could hear them shouting and saying that they were going to kill all of the Albanians.<sup>2507</sup> The shooting continued until all went quiet in the pizzeria.<sup>2508</sup> Shyhrete Berisha, who had sustained shrapnel injuries in her leg, chest and stomach, was still alive following the shooting. When this was noticed, she was shot by one of the policemen; this wound was to her arm.<sup>2509</sup> Drilon, Gramoz and Shyhrete Berisha's 11 year old son Altin were also still alive but pretended to be dead. When the policemen noticed that Altin was still alive, he also was shot once more; Shyhrete Berisha heard her son moan, and he died.<sup>2510</sup> Shyhrete Berisha pretended to be dead. The policemen then left the café.<sup>2511</sup> She then heard voices saying that the bodies should be loaded onto the truck.<sup>2512</sup> It was the testimony of K83 that following the killings at the pizzeria, Čukarić communicated with an unidentified person via his police Motorola equipment.<sup>2513</sup> K83 went to a kiosk on the main road to secure the area and prevent people from passing by.<sup>2514</sup>

676. The evidence demonstrates that all the people shot in the pizzeria were unarmed civilians, Albanians,<sup>2515</sup> and members of the Berisha family. It is accepted that they were targeted because

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<sup>2501</sup> K83, T 422.

<sup>2502</sup> K83, T 389.

<sup>2503</sup> K83, T 389.

<sup>2504</sup> K83, T 389.

<sup>2505</sup> K83, T 389.

<sup>2506</sup> The Chamber notes that it is the testimony of Shyhrete Berisha that there was first uninterrupted shooting into the café followed by grenades being thrown inside, Shyhrete Berisha, T 484-485. The Chamber however will rely on the evidence of K83 in this respect, who testified that prior to Čukarić and Tanović shooting into the café through the window of the pizzeria, two grenades had been thrown into the pizzeria, K83, T 389-390. This is confirmed by the evidence of Velibor Veljković, who first heard a grenade explosion, he thought from the direction of the Metohija Vino company (close to the pizzeria), followed by another explosion and then multiple gun shots, Velibor Veljković, T 7051-7052, 7058-7059, 7134, 7141.

<sup>2507</sup> Shyhrete Berisha, T 485. The Chamber accepts K83's testimony that the only persons outside of the pizzeria at the time of the killings were K83, Miroslav Petković, Čukarić, and Tanović, K83, T 472.

<sup>2508</sup> K83, T 389-390.

<sup>2509</sup> Shyhrete Berisha, T 485-486.

<sup>2510</sup> Shyhrete Berisha, T 486.

<sup>2511</sup> Shyhrete Berisha, T 485.

<sup>2512</sup> As they loaded Shyhrete Berisha's body onto the truck, they removed two golden chains she was wearing around her neck, Shyhrete Berisha, T 486-487.

<sup>2513</sup> K83, T 406-407.

<sup>2514</sup> He stood there for about an hour, to an hour and a half, K83, T 389-390; Exhibit P270, marking "M" indicating the location of the kiosk.

<sup>2515</sup> K83, T 408; *see also* Velibor Veljković, T 7049, 7052-7053, 7084.



they were Kosovo Albanians. It is the finding of the Chamber that a total of 35 members of the Berisha family were wounded by grenades or shot in the pizzeria by members of the local police of Suva Reka/Suharekë town on 26 March 1999. Of these, 32 died of their wounds that day. These are Majlinda, Heroldina, Altin, Redon, Sebahate, Sherina, Ismet (3 year old son of Faton and Sebahate), Eron, Dafina, Drilon, Hava, Vlorjan, Edon, Flora, Dorentina, Lirija (wife of Nexhmedin), Avdi, Fatime (wife of Avdi, 37 years old), Kushtrin, Vesel (55 years old, husband of Sofije Berisha), Sofije, Hajdin, Mihrije, Besim, Mevlude, Fatmire, Genci, and Graniti Berisha,<sup>2516</sup> as well as Hanumusha Berisha (9 years old, daughter of Hamdi and Zelihe Berisha and sister of Mirat Berisha), Hanumsha Berisha (81 years old, the wife of Sait Berisha), Musli Berisha (63 years old), Merita Berisha (10 year old daughter of Hamdi and Selija).<sup>2517</sup> At the time she was killed, Lirija Berisha was in her last month of pregnancy.<sup>2518</sup> Shyhrete, Vjollca and Gramoz Berisha were the only three persons to survive the killings at the pizzeria.<sup>2519</sup>

677. Jashar Berisha had heard the shooting and the explosions coming from the shopping centre and heard the screams of those being killed; he called his brother Halit Berisha and told him that people were being killed at the shopping centre and that Halit should get his family together and leave town.<sup>2520</sup> Jashar told his brother that he could not see the shopping centre but could hear explosions, shooting and screaming coming from it.<sup>2521</sup> He also told him that Sedat, Nexhat and Bujar Berisha had been killed by the police and that other members of the Berisha family members had been killed at the shopping centre.<sup>2522</sup>

678. K83 testified that while waiting at the kiosk to secure the area following the shooting in the pizzeria, he saw police crime technician Todor Jovanović bringing Jashar Berisha to the pizzeria; Jovanović was dressed in civilian clothes, and was driving in an official police vehicle.<sup>2523</sup> Dr Boban Vuksanović, a doctor working at the health centre in town and a member of the “Territorial Defence”,<sup>2524</sup> called Jashar Berisha over, but Jashar Berisha refused and struggled, upon which

<sup>2516</sup> Shyhrete Berisha, T 459-461, 483; Exhibit P272.

<sup>2517</sup> Shyhrete Berisha identified 28 of the 32 victims by name and the remaining four individuals by their photographs, Exhibit P272. For the four individuals whom she did not know by name, the same photographs were shown to Hysni Berisha, who identified them by name, Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4012-4016; Exhibit P596, containing photographs of members of the Berisha family identified, by name, by Hysni Berisha; Exhibit P594, pp 17, 18, 24, 28.

<sup>2518</sup> Shyhrete Berisha, T 482, 530; *See infra*, para 1406; Schedule: Victims Chart.

<sup>2519</sup> Shyhrete Berisha, T 490; Exhibit P272.

<sup>2520</sup> Halit Berisha, Exhibit P598, p 3; Halit Berisha, T 3384.

<sup>2521</sup> Halit Berisha, Exhibit P598, p 3.

<sup>2522</sup> Halit Berisha, Exhibit P598, p 3; Halit Berisha, T 3384.

<sup>2523</sup> K83, T 392-393, 399, 426-427.

<sup>2524</sup> The Chamber notes that while K83 testifies that Dr Boban Vuksanović was a commander for the civilian defence protection, Velibor Veljković testified that Boban Vuksanović was with the “Territorial Defence”, wore a green military uniform and carried an automatic rifle when he arrived at the pizzeria (Velibor Veljković, T 7055, 7132); Exhibit D308. Halit Berisha testified that Dr Vuskanović wore a military uniform and was commander of the Crisis Staff for Suva Reka/Suharekë municipality (Halit Berisha, T 3408). Halit Berisha testified that besides being

Čukarić shot him once in his back.<sup>2525</sup> Jashar Berisha was not seen alive after this day.<sup>2526</sup> Jashar Berisha was unarmed at the time and being detained by members of the Serbian forces. The evidence establishes that he was targeted because he was a Kosovo Albanian. The Chamber accepts that Jashar Berisha was killed by Serbian forces in Suva Reka/Suharekë town on 26 March 1999. Forensic evidence related to Jashar Berisha is discussed below.<sup>2527</sup>

679. Dr Boban Vuksanović, who had arrived at the pizzeria some 15 to 20 minutes after the killing, together with Mirko Đorđević, a “Territorial Defence” commander, examined the bodies.<sup>2528</sup> Crime technician Todor Jovanović took photographs of the bodies.<sup>2529</sup> The bodies at the pizzeria, including Jashar Berisha, were then loaded onto two trucks that had arrived one after the other from the direction of Prizren.<sup>2530</sup> The Chamber accepts that prior to the killings at the pizzeria, Velibor Veljković, a policeman from Suva Reka/Suharekë police station, was ordered to and involved<sup>2531</sup> in loading the body of the detainee killed earlier that day at the police station, as well as the bodies of persons that had been killed earlier on the same day and were lying on Restanski Put,<sup>2532</sup> although not all of these bodies, onto a truck that arrived from the direction of Prizren and was driven by a local policeman, Ramiz Papić.<sup>2533</sup> The truck was then driven down the

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a doctor by profession, Dr Vuksanović had once worked in the Executive Council of Suva Reka/Suharekë municipality and that then, “later on” he became the mayor; he also worked as the director of the health centre in town (Halit Berisha, T 3409). Hysni Berisha was asked whether Dr Vuksanović was the mayor of Suva Reka/Suharekë; he said he does not know but thinks he may have been. This appears to relate to an earlier period, however, when Hysni Berisha was in Germany from where he returned in 1996 (Hysni Berisha, T 3361, 3372-3373). The evidence demonstrates that Dr Vuksanović was killed by gunfire in April of 1999, allegedly by the KLA (Hysni Berisha, T 3372-3373); Halit Berisha, T 3408-3409; K83, T 443. Halit Berisha was told that that Vuksanović was wearing a camouflage military uniform when he was killed, Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7447. On the basis of this evidence, the Chamber is satisfied that Dr Vuksanović, at the time of the killings at the pizzeria, was a member of the Territorial Defence Detachment of the VJ and wore a military uniform.

<sup>2525</sup> K83, T 392-393.

<sup>2526</sup> Halit Berisha, Exhibit P598, p 3; Halit Berisha, T 3384.

<sup>2527</sup> *See supra*, para 683.

<sup>2528</sup> K83, T 390-392, 426; Exhibit D14, number “3” indicating he place where Dr Boban Vuksanović and Mirko Dorđević arrived by car.

<sup>2529</sup> K83, T 400-405, 453.

<sup>2530</sup> K83, T 391-392, 393, 424-425; Exhibit D14, marking “2” indicating the location where the trucks were when the bodies were loaded; *see also* Velibor Veljković, T 7159-7160.

<sup>2531</sup> The Chamber notes the witness’s testimony that he does not know who told him to collect the bodies (Velibor Veljković, T 7050, 7161). In his statement to the OTP in 2006, however, the witness stated that Radojko Repanović, commander of the police station, had ordered him to go after the group of men heading towards the houses on Restanski Put and to load the bodies of those killed (Velibor Veljković, Exhibit D311, para 16).

<sup>2532</sup> The Chamber recalls the hearsay account of Shefqet Zogaj about killings of Kosovo Albanians in Suva Reka/Suharekë town, including Ramadan Sukaj, Hafiz Shala, Osman Elshani and Albert, whose last name he did not know (Shefqet Zogaj, Exhibit P615, p 3). It recalls its earlier finding that while Shefqet describes these killings occurring on 25 March 1999, on the basis of the other evidence received by the Chamber, it is satisfied that the events he referred to occurred on 26 March 1999.

<sup>2533</sup> Velibor Veljković, T 7050-7052, 7088, 7129-7131, 7134, 7142, 7161. While the witness refers to picking up the bodies of the five to six civilians he saw running away from the house on Restanski Put on 26 March 1999, he also testified that it is possible he picked up more bodies on the road, “of people who had been killed earlier”, Velibor Veljković, T 7051. In statement given by the witness to the MUP in 2003, a portion of which was put to him by the Prosecution, he had stated that as they moved down Restanski Put they collected a number of dead bodies in a truck but left some dead bodies behind, Velibor Veljković, T 7183; Exhibit D313. In that same statement, evidence

road to Raštane/Reshtan in a search for other bodies before it was driven to the pizzeria to allow the bodies of those killed at the pizzeria to be loaded onto the same truck.<sup>2534</sup> Veljković testified that he went to the pizzeria with the truck because “I knew that the corpses should not be left just like that. This was a great [number] of bodies, and there would have been an outbreak if we had left them”.<sup>2535</sup> The Chamber is satisfied, therefore, that the two trucks referred to by K83 consisted of the truck containing some of the bodies picked up from Restanski Put, as well another truck that arrived from the direction of Prizren for the purposes of collecting the bodies from the pizzeria.

680. The evidence demonstrates that those involved in the loading of the bodies onto the trucks included members of the civilian defence, as well as some young people who Dr Vuksanović had called to assist and who, upon refusing to take part, were threatened and ordered to do so by Čukarić.<sup>2536</sup> Velibor Veljković also assisted in the process of loading the bodies at the pizzeria onto the trucks.<sup>2537</sup> Veljković saw bodies of dead Albanian women and children in the pizzeria. It was his evidence that a 65-70 year old Albanian woman lying by the door said something to him in Albanian, after which he informed others about the fact that she was alive and left the pizzeria; shortly after, one of his colleagues, he claims not to remember who, shot the woman. Astoundingly, Veljković testified that he feared that the woman might have had a rifle and could have shot at him.<sup>2538</sup> He testified that another man who was still alive was also shot dead, again, by one of his colleagues.<sup>2539</sup> The Chamber does not accept the witness’s attempts to distance himself from the killing of these two Berisha family members by attributing their killing to his colleagues.

681. Once all the bodies from the pizzeria were loaded onto the trucks, one of which already contained the bodies, *inter alia*, of some of the Berisha family members killed on Restanski Put, they were driven in the direction of Prizren.<sup>2540</sup> Shyhrete Berisha, Vjollca Berisha and her son

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which the Chamber accepts, Veljković stated that he also picked up the bodies of a number of individuals from Miladina Popovića street, about 250 metres from the police station, likewise leaving some of them behind, as well as the body of the detainee killed at the police station earlier that day, prior to proceeding to Restanski Put and the pizzeria, Velibor Veljković, T 7183; Exhibit D313. K83 confirmed the evidence that some of the bodies killed on Restanski Put were left lying there until 27 March 1999, testifying that photographs were taken of these bodies on this day by crime technician Todor Jovanović, K83, T 400-405, 453). K83 also testified that approximately 15-20 persons living in the houses on Restanski Put who were killed on 26 March 1999 were buried in the local cemetery, K83, T 451.

<sup>2534</sup> Velibor Veljković, T 7055, 7088, 7132, 7137-7138, 7146, 7185; D308.

<sup>2535</sup> Velibor Veljković, T 7134, 7160. The Chamber notes that in the present trial, Velibor Veljković testified that the bodies from the pizzeria were loaded onto the same truck as the bodies of the Berisha family members he collected on Restanski Put, although he conceded he was not certain that there was not more than one truck, Velibor Veljković, T 7055, 7132-7134, 7141. In his statement to the OTP in 2006, the witness had stated that the bodies of those killed in Suva Reka/Suharekë town were in fact loaded onto two trucks, Velibor Veljković, Exhibit D311, paras 16-17.

<sup>2536</sup> K83, T 390-392, 425-426.

<sup>2537</sup> See *infra*, para 679.

<sup>2538</sup> Velibor Veljković, T 7053-7054, 7137-7139.

<sup>2539</sup> Velibor Veljković, T 7055.

<sup>2540</sup> Shyhrete Berisha, T 487; K83, T 390-391; see also Velibor Veljković, T 7147.

Gramoz, all three of whom were wounded but still alive, had been loaded on the same truck. Having driven for only a short time, this truck stopped, and Shyhrete Berisha heard a woman speaking in Serbian saying “[m]y son, are you finished”, to which a man answered in the affirmative and the woman wished him a good trip. Shyhrete and Vjollca Berisha both recognized the voice of “Vera”, the mother of Zoran Petković referred to earlier as one of the individuals who approached Shyhrete’s house earlier that morning.<sup>2541</sup> Although she never spoke to her personally, Shyhrete Berisha knew Zoran’s mother well and used to see her quite often and hear her speak.<sup>2542</sup> After some time travelling in the truck, Shyhrete Berisha, Vjollca Berisha and her son Gramoz Berisha decided to jump off the back of the truck while it was moving. They did so and found themselves in Nova Šumadija/Malësi-e-Re, a village in the direction of Prizren. There, villagers gave Shyhrete Berisha first aid before taking her to Grejkoc/Grejkovce village to see a doctor.<sup>2543</sup>

682. In September 1999, a British forensic team conducted autopsies of the remains of individuals exhumed from the cemetery in Suva Reka/Suharekë town.<sup>2544</sup> Out of the total of 18 bodies examined, two of them were identified as belonging to Faton and his mother Fatime Berisha, both of whom were last seen falling to the ground near Shyhrete Berisha’s house on Restanski Put,<sup>2545</sup> it was established that the cause of death of each of these individuals was a gunshot wound to the head.<sup>2546</sup> A third body identified at the cemetery was that of Sedat Berisha.<sup>2547</sup> Although no cause of death was established for this victim, on the basis of the eye-witness accounts described, the Chamber is satisfied he died as a result of being shot by Serbian forces in Suva Reka/Suharekë on 26 March 1999.<sup>2548</sup> The Chamber recalls here the evidence of K83 that some of the bodies of civilians from the houses on Restanski Put were left there until 27 March 1999 when photographs were taken of these bodies; he recalled about 15-20 individuals being subsequently buried in the local cemetery, “under the codes that were already there”.<sup>2549</sup>

683. Also in September 1999, the British Forensic team conducted exhumations at the VJ firing range near Koriša/Korishë, close to Prizren,<sup>2550</sup> also referred to as “Kroj-I-Popit”.<sup>2551</sup> Clothing, shoes, wallets and other items were exhumed in the vicinity of some human remains.<sup>2552</sup> All items

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<sup>2541</sup> Shyhrete Berisha, T 487, 526-527.

<sup>2542</sup> Shyhrete Berisha, T 487, 526-527.

<sup>2543</sup> Shyhrete Berisha, T 490-491.

<sup>2544</sup> *See supra*, para 1404.

<sup>2545</sup> *See supra*, paras 670, 672, 682, 1404, 1405.

<sup>2546</sup> *See supra*, para 1405.

<sup>2547</sup> *See supra*, para 1405.

<sup>2548</sup> *See supra*, para 1405.

<sup>2549</sup> K83, T 400-405, 451-454.

<sup>2550</sup> *See supra*, para 1406.

<sup>2551</sup> Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3712-3713; *see supra*, para 1406.

<sup>2552</sup> Hysni Berisha, T 3345-3346; Hysni Berisha, Exhibit P584, pp 8-9; *see also* Halit Berisha, T 3383-3386; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3611-3612, 3636; Exhibit P591, p 6. Halit Berisha testifies about

were presented to family members for identification.<sup>2553</sup> Many of these items were identified as belonging to various members of the Berisha family.<sup>2554</sup> As discussed in more detail later in this Judgement, some of these items belonged to Berisha family members who were identified by an eyewitness survivor as being killed in the pizzeria, while some belonged to other Berisha family members.<sup>2555</sup> Items of clothing of Jashar Berisha, as well as a part of one of his limbs, were found at the site.<sup>2556</sup> Some two years later, in June 2001, the remains of no less than 24 members of the Berisha family, including human remains of Jashar Berisha and the unborn baby of Lirija Berisha, were found, and identified by DNA evidence, over 400 kilometres away in a mass grave site at the Batajnica SAJ Centre near Belgrade.<sup>2557</sup> The Chamber also notes that the remains of Afrim, Arta, Hamdi and Zana Berisha were amongst those 24 individuals exhumed from Batajnica 1. As discussed in more detail later in this Judgement, some personal items belonging to Afrim Berisha were also identified in Kroji-I-Popit. Based on the totality of the evidence and the pattern of attack by Serbian forces in Suva Reka/Suharekë town on 26 March 1999, the Chamber is satisfied that these four Berisha family members were also killed by Serbian forces. With respect to the remaining Berisha family members listed in Schedule D of the Indictment – Nefije, Sait, Mirat and Zelihe Berisha – the Chamber notes that their remains have not identified. In the context of the events described above, the Chamber considers it likely that Nefije, Zelihe and Mirat Berisha, as well as Sait Berisha were also killed on 26 March 1999 in Suva Reka/Suharekë town, although it is unable, on the evidence, to make this finding conclusively. Based on the totality of the evidence, including forensic findings pertaining to the members of the Berisha family, it is accepted by the Chamber that at least 45 members of the Berisha family were killed by MUP forces, including local and reserve policemen, on 26 March 1999.<sup>2558</sup>

684. The Chamber further accepts, on the basis of this evidence, including the forensic evidence discussed in greater detail later in this Judgement, that bodies of Berisha family members killed on 26 March 1999 were transported by truck to the VJ firing range near Koriša/Korishë, close to

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finding the clothes of his brother at this site “sometime in July of 1999” (Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3611-3612, 3636). As testified to by Hysni Berisha, the British forensic team initially visited the site in July of 1999, while the exhumations only started in September of 1999 (Hysni Berisha, Exhibit P584, pp 8-9; Hysni Berisha, T 3345-3346). The Chamber is satisfied, on the evidence, that the exhumation process and identification of items of clothing as well as part of the limb of Halit Berisha’s brother Jashar Berisha, therefore, took place in September of 1999.

<sup>2553</sup> Hysni Berisha, Exhibit P584, pp 8-9; Halit Berisha, T 3385; *see also* Exhibit P590.

<sup>2554</sup> Hysni Berisha, Exhibit P584, pp 8-9; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4011-4012; Hysni Berisha, T 3345-3347; *see also* Exhibits P590, P591, P592, P593; *see supra*, para 1406. Hysni Berisha describes finding a handkerchief of 63 year old Musli Berisha, a sweater/jacket belonging to one of Musli Berisha’s children Violeta or Afrim, a pencil case belonging to the 14 year old Merita Berisha (daughter of Hamdi Berisha), a notebook belonging to 10 year old Mirat Berisha (the son of Hamdi Berisha), and shoes belonging to Sofije Berisha and her husband, 55 year old Vesel Berisha.

<sup>2555</sup> *See supra*, para 1406.

<sup>2556</sup> Halit Berisha, T 3385-3386, 3613; Exhibit P591, p 6.

<sup>2557</sup> Halit Berisha, T 3386-3387; *see also* Exhibit P599 (*Milutinović* transcript), T 3613. *See supra*, para 1406.

Prizren, where they were buried for a short period of time before being disinterred, leaving behind several of the items subsequently found by the British forensic team accompanied by Hysni Berisha and Halit Berisha at this site, and subsequently transported to the Batajnica SAJ Centre near Belgrade to be buried in a mass grave.

685. The Chamber notes here the evidence of Velibor Veljković that K83 was with him throughout the day and was not amongst those men present at the pizzeria at the time of the shooting.<sup>2559</sup> This directly contradicts the evidence provided by him in earlier interviews and statements,<sup>2560</sup> as well as contradicting the evidence of K83 himself about his involvement in the events. The Chamber accepts the evidence of K83 concerning his involvement in the events, convinced of its reliability. Velibor Veljković on the other hand gave unsatisfactory explanations for the obvious and significant discrepancies and ambiguities between his previous evidence and his testimony during this trial. Accordingly, the Chamber was not disposed to accept this aspect of his evidence that K83 was not amongst the men present at the pizzeria at the time of the shooting.<sup>2561</sup>

686. The findings above demonstrate that there was no on-site investigation following the killings of the Berisha family members at the pizzeria. While photographs were taken of the bodies at the pizzeria on 26 March 1999, as well as of the bodies left behind on Restanski Put on 27 March 1999,<sup>2562</sup> the fact that some of the bodies on Restanski Put and the bodies of those killed at the pizzeria were loaded into trucks and transported towards Prizren immediately after the killing prevented any type of investigation into the incident. The Chamber notes that there was an on-site investigation conducted in Suva Reka/Suharekë town on 30 March 1999; this investigation, however, was limited to the bodies of eight Kosovo Albanians discovered on Miladina Popovića street in Suva Reka/Suharekë town on that day.<sup>2563</sup> It records that these bodies were buried in the Muslim cemetery in Suva Reka/Suharekë town on the same day as the on-site investigation.<sup>2564</sup> No

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<sup>2558</sup> See *supra*, para 1403-1406.

<sup>2559</sup> Velibor Veljković, T 7085-7086, 7144-7146.

<sup>2560</sup> Velibor Veljković, T 7069, 7086-7087, 7145-7146, 7181-7185.

<sup>2561</sup> See, for example, Velibor Veljković, T 7071-7074, 7152-7153, 7172-7174, 7189-7190, with respect to the question of the order given by Commander Repanović on 26 March 1999 about what to do with the Albanian population; T 7076-7077; with respect to who ordered him to go and load the bodies of those that had been killed on Restanski Put on 26 March 1999; T 7078-7080, with respect to whether he did or did not see the individuals who were shooting at the civilians running from Vesel Berisha's house towards the shopping centre. See also T 7164-7169, 7188-7189, 7191-7192.

<sup>2562</sup> K83, T 400-405, 453.

<sup>2563</sup> Exhibit D802. The Chamber notes that Velibor Veljković also participated in the collection of a number of the bodies from Miladina Popović location on 26 March 1999; it is his evidence that they left some of the bodies behind there before moving on to collect the bodies of the Berisha family on Restanski Put and then the pizzeria at the shopping centre (Velibor Veljković, T 7183; 6D2, T 12272-12273. During cross-examination of K83, the Defence puts to K83 that there was an on-site investigation on 30 March 1999 on Miladin Popović street, for which K83 provided security detail, which the witness confirms (K83, T 449). The Chamber notes that K83 was not in the position, however, to explain to the Chamber where Miladin Popović street was. No statement was taken from K83 on this occasion (K83, T 450-451). See *infra*, paras 2089-2090.

<sup>2564</sup> Exhibit D802, p 6.

mention is made in the report of this investigation of the bodies on Restanski Put or the bodies at the pizzeria. The lack of a proper investigation into the killings of the Berisha family members is discussed in more detail later in this Judgement.<sup>2565</sup>

(c) Expulsion from Suva Reka/Suharekë town and adjoining villages.  
Destruction of the Mosque in Suva Reka/Suharekë town

687. It is the evidence of policeman Velibor Veljković, that upon returning to the Suva Reka/Suharekë police station following the killings of the Berisha family members on Restanski Put and in the pizzeria on 26 March 1999, he was told by a colleague that there had been an order from Belgrade to cease the killings, and that the Albanian population in town should be told to leave within half an hour or meet the fate of the Berisha family.<sup>2566</sup> There is other confirmatory evidence that this occurred.<sup>2567</sup> Velibor Veljković also testified that following the killings of the Berisha family members on 26 March 1999, the houses on Restanski Put were set on fire by the police.<sup>2568</sup>

688. Evidence demonstrates that soon after the Berisha killings, the Albanian community commenced to leave en masse towards Prizren and Albania.<sup>2569</sup> This evidence receives some support from that of villagers Hysni Berisha and Halit Berisha, who detailed their flight from Suva Reka/Suharekë town following the attack by the police on 26 March 1999, as well as on the destruction of the town's mosque. The factual findings for these events are set out below, in chronological order.

689. On 27 March 1999, there was a large movement of police on the main road and back streets of Suva Reka/Suharekë town. From his home in Suva Reka/Suharekë town Hysni Berisha saw police setting fire to houses in the part of town where the massacre of the Berisha family members had occurred.<sup>2570</sup> That night, Hysni Berisha and his family, together with some of his neighbours, hid in the basement of a house, fearing that the police would soon arrive at that part of town in which he lived.<sup>2571</sup> The following day, fearing for their safety, Hysni Berisha took his family and

<sup>2565</sup> See *infra*, para 2087-2091.

<sup>2566</sup> Velibor Veljković, T 7062, 7172, 7174.

<sup>2567</sup> The Chamber notes the evidence of Shefqet Zogaj, that a few days after the events in Suva Reka/Suharekë town, while in Belanica/Bellanicë, he was told by residents of Suva Reka/Suharekë town that the police had surrounded all of the houses between the police station and the village of Raštane/Reshtan, ordered people to leave their homes, and subsequently burned these homes (Shefqet Zogaj, Exhibit P615, p 3). While Shefqet Zogaj states that this occurred on 25 March 1999, the Chamber accepts, on the basis of evidence of Shyhrete Berisha and Velibor Veljković, that the burning of the houses on this street in fact took place on 26 March 1999.

<sup>2568</sup> Velibor Veljković, T 7063, Shefqet Zogaj, Exhibit P615, p 3.

<sup>2569</sup> Velibor Veljković, T 7063.

<sup>2570</sup> Hysni Berisha, Exhibit P584, p 3; Hysni Berisha, Exhibit P588 (*Milošević* transcript), T 7490.

<sup>2571</sup> Hysni Berisha, Exhibit P584, p 3; Hysni Berisha, Exhibit P588 (*Milošević* transcript), T 7490.

went to stay with a cousin who lived further away from the area where the police were burning houses.<sup>2572</sup>

690. Around noon on 28 March 1999, standing in the garden of his home, Halit Berisha heard an explosion and at a distance of about 300 metres, he saw that at the site of the explosion, the minaret of the mosque in Suva Reka/Suharekë was destroyed.<sup>2573</sup> While the mosque would usually have been full of Albanians because it was the Muslim day of Bajram, it was empty that day (no doubt because of the events described in the previous section of this Judgement); nobody was wounded.<sup>2574</sup> A few minutes after the explosion, a green and olive camouflage Gazik army vehicle was observed moving from the vicinity of the mosque in the direction of the military base in Birač/Biraq.<sup>2575</sup> The destruction of the minaret of the mosque in question, identified elsewhere in the evidence as the Xhamia-eBardhe Mosque, was caused by an explosion from within the building.<sup>2576</sup>

691. Throughout 28 March 1999, convoys of Kosovo Albanian civilians expelled from Suva Reka/Suharekë town by Serbian forces were leaving town in the direction of Prizren.<sup>2577</sup> Around 1800 hours that day, Halit Berisha's neighbour, reserve policeman Djuro Nović, wearing a blue camouflage uniform, came to his house and told Halit Berisha that he should get ready as soon as possible, and that "[y]ou must go to Albania, paramilitaries will come and kill you".<sup>2578</sup> The Chamber finds that this constituted a threat to Halit Berisha. As a result, he left for Albania.<sup>2579</sup> Together with his wife, he left his home and went to Savrovo/Savrovë village to meet the rest of his family that had gone there earlier.<sup>2580</sup> On the following morning, 29 March 1999, Halit Berisha and his family left Savrovo/Savrovë village and went to Bužalja/Buzhallë, where he stayed in a house together with approximately 130 other Kosovo Albanians.<sup>2581</sup> On about 2 April 1999, Serbian forces launched a further offensive in a number of villages throughout Suva Reka/Suharekë municipality, including Sopina/Sopijë, Mušutište/Mushtisht, Vranic/Vraniq, Savrovo/Savrovë,

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<sup>2572</sup> Hysni Berisha, Exhibit P584, p 3; Hysni Berisha, Exhibit P588 (*Milošević* transcript), T 7492-7494.

<sup>2573</sup> Halit Berisha, T 3387-3389, 3416; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3608-3609, 3614-3615; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7456; Exhibit P613, marking "H" to indicate the location of the mosque; Exhibit P614. See also Hysni Berisha, Exhibit P586, p 2.

<sup>2574</sup> Halit Berisha, Exhibit P598, p 3; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3614-3615; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7456; Halit Berisha, T 3388-3389.

<sup>2575</sup> Halit Berisha, T 3387-3388, 3420; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3615-3616, 3661, 3666-3667; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7456; see also para 1820.

<sup>2576</sup> See *infra*, paras 1821-1825.

<sup>2577</sup> Halit Berisha, T 3392, 3415; Halit Berisha Exhibit P598, p 3.

<sup>2578</sup> Halit Berisha, Exhibit P598, p 3; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7462; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3616-3617, 3651; Halit Berisha, T 3379, 3405-3406.

<sup>2579</sup> Halit Berisha, T 3406.

<sup>2580</sup> Halit Berisha, Exhibit P598, p 3; Halit Berisha, T 3415. See also *supra*, para 664.

<sup>2581</sup> Halit Berisha, Exhibit P598, p 4.



Bukosh/Bukoš<sup>2582</sup> and Bužalja/Buzhallë.<sup>2583</sup> Because of this offensive, some of Halit Berisha's family left Bužalja/Buzhallë village and drove toward Albania via Prizren, while Halit Berisha and his two sons took shelter in the mountains, in an area called Llanishte.<sup>2584</sup> Halit Berisha rejoined the members of his family, who had driven towards Albania, two days later in the village of Savrovo/Savrovë; they told him that on their journey to Albania, they had been stopped by police and told to return to Savrovo/Savrovë.<sup>2585</sup> Halit Berisha and his family remained in Savrovo/Savrovë for two more days before returning to Suva Reka/Suharekë town.<sup>2586</sup>

692. On the morning of 3 April 1999, individuals whom Hysni Berisha described as “Serb paramilitaries wearing blue camouflage uniforms, some in black uniforms with black bandannas on their heads and beards, some had shaved heads, carrying automatic AK-47’s weapons, knives, weapons used for creating fire”, approached the house of a cousin of Hysni Berisha in Suva Reka/Suharekë town where the witness and his family had taken shelter.<sup>2587</sup> While in his statement to the OTP in 2001 it appears that he understood the term “paramilitaries” broadly to incorporate several forces,<sup>2588</sup> when questioned in court, he demonstrated that he was, however, able to distinguish among the various forces present in Suva Reka/Suharekë town.<sup>2589</sup> Moreover, his description of some of these individuals wearing blue or blue camouflage uniforms has remained consistent throughout all of his evidence.<sup>2590</sup> Similarly consistent is his evidence of individuals with unshaven faces, shaved heads, some with tattoos, and their dress and equipment. On this basis, and on the basis of other evidence as to uniforms, dress, appearance and equipment used by

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<sup>2582</sup> The Chamber notes that K79, a member of a PJP unit testified about an operation in Bukošh/Bukoš, but does not specify a time-frame (K79, Exhibit P1260 (*Milutinović* transcript), T 9673-9675).

<sup>2583</sup> Halit Berisha, T 3391, 3413-3415; *see also* Halit Berisha, Exhibit P598, p 4.

<sup>2584</sup> Halit Berisha, T 3413-3415; *see also* Halit Berisha, Exhibit P598, p 4; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7436-7437. The Chamber notes that Halit Berisha testified in *Milošević* that he “hid” in the “woods near Buzhallë” together with his two sons when the rest of his family headed towards Albania (Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7436). In his testimony in this trial, however, he stated that he “took shelter” in the mountains in an area called “Llanishte” (Halit Berisha, T 3413-3413). In the view of the Chamber this is not an issue of significance to the credibility of Halit Berisha.

<sup>2585</sup> Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7436-7437; *see also* Halit Berisha, Exhibit P598, p 4.

<sup>2586</sup> Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7436-7437.

<sup>2587</sup> Hysni Berisha, Exhibit P584, p 3.

<sup>2588</sup> In his statement, Hysni Berisha explained that he referred to these forces as “paramilitaries” because they were not regular policemen and did not come from the area, as he did not recognize any of them (Hysni Berisha, Exhibit P584, p 3).

<sup>2589</sup> Hysni Berisha testified that he considered paramilitaries to be “all those citizens who were mobilized into the police and army forces” as well as the “special Yugoslav police forces”, “because their uniforms were different from the regular army”, Hysni Berisha, T 3350-3351. He further distinguished paramilitaries and the military on the basis of their outer appearance; paramilitaries had shaved heads and/or were unshaven and instead of caps would wear bandannas, and some had tattoos, Hysni Berisha, T 3350-3351, 3356, 3358. With respect to the police, Hysni Berisha knew them to wear two types of uniforms, blue and blue camouflage; they usually had inscriptions on their arms, Hysni Berisha, T 3350-3351; *see also* Hysni Berisha, T 3356, 3358. Some of the police he saw in Suva Reka/Suharekë town wore white and red ribbons, although it is not clear from the evidence on which occasion he sighted these individuals, Hysni Berisha, T 3350. The Chamber notes in this regard that there is evidence by some witnesses that ribbons were worn by both MUP and VJ forces during the Indictment period, *see supra*, paras 265-268.

<sup>2590</sup> Hysni Berisha, Exhibit P584, p 3; Hysni Berisha, P587, p 4017-4018; Hysni Berisha, T 3350, 3356-3359.

different units of the Serbian police, VJ forces, and paramilitary units, the Chamber accepts that amongst the individuals observed by the witness on 3 April 1999, there were members of the MUP, even though the witness did not recognize any locals among them, and also of paramilitary units.<sup>2591</sup>

693. The forces described by the witness were shooting and setting fire to houses in the Gashi neighbourhood of Suva Reka/Suharekë town; a total of 50-60 homes in that locality alone were burnt.<sup>2592</sup> Upon seeing these individuals approaching his home, Hysni Berisha and his family left their home and headed to a nearby field where other villagers had also collected, some in vehicles, some on foot.<sup>2593</sup> There they were surrounded.<sup>2594</sup> Hysni Berisha was ordered out of his car by members of these forces and forced to hand over money, after which he was told to “go to Albania”.<sup>2595</sup> A convoy of people then left Suva Reka/Suharekë town, and was joined by more displaced persons along the way. By the time this convoy reached Koriša/Korishë village in Prizren municipality, it was approximately five kilometres long.<sup>2596</sup>

694. In the night of 4-5 April 1999, and again early in the morning of 5 April 1999, while the convoy was forced to remain in Koriša/Korishë village, individuals also described by Hysni Berisha as paramilitaries<sup>2597</sup> arrived in jeeps from the direction of Suva Reka/Suharekë, demanding and seizing money and valuables from the people in the convoy.<sup>2598</sup> At around 0900 hours in the morning of 5 April 1999, police and army forces in tanks and Pragas coming from the direction of Prizren towards Suva Reka/Suharekë passed the convoy waiting in Koriša/Korishë. Shots were occasionally fired at the people in the convoy and some vehicles were seized by the Serbian forces.<sup>2599</sup> This lasted for two days, while the convoy remained in Koriša/Korishë. Finally, the convoy was allowed to continue; it was stopped once more at the military barracks near the entrance of Prizren where it was joined by another convoy from Đakovica/Gjakovë before being allowed to carry on towards Albania.<sup>2600</sup>

695. Near the border with Albania, the convoy was met by a police vehicle carrying Milan Šipka, the former police commander of Suva Reka/Suharekë police station, who was wearing a blue camouflage uniform. Milan Šipka informed the people in the convoy that the border was closed

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<sup>2591</sup> See *supra*, paras 53-55, 64-66, 76, 202, 207, 211, 215.

<sup>2592</sup> Hysni Berisha, Exhibit P584, p 3; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4032, 4035.

<sup>2593</sup> Hysni Berisha, Exhibit P584, p 3.

<sup>2594</sup> Hysni Berisha, Exhibit P584, p 3.

<sup>2595</sup> Hysni Berisha, Exhibit P584, p 3.

<sup>2596</sup> Hysni Berisha, Exhibit P584, p 3.

<sup>2597</sup> Hysni Berisha, T 3350-3351, 3356, 3358.

<sup>2598</sup> Hysni Berisha, Exhibit P584, pp 3-4.

<sup>2599</sup> Hysni Berisha, Exhibit P584, p 4.

<sup>2600</sup> Hysni Berisha, Exhibit P584, p 4.

and that they should return to their homes.<sup>2601</sup> The convoy returned. Upon arriving in Suva Reka/Suharekë at around 2100 hours on 5 April 1999, Hysni Berisha was questioned by a police patrol at the shopping centre. They accused the witness of lying when he told them they had been ordered to return to their homes.<sup>2602</sup> Nevertheless, Hysni Berisha and his family were then allowed to return to their home; there, they found out that it had been broken into, looted, and there was no electricity.<sup>2603</sup> From the day of their return to their home in Suva Reka/Suharekë town, police paid regular visits to the family home.<sup>2604</sup>

696. On 7 May 1999, Hysni Berisha was visited in his home by individuals he described in his statement to the OTP as “another” group of “paramilitaries”, who had arrived in Suva Reka/Suharekë town in several types of vehicles and started looting and burning houses on the main street.<sup>2605</sup> He describes this particular group of men who came to his house as wearing green and brown camouflage uniforms, with black bandannas on their heads and some with white bandannas, some with shaved heads. The majority of these men had tattoos on their arms, and some on their heads; he remembers seeing a tattoo of a snake.<sup>2606</sup> The individuals described by the witness questioned him; he was forced to find food and candles for them.<sup>2607</sup> These forces left Suva Reka/Suharekë town on 9 May 1999.<sup>2608</sup> While the Chamber accepts, from the witness’s description of these men, that they included paramilitaries, it is unable to determine whether these paramilitaries were accompanied by members of the PJP or the SAJ.

697. The evidence demonstrates that witness Halit Berisha, upon his return with his family to Suva Reka/Suharekë from Savrovo/Savrovë on 7 April 1999, went to hide in the woods a second time with two of his sons; the remainder of his family stayed at his aunt’s house in Suva Reka/Suharekë town where they had all taken refuge a few days earlier.<sup>2609</sup> On 2 May 1999, Halit Berisha left the woods and returned to stay in his aunt’s house together with his family. His wife would occasionally go back to their own home in the town to collect food. The family home had been looted of valuable items and the furniture had been destroyed. Certain houses in the area,

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<sup>2601</sup> Hysni Berisha, Exhibit 584, p 4; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4036-4037.

<sup>2602</sup> Hysni Berisha, Exhibit P584, p 4; Hysni Berisha, Exhibit P588 (*Milošević* transcript), T 7500.

<sup>2603</sup> Hysni Berisha, Exhibit P584, pp 4-5.

<sup>2604</sup> Hysni Berisha, Exhibit P584, p 5.

<sup>2605</sup> Hysni Berisha, Exhibit P584, p 5.

<sup>2606</sup> Hysni Berisha, Exhibit P584, p 5; *see also* Hysni Berisha, T 3357. The Chamber notes that in this trial, the witness states that the men who came to his house on 7 May 1999 wore green camouflage uniforms. Hysni Berisha believed them to be of a special unit, but does not provide a sufficient basis for this claim (Hysni Berisha, T 3357; *see also* T 3350-3351, where the witness makes reference to a special unit which he was not able to identify at the time of events but learned about later. It is unclear how he learned of this unit or why he believed this was a “special unit”).

<sup>2607</sup> Hysni Berisha, Exhibit P584, p 5.

<sup>2608</sup> Hysni Berisha, Exhibit P584, p 5.

<sup>2609</sup> *See supra*, paras 691-692.

including that of his neighbour Asllan Berisha, and other Berisha relatives, had been burnt down completely.<sup>2610</sup>

698. On 16 May 1999, Halit Berisha, together with six others, was interviewed at the municipal building by Milorad Nisavić, aka “Mišković”, a member of the RDB of the MUP, and questioned as to his whereabouts in the previous month.<sup>2611</sup> He was not mistreated and allowed to return to his Aunt’s home, where he stayed until 21 May 1999.<sup>2612</sup>

699. The evidence demonstrates that in the course of the morning of 21 May 1999, villagers of Suva Reka/Suharekë town were ordered to leave their homes. At 1020 hours on 21 May 1999 six police officers wearing blue camouflage uniforms came to Halit Berisha’s aunt’s house in Suva Reka/Suharekë town where, at the time, Halit Berisha was staying with his family. One of the policemen, Šinisa Andrejević, told those present, including Halit Berisha, “you have 15 minutes to leave for Albania and you will never see this land again.”<sup>2613</sup> Witness Hysni Berisha gives similar evidence; he testified that on that morning, several individuals known to him arrived at his house<sup>2614</sup> in a red civilian golf vehicle,<sup>2615</sup> wearing blue camouflage police uniforms and carrying automatic weapons.<sup>2616</sup> These were Šinisa Andrejević, Miroslav “Miki” Petković, as well as Milisav Gogić, who worked for the state security department of the MUP, and an individual Hysni Berisha refers to as “Ramiz” who was with the regular police, in addition to one unidentified individual.<sup>2617</sup> They ordered his family to leave.<sup>2618</sup> The Chamber accepts that “Ramiz” is in fact Ramiz Papić, the driver of the police patrol who took part in the events in Suva Reka/Suharekë town on 26 March 1999.<sup>2619</sup>

700. Having been ordered to leave their homes, people in town started to leave town on 21 May 1999; those who had vehicles were told to join a convoy while those without transportation were told to gather in the shopping centre where two buses and two trucks had been organized to

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<sup>2610</sup> Halit Berisha, Exhibit P598, p 4.

<sup>2611</sup> Halit Berisha, Exhibit P598, p 4; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3617-3618; Halit Berisha, T 3407; *see supra* paras 670, 672.

<sup>2612</sup> Halit Berisha, Exhibit P598, p 4.

<sup>2613</sup> Halit Berisha, T 3410; Halit Berisha, Exhibit P598, p 4; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3618-3619.

<sup>2614</sup> Hysni Berisha, Exhibit P584, pp 5-6; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4038.

<sup>2615</sup> Hysni Berisha testified that it was not uncommon for police to use civilian vehicles, (Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4041.

<sup>2616</sup> Hysni Bersiha, T 3371; Hysni Berisha, Exhibit P584, pp 5-6; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4037-4038, 4041.

<sup>2617</sup> The Chamber notes that Hysni Berisha refers to these individuals as “paramilitaries”; having named and described them individually, however, it is clear that the witness used this term broadly to describe Serbian forces (Hysni Berisha, Exhibit P584, pp 5-6). It also notes that the witness refers to a “Mikica” Petković, which the Chamber is satisfied is Miroslav “Miki” Petković, a reserve police member, *see supra*, para 666.

<sup>2618</sup> Hysni Berisha, Exhibit P584, pp 5-6; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4037-4038, 4041.

<sup>2619</sup> *See supra*, para 666.

transport them to Albania.<sup>2620</sup> Halit Berisha and those staying in his aunt's house, by car, joined a convoy of several thousands of people leaving Suva Reka/Suharekë town.<sup>2621</sup> At a checkpoint just outside of Prizren at a pharmaceutical company, a policeman and a soldier checked and seized some of the people's identification documents.<sup>2622</sup> The convoy continued through Prizren and then to Žur/Zhur.<sup>2623</sup> Having reached the border crossing to Albania at Morina a few hours later, "a policeman and a soldier" looked at the hands of the people passing through.<sup>2624</sup> Other evidence suggests that this may have been done to look for signs of the use of firearms.<sup>2625</sup> Before crossing into Albania, identification documents and licences were seized from people in the convoy and registration plates were removed from the vehicles by Serbian authorities.<sup>2626</sup> By this means all formal means of identification and connection with Kosovo were removed. Halit Berisha and his family crossed the border into Albania and went to Kukës, from where they were subsequently taken to a refugee camp.<sup>2627</sup>

701. Despite being ordered to leave, Hysni Berisha, as opposed to Halit Berisha, decided not to join the column leaving Suva Reka/Suharekë town. He testified that this was because of the treatment received the last time they were ordered to leave their homes, on 3 April 1999.<sup>2628</sup> Together with his family, he hid in a house with another family on the night of 21-22 May 1999. The following morning on 22 May 1999, having observed a large movement of the police in town and realizing it was too dangerous to stay, Hysni Berisha and his family left Suva Reka/Suharekë town by vehicle and caught up with some buses being escorted by the police.<sup>2629</sup> Hysni Berisha and his family went to Prizren where they stayed in their aunt's house until 13 June 1999, after which he was able to return to his home in Suva Reka/Suharekë town.<sup>2630</sup>

702. The evidence of Hysni Berisha and Halit Berisha of civilians from Suva Reka/Suharekë being forced to leave is consistent with the evidence of Shyhrete Berisha. Shyhrete Berisha, having on 26 March 1999 jumped off the truck containing the dead bodies of the Berisha family members killed in Suva Reka/Suharekë town, and having been taken by villagers to Grejkovce/Greikoc for

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<sup>2620</sup> Hysni Berisha, Exhibit P584, p 6; Halit Berisha, Exhibit P598, p 4; *see also* Halit Berisha, T 3416.

<sup>2621</sup> Halit Berisha, Exhibit P598, p 4.

<sup>2622</sup> Halit Berisha, Exhibit P598, p 4; Halit Berisha, T 3412.

<sup>2623</sup> Halit Berisha, Exhibit P598, p 4.

<sup>2624</sup> Halit Berisha, T 3410-3412. The Chamber notes that it was the evidence in this trial of Halit Berisha that those who took their identification cards were police and soldiers (Halit Berisha, T 3410), although in his statement to the OTP in 2001 referred only to the police taking part in this process (Halit Berisha, Exhibit P598, p 4). The Chamber accepts his evidence.

<sup>2625</sup> *See* Shukri Gërxhaliu, Exhibit P512, para 35; *see also* Zoran Stanković, T 13464; Vukmir Mirčić, T 13253.

<sup>2626</sup> Halit Berisha, T 3410-3412. The Chamber notes that while Halit Berisha testified in this trial that those who took their identification cards were police and soldiers (Halit Berisha, T 3410), in his statement to the OTP in 2001, he refers to only the police taking part in this process (Halit Berisha, Exhibit P598, p 4).

<sup>2627</sup> Halit Berisha, Exhibit P598, p 4; Halit Berisha, T 3410-3412, 3416.

<sup>2628</sup> Hysni Berisha, Exhibit P584, p 6.

<sup>2629</sup> Hysni Berisha, Exhibit P584, p 6.

medical treatment, eventually met up with her parents in Budakovo/Budakovë village sometime in early May 1999.<sup>2631</sup> Together with her uncles, they went to stay on a mountain near Vraniq/Vranic for some time, before joining a convoy of displaced persons travelling initially to Bukosh/Bukoš village.<sup>2632</sup> In Bukosh/Bukoš, policemen took a number of men from the convoy, some of whom did not return. Women told her they had been robbed of their money and valuables before being allowed to return to the convoy.<sup>2633</sup> The policemen acted aggressively towards the people in the convoy, and told them “[w]e will kill all of you”.<sup>2634</sup> From Bukosh/Bukoš the convoy continued to the Albanian border. Serbian policemen at the border demanded money from people and their identification documents, which were not returned.<sup>2635</sup> Shyhrete Berisha crossed into Albania with the convoy and arrived in Kukës on 5 or 6 May 1999.

## 2. Events in other villages in Suva Reka/Suharekë municipality

703. As already noted above, Serbian forces launched a large scale offensive in an area which included several villages in Suva Reka/Suharekë municipality starting on or about 20-21 March 1999.<sup>2636</sup> The operations launched in these other towns or villages are not separately and specifically charged in the Indictment. They have relevance, however, to the charge of Persecution in Count 5 of the Indictment and may also serve to enable a better understanding of the overall activities of the Serbian forces in the municipality, and Kosovo.

### (i) Pecane/Peqan

704. There was an attack on Pecane/Peqan village on or about 20-21 March 1999.<sup>2637</sup> This village is situated approximately two kilometres to the north of Suva Reka/Suharekë town.<sup>2638</sup> While the evidence is unclear with respect to the forces that actually entered Pecane/Peqan village on this day, the Chamber accepts that this village was shelled (in the Chamber’s finding by VJ forces as only the VJ was equipped to shell), and that Serbian forces –the evidence does not reliably identify whether they were police, army or paramilitary– entered Pecane/Peqan village around this time.<sup>2639</sup> The Chamber is also aware of evidence that virtually every one of the 200-300 households

<sup>2630</sup> Hysni Berisha, Exhibit P584, p 6.

<sup>2631</sup> Shyhrete Berisha, T 491.

<sup>2632</sup> Shyhrete Berisha, T 491-492.

<sup>2633</sup> Shyhrete Berisha, T 492, 536-537.

<sup>2634</sup> Shyhrete Berisha, T 492.

<sup>2635</sup> Shyhrete Berisha, T 492-493, 536.

<sup>2636</sup> *See supra*, para 653.

<sup>2637</sup> Shefqet Zogaj, Exhibit P615, p 2; Shefqet Zofaj, Exhibit P617 (*Milutinović* transcript), T 5879-5880; Hamide Fondaj, Exhibit P627, p 3.

<sup>2638</sup> Exhibit P823, p 11 as stamped on the page.

<sup>2639</sup> In his statement to the OTP in April of 1999, Shefqet Zogaj states that he saw “eight tanks in the village of Peqan alone, seven armoured vehicles (APC’s) and two Pragas” (Shefqet Zogaj, Exhibit P615, pp 2-3). In the *Milutinović* trial, when this portion of his statement is put to him concerning what he saw in Pecane/Peqan village,

in Pecane/Peqan village had a family member active in the KLA, and that the KLA was active in the village in March of 1999.<sup>2640</sup>

705. During cross-examination in the *Milutinović* case, Shefqet Zogaj agreed that KLA member Ilmet Fondaj, Hamide Fondaj's husband, had ordered the civilian population to leave Pecane/Peqan, but testified that this was done because Serbian forces were shelling the village, and not as a strategy to lay an ambush against Serbian forces.<sup>2641</sup> Despite a portion of her husband's statement to the OTP in 2001 in which reference is made to such an order, Hamide Fondaj testified that the population of Pecane/Peqan did not wait for an order from the KLA to leave the village, explaining that the villagers themselves decided to leave once the shelling started.<sup>2642</sup> When the attack against Pecane/Peqan started, Ilmet Fondaj escorted Hamide Fondaj and their children to the nearby village of Nišor/Nishor where other villagers from surrounding villages were also taking shelter.<sup>2643</sup> Serbian forces were not able to enter Nišor/Nishor at this time because of KLA resistance in the area.<sup>2644</sup> KLA forces present in Pecane/Peqan as well as in the surrounding area fought Serbian forces for eight consecutive days before withdrawing to the mountain above Belanica/Bellanicë.<sup>2645</sup>

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he stated, *inter alia*, that "I don't know about this figure, seven, or what you said" (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5885). The Chamber further notes that when Shefqet Zogaj's evidence concerning the vehicles and "policemen" he saw in Pecane/Peqan during the attack is put to him during the *Milutinović* trial, he claims that the description he provided in this respect does not relate to Pecane/Peqan village, but to Belanica/Bellanicë village (Shefqet Zogaj, Exhibit P615, pp 2-3; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5883-5885). Further, the witness's description of the individuals he identifies as "policemen" taking part in the attack in the village is unclear; while in his statement to the OTP in April 1999 he describes the "policemen" he saw as wearing uniforms with different colours, "more black than anything else", masked and with painted faces (Shefqet Zogaj, Exhibit P615, pp 2-3), in his testimony in the *Milutinović* trial, asked whether he saw these "policemen" with his own eyes, he testified that he does not believe he described the individuals in Pecane/Peqan as recorded in his statement, adding that "[w]hat I think I said was that in Belanica/Bellanicë they had painted faces and bandanas" (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5883-5885, 5904-5906). See also Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3776-3777, 5869-5871 and Shefqet Zogaj, T 3441-3442 with respect to his altered description of the individual he identified as Zoran Lazić. Hamide Fondaj does not provide a description of any forces that entered Pecane/Peqan, stating only that Serbian forces shelled Pecane/Peqan (Hamide Fondaj, Exhibit P627, p 3).

<sup>2640</sup> Shyhrete Berisha, T 3843-3844, 3849.

<sup>2641</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5881-5882; see also Hamide Fondaj, Exhibit P627, p 2; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3827, 3836.

<sup>2642</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3846-3847, 3851-3854.

<sup>2643</sup> Hamide Fondaj, Exhibit P627, p 3; Exhibit P626 (*Milutinović* transcript), T 3846.

<sup>2644</sup> Hamide Fondaj, Exhibit P627, p 3; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3856-3857.

<sup>2645</sup> Hamide Fondaj, Exhibit P627, p 3; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3862-3863. The Chamber notes that in the *Milutinović* case, defence counsel put to Shefqet Zogaj that the KLA in Pecane/Peqan and the surrounding area withdrew to "Bellanice and the mountain behind it" after eight days of fighting, and the witness affirms this (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5881-5882). He, however, does not state in either of his statements that the KLA withdrew to Belanica/Bellanicë village on 28 March 1999 (Exhibits P616, P617). During his examination-in-chief in the *Milutinović* trial he testified that the KLA left Belanica/Bellanicë on 28 March 1999 (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3781-3787). Hamide Fondaj says nothing about the KLA retreating to Belanica/Bellanicë itself either, and in fact she refutes this (Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3862-3865). On the basis of this evidence, the Chamber is satisfied that around 28 March 1999, the KLA retreated to a mountain area above Belanica/Bellanicë village, but not that the KLA retreated to the village of Belanica/Bellanicë itself.

706. In the Chamber's finding, the fighting between Serbian forces and the KLA in Pecane/Peqan and in the surrounding area, while a contributing factor to the civilian population of the village leaving their village, was not the only or the main factor for their flight. Rather, it was that Pecane/Peqan was shelled on 20 or 21 March 1999, following which Serbian forces entered the village and fighting ensued.

707. At around the same time, due to the continuous shelling of Nišor/Nishor by Serbian forces, the population of Nišor/Nishor, as well as the people from surrounding villages taking refuge in Nišor/Nishor, including Hamide Fondaj and her children, left for Belanica/Bellanicë on 28 March 1999.<sup>2646</sup>

(ii) Trnje/Tërrnje

708. K54 and K82, both members of the VJ, in their evidence, describe a joint VJ and MUP operation in Trnje/Tërrnje village, slightly to the southwest of Suva Reka/Suharekë town,<sup>2647</sup> which started on 24 or 25 March 1999 and lasted about five days.<sup>2648</sup> Both K54 and K82 gave evidence of the orders given to VJ soldiers to enter the village and to make sure no one was left alive.<sup>2649</sup> The Chamber accepts their evidence of this, and that of K82, that no resistance was offered to the Serbian forces and that there was no KLA presence in the village at the time of the attack.<sup>2650</sup> As the Serbian forces entered the village, civilians who were trying to run away were shot dead.<sup>2651</sup> House to house searches were conducted; occupants of the houses were removed, and their houses were set on fire.<sup>2652</sup> A group of 10-15 Kosovo Albanian civilians were taken into a yard at gun-point, and shot dead.<sup>2653</sup> A further four to five men hiding in a creek between Trnje/Tërrnje and the neighbouring village of Mamuša/Mamushë, just across the border of Suva Reka/Suharekë municipality in Prizren municipality, were shot by Serbian forces moving from Trnje/Tërrnje village to Mamuša/Mamushë.<sup>2654</sup> When these forces returned through the village of Trnje/Tërrnje from Mamuša/Mamushë later in the evening, an elderly civilian man wearing a traditional white

<sup>2646</sup> Hamide Fondaj, Exhibit P627, p 3; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3827-3828, 3855-3856, 3857.

<sup>2647</sup> K54, T 4466-4468; Exhibit D115, marking "Trnje" village.

<sup>2648</sup> K54, Exhibit P782, pp 5-6; K54, T 4375-4378, 4380, 4414-4415, 4474-4478 and Exhibit P785; K54, Exhibit D113 (*Milutinović* transcript), T 10508-10509, 10522, 10585; Exhibit D115; K82, Exhibit P1315, paras 7, 9-18; K82, T 8863-8867, 8891-8898.

<sup>2649</sup> K54, Exhibit P782, p 5; Exhibit D114 (*Milutinović* transcript), T 10508-10509; K54, T 4380-4381, 4415-4416; K82, Exhibit P1315, para 11; K82, T 8864, 8899-8900.

<sup>2650</sup> K82, Exhibit P1315, paras 8, 23; K82, Exhibit P1321 (*Milutinović* transcript), T 11752.

<sup>2651</sup> K54, T 4375-4376, 4413; K82, Exhibit P1315, para 14; K82, T 8864.

<sup>2652</sup> K54, T 4375-4376, 4380; K82, Exhibit P1315, paras 16-17, 19, 22; K82, Exhibit P1321 (*Milutinović* transcript), T 11748; K82, T 8866-8867.

<sup>2653</sup> K82, Exhibit P1315, paras 17-19; K82, Exhibit P1321 (*Milutinović* transcript), T 11748, 11777-11778, 11782-11784; K82, T 8866-8867, 8904-8906.

<sup>2654</sup> K82, Exhibit P1315, paras 25-26; K82, Exhibit P1321 (*Milutinović* transcript), T 11788-11789; K82, T 8869; *see also* Exhibit P1318.



Albanian cap was shot, as were a number of other civilians who, upon witnessing the incident, attempted to flee.<sup>2655</sup> An additional two young men in civilian clothes who were walking from Mamuša/Mamushë to Trnje/Tërrnje village were also shot by Serbian forces.<sup>2656</sup> Following the operation, K82 and K54, along with other soldiers, were ordered to collect the bodies of women and children that had been killed in Trnje/Tërrnje during the operation.<sup>2657</sup> K54 testified that the bodies of the children he had witnessed being killed during the operation as well as the bodies of some of the women were no longer there; he was told that the PJP had already collected these bodies.<sup>2658</sup> Approximately five bodies were loaded onto a truck which, escorted by about 10-20 soldiers, drove through Prizren to Žur/Zhur, a village near the border with Albania, and onto the village of Dragaš/Dragash.<sup>2659</sup> Somewhere in the vicinity of Dragaš/Dragash, the soldiers dug a shallow grave and buried the bodies.<sup>2660</sup> The Chamber finds, on the basis of the evidence summarised above and the descriptions of the killings, that none of the victims were armed or taking any active part in hostilities at the time. It further accepts that these people were killed because they were Kosovo Albanians.

709. The evidence demonstrates that an on-site investigation was conducted in Trnje/Tërrnje village on 2 April 1999 by the Prizren SUP. This on-site investigation, however, was limited to four bodies of Kosovo Albanian men in civilian clothes discovered in the village on that day.<sup>2661</sup> Following the investigation, they were buried in the Muslim cemetery in Trnje/Tërrnje, by members of the Suva Reka/Suharekë “Territorial Defence” in the presence of authorized officials of the Prizren SUP.<sup>2662</sup> The adequacy of this investigation is discussed in further detail elsewhere in this Judgement.<sup>2663</sup>

(iii) Belanica/Bellanicë

710. The evidence demonstrates, in the Chamber’s finding, that as a result of attacks by Serbian forces on many villages throughout Suva Reka/Suharekë municipality on or about 20-21 March 1999 and in the following days—some of them discussed above—thousands of civilians left their

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<sup>2655</sup> K82, Exhibit P1315, para 28; K82, T 8870.

<sup>2656</sup> K82, Exhibit P1315, para 29.

<sup>2657</sup> K54, Exhibit P782, p 6; K82, Exhibit P1315, paras 30-31; K82, Exhibit P1321 (*Milutinović* transcript), T 11752-11753, 11797; K82, T 8911-8912.

<sup>2658</sup> K54, Exhibit P782, p 6; K54, T 4384-4385.

<sup>2659</sup> K54, Exhibit P782, p 6; K54, Exhibit D114 (*Milutinović* transcript), T 10595-10596, 10621; K82, Exhibit P1315, paras 31-32; K82, Exhibit P1321 (*Milutinović* transcript), 11754, 11796-11797; K82, T 8872-8873, 8913.

<sup>2660</sup> K54, Exhibit P782, p 6; K82, Exhibit P1315, para 32; K82, Exhibit P1321 (*Milutinović* transcript), T 11753-11754.

<sup>2661</sup> Exhibit D806.

<sup>2662</sup> Exhibit D806.

<sup>2663</sup> *See infra*, para 2091.

homes and villages. Most of them gathered in Belanica/Bellanicë,<sup>2664</sup> which at that time was relatively calm.<sup>2665</sup> A village emergency commission had been set up in Belanica/Bellanicë to deal with this massive influx of persons.<sup>2666</sup> The Chamber accepts that by 1 April 1999, there were at least 30,000 displaced persons gathered in Belanica/Bellanicë village, the peace-time population of which was 3,500.<sup>2667</sup>

711. Much of the evidence concerning the events in Belanica/Bellanicë village on or about 1 April 1999 was given by housewife Hamide Fondaj and journalist Shefqet Zogaj, both of whom had some affiliation with the KLA at the time of the events.<sup>2668</sup> The Chamber has therefore evaluated their evidence with special caution.<sup>2669</sup> In a number of respects it has not been able to accept aspects of their evidence out of a concern that it may reflect bias, albeit unconsciously, or is exaggerated. The findings which follow reflect this caution.

712. The KLA was in Belanica/Bellanicë until 28 March 1999, when they withdrew because of approaching Serbian forces.<sup>2670</sup> KLA forces which had been active in other villages also withdrew from the general area and passed through Belanica/Bellanicë on the night of 31 March and 1 April 1999 on their way to the mountains of Llapusha. By 0800 hours of 1 April 1999, the KLA

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<sup>2664</sup> See *supra*, paras 653, 707; see also Shefqet Zogaj, Exhibit P616, pp 1-4; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3790, 3802-3803, 5900-5903, 5910-5911; Exhibit P619.

<sup>2665</sup> Shefqet Zogaj, Exhibit P616, p 3; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5901; Shefqet Zogaj, T 3431.

<sup>2666</sup> Shefqet Zogaj, Exhibit P616, p 3.

<sup>2667</sup> Hamide Fondaj stated that upon her arrival in Belanica/Bellanicë in late March 1999, she saw tens of thousands of Kosovo Albanians from surrounding villages gathered there (Hamide Fondaj, Exhibit P627, p 3; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3828). The Chamber considers exaggerated the evidence of Shefqet Zogaj that there were approximately 80,000 people in the village at this time (Shefqet Zogaj, Exhibit P615, p 4; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3780, 3789-3790, 5900-5903, 5910-5911, 5921-5922). Shefqet Zogaj stated that the regular size of the population of Belanica/Bellanicë was 3,500 (Shefqet Zogaj, Exhibit P615, p 4). An increase to 80,000 appears to the Chamber to be unrealistic, especially taking into account the evidence of Halit Berisha to the effect that the entire population of Suva Reka/Suharekë municipality as a whole, during peace-time, was 60,000 (Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3605). The Chamber also notes a post-operation analysis prepared by the VJ, dated 30 March 1999, which refers to the VJ encountering 30,000 displaced people in the village of Belanica/Bellanicë around this time (Exhibit P944). The Chamber therefore accepts that there were at least 30,000 people gathered in Belanica/Bellanicë by 31 March 1999.

<sup>2668</sup> Hamide Fondaj's husband was a KLA member, see *supra*, para 705; see also Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5881-5882; Hamide Fondaj, Exhibit P627, p 2; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript) T 3827, 3837-3838, 3843, 3847-3848. Shefqet Zogaj, a journalist by profession at the time of the events, (Shefqet Zogaj, T 3433-3434, 3437) stated that he was neither a "KLA journalist" nor a member of the KLA (Shefqet Zogaj, Exhibit P616, p 2; Exhibit P617 (*Milutinović* transcript), T 5897; Shefqet Zogaj, T 3443). The Chamber notes, however, that during cross-examination in *Milutinović*, the witness testified that he followed the events on which he reported "from close up", "in the presence of the KLA, mostly during the shelling of the Serbian forces and the counter-attacks by the KLA" (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5906.

<sup>2669</sup> Defence Final Brief, para 777.

<sup>2670</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3781-3787; see also Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5881-5882, where the Defence put to the witness that the KLA withdrew to "Belanica and the mountain behind Belanica" after eight days of fighting Serbian forces in Pecane/Peqan. See also Defence Final Brief, para 778.

had left Belanica/Bellanicë village<sup>2671</sup> and had formed lines of defence approximately five kilometres from Belanica/Bellanicë in the direction of the mountains of Llapusha.<sup>2672</sup>

713. In the course of the morning of 1 April 1999, Serbian forces shelled the periphery of Belanica/Bellanicë from the villages of Banja/Banjë, Tumericina/Temeqinë and Blace/Bllacë.<sup>2673</sup>

714. On 1 April 1999, some time around noon, but before 1400 hours,<sup>2674</sup> Serbian forces comprised of VJ in green camouflage uniforms, regular MUP in blue camouflage uniforms as well as men wearing various kinds of clothes, headscarves or shaved heads, some with beards and some with painted faces, whom the Chamber accepts to be Serbian paramilitaries forces,<sup>2675</sup> approached Belanica/Bellanicë village.<sup>2676</sup> Around 60 elderly men had gone to the mosque at the entrance of

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<sup>2671</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3781-3787, 3790-3791, 5913-5914; Shefqet Zogaj, T 3433; see also the evidence of Hamide Fondaj, who testified that when the VJ, police and paramilitaries entered Belanica/Bellanicë village at around 1300 to 1400 hours on 1 April 1999, there were no KLA present in the village and there was no outgoing fire from Belanica/Bellanicë towards Serbian positions (Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3829; see also Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5996-6006.

<sup>2672</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5921; see also Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5996-6001.

<sup>2673</sup> Shefqet Zogaj, Exhibit P615, p 4; Shefqet Zogaj, Exhibit P616, pp 2, 4; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5911-5912. The Chamber notes that while Shefqet Zogaj says in his statements that Belanica/Bellanicë village itself was shelled on 1 April 1999 (Shefqet Zogaj, Exhibit P615, p 4; Shefqet Zogaj, Exhibit P616, p 4), he agreed in the *Milutinović* trial, when it is put to him that despite his evidence that the village itself was shelled there were only a few casualties, that the shelling was initially directed “around the village”, and then “in the periphery of the village” (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5911-5914).

<sup>2674</sup> Shefqet Zogaj, Exhibit P615, p 4; Hamide Fondaj, Exhibit P627, p 3; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3857.

<sup>2675</sup> Hamide Fondaj, Exhibit P627, p 3; Shefqet Zogaj, T 3439-3440; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3791-3792, 5861-5862. The Chamber notes that while Shefqet Zogaj refers to these forces as “police” in a statement he gave to the OTP in 1999, he also stated that this included “soldiers and paramilitaries of different units” (Shefqet Zogaj, Exhibit P615, p 4). In a statement to the OTP in 2001, he refers to these forces as “police and paramilitaries” (Shefqet Zogaj, Exhibit P616, p 4). In his testimony in this trial, he describes these forces as “police, army and paramilitaries” (Shefqet Zogaj, T 3791). He expands his description of the paramilitaries involved from stating that they wore black uniforms with scarves around their necks, with long hair or shaved heads and beards (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3791-3792), to individuals wearing different types of clothes, shaven heads, and head scarves (Shefqet Zogaj, T 3439-3440). The Chamber observes that the witness’s evidence in this regard is not always consistent. It does accept, however, that the forces he observed approaching the village that day consisted of members of the police, the army, and an unidentified paramilitary formation.

<sup>2676</sup> Shefqet Zogaj, from the third floor of his house, at a distance of about 300-400 metres, saw what he described as a large convoy of “Serb police” approaching Belanica/Bellanicë from the direction of Temeqin, consisting of police tanks, bulldozers and trucks (Shefqet Zogaj, Exhibit P615, p 4; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3792-3983). When it was put to him, during cross-examination the *Milutinović* trial, that his description of the tanks as blue contradicts his identification of a tank shown to him on a photograph, which appears to be green camouflage. Shefqet Zogaj explained this discrepancy by stating that the vehicle shown to him on the photograph had several colours, including both green and blue (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5872-5879). The Chamber notes that both his evidence and that of Hamide Fondaj concerning the description of the forces they saw in Belanica/Bellanicë on 1 April 1999 include VJ members. Further, the Chamber notes that this evidence is consistent with Exhibit P898, an order of the 549<sup>th</sup> Motorised Brigade dated 29 March 1999, which calls for the 243<sup>rd</sup> Mechanized Brigade to support MUP forces in “breaking up and destroying STS” along an axes including, *inter alia*, Blace/Bllacë, Belanica/Bellanicë, Banja/Banje, Pagaruša/Pagarushë, and to “take control” of the villages on this axes (Exhibit P898, p 3). See also Exhibit P944, Analysis of operations of 549<sup>th</sup> Motorised Brigade dated 30 March 1999, p 3.

the village, carrying a white cloth as a sign of surrender. These elderly men were searched,<sup>2677</sup> their traditional white Albanian caps were taken off and they were beaten.<sup>2678</sup> Some VJ remained at the outskirts of the village surrounding it with tanks.<sup>2679</sup> Upon entering the village, the Serbian forces shot at houses and above people's heads and began torching houses.<sup>2680</sup> The inhabitants of these houses left their homes and joined the rest of the thousands of displaced persons that had already gathered in a field in the centre of the village.<sup>2681</sup> The news of the entry of the Serbian forces into the village spread fast; Shefqet Zogaj told those in his neighbourhood to leave their basements, start up their cars and tractors and get out onto the roads since this would be safer than staying in their homes.<sup>2682</sup> Hamide Fondaj gathered her family and together with 20 other people, boarded a tractor and headed to the field where it was considered safer.<sup>2683</sup> Hamide Fondaj and her children stayed in the trailer without food and in the rain during the night of 1/2 April 1999.<sup>2684</sup>

715. Shefqet Zogaj put his family on trucks and tractors piled high with food and clothing and went out onto the street in front of his house where dozens of other tractors and cars had gathered by this time.<sup>2685</sup> Attempting to leave Belanica/Bellanicë by car, Shefqet Zogaj was stopped only a few metres from his house by police in blue camouflage uniforms "wearing Serbian insignias"<sup>2686</sup> and paramilitaries wearing black uniforms and head scarves around their neck. He was searched and money and his press card were taken from him.<sup>2687</sup> He recognized a local policeman named "Zhika", as one of the policemen who stopped him. He was beaten by this man.<sup>2688</sup> During this time, the Serbian forces continued burning houses and were killing livestock in the village.<sup>2689</sup> He

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<sup>2677</sup> Shefqet Zogaj gives differing descriptions of the forces at the outskirts of the village who searched and beat these elderly men. In his statement to the OTP dated 25 April 1999, he says that the elderly men were "seized" by the police" yet goes on to state that the "Serbian forces" who seized the men and searched them included "soldiers and paramilitaries of different units (Exhibit P615, p 4). In *Milutinović*, he testified that the "Serbian military and police forces" beat the men up (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3790). Finally, in this trial, the witness testified that it was the "Serb police" doing this (Shefqet Zogaj, T 3424-3425). Having considered this evidence, the Chamber finds that the forces involved in searching and beating up these elderly men who had come out to the entrance of the village comprised of members of the VJ and the police.

<sup>2678</sup> Shefqet Zogaj, Exhibit P615, p 4; Shefqet Zogaj, Exhibit P616, p 4; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3790; Shefqet Zogaj, T 3424-3425; *see also* Hamide Fondaj, Exhibit P627, p 3.

<sup>2679</sup> Hamide Fondaj, Exhibit P627, p 3.

<sup>2680</sup> Hamide Fondaj, Exhibit P627, p 3; Hamide Fondaj, Exhibit P626 (*Milutinović* Transcript), T 3829; *see also* Shefqet Zogaj, Exhibit P615, pp 4, 5; Shefqet Zogaj, Exhibit P616, p 4; Shefqet Zogaj, T 3424-3425.

<sup>2681</sup> Shefqet Zogaj, Exhibit P615, p 4; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3829.

<sup>2682</sup> Shefqet Zogaj, Exhibit P615, p 5.

<sup>2683</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3830-3831; *see also* Hamide Fondaj, Exhibit P627, p 3.

<sup>2684</sup> Hamide Fondaj, Exhibit P627, p 3.

<sup>2685</sup> Shefqet Zogaj, Exhibit P615, p 4; Shefqet Zogaj, Exhibit P616, pp 4-5.

<sup>2686</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5899.

<sup>2687</sup> He describes the individuals who stops him as "soldiers and paramilitaries", but questioned during cross-examination in *Milutinović*, Shefqet Zogaj states that it was the police who had pulled him out of his car, and that there were soldiers and paramilitaries in the area (Shefqet Zogaj, Exhibit P615, p 5; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5864, 5865, 5886-5887).

<sup>2688</sup> Shefqet Zogaj, Exhibit P615, pp 6-7; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5885; Shefqet Zogaj, T 3440.

<sup>2689</sup> Shefqet Zogaj, Exhibit P615, p 7; Shefqet Zogaj, Exhibit P616, p 4; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3791.

saw police go into the assembled crowd of people in the centre of the village.<sup>2690</sup> Attempting to join the convoy and leave Belanica/Bellanicë village by tractor, Shefqet Zogaj was stopped several times more by police and paramilitaries and forced to provide more money to them on each occasion.<sup>2691</sup> He saw dozens of young men being taken into the direction of the village primary school.<sup>2692</sup> Two police officers pulled out two young men, who were from the village of Ostrozub and had taken shelter in Bellanica/Bellanicë, from the tractor driven by Shefqet's brother and demanded money from them as well as from his brother.<sup>2693</sup> The policemen then fired at the two men from Ostrozub, who were killed. The Chamber finds that these individuals were not armed, were in Serb custody and were not taking an active part in hostilities when killed. Upon witnessing this, Fatmir, Shefqet Zogaj's brother, handed over money to the police.<sup>2694</sup> Shefqet Zogaj then saw the police shoot and kill Agym Bytiqi, a 40 year old mentally handicapped man from Nišor/Nishor.<sup>2695</sup> The police pushed the men who did not have money in the direction of the primary school and beat them before leading them into the schoolyard.<sup>2696</sup> He then heard gunshots in the crowd of people gathered in the centre of the village and saw two local policemen walking through it.<sup>2697</sup> He recognised a number of other local policemen in the village that day.<sup>2698</sup>

716. There is evidence that on this day, the KLA issued an order for the evacuation of the civilian population of Belanica/Bellanicë to Guncat/Ngucat and the Berisha mountains for "security reasons" so that the civilian population would not get caught up in the fighting.<sup>2699</sup> However, the civilian population did not obey this order to leave Belanica/Bellanicë.<sup>2700</sup> Instead, as indicated by the above evidence, the population sought to surrender to the Serbian forces. The evidence demonstrates that having entered Belanica/Bellanicë, the police and the paramilitaries accompanying them forced people to leave town.<sup>2701</sup> Villagers were ordered to get on their tractors or be killed.<sup>2702</sup> There was no firing directed at the Serbian forces.<sup>2703</sup>

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<sup>2690</sup> Shefqet Zogaj, Exhibit P615, p 5.

<sup>2691</sup> Shefqet Zogaj, Exhibit P615, p 6.

<sup>2692</sup> Shefqet Zogaj, Exhibit P615, p 5.

<sup>2693</sup> Shefqet Zogaj, Exhibit P615, p 5.

<sup>2694</sup> Shefqet Zogaj, Exhibit P615, p 5.

<sup>2695</sup> Shefqet Zogaj, Exhibit P615, p 6; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5914.

<sup>2696</sup> Shefqet Zogaj, Exhibit P615, p 6.

<sup>2697</sup> Shefqet Zogaj, Exhibit P615, p 6.

<sup>2698</sup> Shefqet Zogaj, Exhibit P615, pp 6-7.

<sup>2699</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5996-6001, 6002-6007, 6150-6151; see also Exhibit P452, KLA General Staff Order signed by Bislim Zyrapi, dated 1 April 1999; see also Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5914-5915; Defence Final Brief, para 774.

<sup>2700</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5997-5998, 6000.

<sup>2701</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5914-5915.

<sup>2702</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3830-3831. In her statement of 2001, the witness stated that when they entered the village, the "Serbs" told the old people that went to meet them at the entrance of the village that the villagers should get on their tractors, place a white sign on them, and that if they did not do so, they would be killed (Hamide Fondaj, Exhibit P627, p 3). The Chamber is aware that in her testimony in the she refers to these events as occurring on the morning of 2 April 1999, (Hamide Fondaj, Exhibit P626

717. At around 1315 hours, Shefqet Zogaj and his family, a total of 16 persons, were finally able to join the convoy leaving Belanica/Bellanicë.<sup>2704</sup> As the convoy was leaving the town, military vehicles including APC's, Pragas and bulldozers entered it so that it took Shefqet Zogaj's tractor six hours to reach the highway on the edge of town.<sup>2705</sup> In the meantime, people in the convoy were taunted by members of the Serbian forces with various references to NATO and Clinton, and money was taken from them.<sup>2706</sup> At this time, Shefqet Zogaj heard that several other people had been killed in Belanica/Bellanicë village by the Serbian forces that day.<sup>2707</sup>

718. The army and police, in the presence of paramilitaries,<sup>2708</sup> divided the convoy and directed one group in the direction of Banja/Banje, Mališevo/Malishevë, Orahovac/Rahovec, Zrze/Xërxë, and Prizren, while the other group was directed in the direction of Tumaticina/Temeqinë, Blace/Bllacë, Dulje/Duhel,<sup>2709</sup> Suva Reka/Suharekë, and Prizren. The final destination for both groups, however, was the village of Morina/Morinë near the Albanian border.<sup>2710</sup>

719. Shefqet Zogaj and his family were in the convoy that followed the route to the Albanian border through Tumaticina/Temeqinë village, which was in flames when the convoy passed through.<sup>2711</sup> At around 2100 hours on 1 April 1999, having passed by Suva Reka/Suharekë town, the convoy was stopped by ordinary traffic police outside a police station in Ljubižda/Lubizhdë, Prizren municipality.<sup>2712</sup> At the checkpoint, there were other Serbian forces wearing standard army and police uniforms, and some wearing black uniforms, masks, and knives on their belts.<sup>2713</sup> These Serbian forces were singing nationalistic songs, drinking, dancing and cursing at the people in the

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(*Milutinović* transcript), T 3831-3832). The Chamber accepts that the Serbian forces entered the village on 1 April 1999.

<sup>2703</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3791.

<sup>2704</sup> Shefqet Zogaj, Exhibit P615, pp 7, 9.

<sup>2705</sup> Shefqet Zogaj, Exhibit P615, pp 7, 9; Exhibit P616, pp 5-6.

<sup>2706</sup> Shefqet Zogaj, Exhibit P615, p 7; *see also* Shefqet Zogaj, Exhibit P616, p 5.

<sup>2707</sup> Shefqet Zogaj, Exhibit P615, p 7. The people he heard were killed in the village that day were Nazlie Kryeziu, and her daughter Drita; brothers Bekim and Osman Vrenezi; two elderly men named Izet Hoxha and Ibrahim Sertolli; two young men from Pagaruša/Pagarushë, and an elderly man from the village of Semetište/Semetisht.

<sup>2708</sup> In a statement to the OTP in 1999, Shefqet Zogaj had stated that it was the police who guided the convoys, and that in a statement to the OTP in 2001, he referred to the convoy moving towards Suva Reka/Suharekë "without any direction from the Serbs", and that another convoy followed the lead of the first convoy (Shefqet Zogaj, Exhibit P615, p 7; Shefqet Zogaj, Exhibit P616, p 6; *see also* Shefqet Zogaj, Exhibit 617 (*Milutinović* transcript), T 5903-5904). In his testimony in this trial, he stated that those directing the convoy comprised of the police, the army and paramilitaries described by him throughout his evidence. Having considered the differences, and also what follows, the Chamber is persuaded to accept that both the VJ and the police were involved in this process, and that the paramilitaries, which the Chamber has accepted in taking part in the operation in the village, were present also at this time.

<sup>2709</sup> The transcript of Shefqet Zogaj's evidence in the *Milutinović* trial refers to this village as "Duhla" (Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3795). The Chamber accepts that this is the village of Dulje/Duhël, in Suva Reka/Suharekë municipality.

<sup>2710</sup> Shefqet Zogaj, Exhibit P615, p 7; Shefqet Zogaj, Exhibit P616, p 6; Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3795; *see also* Shefqet Zogaj, T 3425-3426.

<sup>2711</sup> Shefqet Zogaj, Exhibit P616, p 6; Shefqet Zogaj, T 3425.

<sup>2712</sup> Shefqet Zogaj, Exhibit P616, p 6; *see also* Shefqet Zogaj, Exhibit P615, p 8.

convoy, telling them that they would never return to Kosovo and that “[...] Kosovo has been and will be Serbian soil”.<sup>2714</sup> From Ljubižda/Lubizhdë village, three traffic police vehicles escorted the convoy to the centre of Prizren where they were directed to continue on the main road towards Albania.<sup>2715</sup> At other police checkpoints enroute to the Albanian border, some drivers of the tractors in the convoy were beaten by the police.<sup>2716</sup> The journey to the border took a total of 30 hours, with delays caused by the congestion of other convoys of Kosovo Albanians from other directions which took the same direction to the border.<sup>2717</sup> Shefqet Zogaj and his family arrived in their convoy at the Morina/Morinë border crossing at around 1500-1700 hours on 2 April 1999.<sup>2718</sup> The convoy passed into Albania, but before they were allowed to cross, they were searched by the Serbian police and an armed man in black civilians clothes with a walkie-talkie; their identity cards were taken from them and when this was done, they were told that they would never again see Kosovo.<sup>2719</sup>

720. Hamide Fondaj did not arrive at the border crossing at Morina/Morinë until 4 April 1999; on the night of 1/2 April 1999, she had remained in Belanica/Bellanicë in her tractor together with her children and other villagers. During that night, armed men dressed in black and wearing masks went from tractor to tractor demanding money from each person on the tractor and threatening to kill anyone who was not able to provide it.<sup>2720</sup> At around 0300 hours, she saw a burst of flames which she identified as a NATO bomb.<sup>2721</sup> On the morning of 2 April 1999, about 20 armed men to whom Hamide Fondaj referred as “police officers”, all but one of them masked and wearing different kinds of uniforms, “some of them black and some of them naked from the waist up and with painted bodies”, bandannas, and carrying knives, demanded money from two elderly men on

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<sup>2713</sup> The Chamber accepts from other evidence that this latter category of individuals described are members of a Serbian paramilitary force.

<sup>2714</sup> Shefqet Zogaj, Exhibit P615, p 8; Shefqet Zogaj, Exhibit P616, p 6.

<sup>2715</sup> Shefqet Zogaj, P616, p 6.

<sup>2716</sup> Shefqet Zogaj, Exhibit P615, p 8.

<sup>2717</sup> Shefqet Zogaj, Exhibit P615, p 8; Exhibit P616, p 6; Shefqet Zogaj, T 3426.

<sup>2718</sup> Shefqet Zogaj, Exhibit P615, p 9; Shefqet Zogaj, Exhibit P616, pp 6-7.

<sup>2719</sup> Shefqet Zogaj, Exhibit P615, p 8; Shefqet Zogaj, Exhibit P616, pp 6-7; *see also* Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 5867-5868). Shefqet Zogaj describes the individual who searched them as a “policeman” in his 1999 statement (Shefqet Zogaj, Exhibit P615, pp 8-9). In his 2001 statement, he refers to this same individual as a “traffic policeman” (Shefqet Zogaj, Exhibit P616, pp 6-7), but in both statements he also describes a man in black civilian clothes involved in this activity. In this trial, Shefqet Zogaj testified that it was the armed man in black civilian clothes who searched them and seized their documents (Shefqet Zogaj, T 3426). The Chamber attaches no significance to whether the search and the words spoken were by, and of, a policeman or the man in black civilian clothes as it finds that the man in civilian clothes worked together with the members of the police present at the border.

<sup>2720</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3830-3831. The Chamber notes that her statement of 2001 does not mention anyone coming to her tractor during the night of 1 April 1999, but on the morning of 2 April 1999 (Hamide Fondaj, Exhibit P627, p 3).

<sup>2721</sup> Hamide Fondaj, Exhibit P627, p 3; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3858.

her tractor and beat the one that did not have any money for them.<sup>2722</sup> They pointed an automatic rifle at Hamide Fondaj and asked her “Do you like NATO? Do you like Clinton? Do you like Rugova? Where is the KLA and why are they not defending you?”<sup>2723</sup> They told her that they would kill them in front of all the others if she did not give them money, upon which she gave them all the money she had.<sup>2724</sup> The Chamber is unable to determine whether the men who approached Hamide Fondaj’s tractors on the night of 1 April 1999 and on the morning of 2 April 1999 were police, or paramilitary forces because of her varying descriptions.

721. The trailer carrying Hamide Fondaj and her family moved off in a convoy at around 1000 hours that morning. Before reaching the end of Belanica/Bellanicë village, the trailer was stopped several times by the “police” who demanded more money, and insulted them.<sup>2725</sup> Again, those in the trailer gave them all they had, including jewellery.<sup>2726</sup> As the convoy was leaving Belanica/Bellanicë it passed by VJ personnel positioned at the outskirts of the village, who waved good-bye.<sup>2727</sup>

722. Hamide Fondaj and her family left Belanica/Bellanicë in the convoy and attempted to head in the direction of Suva Reka/Suharekë. An army convoy they came across told them to go in the direction of Orahovac/Rahovec instead.<sup>2728</sup> The convoy proceeded to pass through the village of Ostrozub/Astrazup, where they were stopped at a VJ checkpoint. Soldiers demanded money from them.<sup>2729</sup> The soldiers took off the traditional white Albanian caps worn by men in the convoy, threw them on the ground, and forced those in the convoy to run them over, as well as over an Albanian eagle that had been drawn on the ground.<sup>2730</sup> On the way, Hamide Fondaj saw that houses were being set on fire by men in military uniforms whom she variously describes as army or police.<sup>2731</sup> As some police special units wore military camouflage uniforms, the Chamber cannot

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<sup>2722</sup> Hamide Fondaj, Exhibit P627, p 4; *see also* Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3831-3832, 3858-3860. In her statement, Hamide Fondaj said that the men who came to her tractor on the morning of 2 April 1999 were “Serb police officers” (Hamide Fondaj, Exhibit P627, p 4). Her descriptions of these men varied in her testimony in *Milutinović*. During cross-examination in that case, she said that she was not paying much attention to insignia, and then stated that she saw the letters “police”, but then said that she could not see this properly as she was scared (Exhibit P626 (*Milutinović* transcript), T 3859-3860).

<sup>2723</sup> Hamide Fondaj, Exhibit P627, p 4; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3832-3833.

<sup>2724</sup> Hamide Fondaj, Exhibit P627, p 4.

<sup>2725</sup> Hamide Fondaj, Exhibit P627, p 4; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3833.

<sup>2726</sup> Hamide Fondaj, Exhibit P627, p 4.

<sup>2727</sup> Hamide Fondaj, Exhibit P627, p 4.

<sup>2728</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3833. In her statement to the OTP of 2001, Hamide Fondaj states that the convoy she was in turned towards Suva Reka/Suharekë but that at a “VJ checkpoint”, they were directed to Mališevo/Malishevë instead (Hamide Fondaj, Exhibit P627, p 4).

<sup>2729</sup> Hamide Fondaj, Exhibit P627, p 4.

<sup>2730</sup> Hamide Fondaj, Exhibit P627, p 4.

<sup>2731</sup> In her statement she describes the individuals setting fire to houses as “soldiers” (Hamide Fondaj, Exhibit P627, p 4), while during her testimony in the *Milutinović* case, describing what she saw, she states “[t]here were policemen, there were people wearing military uniforms, those that burned houses in Ostrozub while we were



determine whether the houses were being burnt by the VJ or the police. Having reached Mališevo/Malishëvë, the tractor the witness was travelling on broke down. Soldiers ordered them to get the tractor moving and threatened that if they did not manage this, they would be placed with what appeared to be some thousands of people who were being held beside the road within a barbed wire encirclement.<sup>2732</sup> Hamide Fondaj was told that these people were waiting for buses to come and take them to the border.<sup>2733</sup> One of the tractors in the convoy was able to tow the witness's tractor, and the convoy moved along to Velika Kruša/Krushë-e-Madhe, in Orahovac/Rahovec municipality. There, Hamide Fondaj saw that a green military excavator was operating; many soldiers were gathered in the location.<sup>2734</sup>

723. The Defence submits that fear of the NATO bombing and of legitimate combat operations between Serbian forces and the KLA made people leave Belanica/Bellanicë.<sup>2735</sup> The Chamber does not accept this argument. While KLA forces may have been present in the area and a witness was able to see burst caused by NATO bombing in the area the evidence does not suggest or establish that these were the factors that drove people out of Belanica/Bellanicë. To the contrary, in the view of the Chamber the evidence establishes that the movement of people out of Belanica/Bellanicë was caused by acts of the Serbian forces, who killed men in the village, threatened the people, set houses on fire, killed livestock and demanded money.

724. The convoy proceeded towards Dušanovo/Dushanovë, Prizren, and the village of Žur/Zhur, where a soldier threw a wrench at the witness's 14 year old son, almost hitting him.<sup>2736</sup> In Vrbnica/Vërmicë, they stopped and tried to bake bread but were forbidden to do so by members of the VJ; it was raining constantly and it was cold.<sup>2737</sup> Along the route to the border, Hamide Fondaj saw other military forces.<sup>2738</sup> The convoy finally reached the Albanian border at 0200 hours on 4 April 1999. At the border, men wearing uniforms with police written on their backs told them that it was because of Rugova and NATO that they had to leave, and that they were sorry for this; the people on the tractor were not searched and no identification papers were taken from them.<sup>2739</sup> They then crossed over the border. The Chamber notes that at the time, vests with "policija" on the

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passing through", continuing to describe the uniformed men she saw while passing by the village as "army". She did not see any insignia on their uniforms (Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3838-3839).

<sup>2732</sup> Hamide Fondaj, Exhibit P627, p 4; Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3833-3835.

<sup>2733</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3834. Hamide Fondaj does not specify who gave her this information.

<sup>2734</sup> Hamide Fondaj, Exhibit P627, pp 4-5.

<sup>2735</sup> Defence Final Brief, para 778.

<sup>2736</sup> Hamide Fondaj, Exhibit P627, p 5.

<sup>2737</sup> Hamide Fondaj, Exhibit P627, pp 4-5.

<sup>2738</sup> These "military forces" are not further specified by the witness (Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3835).

<sup>2739</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3860-3861; Exhibit P627, p 5.

back were worn by members of the the PJP.<sup>2740</sup> From the Albanian side of the border where they stayed for approximately an hour while being provided with food and aid, Hamide Fondaj observed how people in the next convoy were beaten up and had their identification documents confiscated and burned before they were allowed to cross into Albania.<sup>2741</sup> She does not specify whether the persons involved in the beating and seizure of documents described by her were the same persons who let her through. While the Chamber is therefore unable to conclude that the persons she observed beating others in the convoy and taking their documents were PJP forces, it is satisfied that they were members of the MUP, or individuals working together with the police at the border.

725. PJP member K79 saw the convoy of displaced persons in which Hamide Fondaj travelled moving by the village of Ljubižda/Lubizdhë in Prizren municipality, where he was stationed with his unit at the time, on 2 or 3 April 1999. He testified that the convoy was about 30 kilometres long, moving in vehicles, tractors and trucks from the direction of Suva Reka/Suharekë towards Prizren.<sup>2742</sup> Near the village of Koriša/Korishë, just south of Ljubižda/Lubizdhë, he observed a member of the army asking Kosovo Albanian displaced persons in this same convoy for money.<sup>2743</sup> He observed displaced persons moving in this direction throughout the month of April 1999. Halit Berisha likewise witnessed this convoy of displaced persons moving towards the border on or around 2 April 1999. He saw this movement personally when escorting his family from Bužalja/Buzhallë, where the family was taking refuge at the time, up to Bukoš/Bukosh and Sopina/Sopijë. He was told about the expulsion by others, with whom he hid in the mountains in the area of Llanishte for a number of days after his family had left towards Albania.<sup>2744</sup>

726. When Shefqet Zogaj returned to his village of Belanica/Bellanicë on 21 June 1999, he found that about 70 per cent of it had been burnt down.<sup>2745</sup> Hamide Fondaj returned to the village in July of 1999.<sup>2746</sup>

(iv) Budakovo/Budakovë and Bukoš/Bukosh

727. The Chamber has also heard evidence of a PJP operation, on or around 20 April 1999, in the village of Budakovo/Budakovë, which had a stated aim of mopping up KLA members.<sup>2747</sup> Serbian documentary evidence demonstrates that starting on 23 April 1999, a joint VJ and MUP anti-terrorist operation commenced in the Jezerce/Jezerc mountain area, including the village of

<sup>2740</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9589-9590.

<sup>2741</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3861; Hamide Fondaj, Exhibit P627, p 5.

<sup>2742</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9654-9655.

<sup>2743</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9678-9679.

<sup>2744</sup> Hysni Berisha, T 3391, 3413-3415.

<sup>2745</sup> Shefqet Zogaj, Exhibit P617 (*Milutinović* transcript), T 3795; Shefqet Zogaj, T 3427; *see* Exhibit P620.

<sup>2746</sup> Hamide Fondaj, Exhibit P626 (*Milutinović* transcript), T 3864.

<sup>2747</sup> K79, Exhibit 1260 (*Milutinović* transcript), T 9667.

Budakovo/Budakovë;<sup>2748</sup> this operation lasted several weeks. *Inter alia*, it was the subject of discussion at a meeting of the MUP Staff for Kosovo held on 7 May 1999.<sup>2749</sup> During the operation in Budakovo/Budakovë, K79 and three other policemen observed their company commander kill two men, each approximately 30 years old, on a road; the two men did not wear uniforms, and did not carry weapons.<sup>2750</sup> They were not taking an active part in hostilities when they were killed. There was also an operation in the village of Bukoš/Bukošh, a small village in the direction of Budakovo/Budakovë about 10 kilometres from Suva Reka/Suharekë town, during which four KLA members were captured, put in a house, and killed by a grenade thrown into a window by a PJP member. Following this killing, people from the Suva Reka/Suharekë utility company collected the bodies of the four dead KLA members and loaded them onto a truck; K79 does not know what happened to the bodies.<sup>2751</sup> While the evidence is not specific as to the date of this second incident, the Chamber notes that due to an offensive by Serbian forces, by around 2 April 1999, a large number of villages in Suva Reka/Suharekë municipality, including Bukoš/Bukošh village, were empty of their Albanian population.<sup>2752</sup> The Chamber accepts from this evidence that these killings occurred in the course of the joint VJ and MUP anti-terrorist action in the Jezerce/Jezerc mountain area mentioned earlier in this paragraph. None of the six men killed in these incidents was armed or in a position to engage in conflict when killed.

728. Hysni Berisha also learned about a Serbian offensive in Budakovo/Budakovë that took place on 9-11 May 1999. He was also told, by Kosovo Albanian civilians in a column of about 50,000 travelling south from the direction of Štimlje/Shtime, that “paramilitaries” were separating men from the column and taking some to prison. On 12 May 1999, as the convoy passed by Suva Reka/Suharekë town, Hysni Berisha further learned from people in the convoy that they had been ordered by “paramilitaries” to go to Albania, but that they had been stopped on the main road upon reaching the village of Siroko/Shiroke, just below Suva Reka/Suharekë town, where Serbian police and army were stationed. There, they were detained in a factory for a day, before being told to return to their respective villages, escorted by the police.<sup>2753</sup>

### **E. Peć/Pejë municipality**

729. The municipality of Peć/Pejë is located in western Kosovo. It borders the municipalities of Istok/Istog to the north, Klina/Klinë to the east and Dečani/Dečan to the south. To the west, the municipality of Peć/Pejë borders Montenegro.

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<sup>2748</sup> Exhibit P767.

<sup>2749</sup> Exhibit P771, p 11.

<sup>2750</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9667-9668.

<sup>2751</sup> K79, Exhibit P1260 (*Milutinović* transcript), T 9674-9675.

730. The municipality of Peć/Pejë fell within the area of 133<sup>rd</sup> and 134<sup>th</sup> KLA brigades which were part of the Dukagjin Operational Zone. The 134<sup>th</sup> brigade became operative in late January or early February 1999.<sup>2754</sup>

#### 1. Peć/Pejë town

731. At about 0630 hours on 27 March 1999, VJ started shelling the neighbourhood of Kapeshnica in Peć/Pejë using tanks. The tanks were located at the hospital yard and the secondary school.<sup>2755</sup> The neighbourhood of Kapeshnica was an exclusively Kosovo Albanian neighbourhood located opposite the neighbourhood of Puhovci/Sahat Kulla.<sup>2756</sup> That day, many armed men were seen in the neighbourhood of Puhovci/Sahat Kulla, including civilians who appeared to be Serb residents of this neighbourhood, and men dressed in blue camouflage uniforms which combined blue and black colours.<sup>2757</sup> Having regard to this, and to other evidence concerning the uniforms of the Serbian forces, the Chamber accepts that the men in blue camouflage uniforms were police.

732. At about 1400 hours on 27 March 1999, about 15 fully armed men wearing masks entered the yard of a house in the Karagaq neighbourhood in Peć/Pejë.<sup>2758</sup> They insulted the Kosovo Albanian residents and forced them to leave the house and go in the direction of Montenegro.<sup>2759</sup> The residents left as directed.<sup>2760</sup> Policemen, some of them wearing blue uniforms and camouflage trousers, directed this group of Kosovo Albanians to proceed on the side streets of Peć/Pejë and did not allow them to walk through the town centre.<sup>2761</sup> This group of residents continued to walk through side streets of the town. Towards the Jarina neighbourhood of Peć/Pejë, near a police station, they were stopped by more policemen who told them that there was no way for them to go

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<sup>2752</sup> Hysni Berisha, T 3391, 3413-3415.

<sup>2753</sup> Hysni Berisha, Exhibit P584, p 5.

<sup>2754</sup> Bislim Zyrapi, T 2477; Exhibit D58.

<sup>2755</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, p 2; Edison Zatriqi, T 3803-3804; Exhibit P674.

<sup>2756</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, p 2; Edison Zatriqi, T 3803-3804; Exhibit P674. Edison Zatriqi had a very good view of Kapeshnica from his house, and he was able to see clearly that there was no shooting coming from this location, Edison Zatriqi, T 3819-3820.

<sup>2757</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4414-4415.

<sup>2758</sup> Ndreć Konaj, Exhibit P670, p 3. The Defence submits that Ndreć Konaj's evidence is not credible as the witness was inconsistent regarding his knowledge about events in Loda/Loxhë. It is submitted further that should the Chamber choose to rely on Konaj's evidence, it should also take into account his evidence that it was masked Serbian paramilitary forces and not policemen who asked him to leave his home on 27 March 1999, Defence Final Brief, paras 783-784. Having considered the totality of the evidence, however, the Chamber is satisfied that Ndreć Konaj's evidence is reliable to the extent relied on in this Judgement.

<sup>2759</sup> People in the house were given five minutes to pack their belongings, while the masked men shot at the house to scare them, Ndreć Konaj, Exhibit P670, p 3.

<sup>2760</sup> As they travelled, two Serbian soldiers in camouflage uniforms forced the men to give the soldiers all the money they had, Ndreć Konaj, Exhibit P670, p 3; Ndreć Konaj, T 3752.

<sup>2761</sup> Ndreć Konaj, Exhibit P670, p 3; Ndreć Konaj, Exhibit P671 (*Milutinović* transcript), T 4911; Ndreć Konaj, T 3752. The same group of people were also stopped by a group of armed men driving civilian cars who did not appear to be regular soldiers as they had painted faces and were dressed in civilian clothes, Ndreć Konaj, Exhibit P670, p 3; Ndreć Konaj, T 3752-3753. They struck the men of the group in their backs, faces and legs with rifle butts, Ndreć Konaj, Exhibit P670, p 3; Ndreć Konaj, T 3752-3753.

other than to Montenegro.<sup>2762</sup> As they continued, the residents found, that at every side turn on their way, there were three or four men, wearing blue and green uniforms and camouflage trousers, who prevented them from taking any course other than that to Montenegro.<sup>2763</sup>

733. During the night of 27 March 1999, there was shooting, and Kosovo Albanian houses were burnt in the area of the high school in Peć/Pejë.<sup>2764</sup>

734. At about 0800 to 0830 hours in the morning of 28 March 1999, a Serbian policeman moved from house to house in the Jarina neighbourhood ordering the Kosovo Albanian people to leave within five minutes.<sup>2765</sup> Police cars had been stationed at one of the two entrances to the neighbourhood, thus leaving only one exit.<sup>2766</sup> Edison Zatriqi, a Kosovo Albanian owner of a bus company, with his family left by car a house in Jarina neighbourhood.<sup>2767</sup> They joined a convoy of Kosovo Albanians which, on foot and by car, was moving in the direction of Montenegro.<sup>2768</sup> Armed police wearing blue camouflage uniforms and armed civilians were directing the convoy towards Montenegro.<sup>2769</sup> As Zatriqi was leaving Peć/Pejë with the convoy of Kosovo Albanian people, he saw his buses filled with people from his neighbourhood.<sup>2770</sup> A few days before these events, two local policemen, Bato Bulatović and Milian Mišljen had ordered Edison Zatriqi to start his buses and then leave. Zatriqi was threatened at gunpoint by one of the policemen when he asked for a certificate for the buses, which were then confiscated by the police.<sup>2771</sup> When Zatriqi saw his buses on 28 March, they were driven by policemen wearing blue camouflage uniforms.<sup>2772</sup> Edison Zatriqi continued with the convoy in his car and reached Rozaje in Montenegro.<sup>2773</sup>

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<sup>2762</sup> Ndrec Konaj, Exhibit P670, p 3; Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4912.

<sup>2763</sup> Ndrec Konaj, Exhibit P670, p 3; Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4889-4990.

<sup>2764</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2765</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4415, 4420-4421; Edison Zatriqi, T 3809. The Defence submits that Edison Zatriqi's evidence lacked consistency in that his earlier statements did not refer to a policeman going door to door and ordering people to leave on 28 March 1999 and in relation to the number of buses loaded with people he saw in Peć/Pejë, and is, therefore, not credible. (Defence Final Brief, paras 781-782) Having considered the totality of the evidence, however, the Chamber is satisfied that Edison Zatriqi's evidence is reliable in respect of the matter relied on in this Judgement.

<sup>2766</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4419-4421; Edison Zatriqi, T 3809.

<sup>2767</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, p 3.

<sup>2768</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4417.

<sup>2769</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, p 3; Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4416-4418, 4424; Edison Zatriqi, T 3810.

<sup>2770</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, pp 2-3; Edison Zatriqi, Exhibit P672, Statement of 29 January 2002, p 2; Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4417; Edison Zatriqi, T 3830.

<sup>2771</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, p 3; Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4422-4423; Edison Zatriqi, T 3819.

<sup>2772</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4417; Edison Zatriqi, T 3830. In addition to his buses, Edison Zatriqi saw other buses that had also been confiscated from other colleagues, likewise packed with civilians, Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4417.

<sup>2773</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, p 3; Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4424.

735. In the meantime, the group of Kosovo Albanians who were forced out of their houses in Karagaq neighbourhood of Peć/Pejë, continued to the road leading to Montenegro. There were many people in the streets in Peć/Pejë.<sup>2774</sup> They had been ordered to leave to Montenegro.<sup>2775</sup> Police, army and paramilitary forces were standing along the road at every corner preventing people from going back.<sup>2776</sup> Armed men dressed in green camouflage trousers, black T-shirts and various kinds of clothes were also present there.<sup>2777</sup> Some of them had moustaches and beards.<sup>2778</sup> The convoy was stopped near the Economy High School in Peć/Pejë by a group of about 30 police, army and paramilitary soldiers.<sup>2779</sup> Those civilians who had a car were told to proceed towards Montenegro, while the others were directed back to the town centre.<sup>2780</sup>

736. People from various parts of Peć/Pejë were gathering at the square in the town centre of Peć/Pejë.<sup>2781</sup> Policemen and soldiers were pointing their guns at them.<sup>2782</sup> There were some 20 trucks and buses and people were getting onto the buses.<sup>2783</sup> A traffic police commander, dressed in civilian clothes and using a megaphone, ordered the men to separate from the women and the children. However, people started to panic and the order was not enforced.<sup>2784</sup> Families got onto the buses and trucks, and on three different occasions convoys of these vehicles left travelling towards Prizren.<sup>2785</sup> Policemen and soldiers kept the main road clear so that the convoys could pass.<sup>2786</sup>

737. At about 1900 hours on 28 March 1999, three tanks entered the centre of Peć/Pejë. Two tanks swept their cannons towards the people who were there, which caused great fear. The tanks left at about 2000 hours and the lights in the town went out.<sup>2787</sup>

738. At about 2200 hours on the same evening, the buses and trucks that had left that morning, loaded with Kosovo Albanian people, returned empty. The buses and trucks were then reloaded with more Kosovo Albanian people.<sup>2788</sup> Once again the buses and trucks left Peć/Pejë in a convoy

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<sup>2774</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2775</sup> Ndrec Konaj, Exhibit P670, p 4; Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4912; Ndrec Konaj, T 3754-3755. Ndrec Konaj joined this group with his family, walking in the side roads in the direction of Montenegro.

<sup>2776</sup> Ndrec Konaj, Exhibit P670, p 4; Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4889-4890.

<sup>2777</sup> Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4890.

<sup>2778</sup> Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4892.

<sup>2779</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2780</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2781</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2782</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2783</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2784</sup> Ndrec Konaj, Exhibit P670, p 4; Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4913.

<sup>2785</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2786</sup> Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4914.

<sup>2787</sup> Ndrec Konaj, Exhibit P670, p 4.

<sup>2788</sup> Ndrec Konaj, Exhibit P670, p 4. Ndrec Konaj testified that there must have been over a hundred persons on the bus that he boarded and the Serb driver appeared to be an “armed paramilitary”, Ndrec Konaj, Exhibit P670, p 5.

in the direction of Prizren. The convoy was stopped at a checkpoint in the town of Đakovica/Gjakovë, opposite the police station at which was a large group of police and other Serbian forces, dressed in various camouflage uniforms.<sup>2789</sup> They were mistreating civilians who were also at the checkpoint.<sup>2790</sup> The convoy eventually arrived in Prizren at about 0100 hours on 29 March 1999, the people were dropped off at the junction leading to Vrbnica/Vërmicë and the bus driver directed them to go to Albania, adding: “This is not your place, this is Great Serbia.”<sup>2791</sup> Police and soldiers were standing on the opposite side of the street.<sup>2792</sup> Several other buses then arrived and took the Kosovo Albanian people to Vrbnica/Vërmicë from where they were told to walk to the Albanian border.<sup>2793</sup>

739. This convoy of Kosovo Albanian people arrived at the border at 0500 hours on 29 March 1999. There, before they could cross into Albania, Serbian policemen told the people to throw their identification documents in a big wooden box which already contained many documents. Men were searched and women’s bags were checked for identification documents. The people then crossed into Albania.<sup>2794</sup>

740. Upon his return to Peć/Pejë at the end of July 1999, Edison Zatriqi found his house and business office burnt along with his buses.<sup>2795</sup> Many other houses that had belonged to Kosovo Albanians were burnt or destroyed,<sup>2796</sup> the Serb houses, however, had not been damaged.<sup>2797</sup> A number of mosques were also burned and destroyed, including the old mosque in Puhovci/Sahat Kulla neighbourhood, Qarshia Xhamia in the heart of Peć/Pejë, red Xhamia in Kapeshnica, and Hamam Xhamia.<sup>2798</sup>

741. For reasons expressed in detail a little later in this Judgement, the Chamber is satisfied that the offence of deportation has been established with respect to the events in the town of Peć/Pejë on 27 and 28 March 1999.<sup>2799</sup>

742. The accepted evidence of eyewitnesses indicates that both members of the VJ and members of the MUP were involved in the events in the town of Peć/Pejë on 27 and 28 March 1999. The

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<sup>2789</sup> Ndrec Konaj, Exhibit P670, p 5; Ndrec Konaj, T 3756, 3763.

<sup>2790</sup> Ndrec Konaj, Exhibit P670, p 5.

<sup>2791</sup> Ndrec Konaj, Exhibit P670, p 5; Ndrec Konaj, T 3756-3757, 3760-3762.

<sup>2792</sup> Ndrec Konaj, Exhibit P670, p 5.

<sup>2793</sup> Ndrec Konaj, Exhibit P670, p 5; Ndrec Konaj, T 3757.

<sup>2794</sup> Ndrec Konaj, Exhibit P670, p 5; Ndrec Konaj, T 3757.

<sup>2795</sup> Edison Zatriqi, Exhibit P672, Statement of 20 June 2001, p 3; Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4418.

<sup>2796</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T4418; Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4890; Ndrec Konaj, T 3758.

<sup>2797</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4418.

<sup>2798</sup> Edison Zatriqi, Exhibit P673 (*Milutinović* transcript), T 4418; Edison Zatriqi, T 3830-3831; Ndrec Konaj, Exhibit P671 (*Milutinović* transcript), T 4890.

Chamber refers in particular to evidence describing the forces' uniforms as blue and blue camouflage as well as green and green camouflage uniforms. The evidence of shelling and the presence of tanks in the town of Peć/Pejë on 27 and 28 March 1999 further confirms that VJ forces were present there. This evidence is consistent with documentary evidence received in the case. Exhibit P896 is an order of the command of the Priština Military District dated 27 March 1999 which, *inter alia*, tasks the 177<sup>th</sup> Military Territorial Detachment and the MUP with guarding the barracks in Peć/Pejë and the Serb population in the town of Peć/Pejë and in the villages Goraždevac/Gorazhdec, Bresnik (Brezanik/Brezhenic) and Vrelo Polje. The same order further tasks the same VJ and MUP forces with establishing combat control of the territory and to close off the axes of Drelje/Drelaj village--Peć/Pejë, Radevac--Peć/Pejë, and Dečani/Dečan--Peć/Pejë.<sup>2800</sup> The war diary of the armoured battalion of the 125<sup>th</sup> Motorised Brigade further records, in the entry for 28 March 1999, that some of the battalion's forces had participated in "clearing part of the town, in the Grammar School and Aslan Ćesma sector", in Peć/Pejë.<sup>2801</sup> The Chamber refers to its earlier finding that on 27 March tanks were located in the secondary school, that the neighbourhood of Kapeshnica was shelled and that during the night of 27/28 March 1999 houses in the area of the secondary school were burnt. Also in evidence is a further dispatch dated 2 March 1999 signed by the Accused sending two manoeuvre companies (from the 21<sup>st</sup> and the 22<sup>nd</sup> PJP detachments) and one territorial company (from the 72<sup>nd</sup> PJP detachment) to Peć/Pejë for a period of 40 days.<sup>2802</sup>

## 2. Cuška/Qyshk

743. The Indictment does not contain specific allegations with respect to events in the village of Cuška/Qyshk in Peć/Pejë municipality. The Chamber notes, however, that the Indictment alleges that forces of FRY and Serbia committed widespread or systematic acts of brutality and violence against Kosovo Albanian civilians in order to perpetuate a climate of fear and create chaos and a pervading fear for life. These allegations are relied on in support of the charge of persecutions (Count 5).<sup>2803</sup> For these reasons the Chamber has considered the evidence led in respect to events in Cuška/Qyshk in April and May 1999 and has made the factual findings recorded below. These matters will be considered further later in this Judgement in connection with the charge of persecutions.

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<sup>2799</sup> See *infra*, para 1642.

<sup>2800</sup> Exhibit P896, p 4.

<sup>2801</sup> Exhibit P957, p 3.

<sup>2802</sup> Exhibit P1189, p 1

<sup>2803</sup> Indictment, paras 77(b), 27, 28.



744. The village of Cuška/Qyshk is situated in Peć/Pejë municipality, approximately three kilometres to the east from the town of Peć/Pejë.<sup>2804</sup> At the time of the events described below, Cuška/Qyshk had about 2,000 inhabitants, predominantly of Albanian ethnicity. However, three households in the village were Serb.<sup>2805</sup> While Cuška/Qyshk was the home of the father of the KLA military leader Agim Ceku, there is no evidence to suggest that there had been any KLA military presence in the village in 1998 and 1999.<sup>2806</sup>

745. Around mid April 1999 convoys of large numbers of people, cars and tractors moving from the town of Peć/Pejë towards Montenegro were observed from Cuška/Qyshk.<sup>2807</sup>

746. On 16 or 17 April 1999, Serbian police and army entered Cuška/Qyshk and set on fire houses inhabited by people of Albanian ethnicity,<sup>2808</sup> as a result, some villagers attempted to leave Cuška/Qyshk but they were stopped by VJ soldiers, wearing green camouflage uniforms and policemen, wearing blue camouflage uniforms and dark coloured berets, who told them that they could only leave when they were told to.<sup>2809</sup> On 17 April 1999 Serbian police asked the Albanian villagers to hand over their weapons,<sup>2810</sup> as a result, a few weapons were handed over to the police.<sup>2811</sup>

747. On or about 19 April 1999, a police and an army vehicle arrived at Cuška/Qyshk. Approximately four VJ soldiers and four policemen approached a group of eight men who had gathered in the centre of the village.<sup>2812</sup> They took Syl Gashi, who was one of this group of eight men, away to his house and took a car and 3,000 German Marks from him.<sup>2813</sup> From that day on some villagers prepared to flee Cuška/Qyshk on short notice, should the police and army return.<sup>2814</sup>

748. There was evidence suggesting that on 13 or 14 May 1999 at around 1900 to 2000 hours an elderly couple was taken from Cuška/Qyshk and killed in the vicinity of the road connecting

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<sup>2804</sup> Hazir Berisha, Exhibit P796, para 5; Tahir Kelmendi, T 4718, 4738-4739.

<sup>2805</sup> Hazir Berisha, Exhibit P796, para 5; Hazir Berisha, T 4635. According to Tahir Kelmendi there were eight Serb families living in the village of Cuška/Qyshk, Tahir Kelmendi, Exhibit P803, para 5.

<sup>2806</sup> Exhibit P755, pp 3-4.

<sup>2807</sup> Tahir Kelmendi, T 4734-4735.

<sup>2808</sup> Hazir Berisha, T 4605-4606, 4635. The Chamber notes that in an initial statement dated 28 July 1999, Hazir Berisha referred to the forces approaching Cuška/Qyshk on that day as “regular army and paramilitaries”, see Exhibit D117, p 2.

<sup>2809</sup> Hazir Berisha, Exhibit P796, paras 11, 13-14; Hazir Berisha, T 4606, 4608, 4631, 4635. When shown Exhibit P797 in court witness Hazir Berisha identified Slavisa Kastratović and Srećko Popović (photo 1) as being amongst the group of men that stopped him when he tried to leave the village, Hazir Berisha, T 4608.

<sup>2810</sup> Tahir Kelmendi, Exhibit P803, para 6; Tahir Kelmendi, T 4714; Hazir Berisha, Exhibit P796, para 11; Hazir Berisha, T 4605-4606, 4635.

<sup>2811</sup> Tahir Kelmendi, Exhibit P803, para 6; Tahir Kelmendi, T 4714. Hazir Berisha identified the soldier Srećko Popović as being involved in the seizure of the weapons when shown the third photograph of Exhibit P797, Hazir Berisha, T 4609.

<sup>2812</sup> Hazir Berisha, Exhibit P796, paras 15-16.

<sup>2813</sup> Hazir Berisha, Exhibit P796, paras 16-17.

Peć/Pejë town and Priština/Prishtinë.<sup>2815</sup> The witness saw a car with policemen and soldiers passing by and he later heard shots.<sup>2816</sup> There is no evidence of their bodies being found.<sup>2817</sup> No other evidence with respect to this incident has been presented. In the circumstances the Chamber is unable to make a finding that the murder of this elderly couple has been established.

749. On 13 May 1999 a police reservist with several policemen wearing blue police uniforms arrived in Cuška/Qyshk.<sup>2818</sup> This reservist indicated that other Serbian forces would arrive in Cuška/Qyshk on the following day and told the people that the villagers should not be afraid.<sup>2819</sup>

750. On the same day, 13 May 1999, a local police commander from Ozrim/Ozdrim village came to the village of Pasino Selo/Katundi-i-Ri, which adjoins Cuška/Qyshk.<sup>2820</sup> This commander told the villagers that they should go to Cuška/Qyshk from where, on the following day, the Serbian police would send all Albanian residents of Cuška/Qyshk to Albania.<sup>2821</sup> As a consequence, that evening 70 to 80 displaced Kosovo Albanians arrived in Cuška/Qyshk from Pasino Selo/Katundi-i-Ri.<sup>2822</sup>

751. On 14 May 1999 at around 0600 hours an armed Serbian force of about 80 men wearing variously either green or blue camouflage uniforms and T-shirts,<sup>2823</sup> some wearing bandannas,<sup>2824</sup> approached Cuška/Qyshk in lines and surrounded the village.<sup>2825</sup> They did not appear to have any unit patches or insignia.<sup>2826</sup> There were more dressed in blue uniforms than there were dressed in green uniforms.<sup>2827</sup> The men had black and green camouflage raggedy on their faces.<sup>2828</sup> The force was armed with Kalashnikov rifles and hand grenades, some also had knives.<sup>2829</sup> The force closed

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<sup>2814</sup> Hazir Berisha, Exhibit P796, para 18.

<sup>2815</sup> Hazir Berisha, T 4623.

<sup>2816</sup> Hazir Berisha, T 4624.

<sup>2817</sup> Hazir Berisha, T 4624.

<sup>2818</sup> Tahir Kelmendi, Exhibit P803, paras 25, 27-28. A witness believed that this policeman, identified as Mijo Brajović, was sent to Cuška/Qyshk by Commander Obrnović, the commander of the Klincina/Kličinë police station, approximately five to seven kilometres away from Cuška/Qyshk, Tahir Kelmendi, Exhibit P803, paras 25, 27, 28; Tahir Kelmendi, T 4718-4720, 4770.

<sup>2819</sup> Tahir Kelmendi, T 4719.

<sup>2820</sup> Tahir Kelmendi, Exhibit P803, paras 30, 33-36.

<sup>2821</sup> Tahir Kelmendi, Exhibit P803, paras 30, 33-36; Tahir Kelmendi, T 4775-4776.

<sup>2822</sup> Tahir Kelmendi, T 4716-4717.

<sup>2823</sup> Tahir Kelmendi, T 4765-4767.

<sup>2824</sup> Tahir Klemendi, Exhibit 803, para 12.

<sup>2825</sup> Tahir Kelmendi, T 4718, 4738-4739.

<sup>2826</sup> Tahir Kelmendi Exhibit P803, para 12; Tahir Kelmendi, T 4765-4767; Hazir Berisha, Exhibit P796, para 69.

<sup>2827</sup> Tahir Kelmendi, Exhibit P803, para 11; Tahir Kelmendi, T 4765-4767.

<sup>2828</sup> Tahir Kelmendi, T 4718.

<sup>2829</sup> Tahir Kelmendi, P803, para 14; Tahir Kelmendi, T 4767.

in on the village.<sup>2830</sup> There was also a green Jeep without a roof in which there were five persons in green camouflage uniforms and T-shirts.<sup>2831</sup> A submachine gun was mounted on the vehicle.<sup>2832</sup>

752. In the meantime Serbian policemen dressed in blue uniforms and armed with automatic Žastava rifles<sup>2833</sup> were patrolling on the road connecting Cuška/Qyshk with Peć/Pejë in three police cars.<sup>2834</sup> One of the policemen was identified by a witness as Commander Obranović from the Klincina/Kličinë police station,<sup>2835</sup> although the Chamber is unable to accept the reliability of this identification.

753. By around 0800 or 0830 hours, houses in the village were burning and continuous gunfire was heard.<sup>2836</sup> Police in blue camouflage uniforms and VJ in green camouflage uniforms entered houses, and the Kosovo Albanian villagers went to the centre of Cuška/Qyshk,<sup>2837</sup> at the cemetery.<sup>2838</sup>

754. Approximately 250 to 300 villagers gathered at the cemetery in the centre of the village, believing that they would be sent to Albania.<sup>2839</sup> This group consisted mainly of women and children but there were also about 35 to 50 men;<sup>2840</sup> they were surrounded by policemen and soldiers.<sup>2841</sup>

755. The police and VJ forces ordered the men to separate from the women and children<sup>2842</sup> while members of the Serbian forces continued to fire their weapons.<sup>2843</sup> Both the men and the women were ordered to remove their valuables and to throw them on the ground.<sup>2844</sup> Two boys

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<sup>2830</sup> Tahir Kelmendi, Exhibit P803, para 11. *See also* Hazir Berisha, Exhibit P796, para 19; Hazir Berisha, T 4610-4611 testifying that at about 0715 hours some of these forces were seen walking through the field into the village, while firing their weapons.

<sup>2831</sup> Tahir Kelmendi, Exhibit P803, paras 15-16.

<sup>2832</sup> Tahir Kelmendi, T 4769-4770.

<sup>2833</sup> Tahir Kelmendi, Exhibit P803, para 20, 21.

<sup>2834</sup> Tahir Kelmendi, Exhibit P803, para 19.

<sup>2835</sup> Tahir Kelmendi, Exhibit P803, para 24.

<sup>2836</sup> Hazir Berisha, Exhibit P796, para 22.

<sup>2837</sup> Hazir Berisha, Exhibit P796, para 22; Hazir Berisha, T 4631; Tahir Kelmendi, Exhibit P803, paras 37-39.

<sup>2838</sup> Tahir Kelmendi, Exhibit P803, paras 37-40; Hazir Berisha, Exhibit P796, para 22; Hazir Berisha, T 4601.

<sup>2839</sup> Tahir Kelmendi, Exhibit P803, paras 37-40, 43. Hazir Berisha, Exhibit P796, para 22; Hazir Berisha, T 4611.

<sup>2840</sup> Hazir Berisha, Exhibit P796, para 25; Hazir Berisha, T 4612. Estimates of numbers varied, *see* Hazir Berisha, Exhibit P796, para 37.

<sup>2841</sup> Hazir Berisha, Exhibit P796, para 23.

<sup>2842</sup> Hazir Berisha, Exhibit P796, para 24; Tahir Kelmendi, Exhibit P803, para 41; Tahir Kelmendi, T 4768. The Chamber notes that some eight old men were later moved to the group of women and children, Hazir Berisha, Exhibit P796, para 33.

<sup>2843</sup> Hazir Berisha, Exhibit P796, para 24.

<sup>2844</sup> Hazir Berisha, Exhibit P796, para 26; Tahir Kelmendi, T 4721. Hazir Berisha identified the individual who ordered the villagers to remove their personal items as Nebojša Minić when shown a photograph (Exhibit P772) in court, *see also* Hazir Berisha, Exhibit P796, para 73; Hazir Berisha, T 4612-4613, 4625. This photograph was shown to him for the first time after the KFOR arrival in Kosovo, Hazir Berisha, T 4658. Hazir Berisha did not remember whether he knew Nebojša Minić before 14 May and he learned his name only after the events, Hazir Berisha, T 4613, 4658.

collected the items under the directions of VJ soldier Srečko Popović.<sup>2845</sup> This man also ordered that anyone who had a vehicle should get it and return to the cemetery within five minutes.<sup>2846</sup> Four men left. Two of them returned with vehicles.<sup>2847</sup> These two men were made to join the group of men.<sup>2848</sup>

756. The women and children were taken to the courtyard of the house of Sali Rexha.<sup>2849</sup> The group of men<sup>2850</sup> were ordered to walk away from the women and children.<sup>2851</sup> As they were walking, approximately 12 of the men were directed into the courtyard of the house of Ajet Gashi<sup>2852</sup> and then taken to the house of Azem Gashi.<sup>2853</sup> Six members of the Serbian forces followed them.<sup>2854</sup> The men were ordered to hold their hands behind their head.<sup>2855</sup>

757. Some short time later the sound of automatic gunfire was heard coming from the direction of the house of Azem Gashi<sup>2856</sup> and five minutes later flames and smoke were seen coming from the house.<sup>2857</sup> As detailed a little later in this section the 12 men had been shot dead and their bodies left to burn in the house.

758. Some 10-15 minutes after these events, the same police and soldiers, without any of the men, returned to the remaining group of male villagers,<sup>2858</sup> who, were further divided into two groups.<sup>2859</sup> About half of these were taken initially to Sadik Gashi's house<sup>2860</sup> close to the cemetery in the centre of Cuška/Qyshk.<sup>2861</sup> However, before the group entered Sadik Gashi's compound a policeman or soldier objected that this house is too close to the road and that "it would be inappropriate because of the smell".<sup>2862</sup> Eventually, this group of male villagers was directed to Sahit Gashi's house by five or six of the Serbian policemen and soldiers.<sup>2863</sup> The men entered the

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<sup>2845</sup> Hazir Berisha, T 4608; Hazir Berisha, Exhibit P796, para 72; Exhibit P797 (photo 1).

<sup>2846</sup> Hazir Berisha, Exhibit P796, para 35.

<sup>2847</sup> Hazir Berisha, Exhibit P796, para 36.

<sup>2848</sup> Hazir Berisha, Exhibit P796, para 45.

<sup>2849</sup> Tahir Kelmendi, Exhibit P803, para 45; Tahir Kelmendi, T 4720-4722.

<sup>2850</sup> Hazir Berisha, Exhibit P796, para 37.

<sup>2851</sup> Tahir Kelmendi, Exhibit P803, para 41; Tahir Kelmendi, T 4767-4768; Hazir Berisha, Exhibit P796, para 37.

<sup>2852</sup> Hazir Berisha, Exhibit P796, para 37; Hazir Berisha, T 4614.

<sup>2853</sup> Hazir Berisha, Exhibit P796, para 46; Hazir Berisha, T 4616, 4663, 4672; Tahir Kelmendi, Exhibit P803, para 55; Tahir Kelmendi, T 4723.

<sup>2854</sup> Tahir Kelmendi, Exhibit P803, para 54.

<sup>2855</sup> Tahir Kelmendi, Exhibit P803, para 55.

<sup>2856</sup> Hazir Berisha, Exhibit P796, para 46; Hazir Berisha, T 4616, 4663, 4672; Tahir Kelmendi, Exhibit P803, para 55; Tahir Kelmendi, T 4723.

<sup>2857</sup> Tahir Kelmendi, T 4723-4724; Hazir Berisha, Exhibit P796, para 46; Hazir Berisha, T 4616, 4663, 4672.

<sup>2858</sup> Hazir Berisha, Exhibit P796, para 47; Hazir Berisha, T 4616.

<sup>2859</sup> Tahir Kelmendi, Exhibit P803, para 46; Tahir Kelmendi, T 4721. The locations where the villagers were brought to and the vantage point of witness Tahir Kelmendi are depicted in Exhibit D119, a sketch with markings by the witness, Tahir Kelmendi, T 4740-4742.

<sup>2860</sup> Tahir Kelmendi, Exhibit P803, para 54; Hazir Berisha, Exhibit P796, paras 53-54; Hazir Berisha, T 4617, 4626.

<sup>2861</sup> Hazir Berisha, Exhibit P796, para 52; Hazir Berisha, T 4617, 4621.

<sup>2862</sup> Hazir Berisha, Exhibit P796, para 52; Hazir Berisha, T 4617.

<sup>2863</sup> Hazir Berisha, Exhibit P796, paras 53-54; Hazir Berisha, T 4617, 4626.

house holding their hands behind their head, as ordered by the police,<sup>2864</sup> and were further directed into a room and ordered to sit down on a long L-shaped couch.<sup>2865</sup> Four members of the Serbian force entered the room; three of them were armed with Kalashnikov rifles and one of them carried an apparently heavier calibre machine gun.<sup>2866</sup> They cursed the men in the room and then fired shots at them in a sweeping motion<sup>2867</sup>; they then fired a second round of shots following which there was a pause and then single shots were fired at them.<sup>2868</sup> The men fell on top of each other. A foam mattress was then placed on them and blankets in the far corner of the room were set on fire.<sup>2869</sup> A few minutes later a member of the Serbian forces entered the room and threw a canister or a bottle which contained some kind of inflammable gas, into the room.<sup>2870</sup> The room caught fire. One of the shot villagers, Hazir Berisha, although seriously wounded, managed to climb through a window of the room and escape from the house. He saw the roof of the house collapsing as the house burnt.<sup>2871</sup> He heard Serbs' voices giving orders to set things on fire; later he heard truck and car engines being started.<sup>2872</sup> The bodies of the remaining villagers were left to burn in the house.

759. The remaining group of male villagers, comprising 10 to 12 men, were brought to Deme Gashi's house<sup>2873</sup> by six members of the Serbian forces,<sup>2874</sup> the men were holding their hands behind their head.<sup>2875</sup> A long burst of automatic gunfire was then heard coming from the direction of Deme Gashi's house.<sup>2876</sup> The male villagers had been shot by the members of the Serbian forces. Once again, one of the village men in this group managed to escape by climbing through a window.<sup>2877</sup> The bodies of the remaining villagers were left to burn in the house, which had been set on fire.

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<sup>2864</sup> Tahir Kelmendi, Exhibit P803, para 55; Tahir Kelmendi, T 4724.

<sup>2865</sup> Hazir Berisha, Exhibit P796, para 54.

<sup>2866</sup> Hazir Berisha, Exhibit P796, para 55.

<sup>2867</sup> Hazir Berisha, Exhibit P796, para 56; Hazir Berisha, T 4617-4618.

<sup>2868</sup> Hazir Berisha, Exhibit P796, paras 57-58; Hazir Berisha, T 4618, 4601, 4618.

<sup>2869</sup> Hazir Berisha, Exhibit P796, para 60.

<sup>2870</sup> Hazir Berisha, Exhibit P796, para 61; Hazir Berisha, T 4619.

<sup>2871</sup> Hazir Berisha, Exhibit P796, para 65; Hazir Berisha, T 4621. The ruined house of Sahit Gashi is depicted on a photograph, Exhibit P797, p 3.

<sup>2872</sup> Hazir Berisha, Exhibit P796, para 64; Hazir Berisha, T 4621.

<sup>2873</sup> Tahir Kelmendi, Exhibit P803, para 54; Tahir Kelmendi, T 4731-4732; Hazir Berisha, Exhibit P796, para 50; Hazir Berisha, T 4622.

<sup>2874</sup> Tahir Kelmendi, Exhibit P803, para 54.

<sup>2875</sup> Tahir Kelmendi, Exhibit P803, para 55; Tahir Kelmendi, T 4723.

<sup>2876</sup> Tahir Kelmendi, Exhibit P803, para 55; Tahir Kelmendi, T 4723.

<sup>2877</sup> Hazir Berisha Exhibit P796, para 64; Hazir Berisha, T 4622; Tahir Kelmendi, Exhibit P803, para 57, Tahir Kelmendi, T 4731-4732.

760. Flammable cartridges fired from special weapons and flammable grenades were used to set on fire the three houses in which the male villagers were shot.<sup>2878</sup>

761. As the men were being taken to the three houses, the women and children in the village were ordered by members of the Serbian forces to gather at the courtyards of several houses in Cuška/Qyshk, at least one of which had already been set on fire.<sup>2879</sup> Eventually the women and children were taken out of the courtyards, made to board tractors and sent to the town of Peć/Pejë.<sup>2880</sup> Idish Kadrija was shot by Serbian forces because he was not able to drive a tractor.<sup>2881</sup> However, before arriving in Peć/Pejë the women and children were sent back to Cuška/Qyshk by the Serbian police.<sup>2882</sup>

762. Other Kosovo Albanian villagers were killed by Serbian forces in Cuška/Qyshk on 14 May 1999. That morning, Qaush Lushi from Cuška/Qyshk offered money to Serbian forces to spare the life of his son.<sup>2883</sup> After money was handed over, a Serbian policeman asked Qaush Lushi to enter the outer toilet in Azem Gashi's compound where another policeman executed him with an automatic rifle.<sup>2884</sup> Both policemen then slit his throat.<sup>2885</sup> At about 1100 hours Cuška/Qyshk resident Avdi Berisha, while trying to leave the village, was shot by a sniper who fired from a police car which patrolled on the main road to Peć/Pejë town.<sup>2886</sup>

763. After these events, the Serbian forces left Cuška/Qyshk in the direction of the adjoining villages of Pavlan/Plavljane and Zahać/Zahaq.<sup>2887</sup> On that same day, 14 May 1999, Pavlan/Plavljane and Zahać/Zahaq villages were also attacked by the Serbian forces.<sup>2888</sup> Constant shots coming from these villages were heard and smoke rising above them was seen from Cuška/Qyshk.<sup>2889</sup>

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<sup>2878</sup> Tahir Kelmendi, Exhibit P803, paras 58-60, 61, 64; Hazir Berisha, T 4619, 4621. The ruined house of Sahit Gashi is depicted on a photograph in Exhibit P797, p 3.

<sup>2879</sup> Hazir Berisha, Exhibit P796, para 41; Hazir Berisha, T 4615; Tahir Kelmendi, T 4721.

<sup>2880</sup> Tahir Kelmendi, Exhibit P803, paras 61-62; Tahir Kelmendi, T 4728.

<sup>2881</sup> Tahir Kelmendi, Exhibit P803, para 62.

<sup>2882</sup> Hazir Berisha, T 4664-4665; Tahir Kelmendi testified that the women and children were sent back by the Serbian police positioned at a checkpoint at Peć/Pejë entrance. He further testified that another police patrol close to Cuška/Qyshk sent them back to Peć/Pejë, which happened three times, Tahir Kelmendi, Exhibit P803, para 64; Tahir Kelmendi T 4728-4729.

<sup>2883</sup> Tahir Kelmendi, Exhibit P803, paras 47-49, Tahir Kelmendi, T 4725-4726.

<sup>2884</sup> Tahir Kelmendi, Exhibit P803, paras 50, 51.

<sup>2885</sup> Tahir Kelmendi, T 4725-4726, 4780-4781; Exhibit P804; Tahir Kelmendi, T 4736-4737.

<sup>2886</sup> Tahir Kelmendi, Exhibit P803, paras 73-75; Tahir Kelmendi, T 4714-4715, 4733.

<sup>2887</sup> Tahir Kelmendi, Exhibit P803, para 63; Tahir Kelmendi, T 4763. Hazir Berisha testified that about 20 to 25 minutes after his escape from Sahit Gashi's house (*see supra*, para 758) all of the Serbian police and soldiers left Cuška/Qyshk, Hazir Berisha, Exhibit P796, para 66.

<sup>2888</sup> Tahir Kelmendi, Exhibit P803, para 63; Tahir Kelmendi, T 4763.

<sup>2889</sup> Hazir Berisha, T 4624.

764. After the Serbian forces had left Cuška/Qyshk, villagers entered the three houses to which the three groups of men had been taken.<sup>2890</sup> They found the bodies still burning there.<sup>2891</sup> The villagers collected the bodies and hid them from the police.<sup>2892</sup> Three days later the bodies and the bodies of other people from the village killed by the Serbian forces were buried in one mass grave in the centre of the village.<sup>2893</sup>

#### F. Kosovska Mitrovica/Mitrovicë municipality

765. Kosovska Mitrovica/Mitrovicë is located in the northern part of Kosovo and is surrounded by the municipalities of Podujevo/Podujevë, Vuçitrn/Vushtrri and Srbica/Skenderaj. The town of Kosovska Mitrovica/Mitrovicë is located in the southern part of the municipality. At the time alleged in the Indictment about 60 per cent of the population in the town of Kosovska Mitrovica/Mitrovicë was Kosovo Albanian, and about 40 per cent was Serbian.<sup>2894</sup> Situated about three kilometres south-west from the town of Kosovska Mitrovica/Mitrovicë is the village of Zabare/Zhabar. At the time relevant to the Indictment, this village was an exclusively Kosovo Albanian village.<sup>2895</sup> The village of Zabare/Zhabar was composed of Lower and Upper Zabare/Zhabar and had approximately 5,600 houses.<sup>2896</sup> Lower and Upper Zabare/Zhabar are adjacent to each other but have their centres at a distance of around one kilometre.<sup>2897</sup> Upper Zabare/Zhabar is characterised by the mountain known as Grmova.<sup>2898</sup>

766. From January to early April 1999, members of the 35<sup>th</sup> and 85<sup>th</sup> PJP Detachments of the MUP were deployed to assist the Kosovska Mitrovica/Mitrovicë SUP with the performance of “special security tasks”.<sup>2899</sup> Members of the 36<sup>th</sup> and 86<sup>th</sup> PJP Detachments of the MUP were also deployed to provide assistance, *inter alia*, to the Kosovska Mitrovica/Mitrovicë SUP, from January to early May 1999.<sup>2900</sup> Ljubinko Cvetić, Chief of the Kosovska Mitrovica/Mitrovicë SUP in 1999, reported that following a meeting at the headquarters of the MUP Staff in Priština/Prishtinë on 17 March 1999, and in accordance with orders given,<sup>2901</sup> the SUP in Kosovska Mitrovica/Mitrovicë,

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<sup>2890</sup> Tahir Kelmendi, Exhibit P803, para 70; Tahir Kelmendi, T 4732.

<sup>2891</sup> Tahir Kelmendi, T 4729-4730.

<sup>2892</sup> Tahir Kelmendi, Exhibit P803, para 70; Tahir Kelmendi, T 4732.

<sup>2893</sup> Tahir Kelmendi, Exhibit P803, para 70; Tahir Kelmendi, T 4732.

<sup>2894</sup> Aferdita Hajrizi, Exhibit P773, p 3.

<sup>2895</sup> Sadije Sadiku, Exhibit P502, para 6; Sadije Sadiku, T 2967; Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4454.

<sup>2896</sup> Mahmut Halimi, T 2916; Exhibit P500; Exhibit D65; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1892.

<sup>2897</sup> Mahmut Halimi, T 2916.

<sup>2898</sup> Mahmut Halimi, T 2901; Exhibit P500; Exhibit D65.

<sup>2899</sup> Exhibit P1184; Exhibit P1186; Exhibit P1188; Exhibit P711; Exhibit P1191.

<sup>2900</sup> Exhibit P139; Exhibit P712.

<sup>2901</sup> At this meeting Sreten Lukić stated that all the SUPs should prepare and undertake all the necessary measures to go forward with mobilisation of the members of the reserve police forces, so that the ratio between active policemen and reserve policemen should be one to one, Ljubinko Cvetić, T 6609, 6691.

mobilized 665 reserve policemen to match the number of regular police officers.<sup>2902</sup> In March 1999, the regular police units and members of the PJPs totaled 1,990 men and there were 6034 men in reserve police units. In total there were approximately 8,000 police deployed in Kosovska Mitrovica/Mitrovicë by March 1999.<sup>2903</sup>

767. VJ documentary records reveal that on 7 March 1999, the VJ 37<sup>th</sup> motorised brigade was deployed to the general area of Kosovska Mitrovica/Mitrovicë with the stated aim of carrying out exercises and raising combat readiness.<sup>2904</sup> By 18 March 1999 the 211<sup>th</sup> brigade and other VJ units were also deployed in the vicinity of Kosovska Mitrovica/Mitrovicë<sup>2905</sup> and the 125<sup>th</sup> motorised brigade of the VJ was also deployed to the area from 24 March 1999 to “destroy the ŠTŠ”<sup>2906</sup> and “secure and control the territory” of Kosovska Mitrovica/Mitrovicë.<sup>2907</sup> Units of the Priština/Prishtinë military district were also deployed on 27 March 1999 to Kosovska Mitrovica/Mitrovicë and tasked to protect the Serbian population and, in coordination with MUP forces, to prevent operations of the KLA, to guard roads, military installations and other features, and to establish combat control over areas in Kosovska Mitrovica/Mitrovicë.<sup>2908</sup> An order of the Priština Corps Command further reveals that the 37<sup>th</sup> motorised brigade was still engaged on 2 April 1999 in the area of Kosovska Mitrovica/Mitrovicë and was under orders to “crush and destroy the KLA”, to secure main roads and to establish combat control over that area.<sup>2909</sup> A Priština Corps Command order dated 9 April 1999 tasked MUP forces in the area, together with the VJ 37<sup>th</sup> Motorised Brigade, VJ 125<sup>th</sup> Motorised Brigade, VJ 15<sup>th</sup> Armoured Brigade and VJ 58<sup>th</sup> Light Infantry Brigade to gain control over the area of Kosovska Mitrovica/Mitrovicë.<sup>2910</sup>

768. The above evidence establishes, in the finding of the Chamber, that MUP forces, both ordinary uniformed police, and PJP units, were engaged in coordination with VJ units, *inter alia* to “establish combat control” in the area of Kosovska Mitrovica/Mitrovicë throughout the time period relevant to the Indictment.<sup>2911</sup> Moreover, it is accepted that various MUP forces and VJ units were engaged in a coordinated effort to ensure the movement of Kosovo Albanians to the borders with

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<sup>2902</sup> Ljubinko Cvetić, T 6609, 6691.

<sup>2903</sup> Ljubinko Cvetić, T 6609-6610.

<sup>2904</sup> Exhibit P934; Exhibit P965, p 11.

<sup>2905</sup> Exhibit P1339, p 7.

<sup>2906</sup> ŠTŠ is a reference to the Albanian terrorist groups.

<sup>2907</sup> Exhibit P954, pp 1, 3.

<sup>2908</sup> Exhibit P896.

<sup>2909</sup> Exhibit P912; Exhibit P930 is the order from the 37<sup>th</sup> Motorised Brigade implementing Exhibit P912. The Chamber also received evidence of the 52<sup>nd</sup> ARBR of the PVO being deployed to Kosovska Mitrovica/Mitrovicë on 5 April 1999 to evacuate mines and explosives, *see* Exhibit P958, p 11.

<sup>2910</sup> Exhibit P1039; Ljubinko Cvetić, T 6630, 6636-6637.

<sup>2911</sup> The Chamber also finds that Serbian paramilitary forces were also present in Kosovska Mitrovica/Mitrovicë at the time relevant to the Indictment and were engaged in some specific operations, *see* *infra* paras 774, 775, 785, 787.



Albania, and that MUP forces, including members of the Border Police, ensured that the Kosovo Albanians were sent across the border from Kosovo.

769. Kosovska Mitrovica/Mitrovicë municipality was situated between KLA operational zones Shala and Llap.<sup>2912</sup> Mahmut Halimi explained that in the village of Zabare/Zhabar in March 1999 there was a make-shift medical clinic which *inter alia* treated ill and wounded KLA soldiers.<sup>2913</sup> However, no KLA uniformed or armed members would enter the area for fear of attracting Serbian forces.<sup>2914</sup> The Defence submits that several areas within Kosovska Mitrovica/Mitrovicë municipality were KLA strongholds.<sup>2915</sup> The Defence relies on a report of the General Staff of the VJ, dated 15 April 1999, that details the number of alleged KLA members present in the village of Tamnik/Tavnik in Kosovska Mitrovica/Mitrovicë municipality. It was reported that among a population of 30,000 Kosovo Albanians, about 100 KLA members were hiding. The report also stated that there was sniper fire on MUP members.<sup>2916</sup> Whilst the Chamber accepts there may well have been a small number of KLA forces present in the municipality, it is not accepted that the acts of the Serbian forces, discussed below, were part of a legitimate terrorist operation nor were they justified. In what follows, it is evident that the actions of the Serbian forces were manifestly not to fight the KLA but to terrorise the Kosovo Albanian population and to expel them from the area.

#### 1. Kosovska Mitrovica/Mitrovicë town

770. Aferdita Hajrizi was the wife of Agim Hajrizi, a Kosovo Albanian trade union activist in Kosovska Mitrovica/Mitrovicë.<sup>2917</sup> On the night of 24 to 25 March 1999 at 0030 hours, two vehicles stopped in front of the house of Aferdita Hajrizi and her husband Agim Hajrizi.<sup>2918</sup> Six police left the vehicles and approached the Hajrizi house. The men were dressed in dark blue camouflage pattern uniforms and black berets and carried long weapons. Aferdita Hajrizi identified four of the six men. They were Nenad Pavicević, Ratko Antonijević, Dejan Savić and a man known only to them as Boban.<sup>2919</sup> They were regular policemen in the town and Nenad Pavicević was her neighbour.<sup>2920</sup>

<sup>2912</sup> Byslim Zyrapi, T 2493; Exhibit P430.

<sup>2913</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4448; Mahmut Halimi, T 2946-2947.

<sup>2914</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4448; Mahmut Halimi, T 2947.

<sup>2915</sup> Defence Final Brief, para 790. The Defence also relied on Exhibit D302.

<sup>2916</sup> Exhibit D772, p 1.

<sup>2917</sup> Aferdita Hajrizi, Exhibit P773, p 2.

<sup>2918</sup> Aferdita Hajrizi, Exhibit P773, p 6.

<sup>2919</sup> Aferdita Hajrizi, Exhibit P773, p 6; Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4047, 4052.

<sup>2920</sup> The witness recalled that these men used to wear regular police uniforms, however, on the night of the killings they were dressed in the uniform described above, Aferdita Hajrizi, Exhibit P773, p 6; Aferdita Hajrizi, Exhibit P775 (*Milošević* transcript), T 3897; Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4047, 4049-4052; Aferdita Hajrizi, T 4308.

771. As the men were approaching their house, Agim Hajrizi phoned another activist to tell him to leave town.<sup>2921</sup> Aferdita Hajrizi, in fear, fled upstairs to the attic with her children. Her husband, mother-in-law and one of her sons stayed on the ground floor. Aferdita Hajrizi heard the front door being broken down and then shots being fired in the house. Her husband said “Mother” and then the mother in law said “Nenad, how can you shoot my son”. The group of police then left.<sup>2922</sup> At approximately 0045 hours, Aferdita Hajrizi went downstairs, there she found the bodies of her husband, son and mother-in-law lying on the floor; all three were dead. Her son had bullet wounds visible on the left hip, abdomen and elbow. There were no visible bullet wounds on the bodies of Aferdita’s husband and mother-in-law as she looked at the corpses, but the two bodies were lying in pools of blood.<sup>2923</sup> That same night, shots were also heard coming from the house of Latif Berisha who was a local Kosovo Albanian political leader.<sup>2924</sup> He too was shot dead that night.<sup>2925</sup> As is discussed in more detail below, Mahmut Halimi, a prominent Kosovo Albanian lawyer was also told to leave his home in Kosovska Mitrovica/Mitrovicë early in the morning of 25 March 1999.<sup>2926</sup>

772. After the shooting Aferdita Hajrizi left her house with her two children at about 0045 hours and went to stay at an elderly couple’s house about 1200 metres from their house.<sup>2927</sup> At 0700-0730 hours on 25 March 1999, the elderly man went outside the house to check on the situation. He saw numerous police officers and soldiers. Later that day Aferdita Hajrizi and her children met her brother outside the municipality building in Kosovska Mitrovica/Mitrovicë about 300-400 metres from where she had stayed. Along the way she saw Serbian forces wearing green camouflage uniforms and they had their faces covered with green coloured masks.<sup>2928</sup> Her brother took them all to a relative’s house in the Tamnik/Tavnik neighbourhood.<sup>2929</sup> Later in the day Aferdita Hajrizi and the children were driven back to her house. She discovered that all her jewellery, her family’s identification documents, money and photographs were missing.<sup>2930</sup> They then returned to her

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<sup>2921</sup> Aferdita Hajrizi, Exhibit P773, p 6.

<sup>2922</sup> Aferdita Hajrizi, Exhibit P773, p 7.

<sup>2923</sup> Aferdita Hajrizi, Exhibit P773, p 7. Agim Hajrizi’s death was confirmed by Mahmut Halimi (Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4446; Mahmut Halimi, T 2897-2898).

<sup>2924</sup> Aferdita Hajrizi, Exhibit P773, p 8; Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4046; Mahmut Halimi, T 2898; Adnan Merovci, T 2213.

<sup>2925</sup> Aferdita Hajrizi, Exhibit P773, p 8; Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4046.

<sup>2926</sup> *See infra*, para 780. The witness had received an earlier call he considered threatening on 23 March 1999 however all he heard that time was gunshots, Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4445, 4476; Mahmut Halimi, T 2898, 2943-2945.

<sup>2927</sup> Aferdita Hajrizi, Exhibit P773, p 8; Aferdita Hajrizi, Exhibit P774, pp 2-3.

<sup>2928</sup> Aferdita Hajrizi, Exhibit P774, p 3.

<sup>2929</sup> Aferdita Hajrizi, Exhibit P773, p 8; Aferdita Hajrizi, Exhibit P774, p 4; Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4054.

<sup>2930</sup> Aferdita Hajrizi, Exhibit P773, p 8.

relative's house in Tamnik/Tavnik neighbourhood. Along the way she saw Serbian troops and vehicles on the streets, including normal police cars and APCs.<sup>2931</sup>

773. During the same day, Aferdita Hajrizi was too frightened to go to the hospital that day to collect the bodies of her family who had been killed the previous night.<sup>2932</sup> Instead, a relative acted as the next of kin, collected the bodies from the hospital and also attended the crime scene with an investigative judge and a doctor. The witness has never received a report from the investigative judge as to the outcome of the investigation.<sup>2933</sup> It is contended by the Defence that these killings are due to animosity between the witness's family and Nenad Pavicević,<sup>2934</sup> but this is not supported by the evidence. The Chamber finds that these killings were part of a larger plan to expel Kosovo Albanian villagers from the area.

774. On 28 March 1999, Serbian forces comprising of members of the VJ and police, including paramilitary forces, arrived in Tamnik/Tavnik. Tamnik/Tavnik was a predominantly Kosovo Albanian neighbourhood of Kosovska Mitrovica/Mitrovicë.<sup>2935</sup> The paramilitary forces had painted faces and knives on either side of their belts. The police were dressed in the regular police blue uniform.<sup>2936</sup>

775. Serbian forces burned down houses and ordered the residents to leave immediately for Albania. The forces yelled things such as “[t]his is not your country”, and “[w]e will kill you all”.<sup>2937</sup> Aferdita Hajrizi and her family joined a large column of people fleeing Tamnik/Tavnik. The witness stated “[w]e had no plans or goal of where to go. Just to go away and save our lives”.<sup>2938</sup> The witness joined a column of people fleeing the town. They were directed by Serbian

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<sup>2931</sup> Aferdita Hajrizi, Exhibit P774, pp 3-4.

<sup>2932</sup> The witness also did not attend the funeral of her relatives the next day out of fear of Nenad Pavicević, one of the police present at the shooting of her family members, Aferdita Hajrizi, Exhibit P773, p 8.

<sup>2933</sup> The Defence argued that all procedures continued to be undertaken by the Kosovska Mitrovica/Mitrovicë SUP in processing criminal reports filed, following which all necessary measures were put in place to investigate proceedings (Ljubinko Cvetić, T 6814; Defence Final Brief, para 791). While the Chamber accepts this may well have been the case, there is no evidence that investigations were completed by the SUP into the killing of Agim Hajrizi, his son and mother, Aferdita Hajrizi, Exhibit P773, p 8; Aferdita Hajrizi, Exhibit P774, p 5; Aferdita Hajrizi, Exhibit P775 (*Milošević* transcript), T 3898-3900). There is however, evidence from Mahmut Halimi, the Presiding Judge, acting as part of the interim administration governing Kosovo, in criminal proceedings against Lazar Gligorovski and Nenad Pavicević, policemen at the Kosovska Mitrovica/Mitrovicë police station, Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4468-4469. These two were charged in the year 2000 with the murder of Agim Hajrizi, his son and his mother, Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4462-4463, 4469. Nenad Pavicević was tried *in absentia* and found guilty of the murder of Agim Hajrizi and sentenced to 20 years imprisonment, Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4050; Exhibit P777. Lazar Gligorovski was acquitted, Aferdita Hajrizi, Exhibit P775 (*Milošević* transcript), T 3902). No evidence was provided that Nenad Pavicević served his sentence.

<sup>2934</sup> Defence Final Brief, para 794.

<sup>2935</sup> Aferdita Hajrizi, Exhibit P774, p 4; Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4054-4055, 4065-4066.

<sup>2936</sup> Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4070, 4073; *See supra*, paras 53, 54.

<sup>2937</sup> Aferdita Hajrizi, Exhibit P774, p 4; Exhibit P776 (*Milutinović* transcript), T 4055, 4066.

<sup>2938</sup> Aferdita Hajrizi, Exhibit P774, p 4.

forces to Zabare/Zhabar, a village in the direction of Albania. Serbian forces were along the road to Zabare/Zhabar and they were firing weapons over the displaced persons heads.<sup>2939</sup>

776. This column of people stayed in Zabare/Zhabar for two to three days, until they were told to leave by Serbian forces.<sup>2940</sup> Aferdita Hajrizi and her children stayed in a house with about 100 other people. She heard on the radio on 28 March 1999, that there were 70,000 displaced persons in Zabare/Zhabar. In the village there were Serbian forces dressed in dark blue and black camouflage uniforms; they wore tall boots and big knives and had black masks and fingerless gloves.<sup>2941</sup> Aferdita Hajrizi understood these to be paramilitary forces, although the evidence is not sufficient to enable the Chamber to make such a finding. After three days in Zabare/Zhabar, on 1 April 1999, the displaced persons were told by Serbian forces to leave. Aferdita Hajrizi and her children did so and managed to return to Kosovska Mitrovica/Mitrovicë to stay in the Tamnik/Tavnik neighbourhood. When they returned there was still shooting in the streets and houses were burning.<sup>2942</sup> Kosovo Albanians lived in an atmosphere of fear.

777. On 3 April 1999, buses had been arranged by “Serbs” to transport Kosovo Albanians from Kosovska Mitrovica/Mitrovicë out of Kosovo. The buses belonged to a State transport company. Only Kosovo Albanian residents of Kosovska Mitrovica/Mitrovicë were taken on the buses; they had to pay for the bus ticket to leave. There were 16 or 17 buses, which was not enough for the number of residents seeking a place on the buses. Serbian forces were monitoring the departure of Kosovo Albanians from the bus station. On the morning of 4 April 1999, residents were driven on these buses to the Montenegrin border, where they arrived the same day.<sup>2943</sup> When the buses with the displaced persons arrived at the border, the men were ordered off the buses by Serbian forces, maltreated and interrogated about their possible connections to the KLA. The men were forced to shout “Serbia, Serbia.” The men then rejoined the buses which were allowed to proceed to Montenegro. The displaced persons were allowed to retain their identification documents and valuables.<sup>2944</sup>

778. The Defence contends that there is no showing of a campaign to deport or forcibly transfer Kosovo Albanians from Kosovska Mitrovica/Mitrovicë.<sup>2945</sup> It further submits that Kosovo Albanians leaving Kosovska Mitrovica/Mitrovicë, including those leaving by bus on 4 April 1999,

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<sup>2939</sup> Aferdita Hajrizi, Exhibit P774, p 4.

<sup>2940</sup> Aferdita Hajrizi, Exhibit P774, p 5.

<sup>2941</sup> Aferdita Hajrizi, Exhibit P774, p 4.

<sup>2942</sup> Aferdita Hajrizi, Exhibit P774, p 5.

<sup>2943</sup> Aferdita Hajrizi, Exhibit P774, p 6.

<sup>2944</sup> Aferdita Hajrizi, Exhibit P774, p 6; Aferdita Hajrizi, Exhibit P776 (*Milutinović* transcript), T 4060-4061.

<sup>2945</sup> Defence Final Brief, para 802.

expressed a genuine wish (consent) to leave the area.<sup>2946</sup> This contention is supported by the evidence that the people boarding the buses paid for their bus tickets, the buses were not escorted by police, the Serbian forces patrolling the bus station did not interfere and that the people on the buses were allowed to retain their identification documents at the Montenegrin boarder.<sup>2947</sup>

779. With respect to the displacement of Kosovo Albanians on 4 April 1999, the Chamber finds that it cannot reasonably infer genuine consent from the fact Kosovo Albanians bought their own bus tickets to leave Kosovska Mitrovica/Mitrovicë or from the other factors advanced by the Defence. It is the view of the Chamber that the coercive atmosphere that prevailed in the Kosovska Mitrovica/Mitrovicë at the time deprives the consent expressed of any value. The Chamber cannot reasonably find that the Kosovo Albanians voluntarily left Kosovska Mitrovica/Mitrovicë to Montenegro. The only reasonable conclusion available on the evidence is that the threatening and intimidating acts committed by the Serbian forces in Kosovska Mitrovica/Mitrovicë were calculated to instil fear on the Kosovo Albanian population in Kosovska Mitrovica/Mitrovicë and make them leave the country. The Chamber therefore finds that the displacement of Kosovo Albanians to Montenegro was forceful and unlawful; there was no genuine choice in their displacement.

## 2. Zabare/Zhabar

### (a) Experience of Mahmut Halimi

780. Mahmut Halimi was a Kosovo Albanian lawyer who lived in Kosovska Mitrovica/Mitrovicë town. He was well known for his opposition to the Milošević government.<sup>2948</sup> At about 0600 hours on 25 March 1999, Mahmut Halimi received a telephone call from a woman speaking Serbian who warned him that he should leave his home as soon as possible.<sup>2949</sup> At around 0630-0645 hours he left Kosovska Mitrovica/Mitrovicë town with his family to take shelter in the village of Zabare/Zhabar.<sup>2950</sup> As Mr Halimi was leaving he was called again by the same woman who asked him if he already had left his house because “they” were approaching his house. The witness believed that she meant the Serbian military and paramilitary forces who were in the area.<sup>2951</sup> The Chamber is satisfied that the cognisance of his opposition to the Serbian government, coupled with the presence of Serbian forces in the area and the warning telephone call instilled in the mind of Mahmut Halimi fear for the safety of his family and himself. As a result they left the area.

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<sup>2946</sup> Defence Final Brief, para 792.

<sup>2947</sup> Defence Final Brief, para 795.

<sup>2948</sup> Mahmut Halimi, T 2898-2899.

<sup>2949</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4445, 4476; Mahmut Halimi, T 2898, 2943-2945.

<sup>2950</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4445; Mahmut Halimi, T 2900-2901.

<sup>2951</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4445-4446, 4476.

781. Over the course of the next two days, 26 and 27 March 1999, the witness and his family stayed at his brother's house in Zabare/Zhabar.<sup>2952</sup> On 28 March 1999, Mahmut Halimi was asked by two unarmed men, he knew to be members of the KLA, to leave for the mountains because the "security forces" were looking for him and by staying in the village he was putting his life and that of the villagers at risk.<sup>2953</sup> He left with these two men and two sons of his brother and went to the mountains about four kilometres away.<sup>2954</sup> Mahmut Halimi stayed in the mountains for about six days. He returned to his brother's house in Zabare/Zhabar and rejoined his family on or about 3 or 4 April 1999.<sup>2955</sup>

782. The house of Mahmut Halimi's brother was situated in Lower Zabare/Zhabar. The house had a commanding view over Suvi Do/Suhadoll and the new stadium of Zabare/Zhabar.<sup>2956</sup> At about 1000 hours on 14 April 1999, Serbian forces began approaching the new stadium.<sup>2957</sup> The Serbian forces had arrived in two APCs and began shooting with their machine guns. There were also Pragas shooting their weapons in the direction of the upper part of the village.<sup>2958</sup> The witness was not able to see the uniforms these forces were wearing.<sup>2959</sup> The Defence submitted that this attack was in response to a KLA terrorist attack that day in Šipolje/Shipol near the road linking Zabare/Zhabar to Tamnik/Tavnik and Šipolje/Shipol. The KLA terrorist attack was reported at 1700 hours on 14 April 1999 whereas the evidence before the Chamber, discussed above, indicates that the attack of the Serbian forces started much earlier at 1000 hours.<sup>2960</sup> The "terrorist attack" was said to be aimed at members of the police at Šipolje/Shipol bridge in Kosovska Mitrovica/Mitrovicë. During the attack two policemen were wounded.<sup>2961</sup> No further details were provided about the terrorist attack. While the Chamber accepts that the attack at the Šipolje/Shipol bridge described above may have occurred, in the view of the Chamber, this is of no relevance to its factual findings about events earlier that day. The Chamber notes that the attack on Tamnik/Tavnik and other areas of Kosovska Mitrovica/Mitrovicë, described below, were targeted at the general population of Kosovo Albanians, including women, children and the elderly, rather than at KLA members. The evidence does not suggest that Serbian forces made any attempt to distinguish between civilians and KLA members. On the contrary, eyewitness accounts deal with threats that if

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<sup>2952</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4445, 4447; Exhibit D65; Mahmut Halimi, T 2913.

<sup>2953</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4447, 4493; Mahmut Halimi, T 2945-2946.

<sup>2954</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4447-4448.

<sup>2955</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4448.

<sup>2956</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4448.

<sup>2957</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4448-4449; Mahmut Halimi, Exhibit P500 (house of his brother marked on the map with number "1" and upper Zabare/Zhabar with a number "2"); Mahmut Halimi, Exhibit D65 (in this map, the witness marked his brother's house in Zabare/Zhabar with a no. 1).

<sup>2958</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4448-4449; Mahmut Halimi, T 2953.

<sup>2959</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4449.

<sup>2960</sup> Exhibit D302, p 4.

<sup>2961</sup> Exhibit D302, p 4.

the villagers did not comply with the instructions of the Serbian forces the forces would “kill all Albanians”.<sup>2962</sup> The evidence contradicts the Defence submission that the attack of the Serbian forces earlier in the day of 14 April 1999 in Kosovska Mitrovica/Mitrovicë was directed against the KLA and was in response to a strong KLA presence.<sup>2963</sup>

783. As a result of the Serbian forces attack, Mahmut Halimi and his family and his brother and his family left Lower Zabare/Zhabar along the Ibar river and went to a house in Upper Zabare/Zhabar.<sup>2964</sup> From the house in Upper Zabare/Zhabar, Mahmut Halimi could see the entire area of Zabare/Zhabar along with parts of the villages of Mitrovica/Mitrovicë, Tamnik/Tavnik, Šipolje/Shipol and the road between Mitrovica/Mitrovicë and Peć/Pejë.<sup>2965</sup> From approximately 1000 hours on the following day, 15 April 1999, Mahmut Halimi saw displaced persons from the neighbouring villages of Šipolje/Shipol, Suvi Do/Suhadoll, and the Tamnik/Tavnik neighbourhood in Kosovska Mitrovica/Mitrovicë town begin to gather in Lower Zabare/Zhabar.<sup>2966</sup> This was a result of Serbian forces entering these neighbouring villages and forcing the people to leave to Zabare/Zhabar.<sup>2967</sup> By about 1530-1600 hours there were approximately 35,000 displaced persons gathered in Zabare/Zhabar.<sup>2968</sup> Shortly after, at about 1600 hours, Mahmut Halimi saw the mass of displaced persons begin to leave the village in a convoy, in the direction of Šipolje/Shipol.<sup>2969</sup> The convoy used the two available roads that led from the crossroads at Lower Zhabar to the school in Šipolje/Shipol.<sup>2970</sup> From another road leading from the school in Šipolje/Shipol, cars, tractors and lorries joined the convoy.<sup>2971</sup> Along the road there were vehicles burning and shots were heard.<sup>2972</sup> The witness saw that Serbian soldiers, described as a paramilitary force, had taken up station in Lower Zabare/Zhabar about 40 metres from the main road. The witness determined they were paramilitary forces because of their uniforms and weaponry; they had beards, shaved heads, wore scarves and bandannas on their heads and they had sophisticated weapons which included

<sup>2962</sup> Aferdita Hajrizi, Exhibit P774, p 4; Exhibit P776 (*Milutinović* transcript), T 4055, 4066.

<sup>2963</sup> Defence Final Brief, para 790.

<sup>2964</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4448, 4449.

<sup>2965</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4449-5450; Exhibit P500 (house of his brother marked on the map with number “1”, upper Zabare/Zhabar with a number “2”, number “3” marks Tamnik/Tavnik, number “4” marks Šipolje/Shipol and number “5” the road towards Peć); Exhibit D65 (the brother’s house in Zabare/Zhabar is marked with the number “1”).

<sup>2966</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4449-4450; Mahmut Halimi, T 2951, 2955.

<sup>2967</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4450.

<sup>2968</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4450-4451; Mahmut Halimi, T 2902, 2951.

<sup>2969</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4450, 4451; Mahmut Halimi, T 2903; Exhibit P500.

<sup>2970</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4450-4451; Mahmut Halimi, Exhibit P500 (number “3” marks Tamnik/Tavnik, number “4” marks Šipolje/Shipol and number “5” the road towards Peć/Pejë) Mahmut Halimi, T 2903, 2914, 2949; Mahmut Halimi, Exhibit D65, (the school is marked with a number “3”).

<sup>2971</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4450-4451; Mahmut Halimi, Exhibit P500 (number “3” marks Tamnik/Tavnik, number “4” marks Šipolje/Shipol and number “5” the road towards Peć/Pejë) Mahmut Halimi, T 2903, 2914, 2949; Mahmut Halimi, Exhibit D65, (the school is marked with a number “3”).

<sup>2972</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4452.

long barrel weapons which the witness described as sniper rifles with small magazines.<sup>2973</sup> The Chamber accepts that the description given by Mahmut Halimi is consistent with the typical dress and equipment of paramilitary forces.

784. Mahmut Halimi heard that as the convoy progressed displaced persons had been shot, including three inhabitants of Zabare/Zhabar. There is no direct evidence however about these killings. The next day, 16 April 1999, from his brothers house Mahmut Halimi saw that the convoy was being forced to continue along the Peć/Pejë main road by Serbian forces. The convoy then disappeared from his view in the direction of Peć/Pejë and police forces then began to return to Zabare/Zhabar.<sup>2974</sup> They began to burn houses and shoot.<sup>2975</sup> At this time, Mahmut Halimi saw some villagers and displaced persons who had stayed in Zabare/Zhabar, or sought refuge there, leave the area and head to the carpentry compound called Gaterat.<sup>2976</sup>

785. As the Serbian police began to enter the village again, Mahmut Halimi and his brother realised that the Serbian forces had closed the road out of Upper Zabare/Zhabar. They decided to leave the house where they had been staying in at Upper Zabare/Zhabar in three cars in the direction of Montenegro.<sup>2977</sup> They were stopped on the main road between Kosovska Mitrovica/Mitrović and Zubin Potok by Serbian soldiers. They were allowed to take some things from the car and then had to leave by foot. The cars were taken by the soldiers.<sup>2978</sup> Mahmut Halimi and the group of Kosovo Albanians with which he was travelling decided to seek refuge in the carpentry compound Gataret. They spent the night there.<sup>2979</sup> As they were walking back to the compound, the witness saw two lorries, and a military jeep with a machinegun, on the side of the road, and five or six soldiers. He recognised these vehicles as the same type of vehicles used by the paramilitary forces that were stationed in Lower Zabare/Zhabar on 15 April 1999. These forces, however, wore black bandannas, very dark uniforms, possibly black in colour, and medium to long beards. One of the paramilitaries wore a black shirt and carried two knives.<sup>2980</sup> These paramilitary soldiers were removing contents from houses that had been abandoned as the residents fled from Zabare/Zhabar.

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<sup>2973</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4452-4453.

<sup>2974</sup> This convoy continued in the direction of Peć/Pejë, Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4453, 4454, 4456.

<sup>2975</sup> The evidence of the witness persuaded the Chamber that he was able to differentiate between the VJ and MUP. More importantly, the Chamber is satisfied that the witness could clearly distinguish between MUP forces, specifically, identifying the difference between paramilitaries, regular police units and local reservists, Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4453-4454; Mahmut Halimi, T 2952, 2956-2957.

<sup>2976</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4453-4454; Mahmut Halimi, T 2904.

<sup>2977</sup> They left in three cars along with his brother's family and his brother in law's family (Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4454-4455; Mahmut Halimi, T 2904).

<sup>2978</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4464; Mahmut Halimi, T 2958.

<sup>2979</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4454-4455, 4464; Mahmut Halimi, T 2904.

<sup>2980</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4455.



These contents were loaded onto lorries.<sup>2981</sup> Cars that had been left behind as residents fled were taken by the police.<sup>2982</sup>

786. After spending the night in the carpentry compound, the following day, 17 April 1999, sometime before 1200 hours, police, wearing dark blue camouflage uniforms with an insignia that had a white eagle and the words “MUP Serbia” on it and their ranks in yellow on their shoulders, arrived and shouted orders to the people taking refuge in the carpentry compound to leave. As ordered by the police, the displaced persons left Zabare/Zhabar in a convoy and headed in the direction of Peć/Pejë and then to Albania.<sup>2983</sup>

787. The convoy passed through the village of Šipolje/Shipol where Mahmut Halimi and his brother’s son-in-law found two defective vehicles which they were able to fix. They used these to travel in a convoy to the border crossing with Albania.<sup>2984</sup> As the convoy travelled to Albania, VJ and Serbian police, including paramilitaries, were monitoring and observing them.<sup>2985</sup> From Mitrovica/Mitrovicë, upon leaving Šipolje/Shipol to join the Peć/Pejë road, the whole area was controlled by regular police units. On the way to Albania the convoy passed through several municipalities including Srbica/Skenderaj, Istok/Istog, Prizren and Đakovica/Gjakovë.<sup>2986</sup> At one point, on both sides of the road, there were Serbian special forces. They were wearing a dark shade of uniform that was predominantly blue with some black, they carried automatic weapons and wore balaclavas. They were observing the people in the convoy.<sup>2987</sup> At the entrance to Prizren another paramilitary unit was seen to be beating displaced persons at a checkpoint.<sup>2988</sup> Mahmut Halimi arrived in the convoy to Zhur/Zur at about 1900 hours on 17 April 1999, stayed there over night, and the next morning they reached the border.<sup>2989</sup> At the border crossing at Vrbnica/Verbnica (Morina), there were three boxes in which the Kosovo Albanians refugees in the convoy were made to throw their identification cards, passports, drivers licences and car registration plates. The police threatened to execute the refugees in the convoy if they did not hand over these documents.<sup>2990</sup> The

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<sup>2981</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4455.

<sup>2982</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4464; Mahmut Halimi, T 2958.

<sup>2983</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4456.

<sup>2984</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4457; Mahmut Halimi, T 2958-2959; Mahmut Halimi, Exhibit D65 (number “3” marks the village of Šipolje/Shipol).

<sup>2985</sup> From Kosovska Mitrovica/Mitrovicë to Peć/Pejë the witness also saw army forces on the left side of the road wearing older style VJ uniforms that were a grey-olive colour, Mahmut Halimi, T 2957. There was also police units in the area from Rudnik/Runik to Rakoš/Rakosh, on the road from Brabonjic to Lubovec and on the top of the hill in front of the village of Dubovec (Mahmut Halimi, T 2905; Exhibit P501 (map marked by witness to depict the route of the convoy).

<sup>2986</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4457; Mahmut Halimi, T 2958-2959; See Exhibit P501.

<sup>2987</sup> Mahmut Halimi, T 2905.

<sup>2988</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4491.

<sup>2989</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4457.

<sup>2990</sup> Based on this strong evidence, the Chamber does not accept the Defence argument (Defence Final Brief, para 797) that Kosovo Albanians were not stripped of their identity documents at the border on the basis that Mahmut Halili

refugees then crossed over the border into Albania. As discussed in more detail later in this Judgement, the Chamber is satisfied that this convoy of people was forced by Serbian police to leave the area of Zabare/Zhabar on or about 14 April 1999 and the following days and go to Albania.<sup>2991</sup>

788. Mahmut Halimi was able to return to Kosovska Mitrovica/Mitrovicë from Albania on 11 July 1999. He observed that all four mosques in Kosovska Mitrovica/Mitrovicë town had been destroyed since he left on 25 March 1999.<sup>2992</sup> He heard from people who had stayed in the town that Serbian forces had destroyed all four mosques.<sup>2993</sup> His house had been completely burned and he was told by people in the town that his house had been set on fire on 3 or 4 April 1999.<sup>2994</sup> Whilst the Chamber also heard the evidence of András Riedlmayer, discussed in further detail elsewhere in this Judgement, no finding could be made as to how the mosques were destroyed, by which forces, or whether the mosques were being used for military purpose.<sup>2995</sup>

(b) Experience of Sadije Sadiku

789. The Chamber also heard the evidence of Sadije Sadiku, a Kosovo Albanian woman from Zabare/Zhabar, who was aged 20 at the time of the events described below. On or about 13 April 1999 Serbian police began burning houses in one end of the village and forcing people out of their homes.<sup>2996</sup> Those who were forced out of their homes gathered in the courtyard of the Gaterat carpentry compound of the village which was guarded by the police.<sup>2997</sup> The witness and her family fled to the mountains for the night, however, when they returned to their home the next day (about 14 April 1999) at 0800 hours, police officers in Pinzaugers told the witness and her family at gunpoint to leave or they would be killed.<sup>2998</sup> The witness described the uniforms worn by the police both as blue camouflage and dark blue and black.<sup>2999</sup> Based on the Chamber's earlier findings, it is satisfied that the men described by the witness were members of the MUP.<sup>3000</sup>

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managed to retain his passport in his bag (Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4458-4459, 4484, 4490).

<sup>2991</sup> See supra paras 1647-1648.

<sup>2992</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4461; Mahmut Halimi, T 2907-2908.

<sup>2993</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4461.

<sup>2994</sup> Mahmut Halimi, T 2907-2908, 2960; Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4460.

<sup>2995</sup> See *infra*, paras 1827-1829.

<sup>2996</sup> The Chamber is satisfied that the evidence of Sadije Sadiku reliably reveals events she experienced; whether these events commenced on 13 or 14 April 1999 is a matter of little significance. Sadije Sadiku, Exhibit P502, para 11; Sadije Sadiku, T 2988.

<sup>2997</sup> Sadije Sadiku, Exhibit P502, para 11; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1892-1893.

<sup>2998</sup> Sadije Sadiku, Exhibit P502, para 14; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1918, 1920; Sadije Sadiku, T 2989.

<sup>2999</sup> Sadije Sadiku, Exhibit P502, para 14; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1920; Sadije Sadiku, Exhibit P504; Sadije Sadiku, Exhibit D66; Sadije Sadiku, T 2968.

<sup>3000</sup> See supra, para 64.

790. As instructed by the police, Sadije Sadiku and her family joined the villagers who had already assembled in the carpentry courtyard the previous day. They were ordered into a column by the police and told to leave for Tirana in Albania.<sup>3001</sup> Sadije Sadiku and her family were among some 8,000 to 9,000 people that left Zabare/Zhabar that day in the convoy. They travelled to Albania as ordered by the police.<sup>3002</sup> Checkpoints, manned by both police and VJ, were located about every two kilometres along the route to the border.<sup>3003</sup> As they passed through the checkpoints they were told by police to go quickly and disappear from Kosovo to Albania.<sup>3004</sup> During the convoy, the displaced persons were not provided with any food or water; they drank water from puddles in the ground. They were in fear of the police who treated them “very badly” while the VJ observed more “proper behaviour”.<sup>3005</sup> At the checkpoint in Šipolje/Shipol the police directed the convoy to Peć/Pejë. By 16 April 1999, the convoy had reached Gornja Klina/Klinë-e-Eperme. In Gornja Klina/Klinë-e-Eperme a police officer on a motorcycle, split the convoy and ordered one part of the convoy - approximately 2,000 people - to return to Kosovska Mitrovica/Mitrovicë - and the other part of the column – approximately 6,000 people, including Sadije Sadiku and her family – to continue to Peć/Pejë.<sup>3006</sup> The column that was ordered in the direction of Peć/Pejë continued and passed by the town of Srbica/Skenderaj, on or about the night of 16 or 17 April 1999, where they stopped overnight.<sup>3007</sup> At 0500 hours the next morning they continued towards the village of Zablac/Zaballaq and arrived in Zlokucane/Zllakuqan on or about 19 April 1999.<sup>3008</sup> After about an hour, the convoy of displaced people was told to return to the village of Zablac/Zaballaq. When they arrived, a policeman fired his automatic gun in the air and told them to find shelter in the ruins of shelled houses in the village.<sup>3009</sup> Police officers were positioned at the entrance of the village.<sup>3010</sup>

791. Sadije Sadiku and her family were forced to stay in Zablac/Zaballaq from about 19 April 1999 for about three weeks. There was not enough accommodation for the displaced persons and no food was provided to them. At all times the village was guarded by the police and they were not allowed to leave the houses. If they tried to leave the houses or enter the yard of the houses where they had found shelter, the police would shoot at them.<sup>3011</sup> One day, around 8 May 1999, Sadije Sadiku and her friends ventured two or three houses from where they were

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<sup>3001</sup> Sadije Sadiku, Exhibit P502, paras 13-16; Sadije Sadiku, T 2970.

<sup>3002</sup> Sadije Sadiku, Exhibit P502, para 16.

<sup>3003</sup> Sadije Sadiku, Exhibit P502, para 17.

<sup>3004</sup> Sadije Sadiku, Exhibit P502, para 16.

<sup>3005</sup> Sadije Sadiku, Exhibit P502, paras 17, 19.

<sup>3006</sup> Sadije Sadiku, Exhibit P502, para 20.

<sup>3007</sup> Sadije Sadiku, Exhibit P502, para 21.

<sup>3008</sup> Sadije Sadiku, Exhibit P502, para 22.

<sup>3009</sup> Sadije Sadiku, Exhibit P502, para 23; Sadije Sadiku, T 2973.

<sup>3010</sup> Sadije Sadiku, Exhibit P502, para 23.

<sup>3011</sup> Sadije Sadiku, Exhibit P502, para 24.

staying to collect some potatoes.<sup>3012</sup> As they went Sadije Sadiku saw police positioned near the church in the village.<sup>3013</sup> On their way back to the house, the witness fell to the ground in pain. She then heard shooting.<sup>3014</sup> The witness lost consciousness for about two or three minutes and when she regained consciousness she realised she had an exit wound from a bullet under her right breast. She had been hit in the middle of the back on the left hand side.<sup>3015</sup> By this stage, Sadije Sadiku's friends had fled. She tried to crawl back to the house using her arms. As she began to move the shooting resumed. She screamed for help but because the sniper shooting was continuing no-one from the house could come to assist her.<sup>3016</sup> From where Sadije Sadiku was lying she saw smoke coming from the church where she had seen the police positioned. She could see seven police near the church.<sup>3017</sup> After about 30 minutes, even as the sniper shooting continued, the witness's two sisters, Lutfije and Fikrije Sadiku, reached her and helped her to safety.<sup>3018</sup> Sadije Sadiku was able to clearly recall the events and identify those firing as the police. In light of the documented evidence of police presence, including PJPs, in the area which was discussed earlier in this Judgement, and her eyewitness account, the Chamber accepts that Sadije Sadiku was shot by members of the Serbian police.<sup>3019</sup>

792. When Sadije Sadiku's sisters managed to get her into the house they wrapped her in a blanket and a doctor from Kosovska Mitrovica/Mitrovicë, who was among the displaced people, came and examined her. There was nothing he could have done because he had no instruments.<sup>3020</sup> The witness was then carried by six men to the village of Zahac/Zahaq, a few kilometres away. There a doctor closed her wound with sutures, without any anaesthetic.<sup>3021</sup> The witness and her sister Luftije Sadiku spent the next four days in Zahac/Zahaq until she was moved to the house of a young man in the same village. Sadije Sadiku was in great pain and no medication was available.<sup>3022</sup>

793. On the fifth day, Serbian police began to expel the villagers from Zahac/Zahaq.<sup>3023</sup> Sadije Sadiku, her sister, a handicapped woman, nine other women, six children and a 12 year old boy

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<sup>3012</sup> Sadije Sadiku, Exhibit P502, para 25.

<sup>3013</sup> Sadije Sadiku, Exhibit P502, para 28.

<sup>3014</sup> Sadije Sadiku, Exhibit P502, para 25; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1900; Sadije Sadiku, T 2973.

<sup>3015</sup> Sadije Sadiku, Exhibit P502, para 26; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1900.

<sup>3016</sup> Sadije Sadiku, Exhibit P502, para 27.

<sup>3017</sup> Sadije Sadiku, Exhibit P502, para 28; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1928-1929, 1937, 1939; Sadije Sadiku, T 2973, 2998.

<sup>3018</sup> Sadije Sadiku, Exhibit P502, paras 27, 29; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1901; Sadije Sadiku, T 2998.

<sup>3019</sup> Forces of the PJP were dispatched to Kosovska Mitrovica/Mitrovicë with weapons, including sniper rifles, Exhibit P1184; *see also*, Exhibit P1186; *see supra* para 766.

<sup>3020</sup> Sadije Sadiku, Exhibit P502, para 32.

<sup>3021</sup> Sadije Sadiku, Exhibit P502, para 32; Sadije Sadiku, T 2974.

<sup>3022</sup> Sadije Sadiku, Exhibit P502, para 33.

were put on a tractor and joined the convoy of other tractors and cars heading in the direction of Peć/Pejë. As the convoy approached the main road, it was shelled.<sup>3024</sup> The Chamber notes that the only force which had the armament to shell the convoy was the VJ, which was present in the area. The convoy continued and was stopped at every checkpoint on the way to the Albanian border, including in Peć/Pejë, Dečani/Dečan, Đakovica/Gjakovë, Prizren, and Zur/Zhur.<sup>3025</sup> At each checkpoint money was demanded from the displaced persons. They had to pay.<sup>3026</sup> Out of fear that she would be taken away, Sadije Sadiku never asked for medical assistance for her injuries and pretended to be handicapped by birth.<sup>3027</sup> The journey to the Albanian border lasted three days.<sup>3028</sup>

794. Sadije Sadiku, and the convoy in which she was travelling, reached the border on or about 12 May 1999. At the border, there were Serbian border police. They wore uniforms which Sadije Sadiku described as both dark blue and black in colour, in the Chambers finding she was describing the police camouflage uniforms.<sup>3029</sup> The border police demanded money from the people in the tractor and all their identification documents were seized and burnt.<sup>3030</sup> The people on the tractor had to pay money to cross the border. They were then allowed to cross over into Albania.<sup>3031</sup> When Sadije Sadiku arrived to Kukës in Albania, because of the severity of her injuries, she was taken by helicopter to a hospital in Tirana where she underwent two separate operations. After three months in hospital in Tirana she was taken by the ICRC to a hospital in Germany where she underwent five more operations and six months of treatment.<sup>3032</sup> At the time of her testimony Sadije Sadiku had undergone in total 12 operations; she had suffered paraplegia as a result of the injuries she had received and is confined to a wheelchair.<sup>3033</sup>

### **G. Priština/Prishtinë municipality**

795. Priština/Prishtinë is located in the east of Kosovo and the main town in the municipality, also called Priština/Prishtinë, was the capital of the province of Kosovo. The population of the

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<sup>3023</sup> Sadije Sadiku, Exhibit P502, para 34; Sadije Sadiku, T 2975.

<sup>3024</sup> Sadije Sadiku, Exhibit P502, para 34.

<sup>3025</sup> Sadije Sadiku, Exhibit P502, para 36; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1902; Sadije Sadiku, T 2975.

<sup>3026</sup> Sadije Sadiku, Exhibit P502, para 35.

<sup>3027</sup> Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1944-1945.

<sup>3028</sup> Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1945.

<sup>3029</sup> Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1903; *see supra*, paras 53-54.

<sup>3030</sup> Sadije Sadiku, Exhibit P502, para 36; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1903.

<sup>3031</sup> Sadije Sadiku, Exhibit P502, para 38.

<sup>3032</sup> The Chamber notes the discrepancy in the dates of the medical reports, however, finds this in no way impacts upon the findings in regards to the injuries suffered by Sadije Sadiku (Sadije Sadiku, Exhibit P502, paras 39-41; Sadije Sadiku, Exhibit P503 (*Milutinović* transcript), T 1907-1909).

<sup>3033</sup> Sadije Sadiku, T 2976.

municipality of Priština/Prishtinë was around 200,000 and it was predominately Kosovo Albanian.<sup>3034</sup>

### 1. Events prior to NATO bombing

796. At the end of February 1999, the VJ began deploying large number of troops, tanks and APCs to the outskirts of the city of Priština/Prishtinë.<sup>3035</sup> During that same period, checkpoints were set up in the outlying areas of Priština/Prishtinë and a curfew was imposed at night that prevented people from circulating freely in and out of town after around 1830 hours.<sup>3036</sup> During March 1999, representatives of the international media and OSCE verifiers began leaving Priština/Prishtinë, and on 20 March 999, the last of the OSCE verification mission left Priština/Prishtinë.<sup>3037</sup>

797. Kosovo Albanian residents of Priština/Prishtinë saw an increase of police and VJ activity in the streets of Priština/Prishtinë prior to the commencement of NATO bombing.<sup>3038</sup> The SUP Priština and the MUP Staff for Kosovo was headquartered in Priština/Prishtinë, and Priština SUP was functioning throughout the time relevant to the Indictment, as was the Joint Command.<sup>3039</sup> Members of the 36<sup>th</sup> and 86<sup>th</sup> PJP Detachments were deployed, by Orders signed by the Accused, to give assistance *inter alia* to the Priština/Prishtinë SUP from January to early May 1999 to perform special security tasks.<sup>3040</sup> Members of the 37<sup>th</sup> PJP Detachment were also dispatched to Priština/Prishtinë on 23 February 1999 to perform special security tasks for an indefinite period of time.<sup>3041</sup> For the purpose of carrying out special security tasks, members of the 21<sup>st</sup> and 22<sup>nd</sup> PJP Detachment were deployed to the Priština/Prishtinë SUP in March 1999 for a period of up to 40 days.<sup>3042</sup> During March 1999, an anti-terrorist unit of the VJ 52<sup>nd</sup> Military Police Battalion and the 72<sup>nd</sup> Special Brigade of the VJ were stationed at the VJ *Kosovski Junaci* barracks in Priština/Prishtinë.<sup>3043</sup>

798. The presence of paramilitary soldiers particularly intimidated Kosovo Albanian residents and they avoided being on the streets after 1700 hours as they feared for their safety.<sup>3044</sup> No-one

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<sup>3034</sup> Exhibit P983, p 9.

<sup>3035</sup> Antonio Russo, Exhibit P1213, pp 3-4.

<sup>3036</sup> Antonio Russo, Exhibit P1213, p 4.

<sup>3037</sup> Nazlie Bala, T 2325.

<sup>3038</sup> Nazlie Bala, Exhibit P420, para 7.

<sup>3039</sup> *See supra*, paras 47, 230, 236.

<sup>3040</sup> Exhibit P139; Exhibit P712; Exhibit P138; Exhibit P711.

<sup>3041</sup> Exhibit P1188.

<sup>3042</sup> Exhibit P137; Exhibit P714.

<sup>3043</sup> K73, Exhibit P330, para 35.

<sup>3044</sup> Adnan Merovci, Exhibit P416, para 45; Baton Haxhiu, T 6227; Nazlie Bala, Exhibit P420, para 7.

went to work and the city's services functioned irregularly.<sup>3045</sup> Some Albanian residents sent their families to the outskirts of Priština/Prishtinë as they feared retaliation from Serbian police and military forces.<sup>3046</sup> On 21 March 1999, Arianit Kelmendi, a civilian, was killed by unknown perpetrators in front of the café where he worked in Priština/Prishtinë.<sup>3047</sup> A sign was displayed at the hotel which read "Albanians and dogs are forbidden to enter Grand Hotel".<sup>3048</sup>

799. On 22 and 23 March 1999, the city was under blockade and all movement was difficult.<sup>3049</sup> The night prior to the NATO air-strikes, explosions in the city were heard, and cafes and shops were destroyed by unidentified perpetrators.<sup>3050</sup> All telephone lines were cut off and in the evening of 24 March 1999, the electricity was cut off in various neighbourhoods of Priština/Prishtinë.<sup>3051</sup>

800. In the morning of 24 March 1999, the VJ 52<sup>nd</sup> Military Police Battalion and the 72<sup>nd</sup> Special Brigade of the VJ were relocated to Badovac/Badoz, near Gračanica/Grashticë, for a week, after which they were sent to other locations close to Priština/Prishtinë city where they were housed in empty houses that had previously belonged to Kosovo Albanians who had been "cleaned out" of their houses by the MUP.<sup>3052</sup> On this same day, paramilitary forces, including a force known as "Arkan's men", were also present in Priština/Prishtinë.<sup>3053</sup> Arkan's base was in the Grand Hotel in Priština/Prishtinë.<sup>3054</sup> Adnan Merovci saw what he described as huge numbers of paramilitary soldiers in the streets of Priština/Prishtinë as early as 21 March 1999. He described the paramilitary soldiers as predominantly young local men, most of whom wore civilian clothes with either green military style jackets or black leather jackets. They carried weapons openly.<sup>3055</sup> The Chamber finds that these were paramilitary forces; it also finds that among these paramilitary forces there were local Serb volunteers who were not part of a particular unit. After some days the paramilitary soldiers became very active and began beating people on the streets, taking their cars, and setting on fire Albanian owned businesses.<sup>3056</sup> They were organised and co-ordinated by the "Staff of Arkan" at the Grand Hotel.<sup>3057</sup>

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<sup>3045</sup> Adnan Merovci, Exhibit P416, para 45.

<sup>3046</sup> Nazlie Bala, T 2330.

<sup>3047</sup> Baton Haxhiu, T 6227.

<sup>3048</sup> Adnan Merovci, T 2213.

<sup>3049</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4222.

<sup>3050</sup> Ibrahim Rugova, Exhibit P285, p 9.

<sup>3051</sup> Ibrahim Rugova, Exhibit P285, p 9; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4222; Nazlie Bala, Exhibit P420, p 2; Nazlie Bala, T 2331.

<sup>3052</sup> K73, Exhibit P330, para 36; K73, T 1518, 1520; Exhibit P338 (War log of a unit of the Military Police Battalion), p 1.

<sup>3053</sup> Baton Haxhiu, T 6226; Adnan Merovci, Exhibit P916, para 44; Adnan Merovci, T 2210-2211.

<sup>3054</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6092; Adnan Merovci, T 2211-2213.

<sup>3055</sup> Adnan Merovci, Exhibit P416, paras 44, 48.

<sup>3056</sup> Adnan Merovci, Exhibit P416, para 45; Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8434-8435; Adnan Merovci, T 2211.

<sup>3057</sup> Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8433-8434; Adnan Merovci, Exhibit P416, para 44.

801. It is the evidence of a former KLA member and scientific advisor at the Institute of Albanian Studies in Priština/Prishtinë, Emin Kabashi, that during March 1999, the KLA was active in Priština/Prishtinë. There were no headquarters but there were groups of people who carried out different duties.<sup>3058</sup> Priština/Prishtinë was in the Lab/Llap KLA operational zone.<sup>3059</sup> A KLA logistics unit was based in Priština/Prishtinë,<sup>3060</sup> which supplied the KLA with some needs including medicine and food, but no weapons.<sup>3061</sup> The logistic unit was primarily based at a medical clinic in Priština/Prishtinë.<sup>3062</sup> The Chamber accepts the evidence of Emin Kabashi in respect of the presence of KLA in Priština/Prishtinë as credible and reliable.

802. Defence witness Milutin Filipović also spoke of KLA units active in the zone around Priština/Prishtinë and, in some cases, in the city itself.<sup>3063</sup> However, for reasons discussed below, the Chamber is not able to accept Filipović as a reliable witness or a witness of truth except in those areas of his evidence that coincide with the accepted evidence of Emin Kabashi.

## 2. Events during and after the NATO bombing

803. NATO executed its first aerial bombing campaign on 24 March 1999 at around 2020 hours.<sup>3064</sup> At around the same time VJ units, located in the outskirts of city, started shelling some areas of Priština/Prishtinë.<sup>3065</sup> Many buildings on the outskirts of the city were burned or otherwise destroyed by Serbian forces. These buildings included the LDK office and the USA office in Priština/Prishtinë.<sup>3066</sup> In the early hours of 25 March 1999, sometime between 0100 or 0200 hours, the hillsides surrounding the Mantica neighbourhood of Priština/Prishtinë were the subject of a “massive shelling attack by the Serbs”.<sup>3067</sup>

804. During the night of 24 March 1999, the premises of the Albanian newspaper “Koha Ditore” was ransacked: computers were stolen, the printing shop was burnt, and a Kosovo Albanian man that was guarding the building was killed. Baton Haxhiu, founder of the newspaper, testified that when he arrived at the premises of the newspaper on 25 March 1999, he saw traces of blood on the

<sup>3058</sup> Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2084.

<sup>3059</sup> Byslim Zyrapi, T2493; Exhibit P427, para 16; Exhibit 430.

<sup>3060</sup> Emin Kabashi, Exhibit P435 (*Milutinović* transcript), T 2086-2087. There was also a civil protection unit that helped to evacuate the population when there was fighting, Byslim Zyrapi, T2457.

<sup>3061</sup> Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2086; Emin Kabashi, T 2389.

<sup>3062</sup> Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2084; Emin Kabashi, T 2389.

<sup>3063</sup> Witness for the Defence Milutin Filipović identified five different brigades of the KLA in the KLA operational zone around Priština/Prishtinë. On his evidence, after the NATO bombings, the KLA intensified its attacks against civilians, and against VJ and MUP units in the area of Priština/Prishtinë and within Priština/Prishtinë town (Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19164, 19165, 19218; Milutin Filipović, T 11544-11546).

<sup>3064</sup> Veton Surroi, T 291.

<sup>3065</sup> Antonio Russo, Exhibit P1213, p 4.

<sup>3066</sup> Ibrahim Rugova, Exhibit P285, pp 8-9; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4222-4224; Antonio Russo, Exhibit P1213, p 5.

<sup>3067</sup> Antonio Russo, Exhibit P1213, p 5.



floor. He talked to policemen in front of the premises who told him that perpetrators were unknown.<sup>3068</sup> The office of the LDK Albanian political party in Priština/Prishtinë was also burnt by unidentified Serbian forces during the first night of the NATO bombing.<sup>3069</sup>

805. On 25 March 1999, the streets of Priština/Prishtinë were filled with Serbian police and military.<sup>3070</sup> Reinforcements of Serbian military, police and volunteers had arrived on 24 March 1999 and entered the city on 25 March 1999.<sup>3071</sup>

806. VJ troops and armed Serbian forces, described by an Italian journalist as “militia”, entered the Mantica neighbourhood at around 0930 hours on 25 March 1999. The journalist, Antonio Russo, saw three of these “militia”, who were armed with AK47s, alight from an APC and begin firing into a civilian car that had been stopped. One of the four occupants of the car, who had managed to get out, was stopped by a “militia” member who put a rifle into his mouth and shot him. The militia then put him back in the car with the other occupants. The APC then rammed the car into the wall of a nearby house and crushed the car and the occupants.<sup>3072</sup>

807. In the days following the initiation of the NATO bombing, Nazlie Bala, a human rights assistant for the KVM, observed from the roof of her five storey house located in the old town of Priština/Prishtinë events as they unfolded in Priština/Prishtinë. She could not see into the centre of city from her roof terrace, however, she could clearly see the streets in Dragodan, Vranjevc/Kodra-e-Trimave and Taslixhe, neighbourhoods located on hills surrounding the town.<sup>3073</sup> Her vision from her roof terrace was aided by night vision binoculars she had from the OSCE.<sup>3074</sup>

808. During the night of 24 March and the early morning of 25 March 1999, Nazlie Bala saw local Serbian civilians shooting in the air with automatic weapons and hand guns as they drove around parts of the city.<sup>3075</sup> On 26 March 1999, Nazlie Bala observed Serbian forces, comprising members of the MUP, VJ and civilians, destroying houses and shops belonging to Kosovo Albanians in the neighbourhoods of Dragodan, Vranjevc/Kodra-e-Trimav, Taslixhe and Kolovica.<sup>3076</sup> During the night of that same day, she heard explosions coming from those

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<sup>3068</sup> Baton Haxhiu, T 6228-6229.

<sup>3069</sup> Ibrahim Rugova, Exhibit P285, p 9; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4222-4223; Adnan Merovci, Exhibit P416, para 46; Adnan Merovci, T 2212.

<sup>3070</sup> Veton Surroi, T 292; *see also* Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4224.

<sup>3071</sup> Ibrahim Rugova, Exhibit P285, p 9; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4223-4224.

<sup>3072</sup> Antonio Russo, Exhibit P1213, p 5.

<sup>3073</sup> Nazlie Bala, T 2289-2333; Nazlie Bala, Exhibit P420, p 8.

<sup>3074</sup> Nazlie Bala, T 2289.

<sup>3075</sup> Nazlie Bala, T 2289-2333; Nazlie Bala, Exhibit P420, p 2.

<sup>3076</sup> Nazlie Bala, Exhibit P 420, p 3.

neighbourhoods and on one occasion saw two Serbian APCs entering the Dragodan neighbourhood and then saw two houses burning in that neighbourhood.<sup>3077</sup>

809. In the morning of 28 March 1999, Nazlie Bala heard shooting in the neighbourhood of Vranjevc/Kodra-e-Trimav. From her rooftop she saw fighting between the Serbian forces and the Hartica family who had been using their house as a school for Albanian children who did not attend the normal schools in Priština/Prishtinë.<sup>3078</sup> The Hartica family, who were armed resisted for about two hours until Serbian forces blew up their house with grenades.<sup>3079</sup> Later that day, at around 1400 hours, Nazlie Bala observed from her roof terrace Serbian forces and a tank on the hillside of Vranjevc/Kodra-e-Trimav firing rounds of artillery towards the hillside of Kolovica.<sup>3080</sup> The Serbian forces were shooting at unarmed Albanian civilians who were fleeing. She heard the shooting continuing all the day.<sup>3081</sup> Villagers from Vranjevc/Kodra-e-Trimav who passed by the house of Nazlie Bala said they were leaving Vranjevc/Kodra-e-Trimav because of the shelling. Hasbie Krasniqi told her that Serbian forces had killed Kosovo Albanians and looted and burnt homes in the area. Explosions and shooting continued throughout the evening.<sup>3082</sup>

810. The evidence of Nazlie Bala concerning the events she saw from the terrace and related matters, was directly challenged by Defence witness Milutin Filipović.<sup>3083</sup> For the reasons discussed later in this section, the Chamber is not able to accept the evidence of Filipović in these respects to be reliable or honest.<sup>3084</sup> The Chamber accepts the soundness of the description by Nazlie Bala of her sightings from her roof terrace and related evidence discussed above.

811. In the week following the start of the NATO bombing, Kosovo Albanians were not allowed to circulate freely within Priština/Prishtinë.<sup>3085</sup> The Chamber accepts that civilian residents in Priština/Prishtinë only left their homes to buy elementary supplies and would then return to their homes.<sup>3086</sup> Checkpoints had been set up in many parts of the city and on the roads leading into and out of Priština/Prishtinë. The checkpoints were manned by Serbian police, VJ and “Serb civilians” or paramilitary.<sup>3087</sup> These Serb civilians or paramilitary wore black uniforms with no patches, their

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<sup>3077</sup> Nazlie Bala, Exhibit P420, p 3; Exhibit D51, p 2.

<sup>3078</sup> Nazlie Bala, Exhibit P420, p 9; Nazlie Bala, T 2343-2344.

<sup>3079</sup> Nazlie Bala, Exhibit P420, p 9; Nazlie Bala, Exhibit D51, p 2; Nazlie Bala, T 2342-2344.

<sup>3080</sup> Nazlie Bala, Exhibit P 420, p 3; Nazlie Bala, T 2341-2344.

<sup>3081</sup> Nazlie Bala, Exhibit P420, p 9.

<sup>3082</sup> Nazlie Bala, Exhibit P 420, pp 3-4.

<sup>3083</sup> Milutin Filipović, T 11574-11575, 11579, 11654-11656, 11671; Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19180-19181, 19243, 19247-19249.

<sup>3084</sup> *See supra*, paras 842-851.

<sup>3085</sup> Nazlie Bala, Exhibit P420, p 3.

<sup>3086</sup> Veton Surroi, T 294.

<sup>3087</sup> Nazlie Bala, Exhibit P420, p 3; Nazlie Bala, Exhibit D51, p 1; Nazlie Bala, T 2290, 2334.

faces were either painted or masked, and some wore scarves on their heads and arms.<sup>3088</sup> In order to cross checkpoints, Albanian civilians were forced to pay money to the Serbian forces manning the checkpoints, or to hand-over their motor vehicles.<sup>3089</sup> The Defence witness Muilutin Filipović testified that there were no checkpoints in Priština/Prishtinë at this time, a proposition which is contradicted by much evidence which the Chamber accepts. He also contended that whenever Serbian police or military forces carried out what he described as “security checks”, they would do so for all and without regard to ethnicity.<sup>3090</sup> The Chamber does not accept this evidence of Milutin Filipović to be reliable or honest.<sup>3091</sup>

812. During the course of the NATO bombing on one occasion the post office in Priština/Prishtinë was bombed.<sup>3092</sup> The explosion also damaged the windows of a nearby shopping mall. In addition, an adjoining house was hit, killing the family members taking shelter in it.<sup>3093</sup> Throughout the NATO bombardment NATO planes also targeted the airport, the main police station, and the VJ barracks located just outside the city at different time periods.<sup>3094</sup>

### 3. Killing and threats to prominent Albanian personalities

813. Several witnesses spoke of reliable reports of the killing, beating or threatening of some prominent Albanian citizens in Priština/Prishtinë by Serbian forces. One such report involved Bajram Kelmendi, a renowned lawyer and founder of the “Kosova Council for the Protection of Human Rights in Kosova”, and his two sons, Kastriot and Kushtrim Kelmendi, who were taken by the police from their home in Priština/Prishtinë in the days after the commencement of NATO bombing of 24 March 1999, and were later found dead near Priština/Prishtinë.<sup>3095</sup> Baton Haxhiu, journalist and founder of the Albanian newspaper “Koha Ditore”, also testified that Bajram Kelmendi, and his sons, were killed between 24 and 25 March 1999, three days after Kelmendi had defended Baton Haxhiu in the municipal court of Priština/Prishtinë for publishing a KLA communiqué in his newspaper, “Koha Ditore”.<sup>3096</sup> Baton Haxhiu contended that it was a matter of

<sup>3088</sup> Nazlie Bala, Exhibit P420, para 9.

<sup>3089</sup> Nazlie Bala, Exhibit P420, p 3.

<sup>3090</sup> Milutin Filipović, T 11573-11574, 11578; Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19178.

<sup>3091</sup> *See supra*, paras 842-851.

<sup>3092</sup> Exhibit D4 (photograph depicting the bombing of the post office and damage to a shopping mall in Priština/Prishtinë).

<sup>3093</sup> Veton Surroi, T 355-356; Veton Surroi, Exhibit D5 (photograph depicting destruction of buildings in Priština/Prishtinë); Milutin Filipović, T 11555.

<sup>3094</sup> Emin Kabashi, Exhibit P424, p 6; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2052; Emin Kabashi, T 2376, 2385; Exhibit D54 (Map of Priština/Prishtinë); Veton Surroi, T 355-356; *See* Exhibit D4 (photograph depicting the bombing of the post office and damage to a shopping mall in Priština/Prishtinë); Milutin Filipović, Exhibit D712 (*Milutinović* transcript), T 19170-19174; Milutin Filipović, T 11555-11556; Milutin Filipović, Exhibit D716 (Video depicting damaged buildings in Priština/Prishtinë).

<sup>3095</sup> Veton Surroi, T 292-293; Ibrahim Rugova, Exhibit P285, p 9; Adnan Merovci, Exhibit P416, para 46; Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6087; Baton Haxhiu, T 6237-6239.

<sup>3096</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6087; Baton Haxhiu, T 6237-6239.

common knowledge that the police and secret police had committed the killings and that an investigation undertaken by the Council for the Protection of Human Rights and Freedom in Serbia, led by Natasha Kandić, had confirmed this.<sup>3097</sup>

814. Baton Haxhiu also testified that Fehmi Agani, a colleague of Ibrahim Rugova, was killed at the end of April or beginning of May 1999.<sup>3098</sup> It was his evidence that Fehmi Agani was made to board a train travelling towards FYROM and then taken from the train to a police station and shot.<sup>3099</sup> Ibrahim Rugova also heard when he arrived in Italy on 6 May 1999 of Fehmi Agani's death at the hands of VJ or paramilitary soldiers.<sup>3100</sup> Veton Surroi also testified that another activist, Mr Hajrizi, was killed during the course of the first night of the NATO bombing.<sup>3101</sup> The Chamber accepts that Bajram Kelmendi, his two sons and Fehmi Agani and Mr Hajrizi were killed in this period.

815. Having heard reports of the murder of the above mentioned people, including his lawyer Bajram Kelmendi, and as a result of recommendations of some friends, on 24-25 March 1999 Haxhiu left his home and hid in different houses located in neighbourhoods within Priština/Prishtinë.<sup>3102</sup> Baton Haxhiu feared for his safety as he was a public figure who openly disclosed his views against the Serbian government in his newspaper articles.

816. Around noon on 31 March 1999 three or four armed and uniformed men from the Serbian forces broke into the house of Ibrahim Rugova, the president of the LDK, in the neighbourhood of Velania. The commander of these forces was dressed in a green camouflage uniform and had a red beret.<sup>3103</sup> Other evidence in this case confirms this to be a JSO uniform. The JSO was the special unit of the State Security Service of the MUP.<sup>3104</sup> Adnan Merovci, the personal secretary to Rugova who had been taking shelter with his family in Rugova's house, confirmed that with this commander there were altogether a combined number of about 20 VJ and MUP at the house, dressed in their respective uniforms.<sup>3105</sup> Ibrahim Rugova, Adnan Merovci, their families, and a German journalist who were there at the time, were held in Rugova's house for several hours.<sup>3106</sup> Adnan Merovci was beaten in Rugova's house by these police and army personnel for over half an

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<sup>3097</sup> Baton Haxhiu, T 6239.

<sup>3098</sup> Baton Haxhiu, T 6239-6240.

<sup>3099</sup> Baton Haxhiu, T 6239-6240.

<sup>3100</sup> Ibrahim Rugova, Exhibit P285, p 12; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4255.

<sup>3101</sup> Veton Surroi, T 294.

<sup>3102</sup> Baton Haxhiu, T 6287-6288; Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6090, 6093.

<sup>3103</sup> Ibrahim Rugova, Exhibit 285, pp 9-10; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4225- 4227.

<sup>3104</sup> *See supra*, paras 80-81, 85, 86.

<sup>3105</sup> Adnan Merovci, T 2219-2220; *See* Adnan Merovci, Exhibit P416, para 53.

<sup>3106</sup> Ibrahim Rugova, Exhibit 285, pp 9-10; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4225- 4227; Adnan Merovci, T 2220-2221.

hour.<sup>3107</sup> Ibrahim Rugova and Adnan Merovci were placed under house arrest in Rugova's home in Priština/Prishtinë on 31 March 1999 and held there until 4 - 5 May 1999.<sup>3108</sup>

#### 4. Forced Expulsion from homes in Priština/Prishtinë and refugee convoys

817. Even in the first week of NATO bombing Serbian forces comprising VJ, MUP and others, expelled Kosovo Albanians from their homes in the city of Priština/Prishtinë. Expulsions of Kosovo Albanians from Priština/Prishtinë continued in the weeks that followed. The expulsions in the following weeks were not, however, as massive as in the first week of the bombing.<sup>3109</sup> Paramilitary soldiers or local Serb volunteers were used on some occasions to assist in the forced expulsion of Kosovo Albanians from their homes.<sup>3110</sup>

##### (a) Dragodan and Vranjevc/Kodra-e-Trimav neighbourhoods

818. Dragodan is located between the neighbourhoods of Lakrishta and Lahja-e-Ymerajve in the western part of Priština/Prishtinë. The Kosovo Albanian inhabitants from Dragodan neighbourhood were among the first to be expelled from their homes.<sup>3111</sup>

819. As discussed above, Nazlie Bala saw attacks taking place in Dragodan on 26 March 1999.<sup>3112</sup> On 28 March 1999, four VJ soldiers and eight members of the "special police"<sup>3113</sup> broke into a house in Dragodan neighbourhood where Emin Kabashi, along with four of his family members, and about six other men, women and children, were taking refuge.<sup>3114</sup> The VJ soldiers wore camouflaged uniforms with VJ insignia on the left arm; they were not wearing masks.<sup>3115</sup> The VJ and MUP entered a room on the second floor where Emin Kabashi and the group of people were located. At gunpoint, Emin Kabashi was told "get out, go to Albanian,

<sup>3107</sup> Adnan Mervoci, T 2220; Adnan Merovci, Exhibit P416, para 52.

<sup>3108</sup> Ibrahim Rugova, Exhibit P285, pp 9-12; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4252-4255; Adnan Merovci, T 2221-2222.

<sup>3109</sup> Veton Surroi, T 299.

<sup>3110</sup> Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8435-8436.

<sup>3111</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4224.

<sup>3112</sup> *See supra*, para 808.

<sup>3113</sup> The Special Police were the PJP, SAJ or JSO; each being a component of the MUP.

<sup>3114</sup> Emin Kabashi had already sent his family to Priština/Prishtinë after he received threatening telephone calls that day at 1500 hours in his home village of Kosovo Polje/Fushe Kosova. Following these calls, that night at 2145 hours, explosives were aimed at his house and his house was fired upon. When the gunfire had stopped Emin Kabashi heard people running and saw them driving away in a blue police jeep that had a machine gun mounted at the back (Emin Kabashi, Exhibit P424, p 2). Some of the police and the neighbours were wearing civilian clothes while others were wearing police uniforms (Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2063; Emin Kabashi, T 2371). Although the credibility of the witness and his ability to identify forces or vehicles was challenged by Defence counsel in *Milutinović* because it was dark at the time of the attack, the Chamber accepts the witness' explanation of the description of the uniforms and his identification of the neighbours by their voices. It is further accepted by the Chamber that as a result of this attack and the threatening telephone calls, Emin Kabashi and the people he was with left the village (Emin Kabashi, Exhibit P424 p 2).

NATO will defend you there”.<sup>3116</sup> Following this, the women were forced to handover their identity cards and one of the Serbian forces tore the head scarf off one of the ladies and threw it on the floor with all the identity cards. One woman had her identification card returned.<sup>3117</sup> The women were then taken outside of the house.<sup>3118</sup> The men were then forced to handover any money they had and after receiving some money one member of the Serbian forces said “that is what your life costs”. The group of men were then taken out of the room. At the stairs Emin Kabashi saw other special police dressed in dark blue camouflage uniforms.<sup>3119</sup> Some of them had painted faces, others were wearing masks. The police were wearing bullet proof vests, baseball style peaked caps, boots up to their knees and knives on their waist. The police had automatic rifles, some had sniper rifles, which were longer with telescopic sights.<sup>3120</sup> The men were taken out of the house and in the Chamber’s finding, following this the men, women and children were directed to go Vranjevc/Kodra-e-Trimav in Priština/Prishtinë by the police.<sup>3121</sup> Although the Defence contend that the description of these uniforms does not match any uniforms worn by the police<sup>3122</sup> it is clear to the Chamber from other evidence about uniforms that these men described as wearing the dark blue camouflage uniforms were from one of the police special units, ie the PJP.<sup>3123</sup> Moreover, this evidence is a further illustration of VJ and police special units participating in a joint operation in Priština/Prishtinë.

820. When Emin Kabashi and four of his family members arrived at Vranjevc/Kodra-e-Trimav they were taken in by Qamil Berisha and his family.<sup>3124</sup> The following day, on or about 30 March 1999, there were gunshots and explosions in the Vranjevc/Kodra-e-Trimav neighbourhood. People were killed.<sup>3125</sup> At about 0800 hours that day, Serbian police surrounded the Vranjevc/Kodra-e-Trimav neighbourhood. Emin Kabashi and the four members of his family who were with him were told by members of the special police to leave Qamil Berisha’s family house. These Serbian police said to him “Get out, you asked for NATO, go to FYROM, or Albania.

<sup>3115</sup> Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2047-2048; Emin Kabashi, T 2374. The witness at one point said that the VJ wore blue camouflage uniforms; the Chamber is satisfied from other evidence that this was a mistake by the witness.

<sup>3116</sup> Emin Kabashi, Exhibit P424, p 3; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2374, 2377.

<sup>3117</sup> The Defence suggested that this was probably because only her identification was legitimate (Defence Final brief, para 807). The Chamber has heard no evidence to support this assertion and therefore does not accept the suggestion that the women’s identification cards were taken because they were illegitimate. Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2374.

<sup>3118</sup> Emin Kabashi, Exhibit P424, p 3; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2374.

<sup>3119</sup> Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2047, 2359.

<sup>3120</sup> Emin Kabashi, Exhibit P424, pp 3-4.

<sup>3121</sup> Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, T 2360; Exhibit P426 (Map of Priština/Prishtinë; no. 2 marks the Vranjevc/Kodra-e-Trimav neighbourhood).

<sup>3122</sup> Defence Final Brief, para 809.

<sup>3123</sup> See *supra*, paras 64, 65; Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2047, 2049; Emin Kabashi, T 2359.

<sup>3124</sup> Emin Kabashi, Exhibit P424, p 4; Exhibit P426 (Map of Priština/Prishtinë; no. 2 marks the Vranjevc/Kodra-e-Trimav neighbourhood).

Anyone who does not leave we will catch and burn. This is Serbia”.<sup>3126</sup> Emin Kabashi and some of his family went to another house belonging to Rexhep Ajazi, a few hundred metres away, where they slept that night. During the rest of that day and that night, the witness saw people being killed, heard gunshots, explosions and saw houses on fire. The next morning at 0800 hours, Emin Kabashi and his family were thrown out of Rexhep Ajazi’s house by the police. The police had surrounded the entire neighbourhood of Vranjevc/Kodra-e-Trimav and they forced all the people out onto the streets. This was a Kosovo Albanian neighbourhood. In the street Emin Kabashi was asked for his money. The police considered the amount he produced was not enough. It was given back to him and the police threatened to search his wife and kill him if he was hiding more money. It appears this threat was not acted on. In time the entire group of people that had gathered in the street were told by the police to “go to Albania”.<sup>3127</sup> They were directed “downtown” by the police and they moved off to the Vranjevc bridge.<sup>3128</sup> At the Vranjevc bridge, where a VJ tank was stationed, the column of people was divided into two. One group was ordered to go to the Islamic seminary, and the other group was ordered to go to the railway station.<sup>3129</sup> Police escorted people to the railway station. On the way to the railway station there was a police patrol that had a list of KLA activists. When stopped by this patrol Kabashi did not give his real name but gave another name; he was allowed to continue with a warning that if he did not leave immediately for Albania, he would be killed.<sup>3130</sup> Police snipers were positioned to observe the column of people marching towards the railway station. At one point a boy tried leaving the column and he was shot dead.<sup>3131</sup>

821. At the railway station police ordered the people to go to a large field that separates Dragodan neighbourhood from the station. From that location the witness could see that houses were burning in Dragodan neighbourhood. After a time police told the people to go to the other side of the station. Columns of large numbers of people could be seen coming to the station from the city. None of the people in these columns were Serb civilians. Police directed that the people waiting get rid of any metal objects they possessed. Then buses started arriving. The waiting people were loaded onto the buses and taken away.<sup>3132</sup>

822. Emin Kabashi managed to avoid going on the buses and stayed at the railway station for three days, hoping that his other family members, whom he had left before he went to Vrajvec,

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<sup>3125</sup> Emin Kabashi, Exhibit P424, p 4.

<sup>3126</sup> Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, T 2360.

<sup>3127</sup> Emin Kabashi, Exhibit P424, p 4.

<sup>3128</sup> Emin Kabashi, T 2360.

<sup>3129</sup> Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2050; Emin Kabashi, T 2360, 2377.

<sup>3130</sup> Emin Kabashi, Exhibit P424, p 4; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2057-2058.

<sup>3131</sup> Emin Kabashi, Exhibit P424, p 5.

<sup>3132</sup> Emin Kabashi, Exhibit P424, p 5.

would arrive.<sup>3133</sup> Each day buses, and between five and 12 trains, left the station.<sup>3134</sup> Armed police forced people on to the trains, with such force and chaos that people crushed each other.<sup>3135</sup> The people expelled from Priština/Prishtinë were all Kosovo Albanians and a few Romas.<sup>3136</sup> On or about 1 April 1999, early in the morning Emin Kabashi, together with other people, was forced onto a train by police. The train went to the FYROM border at a town called Đeneral Janković/Han-i-Elezit. There, the people from the train were forced to walk to the border crossing and into FYROM.<sup>3137</sup> Police ordered them to walk in between the rails saying that the other areas were mined. Before crossing the border, Emin Kabashi once again managed to wait for his family in a “no mans land”, called Blace, located between the borders.<sup>3138</sup> He saw trains and buses bringing in more refugees.<sup>3139</sup> The number of refugees who crossed into FYROM grew to approximately 25,000.<sup>3140</sup> Some of them were sick, and some had been beaten. Ymer Sfarqa, a boy who had been beaten by the police at Kosovo Polje/Fushe Kosovë railway station, died of his injuries in Blace/Bllacë.<sup>3141</sup> At 0700 on approximately 6 April 1999, the refugees in Blace were required to leave that area by the police. The Red Cross helped them to get on some buses which took these refugees from Blace to Albania. At 0845 hours on the same day, the buses left for Albania in a convoy of about 121 buses which travelled all night and arrived in Korca, Albania, at 0800 on the following day.<sup>3142</sup> Emin Kabashi travelled on one of these buses to Albania. He crossed the border. There was no evidence that Emin Kabashi was forced to hand over his identification documents.<sup>3143</sup> Nevertheless, based on the totality of the evidence, the Chamber is satisfied that Emin Kabashi was forcibly transferred and then deported to Albania.<sup>3144</sup>

(b) Kolevic-e-Re neighbourhood

823. On 28 March 1999, armed Serbian police and soldiers expelled Kosovo Albanians from their homes in Kolevic-e-Re, a neighbourhood of Priština/Prishtinë located in the outskirts of town.<sup>3145</sup> The police came to the house of K14 in Kolevic-e-Re, they were dressed in plain blue

<sup>3133</sup> The Defence contend that this was a personal choice of Emin Kabashi (Defence Final Brief, para 810). While the Chamber accepts that the witness did wait as long as possible to leave because he was waiting for his family, he was finally forced to leave for the border of FYROM and was then taken in a convoy to Albania. Emin Kabashi, Exhibit P424, p 5; Emin Kabashi, T2381.

<sup>3134</sup> Emin Kabashi, Exhibit P424, p 5.

<sup>3135</sup> Emin Kabashi, Exhibit P424, p 5; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2053.

<sup>3136</sup> Emin Kabashi, Exhibit P424, p 6; Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2053; Emin Kabashi, T 2362-2363.

<sup>3137</sup> Emin Kabashi, Exhibit P424, p 5; See also Richard Ciagalinski, T 5289.

<sup>3138</sup> Emin Kabashi, Exhibit P424, p 5.

<sup>3139</sup> Emin Kabashi, Exhibit P424, p 6; Emin Kabashi, T2363.

<sup>3140</sup> Richard Ciagalinski, T 5288-5289; Exhibit P840 (Photograph taken by Ciagalinski depicting refugees in a field).

<sup>3141</sup> Emin Kabashi, Exhibit P424, p 6; Emin Kabashi, T 2363.

<sup>3142</sup> The witness counted 121 buses that arrived to Korca, Emin Kabashi, Exhibit P424, p 6.

<sup>3143</sup> Defence Final Brief, para 813.

<sup>3144</sup> See *supra*, paras 1649-1650.

<sup>3145</sup> K14, Exhibit P1325, pp 2-3; K14, T 8992-8994; K14, Exhibit P1326 (*Milošević* transcript), T 1421-1422.



uniforms and each had a blue ribbon around the arm. The plain blue uniform is consistent with the uniforms worn by local police, both regular and reserve.<sup>3146</sup> They were wearing baseball caps and bullet proof jackets. The soldiers with them were wearing green camouflage uniforms.<sup>3147</sup> The police threatened the people in the house with their rifles and told them “Get out of here. Go to your brothers in Albania”.<sup>3148</sup> The people in the house were forced to leave. In the street they saw crowds of other Kosovo Albanians, crying and screaming.<sup>3149</sup> A convoy of these people was formed and sent by the Serbian forces in the direction of Graštica/Grashticë outside Priština/Prishtinë.<sup>3150</sup> All the people in the convoy were Kosovo Albanians.<sup>3151</sup> The convoy was escorted by police and soldiers.<sup>3152</sup>

824. During the journey to Graštica/Grashticë, men in the convoy were beaten by the police. The police swore at the people in the convoy and told them to go to their Albanian brothers and to “ask NATO for help”.<sup>3153</sup> There was shelling and shooting in the village of Lukare/Llukar which the convoy passed walking towards Grastica/Grashtice.<sup>3154</sup> The people in the convoy were able to stay in Grastica/Grashtice. There shelling and shooting could be heard from Laplje Selo/Fshati Llap and flames could be seen from the village of Kolic/Koliq.<sup>3155</sup> After some two to three weeks they set off to return to Priština/Prishtinë because it was no longer safe to stay in Graštica/Grashticë.<sup>3156</sup> Some were on foot, others had cars. There were Serbian forces standing along the road to Priština/Prishtinë.<sup>3157</sup> These were policemen in uniforms described as combined “light and dark blue” which corresponds with the description of a standard police camouflage uniform typically worn by local MUP.<sup>3158</sup> The others were soldiers in green uniforms. There were also other men among the Serbian forces, who were dressed in green trousers, had bandannas on their shaved heads and wore knives. Evidence considered elsewhere in this Judgement, indicates that such dress is consistent with some Serbian paramilitary units, but the evidence is not sufficient to enable a

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<sup>3146</sup> See *supra*, paras 53-55.

<sup>3147</sup> K14, Exhibit P1325, p 3.

<sup>3148</sup> K14, Exhibit P1325, p 3; K14, Exhibit P1326 (*Milošević* transcript), T 1421-1422; K14, Exhibit P1327 (*Milutinović* transcript), T 10981; K14, T 8993-8994, 9016.

<sup>3149</sup> K14, T 8994, 9015.

<sup>3150</sup> K14, Exhibit P1325, p 3; K14, T 8994-8995.

<sup>3151</sup> K14, Exhibit P1325, p 3; K14, T 8994.

<sup>3152</sup> K14, Exhibit P1327 (*Milutinović* transcript), T 10969-10970.

<sup>3153</sup> K14, Exhibit P1325, p 3; K14, Exhibit P1326 (*Milošević* transcript), T 1421-1422; K14, T 8993-8995, 9016.

<sup>3154</sup> K14, Exhibit P1325, p 3.

<sup>3155</sup> K14, Exhibit P1325, p 3; K14, Exhibit P1326 (*Milošević* transcript), T 1425.

<sup>3156</sup> K14, Exhibit P1325, p 3; K14, Exhibit P1326 (*Milošević* transcript), T 1424, 1425; K14, T 9022-9023.

<sup>3157</sup> K14, Exhibit P1325, p 3; K14, T 8996.

<sup>3158</sup> See *supra*, paras 53, 54.

positive finding about the identity of these troops.<sup>3159</sup> A number of displaced persons travelling to Priština/Prishtinë by car were stopped by police who beat them, and confiscated their cars.<sup>3160</sup>

(c) Kodra-e-Diellit neighbourhood

825. On 29 March 1999, Serbian forces which included local police, together with men identified by a witness as “paramilitaries”, rounded up inhabitants in Kodra-e-Diellit, a neighbourhood in Priština/Prishtinë.<sup>3161</sup> Baton Haxhiu, a journalist, described how one of the men, in a green uniform, arrived at the house of a friend of Haxhiu in Kodra-e-Diellit. Haxhiu had been sheltering there for two days. The man ordered the inhabitants of the house to leave.<sup>3162</sup> As instructed, Haxhiu and the other inhabitants left the house. They were escorted by policemen. They assembled in a parking lot in the centre of the neighbourhood where a large group of people, who had also been expelled from their houses had already gathered.<sup>3163</sup> Approximately 20,000 people had assembled in the parking lot.<sup>3164</sup> Men also wearing green uniforms ordered the inhabitants assembled in the parking lot to leave for FYROM, or Albania if they could travel by car; those on foot were to go the Kosovo Polje/Fushe Kosovë railway station.<sup>3165</sup> Accordingly, Baton Haxhiu travelled to FYROM by car. He was in a convoy of vehicles. Checkpoints manned by police and VJ soldiers had been set up all over Kodra-e-Diellit and on the main road to FYROM. Serbian forces in military and police vehicles gave directions to the convoy of vehicles.<sup>3166</sup> At one checkpoint on the way to FYROM, police and VJ demanded he hand over money; Baxton Haxhiu gave them money.<sup>3167</sup> By the time the convoy of vehicles reached the border with FYROM the convoy extended more than 15 kilometres. Haxhiu noted that this convoy was comprised of Kosovo Albanians from Vučitrn/Vushtrri, Košovska Mitrovica/Mitrovica, Priština/Prishtinë and other places.<sup>3168</sup> The Chamber accepts that Baton Haxhiu and others in the convoy were forced to leave Priština/Prishtinë and go to FYROM, especially as he was escorted to the border by Serbian forces. The Chamber does not accept the contention that he was not forced to leave because there is no evidence that he was forced to hand over his identification document.

<sup>3159</sup> See *supra*, paras 85, 202, 207, 211, 215; K14, T 8996.

<sup>3160</sup> K14, Exhibit P1325, p 3; K14, T 8996.

<sup>3161</sup> The police wore dark blue uniforms. The men in green uniforms were identified as paramilitaries, because of the colour of their uniforms and that they wore masks and because of their poor physique, being described as generally “fat bellied” (Baton Haxhiu, T 6231-6232; Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6091-6092, 6094). The description of these men is consistent with paramilitary forces or with reservists. The description is not sufficient for certain identification.

<sup>3162</sup> Baton Haxhiu, T 6230.

<sup>3163</sup> Baton Haxhiu, T 6241-6242; Baton Haxhiu, Exhibit P995 (map of Priština/Prishtinë). Baton Haxhiu marked with a no. 7 the location of the parking lot in Kodra-e-Diellit.

<sup>3164</sup> Baton Haxhiu, T 6243.

<sup>3165</sup> Baton Haxhiu, T 6241-6243; Baton Haxhiu, Exhibit P995 (map of Priština/Prishtinë).

<sup>3166</sup> Baton Haxhiu, T 6243-6244; Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6091.

<sup>3167</sup> Baton Haxhiu, T 6243-6244.

<sup>3168</sup> Baton Haxhiu, Exhibit P994 (*Milutinović* transcript), T 6092-6093.

(d) The old town and other parts of Priština/Prishtinë

826. Nazlie Bala described that, on 29 March 1999, a VJ officer accompanied by another man, whom she described as a “Roma”, came to her house and other houses located in the old part of Priština/Prishtinë city. Both the VJ officer and the Roma were armed. At the time over one hundred persons were taking refuge in Bala’s house. The VJ officer said that those in the house had “five minutes to leave”.<sup>3169</sup> A back up team of Serbian forces, composed of men wearing military and police uniforms, and also some in civilian clothes, followed. They checked whether the inhabitants had left their homes as instructed. A 70 year old man and his wife, who had refused to leave their house, were severely beaten by members of the “back-up” team. Following the beating, the elderly couple left their home as ordered.<sup>3170</sup>

827. Nazlie Bala and the others who were taking shelter in her house left as ordered. Outside they were directed to a convoy of other Kosovo Albanians who had also been forced out of homes. The convoy comprised of thousands Kosovo Albanians who had been gathered together from different neighbourhoods around the city.<sup>3171</sup> MUP and VJ forces escorted the convoy to a main checkpoint in the centre of the city which was manned by men in black uniforms with eagle patches.<sup>3172</sup> All persons expelled from houses in town arrived at this main checkpoint and were then directed by Serbian MUP and VJ to the railway station.<sup>3173</sup> Nazlie Bala recalled police and army members pointing their weapons at the convoy, as the people walked to the railway station.<sup>3174</sup> Serb civilians also threw items at the convoy from their balconies while they walked by and shouted at the Serbian forces to “kill them all”.<sup>3175</sup> On the way to the railway station, the convoy passed tents with the Yugoslav flag and flags with skull and crossbones.<sup>3176</sup> Kosovo Albanian men who were walking in the convoy were separated by the police and army and robbed of their money.<sup>3177</sup>

828. At the Dragodan hill railway station the convoy was surrounded by armed police wearing blue camouflaged uniforms. These were local policemen.<sup>3178</sup> The police were aided by Serb civilians. The Kosovo Albanians were then forced onto a passenger train that was under a guard of armed police, army and Serb civilians. The train was so crowded that people could not move.

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<sup>3169</sup> Nazlie Bala, Exhibit P420, p 4; Nazlie Bala, T 2293-2294.

<sup>3170</sup> Nazlie Bala, Exhibit P420, p 4; Nazlie Bala, T 2293.

<sup>3171</sup> Nazlie Bala, T 2299-2294; Nazlie Bala, Exhibit P420, p 4.

<sup>3172</sup> The uniform described is consistent with that usually worn by the paramilitary unit known as Šešelj’s White Eagles, *see supra*, para 215; Nazlie Bala, T 2299-2294, 2337; Nazlie Bala, Exhibit P420, p 4.

<sup>3173</sup> Nazlie Bala, T 2337, 2295.

<sup>3174</sup> Nazlie Bala, Exhibit D51, p 2.

<sup>3175</sup> Nazlie Bala, T 2295.

<sup>3176</sup> Nazlie Bala, Exhibit P420, p 4; Nazlie Bala, Exhibit D51, p 2.

<sup>3177</sup> Nazlie Bala, Exhibit P420, p 4.

<sup>3178</sup> Nazlie Bala, Exhibit P420, p 4; Nazlie Bala, T 2295

Children were placed in the luggage racks as there was no room for adults to hold their children.<sup>3179</sup> The train departed to Kosovo Polje/Fushë Kosovë. Just before arriving to Kosovo Polje/Fushë Kosovë, three or four bodies of people who had been burned could be seen on the streets. Serbian forces guarding the train shouted nationalistic insults at the Albanians.<sup>3180</sup> The train stopped at Kosovo Polje/Fushë Kosovë for about one hour during which time armed Serbian police, military and Serbian civilians surrounded the train and would not allow the windows of the train to be opened. They also shouted threats at the children to be quiet or they would be shot.<sup>3181</sup> The train then moved on and reached the border town of Đeneral Janković/Han-i-Elezit that same day.<sup>3182</sup> There the passengers were ordered to disembark and to walk down the train tracks towards the border by armed Serbian police and military forces.<sup>3183</sup> Men were separated from the column of refugees and forced to give valuables and identification documents to the police and military that were guarding them.<sup>3184</sup> While the Defence contends that there was no evidence that Nazali Bala was forced to hand over her identification documents,<sup>3185</sup> the witness explained that she and those with her did not have identification documents with them at the time they were forced to leave for the border.<sup>3186</sup> Moreover, given the large number of people being pushed over the border she further explained that it was impossible to check all identification cards. Only some people were selected from the convoy, with their families, and taken aside and their possessions, including identifications, were taken and they were beaten.<sup>3187</sup> The Chamber cannot attach significance, in these circumstances, to any failure by Serbian forces at the border to demand the identification documents of Nazlie Bala and those with her. In the Chamber's finding they were forced to cross the border to FYROM. Later that evening of 29 March 1999, the passengers arrived at large grain yard in a location identified as "Blace". This was neutral territory between the borders of Kosovo and FYROM. In Blace, refugees had been waiting for a week to cross the border to FYROM.<sup>3188</sup> The following day, Nazlie Bala, with many others, was taken on a bus across the border to FYROM.<sup>3189</sup>

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<sup>3179</sup> Nazlie Bala, Exhibit P420, p 4; Nazlie Bala, T 2296.

<sup>3180</sup> Nazlie Bala, Exhibit P420, pp 4-5; Nazlie Bala, T 2296-2298, 2346.

<sup>3181</sup> Nazlie Bala, Exhibit P420, p 5; Nazlie Bala, Exhibit D51, p 3; Nazlie Bala, T 2298.

<sup>3182</sup> Nazlie Bala, T 2298-2299; Nazlie Bala, Exhibit P420, p 5.

<sup>3183</sup> Nazlie Bala, Exhibit P420, p 5; Nazlie Bala, Exhibit D51, p 3; Nazlie Bala, T 2299-2300.

<sup>3184</sup> Nazlie Bala, Exhibit P420, p 5.

<sup>3185</sup> Defence Final Brief, para 813.

<sup>3186</sup> Nazlie Bala, T 2344.

<sup>3187</sup> Nazlie Bala, T 2344-2345.

<sup>3188</sup> Nazlie Bala, Exhibit P420, p 8; Nazlie Bala, T 2300.

<sup>3189</sup> Nazlie Bala, Exhibit P420, p 8.

(c) Velania neighbourhood

829. In the morning of 31 March 1999, police and VJ forces began expelling Kosovo Albanian inhabitants from Velania, a neighbourhood located in the eastern part of Priština/Prishtinë.<sup>3190</sup> An Italian journalist, Antonio Russo, witnessed a shelling of the area which preceded the arrival in the neighbourhood of VJ and MUP forces on foot. The people were instructed to leave their homes. Accordingly, approximately 400 Kosovo Albanians did so. They were instructed to gather near the Park Hotel.<sup>3191</sup> Antonio Russo joined these people. He observed MUP forces wearing the same uniforms as the VJ but with a badge, “bearing 4-5 rocket propelled grenades on the back”.<sup>3192</sup> Based on the description of the uniforms the Chamber accepts that these forces included members of the PJP.<sup>3193</sup> These forces were expelling inhabitants from nearby houses and instructing them to join the crowd of people that had gathered near the Park Hotel. A green jeep with Cyrillic “Militia” markings and an APC camouflaged vehicle with VJ troops in green camouflage uniforms were at the rear of the crowd which swelled to approximately 2000 people. These Serbian forces moved the crowds *en masse* down the main street from the Park Hotel, past the police station, to the railway station.<sup>3194</sup>

830. On the way to the railway station, all crossroads and road junctions had been blocked off; there were armed groups of police, military personnel and occasionally armed civilians guarding the route to keep the convoy of Albanian people on course to the railway station. At the junction with the road from Valjiana, another group of Kosovo Albanians was directed into the main road and merged with the convoy.<sup>3195</sup> During the march to the railway station, the police continued shouting “Raus” in German and “Mursh” in Serbian to keep the convoy moving. The convoy of people arrived at the railway station by 1500 hours on 31 March 1999. Many others had already been gathered there.<sup>3196</sup>

831. The crowd of Kosovo Albanians was forced to remain in the square adjacent to the railway station, without shelter, throughout the night. They were guarded by armed men described as “Serbian militia”. From there, houses could be observed burning in the Dardania neighbourhood near the railway station. Throughout that night, explosions from NATO bombings could be seen. A van driven by militia men took women from the crowd. By the following morning, 1 April 1999,

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<sup>3190</sup> Ibrahim Rugova, Exhibit P285, p 9; Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4224; Adnan Merovci, Exhibit P417 (*Milutinović* transcript), T 8441; Antonio Russo, Exhibit P1213, p 5.

<sup>3191</sup> Antonio Russo, Exhibit P1213, p 5.

<sup>3192</sup> Antonio Russo, Exhibit P1213, p 6.

<sup>3193</sup> *See supra*, paras 64, 65, 162.

<sup>3194</sup> Antonio Russo, Exhibit P1213, p 6.

<sup>3195</sup> Antonio Russo, Exhibit P1213, p 6.

<sup>3196</sup> Antonio Russo, Exhibit P1213, p 7.

a train had arrived. There were by then approximately 7,600 refugees to board the train. Train company staff were paid money by refugees so that two additional carriages were added to the train to accommodate the number of people needing to get on board the train. Once loaded, the train travelled first to Kosovo Polje/Fushë Kosovë and later that day to Blace in FYROM, in the border zone between Serbia and FYROM, where it appears the people were unloaded from the train and then crossed over the border into FYROM.<sup>3197</sup>

## 5. Sexual Assault

832. The Chamber has heard evidence about two incidents of alleged sexual assault in Priština/Prishtinë. Sometime in April 1999, a witness described that she saw a Kosovo Albanian girl, who was travelling with other displaced persons in a convoy from Graštica/Grashticë in the Priština/Prishtinë municipality to the town of Priština/Prishtinë, taken off a tractor in Lukare/Llukar by two men.<sup>3198</sup> One of the men was carrying knives and was dressed in a black sleeveless shirt and green camouflage pants. He had a shaved head tied with a scarf and three earrings in one ear. The other man, identified as a policeman, wore a blue camouflage uniform with a blue ribbon on his sleeve.<sup>3199</sup> The man with the shaved head took the Kosovo Albanian girl into the woods, while the policeman stood guard. When the man with the shaved head came out, the policeman went into the woods.<sup>3200</sup> The girl was heard from the convoy to be screaming and crying.<sup>3201</sup> After about half an hour the girl was brought back to the convoy. She was flushed from crying. She was barefoot, wrapped in a blanket and appeared to be naked.<sup>3202</sup> She had been clothed when taken to the wood. There is no direct evidence as to the events in the wood, nor is there direct evidence concerning what happened to another woman who was also seen to be taken from this convoy.<sup>3203</sup> In the absence of further evidence, the Chamber is unable to make a finding in this instance that this woman was subjected to sexual assault.<sup>3204</sup>

833. The second alleged incident of sexual assault is related to events that began on 20 May 1999 in Kolevic-e-Re, a neighbourhood located in the outskirts of Priština/Prishtinë town. On this day, six Serbian men went to a house in the neighbourhood; some of the men wore the blue camouflage uniform of the police and each had a blue ribbon on the shoulder. The others wore green camouflage uniforms which is consistent with the uniforms of the PJP of the MUP or the VJ. Some

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<sup>3197</sup> Antonio Russo, Exhibit P1213, p 7.

<sup>3198</sup> K14, Exhibit P1326 (*Milošević* transcript), T 1426-1427.

<sup>3199</sup> K14, Exhibit P1325, pp 3-4; K14, Exhibit P1326 (*Milošević* transcript), T 1426; K14, T 8997-8998, 9024-9026.

<sup>3200</sup> K14, Exhibit P1325, p 4; K14, T 9024-9026.

<sup>3201</sup> K14, Exhibit P1325, p 3; K14, T 8997.

<sup>3202</sup> K14, Exhibit P1325, pp 3-4; K14, T 8997-8998.

<sup>3203</sup> K14, Exhibit P1325, p 4.

<sup>3204</sup> *See infra*, para 1792.

of these men had numbers on their uniforms above their left chests, and had camouflage caps on their shoulders under their epaulets.<sup>3205</sup> They gave the family in the house, green cards to fill out, and told them that they would come the next day to take them to Hotel Bozhur to get their papers stamped.<sup>3206</sup> The Defence contested the witness's ability to identify and distinguish between the different types of uniforms of the VJ and MUP.<sup>3207</sup> During this case the witness was unable to identify the same uniforms that had previously been identified in the *Milošević* case, however, when this inconsistency was suggested, the witness was able to confirm that both VJ and MUP were present and she described the police uniforms again.<sup>3208</sup> The Chamber is therefore satisfied with the witness's recollection of the uniforms and accepts as reliable the description given of the police uniforms. These divergences in the evidence are explainable, in the Chamber's view, in light of the traumatic nature of the events, the passage of ten years since the events and seven years since her testimony in the *Milošević* case.<sup>3209</sup>

834. On the morning of 21 May 1999, two of the men in blue police uniforms came back to the same house. One of them was referred to by the other as Novica.<sup>3210</sup> They were armed with automatic guns.<sup>3211</sup> This time, they brought a "Roma" with them who had been a road sweeper living nearby.<sup>3212</sup> On that day, the Roma was dressed in a police blue camouflage uniform.<sup>3213</sup> All three men spoke Serbian; the one called Novica and the Roma spoke a little Albanian.<sup>3214</sup> The men forcefully took two girls, sisters, to a red Ascona car with no registration plate, parked in front of the house. They threw one of the girls on the ground, and forced the other onto the back seat of the car with Novica on her right side.<sup>3215</sup> The girl was crying and Novica hit her hip with the butt of his gun, and slapped her face.<sup>3216</sup> Novica then grabbed her head, turned it towards him and bit and sucked on her neck.<sup>3217</sup> He also sprayed clear liquid resembling a perfume all over her face and

<sup>3205</sup> K14, Exhibit P1325, p 4; K14, Exhibit P1327 (*Milutinović* transcript), T 10983; K14, T 8998-8999, 9004, 9027-9028.

<sup>3206</sup> K14, Exhibit P1325, p 4; K14, Exhibit P1326 (*Milošević* transcript), T 1429; K14, T 9028-9029.

<sup>3207</sup> Defence Final Brief, para 815; K14, T 9004, 9005.

<sup>3208</sup> K14, T 9005.

<sup>3209</sup> The Chamber has taken into account the variations in the evidence of the witness concerning her relative in evaluating the credibility of the witness and is satisfied that it does not affect the reliability of her evidence in regards to the sexual assaults that took place in the convoy (Defence Final Brief, paras 817-818).

<sup>3210</sup> K14, Exhibit P1325, p 4; K14, Exhibit P1326 (*Milošević* transcript), T 1428; K14, T 9000.

<sup>3211</sup> K14, T 9031.

<sup>3212</sup> K14, Exhibit P1325, p 4; K14, Exhibit P1327 (*Milutinović* transcript), T 10994; K14, T 8999, 9029.

<sup>3213</sup> K14, Exhibit P1325, p 4; K14, Exhibit P1327 (*Milutinović* transcript), T 10983, 10994; K14, T 9030.

<sup>3214</sup> K14, Exhibit P1325, pp 4, 6; K14, Exhibit P1327 (*Milutinović* transcript), T 10984-10985, 10994; K14, T 9029, 9031, 9036.

<sup>3215</sup> K14, Exhibit P1325, p 5; K14, Exhibit P1326 (*Milošević* transcript), T 1429; K14, Exhibit P1327 (*Milutinović* transcript), T 10985-10986; K14, T 9000, 9032-9034.

<sup>3216</sup> K14, Exhibit P1325, p 5; K14, Exhibit P1326 (*Milošević* transcript), T 1429; K14, Exhibit P1327 (*Milutinović* transcript), T 10985-10986; K14, T 9001-9002, 9034.

<sup>3217</sup> K14, Exhibit P1325, p 5; K14, T 9034.

neck. The girl was very scared but the spray caused her to become more calm.<sup>3218</sup> The girl's sister was allowed to return to the house before the car left with the girl in the back seat.<sup>3219</sup>

835. The car arrived at the Bozhur Hotel where there were many Kosovo Albanians forming a queue. The girl was not allowed to join them, and was taken to a room on the second floor through the basement of the hotel. Novica went inside the room with her and he locked the door of the room. The Roma remained in the basement and the other policeman stayed outside the room.<sup>3220</sup> Novica ripped the girl's clothes off and made her lie naked on the bed. He then took his clothes off.<sup>3221</sup> He started touching and kissing her body and told her that she would not get pregnant. When the girl refused him, he slapped her. Novica put his penis inside the girl, and this lasted for a while. When he got off, the girl was bleeding and was in a great pain.<sup>3222</sup> When Novica opened the bedroom door, the other policeman tried to come in. The girl begged Novica not to let the other policeman do the same thing to her. Novica asked her if she would promise to come out with him on Monday and bring her sister for his friend. The girl agreed out of fear.<sup>3223</sup>

836. Apparently after the girl dressed, Novica took the witness by her arm and walked her out of the room, helped by the other policeman because she could not walk. The Roma was still in the basement and Novica gave him some money. The Roma told the girl to stop crying if she wanted to go home because other Kosovo Albanians would see her. He then put a pair of sunglasses on her to cover her eyes.<sup>3224</sup> In the car on the way back to the house, Novica continued to kiss the girl and kept reminding her of their promise.<sup>3225</sup> The whole incident lasted approximately two hours.<sup>3226</sup>

837. On the same day, the girl told a friend what had happened. Her friend started crying and told the girl that she had also been raped by four men in a civilian house where she had been detained for two days.<sup>3227</sup>

838. On 22 May 1999, the Roma came to tell the girl not to worry about becoming pregnant and that she could stay at his house if she was frightened. On 22 and 23 May 1999, policemen drove by the girl's house several times and honked.<sup>3228</sup> The girl was afraid that she and her sister would be raped, and told her uncle that it would not be safe for girls in the house to stay there. The girl and

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<sup>3218</sup> K14, Exhibit P1325, p 5; K14, T 9000, 9034-9035.

<sup>3219</sup> K14, Exhibit P1325, p 5.

<sup>3220</sup> K14, Exhibit P1325, p 5; K14, Exhibit P1326 (*Milošević* transcript), T 1429; K14, Exhibit P1327 (*Milutinović* transcript), T 10987-10988; K14, T 9000-9001.

<sup>3221</sup> K14, Exhibit P1325, p 5; K 14, Exhibit P1326 (*Milošević* transcript), T 1429; K14, T 9000-9001.

<sup>3222</sup> K14, Exhibit P1325, pp 5-6; K14, Exhibit P1326 (*Milošević* transcript), T 1429; K14, T 9001.

<sup>3223</sup> K14, Exhibit P1325, p 6; K14, Exhibit P1327 (*Milutinović* transcript), T 10989; K14, T 9001, 9036-9037.

<sup>3224</sup> K14, Exhibit P1325, p 6.

<sup>3225</sup> K14, Exhibit P1325, p 6; K14, Exhibit P1326 (*Milošević* transcript), T 1430.

<sup>3226</sup> K14, Exhibit P1326 (*Milošević* transcript), T 1429.

<sup>3227</sup> K14, Exhibit P1325, pp 6-7; *See infra*, para 1792.



her sister decided to flee to FYROM; they left in the early morning on 24 May 1999 and, with her aunt and her aunt's family, took the next train to FYROM.<sup>3229</sup> At Blace, on the border of FYROM, the witness saw a lot of Serbian police. Small groups of people were being allowed to cross into FYROM. They spent the night at the border and then continued walking on foot.<sup>3230</sup> When the witness and her family arrived to a refugee camp in FYROM she spoke with a representative from the ICTY. She also reported the rape to the FYROM authorities and she was given medical assistance.<sup>3231</sup> Authorities in Serbia were not ever notified of the rape.<sup>3232</sup> While the Chamber accepts that this girl was sexually assaulted, as will be discussed in more detail later in this Judgement, no finding in respects of the count of sexual assault as persecution could be established on the evidence.<sup>3233</sup>

## 6. Looting

839. During the NATO bombing campaign, in Priština/Prishtinë houses belonging to Kosovo Albanians were looted of valuables by the police.<sup>3234</sup> By contrast, Serb houses that had orthodox icons on the windows were left intact.<sup>3235</sup> Once Albanians homes were vacated by the residents who had been forced to leave, VJ and MUP would put up signs indicating that they were "MUP apartments". There were also cases in which Albanians, who had been forced to leave their homes, put up similar signs in order to prevent their homes from being looted in their absence.<sup>3236</sup>

840. In June 1999, when Serbian forces withdrew from Kosovo, VJ troops and police left Priština/Prishtinë in convoys to Serbia. The vehicles they used were laden with looted goods such as refrigerators and television sets.<sup>3237</sup>

## 7. Villages in Priština/Prishtinë municipality

841. It is alleged in the Indictment that from or about 24 March 1999, and continuing through until the end of May 1999, forces of the FRY and Serbia entered villages in Priština/Prishtinë municipality where they beat and killed Kosovo Albanians, robbed them of their money, looted their property and burned their homes. It is also alleged that many villagers were taken by truck to the town of Glogovac/Glllogoc in the municipaliy of Lipljan/Lipjan and from there by train across

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<sup>3228</sup> K14, Exhibit P1325, p 7.

<sup>3229</sup> K14, Exhibit P1325, p 7; K14, Exhibit P1326 (*Milošević* transcript), T 1430; K14, Exhibit P1327 (*Milutinović* transcript), T 10989-1991; K14, T 9002-9003, 9038-9039.

<sup>3230</sup> K14, Exhibit P1325, p 7; K14, Exhibit P1327 (*Milutinović* transcript), T 9003.

<sup>3231</sup> K14, T 9040-9043.

<sup>3232</sup> K14, T 9042.

<sup>3233</sup> *See infra*, paras 1791, 1796, 1797.

<sup>3234</sup> Veton Surroi, T 298.

<sup>3235</sup> Veton Surroi, T 298.

<sup>3236</sup> Adnan Merovci, T 2237-2238.

the FYROM border. It is alleged that other villagers made their way to the town of Uroševac/Ferizaj, and were then ordered to take a train to Đeneral Janković/Hani-i-Elezit, from where they crossed the FYROM border on foot.<sup>3238</sup> While the Chamber has heard evidence, which it has discussed above, concerning such events and Kosovo Albanians from various neighbourhoods of the city of Priština/Prishtinë, there has not been any evidence relevant to these allegations in the Indictment in respect to villages in the municipality of Priština/Prishtinë. For this reason, the Chamber finds, save for those neighbourhoods discussed above, the forcible displacement of Kosovo Albanians from other villages in the municipality of Priština/Prishtinë charged in the Indictment has not been established.

#### 8. The evidence of Milutin Filipović

842. The Defence called Milutin Filipović, who was temporarily in command of the VJ Priština/Prishtinë garrison at the time of the NATO bombing, with regard to events in the municipality of Priština/Prishtinë during the Indictment period.

843. The Chamber finds that the evidence of Milutin Filipović was inconsistent in material respects and, when questioned about discrepancies in, or difficulties with, his evidence, he was unable to provide an adequate explanation. It was apparent that he did not take appropriate care and caution as to the truth when recounting events. All too often, during cross-examination, it became clear to the Chamber that the witness was concocting an explanation or applying some elements of fact to different sets of circumstances in an attempt to justify his use of it and his evidence. For example, Milutin Filipović testified that on the eve of the NATO bombing residents started to leave Priština/Prishtinë. It was his primary evidence that the movement of Albanians out of Priština/Prishtinë was at their own initiative. He suggested they were afraid initially of the imminent threat of NATO bombing, then of the threat of ongoing NATO bombing, and of KLA terrorists.<sup>3239</sup> They feared for themselves and their families.<sup>3240</sup> The movement was not because of any operations or actions of Serbian VJ or MUP forces.<sup>3241</sup> However, neither in his evidence in chief, nor in cross-examination, was Milutin Filipović consistent in this contention, nor could he

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<sup>3237</sup> Richard Ciagalinski, T 5293, 5378-5379.

<sup>3238</sup> Paragraph 72(g)(i) of the Indictment.

<sup>3239</sup> The Defence argued that KLA terrorist attacks continued after the NATO bombing started, including an attack killing a Serbian police officer on 27 March 1999 and injuring two other officers on 28 March 1999 (Exhibit P1100; Exhibit P1058; Defence Final Brief, para 804). There was also another incident on 28 March 1999 that involved an attack on a Russian journalist which resulted in the death of his driver (Exhibit P1058; Defence Final Brief, para 804). The Chamber accepts that KLA attacks may have continued however, in the Chamber's view, as further detailed above, this was not the reason why the Kosovo Albanians were leaving Priština/Prishtinë.

<sup>3240</sup> Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19181, 19192; Milutin Filipović, T 11561.

<sup>3241</sup> Milutin Filipović, T 11567, 11579; Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19203.

sustain it in the face of other evidence. In fact, in material respects, some of his evidence was quite contradictory of his primary proposition.

844. As an example, to explain how he was in a position to know why displaced Kosovo Albanians in columns were leaving Priština/Prishtinë, he offered the explanation that he would often leave his command post to talk to Albanians walking past in their columns. He said he would try to assure them there was no reason for them to leave and he would ask why they were leaving or where they were going. It is his evidence that their reply was to the effect that they were leaving because they were told to do so; they themselves were not really clear about the reasons why they had to leave.<sup>3242</sup>

845. While his evidence was not always logical or readily understandable, it was the case that Filipović also introduced differing explanations. He suggested, perhaps to support the view that the people did not really know why they were leaving, that what was happening was that a convoy of people would go back and forth one day and the next. The underlying idea of this seemed to be that there was not really a departure of refugees. At one point he seemed to advance the proposition that the refugee columns were staged to enable terrorists to present a false image of events to the international media. He also gave additional reasons. He stated that the columns were assisting the terrorists in an elaborate ruse. The displaced persons would have terrorists join the columns; those terrorists would have discarded their weapons and would have been dressed as civilians. In this way they could flee from the fighting and Serbs shooting at them. He thus described the convoys of refugees to the borders as “fake migration”.<sup>3243</sup> However, when challenged in cross-examination about the pointlessness of terrorists fleeing the country in this way, he altered this account to say that the idea of terrorists joining refugee columns was not to leave the country, but to infiltrate Kosovo again to continue their terrorist activities.<sup>3244</sup>

846. On either of these views of the use of refugee columns by KLA terrorists, it was obvious that action by Filipović, as the VJ garrison Commander, would have been called for. Despite this, he did not suggest that he took direct action about the KLA activity in the columns. However, he then went on to suggest that he made reports of this KLA activity to his superiors, both oral and written reports. He had to agree that no action was taken by his superiors despite his alleged reports, nor had the witness been able to locate any of these reports in official records or in his own documents.<sup>3245</sup> When pressed about this in cross-examination, he offered yet another and different explanation for the Albanian refugee columns. He suggested that some people were moving out

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<sup>3242</sup> Milutin Filipović, T 11564.

<sup>3243</sup> Milutin Filipović, Exhibit D712 (*Milutinović* transcript), T 1913-19194; Milutin Filipović, T 11564, 11592.

<sup>3244</sup> Milutin Filipović, T 11582-11585.

because the situation in the town was difficult; there were power cuts, no telephone lines, and they could not speak to their “nearest and dearest”.<sup>3246</sup> Throughout his evidence, he was determined that the VJ and the MUP never exerted pressure on the Albanian people; they were never forced or told to leave their houses. On the contrary, he maintained that the police and the VJ were under orders to talk to residents to reassure them, and to behave properly to them, so they would not leave, clearly implying that such orders were of course obeyed.<sup>3247</sup>

847. He attempted to strengthen his primary argument by suggesting that the fear of the Kosovo Albanians residents was aggravated because of the use by NATO of Depleted Uranium Ammunition.<sup>3248</sup> He claimed to have lifted the remains of such ammunition with his own hands and brought it to the town where he put it on public display. He said he did this to allay public fear of Depleted Uranium Ammunition.<sup>3249</sup> He had no satisfactory explanation why he had not previously mentioned the use of Depleted Uranium, particularly in his evidence in the *Milutinović* trial, despite his detailed account in that trial of NATO bombing. Further, he constantly evaded answering when and how he had heard of the use of Depleted Uranium Ammunition by NATO or why if he had such knowledge he had handled it himself and why he had created such a supposed hazard by placing it on public display.<sup>3250</sup> The Trial Chamber was left with clear view that all Milutin Filipović had to say about the use of Depleted Uranium Ammunition was concocted.

848. Milutin Filipović’s evidence about the Albanian refugee columns and related matters, characterised as it was by inconsistency, contradiction, recent concoction and a lack of conviction, was not in the Chamber’s view credible or reliable. While it can be accepted that NATO bombing and fighting between Serbian forces and the KLA had some influence on the views of Albanian residents of Priština/Prishtinë city and elsewhere, the evidence of Filipović does not dissuade the Chamber from accepting the cogency and reliability of the large body of evidence which, in the Chamber’s view, establishes that the dominant and prevailing factor was the actions of Serbian forces which, by direct intervention or induced fear, caused Kosovo Albanian residents to leave their homes and, in the majority of cases, to cross the border, whether to Albania or elsewhere.

849. In addition, much of the evidence of Milutin Filipović was focused on challenging the credibility of the Prosecution witness, Nazlie Bala, who described events in the municipality she

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<sup>3245</sup> K73, Exhibit P330, para 35; Milutin Filipović, T 11585-11586.

<sup>3246</sup> Milutin Filipović, T 11591.

<sup>3247</sup> Milutin Filipović, T 11567, 11579; Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19203.

<sup>3248</sup> Milutin Filipović, T 11559-11560.

<sup>3249</sup> Milutin Filipović, T 11598-11600.

<sup>3250</sup> Milutin Filipović, T 11593-11601.

said she had seen from her roof terrace.<sup>3251</sup> In this respect, also, Milutin Filipović's evidence proved not to be convincing. When cross-examined, it became clear that Milutin Filipović neither knew the exact location of Nazlie Bala's house nor had he any means of knowing what really could be seen from the roof of what is a multi-storeyed house.<sup>3252</sup> In the Chamber's view Milutin Filipović's assertions are not based on demonstrated knowledge. Although his remarks were made with apparent absolute confidence, his evidence was characterised by unsupported generalisations which did not stand up to scrutiny. With Milutin Filipović's reliability under deep suspicion, there was an absence of resonance in his determined attempt to discredit the Prosecution witness Nazlie Bala. The Trial Chamber accepts the soundness of the descriptions by Nazlie Bala of her sightings from her roof-terrace.

850. Milutin Filipović also asserted emphatically that there were no combat troops of the VJ in Priština/Prishtinë and no artillery or armoured forces at the relevant time.<sup>3253</sup> He contended that the 15<sup>th</sup> Armoured Brigade had left Priština/Prishtinë on the eve of the bombing.<sup>3254</sup> On the contrary, however, it is clear from an order of the Priština Corps Command of the VJ dated 1 April 1999, that the 15<sup>th</sup> Armoured Brigade was to deploy part of its force to the general area of Priština/Prishtinë.<sup>3255</sup> When confronted with this order in court, Milutin Filipović unconvincingly argued that, very strictly viewed, the 15<sup>th</sup> Armoured Brigade was deployed outside of Priština/Prishtinë. He sought to identify the locations over which the Brigade was specifically ordered to establish combat control and contended that technically these were just outside the city. That technicality was entirely unsatisfactory, particularly, as one of the areas so identified was a populated area which was for practical purposes clearly part of the city.<sup>3256</sup> Milutin Filipović also argued that the order of the Priština Corps Command dated 1 April 1999 did not specify that tanks were to be used by the 15<sup>th</sup> Armoured Brigade to execute the order. From this premise he sought to assert that tanks were not used.<sup>3257</sup> This is not credible. The Armoured Brigade was ordered to establish combat control. Tanks were a primary piece of equipment for the Brigade. In any event, the Armoured Brigade itself is a combat force. Further, on 27 March 1999, the 50<sup>th</sup> Military Territorial Detachment of the VJ was directly deployed to Priština/Prishtinë and was tasked to protect the Serbian population, to guard military installations, and, in coordination with the MUP, to

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<sup>3251</sup> Milutin Filipović, T 11574-11575, 11579, 11654-11656, 11671; Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19180-19181, 19243, 19247-19249.

<sup>3252</sup> Milutin Filipović, T 11638-11652; Exhibit P1542 (Topographical Map of Priština/Prishtinë).

<sup>3253</sup> Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19153, 19210-19211; Milutin Filipović, T 11524, 11537, 11569, 11574, 11619, 11666.

<sup>3254</sup> Milutin Filipović, Exhibit D712, (*Milutinović* transcript), T 19177, 191210-191211.

<sup>3255</sup> Exhibit P928.

<sup>3256</sup> Milutin Filipović, T 11621-11623, 11663-11664; *see*, Exhibit D722.

<sup>3257</sup> Milutin Filipović, T 11621-11623; Exhibit P928.

protect features of importance such as hospitals, post offices, television and radio stations.<sup>3258</sup> When confronted with this Milutin Filipović simply sought to reassert that there was not a single combat unit and not a single armoured combat vehicle at a distance from the city centre of Priština/Prishtinë.<sup>3259</sup> For these shortly stated reasons and the general conclusion of the Chamber in regards to the credibility of Milutin Filipović, the Chamber is not able to accept this argument.

851. It is the Trial Chamber's assessment that the evidence of Milutin Filipović is unreliable and that indeed some of it is dishonest fabrication. He did not display any appropriate care and caution when recounting events and, too often, it became clear when he was pressed in cross-examination that he had knowingly stated as absolute fact matters about which there was no certainty. At many points and over a number of issues, he was evasive and not prepared or able to deal with direct questions. The Chamber is not able to accept him as a reliable witness, or a witness of truth; indeed, he sought to mislead the Chamber about material matters.

#### **H. Đakovica/Gjakovë municipality**

852. The municipality of Đakovica/Gjakovë lies in the west of Kosovo, between Prizren municipality to the south and Dečani/Deçan municipality to the north, and shares a border with Albania.<sup>3260</sup> In early 1998, the municipality had a population of approximately 131,700, some 93 per cent of whom were Kosovo Albanian.<sup>3261</sup> The city of Đakovica/Gjakovë is the largest in the municipality and is located on the main road from Prizren to Peć/Peja, approximately in the centre of the municipality.<sup>3262</sup> At the time of events described below, the city had a population of approximately 100,000 people, of whom some 20,000 were displaced from other parts of Kosovo.<sup>3263</sup> The ethnic composition of the city of Đakovica/Gjakovë was approximately 90 per cent Kosovo Albanian.<sup>3264</sup> VJ military barracks (*Devet Jugovića*), were positioned next to the Catholic Church, near the outskirts or exit point of the city towards the village of Brekovac/Brekoc on the southern side, near the Tabaku bridge.<sup>3265</sup> The Priština Corps forward command post, established on 21 April 1998, for the purpose of commanding the forces of the Corps engaged in securing the state border and the border area,<sup>3266</sup> was located at the VJ barracks.<sup>3267</sup>

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<sup>3258</sup> Exhibit P896.

<sup>3259</sup> Milutin Filipović, T 11622-11625, 11662.

<sup>3260</sup> Exhibit P823, pp 18, 9; Exhibit P1032.

<sup>3261</sup> Exhibit P756, p 211.

<sup>3262</sup> Exhibit P823, p 24.

<sup>3263</sup> K74, Exhibit P1095, p 7; Exhibit P756, p 212.

<sup>3264</sup> Exhibit P756, p 213.

<sup>3265</sup> Fuad Haxhibeqiri, Exhibit P1068, p 4; Fuad Haxhibeqiri, T 7019; Exhibit D689, p 1; Exhibit P295; Lizane Malaj, T 823; Nike Peraj, Exhibit P313, para 22; Lulzim Vejsa, T 6099.

<sup>3266</sup> Exhibit D340, p 2.

<sup>3267</sup> Exhibit D687, p 1.

853. Carragojs valley, an area also comprising the Trava and Erenik river valleys, lies to the west of Đakovica/Gjakovë city and extends for 10 to 15 kilometres to the Albanian border.<sup>3268</sup> The area is also referred to as “Reka”.<sup>3269</sup> It encompasses a number of small towns and villages, including Mejë/Meja, Orize, Korenicë/Korenica, Babaj Boks/Babaj-i-Bokës, Guska/Guskë and Ramoc.<sup>3270</sup> These lie mainly to the west and south of Đakovica/Gjakovë city.

854. The KLA was active in the villages of the municipality in 1998 and 1999<sup>3271</sup> and the border region was used to smuggle arms and supplies.<sup>3272</sup> The KLA operational zone covering Đakovica/Gjakovë was commanded by Ramush and Daut Haradinaj in 1998.<sup>3273</sup>

855. While there had been VJ and MUP forces deployed in the Đakovica/Gjakovë region<sup>3274</sup> since at least the autumn of 1998, this presence increased significantly from the beginning of the NATO bombing in March 1999.<sup>3275</sup>

856. NATO bombing in the vicinity of the city of Đakovica/Gjakovë commenced on the night of 24 March 1999.<sup>3276</sup> The VJ barracks were hit on 26 and 28 March 1999.<sup>3277</sup> NATO bombing continued in the municipality of Đakovica/Gjakovë in April 1999. On 14 April 1999, NATO bombs were reported to have hit a civilian column crossing a bridge on the Đakovica/Gjakovë-Prizren road.<sup>3278</sup> A VJ report also indicates that NATO bombs struck a refugee camp in Đakovica/Gjakovë in April 1999, resulting in the killing of civilians.<sup>3279</sup>

857. The evidence indicates that KLA units were located in villages in the area around Đakovica/Gjakovë city immediately prior to the NATO bombing, rather than in the city itself.<sup>3280</sup> Although MUP reports covering security events in the period 24 March 1999 to early April 1999 record one “terrorist attack” in this time frame in Đakovica/Gjakovë city, resulting in serious injury

<sup>3268</sup> Momir Stojanović, T 11900-11901; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19713-19714.

<sup>3269</sup> Miloš Došan, T 11473; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19713-19714 (referring to “Reka e Keqe/Losa Reka”).

<sup>3270</sup> See Exhibits P314, P315 and P317.

<sup>3271</sup> Bislim Zyrapi, Exhibit P428, (*Milutinović* transcript), T 5932, 5967.

<sup>3272</sup> Exhibit P756, p 211. See also K73, T 1561; K73, Exhibit P330, para 26; K73, P332 (*Milutinović* transcript), T 3350-3351; John Crosland, Exhibit P1401 (*Milutinović* transcript), T 10008.

<sup>3273</sup> Bislim Zyrapi, Exhibit P427, para 16. See also Exhibit P430 (map showing KLA operational zones in Kosovo).

<sup>3274</sup> Lizane Malaj, T 806-807.

<sup>3275</sup> Merita Dedaj, Exhibit P1030, p 2; Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1428.

<sup>3276</sup> Shyhrete Dula, Exhibit P1268, p 2; Shyhrete Dula, T 8333, 8360; Fuad Haxhibeqiri, Exhibit P1068, p 5; Exhibit P903, p 2; Lulzim Vejsa, T 6099.

<sup>3277</sup> Exhibit D922, p 2; Exhibit P696, p 2; Exhibit D37, p 3; Exhibit P958, p 5.

<sup>3278</sup> Exhibit D696.

<sup>3279</sup> Exhibit D407, p 1. See also Exhibits D702, D304.

<sup>3280</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6264-6265. See also Exhibit P718, p 2.

to one policeman,<sup>3281</sup> and record the apprehension by the police of a small number of suspected KLA fighters,<sup>3282</sup> the evidence demonstrates that actual fighting between KLA and Serbian forces in Đakovica/Gjakovë city began only on 7 May 1999 in the Kodra e Cabrati neighbourhood.<sup>3283</sup>

858. On 3 April 1999, a large-scale operation by Serbian forces, both VJ and MUP, in Đakovica/Gjakovë municipality was ordered by the VJ commander of the military police unit in the 2<sup>nd</sup> Battalion of the 549<sup>th</sup> Motorised Brigade Colonel Vlatko Vuković.<sup>3284</sup> This was in anticipation of a predicted attack by KLA forces, in concert with NATO, from Albania.<sup>3285</sup> A KLA ground attack from Albania, though not with active NATO involvement, did begin on 9 April 1999 along the Košare/Koshare-Morina/Morinë axis as part of the *Strela/Shigjeta*<sup>3286</sup> 1 (*Strela Jedan*) operation.<sup>3287</sup> The operation had the objective of opening up corridors for the KLA to procure weapons.<sup>3288</sup> Other VJ and MUP reports indicate that the KLA continued to launch attacks in Đakovica/Gjakovë municipality during the period of the NATO bombing.<sup>3289</sup> According to Bislim Zyrapi, Chief of the General Staff of the KLA, the KLA operated in Đakovica/Gjakovë municipality until mid-May.<sup>3290</sup>

859. Consistent with the above, combat reports and war diary entries for the Serbian VJ forces during this period indicate that during April 1999, VJ forces were concentrated around the Košare/Koshara border post and the village of Junik situated a few kilometres from the Albanian border where most of the KLA activity appeared to be occurring. The war diary entry of the Howitzer Battalion of the 125<sup>th</sup> Motorised Brigade recorded that on 27 April 1999, the activities of the “enemy” took place in and around the Košare/Koshare border post.<sup>3291</sup> A regular combat report of the 125<sup>th</sup> Motorised Brigade commanded by Colonel Dragan Živanović to the Priština Corps Command and Đakovica/Gjakovë forward command post dated 29 April 1999 noted that there were around 200 to 250 “terrorists” in the Rasa e Kosares, Mala Glava and Glava sectors. On 28 April, the “ŠTŠ”<sup>3292</sup> had fired on the positions of the 2<sup>nd</sup> company of the 2<sup>nd</sup> Motorised Battalion, resulting

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<sup>3281</sup> Exhibit D295, pp 3-4. The details of this “terrorist attack” are unclear from the report. The information given is that on “25 March 1999, at around 1955 hours, in the park in front of *Paštrik* Hotel in Đakovica, during a NATO air strike, there was a terrorist attack against members of the crime police of the Đakovica SUP.”

<sup>3282</sup> Exhibit D294, p 4.

<sup>3283</sup> Fuad Haxhibeqiri, T 6945, 7007-7008, 7009.

<sup>3284</sup> Exhibit D356.

<sup>3285</sup> Exhibit D356.

<sup>3286</sup> “*Strela/Shigjeta*” is translated as “Arrow”.

<sup>3287</sup> Exhibit D630, p 2; Exhibit P919; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6238-6239; Exhibit P948; Exhibit P1397, p 13.

<sup>3288</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6231.

<sup>3289</sup> Exhibit P931; Exhibit P1544; Exhibit P1397.

<sup>3290</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6231, 6238-6239.

<sup>3291</sup> Exhibit P1397, p 25.

<sup>3292</sup> “ŠTŠ” is a reference to Kosovo Albanian terrorist groups.



in nine dead (four volunteers and five soldiers) and five wounded (including two volunteers).<sup>3293</sup> It was also reported that NATO aircraft circled and attacked Brigade units.<sup>3294</sup> The focus of the Brigade's work was reported to be on "operations aimed at destroying the ŠTŠ at Rasa e Kosares".<sup>3295</sup> The report noted that the Commander and Chief of Staff of the Priština Corps, *i.e.* General Vladimir Lazarević and Zivković, visited the Brigade from 0900 to 1200 hours on 29 April 1999.<sup>3296</sup>

860. However, on 27-28 April 1999, the area of the Carrogojs valley comprising the villages of Korenica/Korenicë and Meja/Mejë, to the west of Đakovica/Gjakovë city, was surrounded and secured by the VJ, making it difficult for KLA fighters to be present or active in that area at that time.<sup>3297</sup> Witnesses from the villages in the area gave evidence that the KLA were not known to be present in that period,<sup>3298</sup> due to the large number of VJ in the area.<sup>3299</sup> Save for one incident in the night of 27 April 1999 in the village of Ramoc, discussed below, in which a short unplanned firefight took place between three of four KLA fighters and members of the anti-terrorist unit of the VJ 52<sup>nd</sup> Military Police Battalion, resulting in the killing of one VJ soldier and one KLA member, the evidence indicates that there was no KLA activity and minimal KLA presence in the valley at the relevant time.<sup>3300</sup>

#### 1. The city of Đakovica/Gjakovë

861. In the days immediately before 24 March 1999, the commencement of bombing by NATO, Serbian forces patrolled the streets of Đakovica/Gjakovë, especially at night.<sup>3301</sup> Albanian men did not venture to go outside during this time; they stayed inside. Women who went out for shopping were often stopped by Serbs, including the police and men, apparently reservists, and questioned about their husbands and sons.<sup>3302</sup> In this time prominent Albanians in Đakovica/Gjakovë city were targeted and killed or imprisoned.<sup>3303</sup>

862. There were two distinct main operations by Serbian forces in the city of Đakovica/Gjakovë: one that began on 24 March 1999 and one that began on 7 May 1999, each lasting a week. There was also a specific operation in the Ćerim/Qerim neighbourhood on 1-2 April 1999.

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<sup>3293</sup> Exhibit P921, p 1.

<sup>3294</sup> Exhibit P921, p 1.

<sup>3295</sup> Exhibit P921, p 2.

<sup>3296</sup> Exhibit P921, p 2.

<sup>3297</sup> K90, Exhibit P321, para 63. *See also* K90, Exhibit P321, para 62; K90, Exhibit P322 (*Milutinović* transcript), T 9450-9451.

<sup>3298</sup> Lizane Malaj, T 840; Merita Dedaj, Exhibit P1030, p 4.

<sup>3299</sup> Martin Pnishi, Exhibit P1034, p 1508.

<sup>3300</sup> *See infra*, para 975.

<sup>3301</sup> K74, T 7435-7436; K74, Exhibit P1095, p 4.

(a) Operation on 24-28 March 1999

863. Late in the night of 24 March 1999, Serbian forces entered houses in various neighbourhoods of Đakovica/Gjakovë, and either ordered the residents to leave or caused them to leave. On 24 March 1999, Shyhrete Dula and her family were at their home in Đakovica/Gjakovë, located in Mahala-e-Hadumit, the historic quarter encompassing the shopping bazaar and the 16<sup>th</sup> century Hadum Mosque (formally called Xhamia et Hadumit or the Mosque of Hadum Suleiman Aga) and its adjoining Islamic Library (formally called Library of Hadum Suleiman Efendi).<sup>3304</sup> Around midnight, she heard a commotion and many voices in the street outside the family compound.<sup>3305</sup> She became aware of the sound of burning wood outside in the bazaar.<sup>3306</sup> About an hour and half later, the gate of the family compound flew open having been forced open by a police jeep.<sup>3307</sup> Men could be heard entering the compound, speaking and cursing in Serbian and presently Shyhrete Dula saw them coming up the steps of the balcony near the entrance door of her house, which was made of transparent glass.<sup>3308</sup> The men who entered the yard wore blue camouflage uniforms of the Serbian police.<sup>3309</sup> The Chamber accepts that the men were police. Shyhrete Dula, her three children and her husband fled from the house through a window on the ground floor at the rear of the house. They scaled the wall of their compound, dropped into a neighbour's garden and ran from yard to yard away from the bazaar.<sup>3310</sup>

864. The family found refuge in the yard of a house of an elderly woman, who was not known to them, in the Ruga e-Mullirit area.<sup>3311</sup> From the upper floor of this house, Shyhrete Dula could see that her own home and other surrounding buildings were on fire.<sup>3312</sup> She did not return to her house until it became light on 25 March 1999.<sup>3313</sup> When she returned, she observed extensive destruction in her neighbourhood. In the bazaar, some of the shops were still on fire, while others were entirely burned.<sup>3314</sup> The minaret of the Hadum mosque had been "snapped", the top was lying on the ground and the external walls of the mosque were damaged.<sup>3315</sup> Her own house and the small

<sup>3302</sup> K74, Exhibit P1095, p 2; K74, Exhibit P1096, (*Milutinović* transcript), T 7508; K74, T 7475.

<sup>3303</sup> Exhibit P756, pp 211-212; Frederick Abrahams, T 3974; Fuad Haxhibeqiri, Exhibit P1068, p 7.

<sup>3304</sup> Shyhrete Dula, Exhibit P1268, p 2; Shyhrete Dula, T 8333, 8336, 8360; Exhibit P1098, pp 53 and 56.

<sup>3305</sup> Shyhrete Dula, Exhibit P1268, p 2.

<sup>3306</sup> Shyhrete Dula, Exhibit P1268, pp 2-3.

<sup>3307</sup> Shyhrete Dula, Exhibit P1268, p 3.

<sup>3308</sup> Shyhrete Dula, T 8363-8364.

<sup>3309</sup> Shyhrete Dula, Exhibit P1268, p 3; Shyhrete Dula, T 8365.

<sup>3310</sup> Shyhrete Dula, Exhibit P1268, p 3; Shyhrete Dula, T 8334-8335.

<sup>3311</sup> Shyhrete Dula, Exhibit P1268, p 3; Shyhrete Dula, T 8370.

<sup>3312</sup> Shyhrete Dula, Exhibit P1268, p 3; Shyhrete Dula, T 8336, 8372-8373.

<sup>3313</sup> Shyhrete Dula, Exhibit P1268, p 3.

<sup>3314</sup> Shyhrete Dula, Exhibit P1268 pp 3-4; Shyhrete Dula, T 8336-8337, 8379; Exhibits P1105 and P1269.

<sup>3315</sup> Shyhrete Dula, Exhibit P1268, pp 3-4; Shyhrete Dula, T 8336-8337; Exhibit P1104. Another witness, Fuad Haxhibeqiri testified that on 5 April, he saw that the 400 years old mosque in Hadum/Carshia-e-Vjeter was damaged on the inside and that the auxiliary buildings of the mosque were burnt down. Fuad Haxhibeqiri, T 6942, 6948; 7005-7006; Exhibit P1069.

summer house had both been burnt. The adjacent house of her brother-in-law was damaged inside by bullet holes that covered the walls.<sup>3316</sup> That same night, shops of the city's historic centre were also burnt.<sup>3317</sup>

865. The Defence submits that the burning of the old city of Đakovica/Gjakovë was the result of NATO bombing.<sup>3318</sup> Miloš Došan, commander of the 52<sup>nd</sup> Artillery Rocket Brigade of the Air Defence of the VJ in Đakovica/Gjakovë and of the Đakovica/Gjakovë garrison,<sup>3319</sup> stated that in his opinion the fires in the old town were caused by NATO bombing.<sup>3320</sup> Došan admitted, however, that this was an assumption on his part and that he did not have any direct knowledge of what caused the fire.<sup>3321</sup> He claimed to have heard three explosions on the night of 24 March 1999, the first at 2000 hours, while he was in the VJ shelter on Čabrat hill, which overlooks the old historic quarter.<sup>3322</sup> After he left the shelter, he observed a fire on Katolička Street, on which Hadum Mosque is located.<sup>3323</sup> In his evidence before this Chamber, Došan stated that he was told by his subordinate, Major Zlatko Odak, who was stationed at the *Devet Jugovića* barracks, that he had seen a NATO missile hit the old part of town and that this caused the fire.<sup>3324</sup> In prior proceedings, however, Došan gave evidence that he was given information that the centre of town was hit from the operations duty officer who received a report from an MUP unit.<sup>3325</sup> Because of this significant inconsistency in his evidence as well as reasons related to his general credibility explained elsewhere, the Chamber is unable to rely on the evidence of Došan.

866. The Defence's submission that the damage to the Hadum Mosque and its adjoining Islamic Library was the result of NATO bombing is supported by a MUP Staff report covering security related events for 25-26 March 1999 that stated that during the night of 24 March and early morning of 25 March 1999, NATO aircraft fired missiles which hit the old part of town and that the resulting explosions caused destruction and a fire in which 220 rental facilities and residential buildings were destroyed, and three civilians were killed.<sup>3326</sup> The contrast of this report with other evidence, described below, however, leaves the Chamber unable to accept this report as reliable.

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<sup>3316</sup> Shyhrete Dula, T 8342-8344, 8379-8382; Exhibits P1270; D354.

<sup>3317</sup> Lulzim Vejsa, Exhibit P978, p 2.

<sup>3318</sup> Defence Final Brief, para 825.

<sup>3319</sup> Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45337, 45339; Miloš Došan, T 11338.

<sup>3320</sup> Miloš Došan, T 11355.

<sup>3321</sup> Miloš Došan, T 11354; Exhibit D687, p 2.

<sup>3322</sup> Miloš Došan, T 11353; Exhibit D687, p 2; Exhibit D685, (*Milošević* transcript) T 45392.

<sup>3323</sup> Miloš Došan, T 11353; Exhibit D687, p 2.

<sup>3324</sup> Miloš Došan, T 11354.

<sup>3325</sup> Miloš Došan, Exhibit D685, (*Milošević* transcript) T 45392-45393, 45474.

<sup>3326</sup> Exhibit D295, p 3. The report also states that in the evening of 25 March 1999, NATO aircraft bombed the barracks in Đakovica/Gjakovë, hitting a police accommodation facility and causing a fire which completely destroyed the facility.

867. Firstly, the Chamber notes that the war diaries of the relevant VJ units present in the city of Đakovica/Gjakovë do not record any such bombing of the old town. The war diary of the VJ 2<sup>nd</sup> Motorised Battalion of the 549<sup>th</sup> Motorised Brigade records that on 24 March 1999, NATO forces hit “military targets” in a number of locations in Serbia and Kosovo, including Đakovica/Gjakovë.<sup>3327</sup> The war diary of the VJ 52<sup>nd</sup> Artillery Rocket Brigade records that on 24 March 1999 at 1935 hours reports were received of four planes flying overhead of Đakovica/Gjakovë, at 2000 hours “Air strikes against ground targets [were] carried out” and at 2115 hours VJ artillery fire was opened on “targets” from Čabrat into the airspace.<sup>3328</sup> The war diary does not specify what “ground targets” were hit. However, neither VJ Brigade make any reference in their war diaries to NATO airstrikes to the old historical centre of Đakovica/Gjakovë on 24 March 1999.

868. Secondly, none of witnesses on the ground in the relevant areas at the relevant time testified that NATO bombed the old town or other civilian areas in Đakovica/Gjakovë city.<sup>3329</sup> As noted, the VJ war diaries record that the ammunition depot of the VJ *Devet Jugovića* barracks was hit on 26 March 1999 sometime after 2000 hours<sup>3330</sup> and again on 28 March 1999 at about 2205 hours.<sup>3331</sup> Like the war diaries, the MUP documents report that the VJ barracks were hit on 26 March 1999, but the MUP report also states that this caused damage to “many Serbian and Montenegrin houses”.<sup>3332</sup> The VJ barracks are not in the historic old town. Although Miloš Đošan suggested in his evidence that the VJ barracks were “very close by”, practically in the continuation of the same street as where the Hadum Mosque was situated,<sup>3333</sup> the consistent evidence of other witnesses, which the Chamber accepts, places the *Devet Jugovića* barracks near the outskirts or exit point of the city towards the village of Brekovac/Brekoc on the southern side, near the Ura e Tabaku or Tabaku bridge,<sup>3334</sup> some one and a half to two kilometres from the centre of the city.<sup>3335</sup> The MUP report further states that the Novi Blok neighbourhood was hit the same day by NATO airstrikes, causing fires in about 40 houses and killing four persons.<sup>3336</sup> Again, this is not in the old town. Further, the Chamber is highly doubtful of the reliability of the MUP report in this respect, which stands alone as the only evidence of NATO bombing of civilian areas in Đakovica/Gjakovë city, a proposition that was consistently denied by witnesses on the ground at the relevant time.

<sup>3327</sup> Exhibit D37, p 2. The specific location hit in Đakovica/Gjakovë is not specified.

<sup>3328</sup> Exhibit P958, p 4.

<sup>3329</sup> Lulzim Vejsa, Exhibit P979 p 4087; Fuad Haxhibeqiri, Exhibit P1068, p 5.

<sup>3330</sup> Exhibit D37, p 3; Exhibit P958, p 5.

<sup>3331</sup> Exhibit P958, pp 5-6.

<sup>3332</sup> Exhibit D922, p 2; Exhibit P696, p 2.

<sup>3333</sup> Miloš Đošan, T 11353.

<sup>3334</sup> Fuad Haxhibeqiri, Exhibit P1068, p 4; Fuad Haxhibeqiri, T 7019; Exhibit D689, p 1; Exhibit P295; Lizane Malaj, T 823; Nike Peraj, Exhibit P313, para 22; Lulzim Vejsa, T 6099.

<sup>3335</sup> Lulzim Vejsa, T 6093.

<sup>3336</sup> Exhibit D922, p 2; Exhibit P696, p 2.

869. Thirdly, the Chamber takes into account the evidence given by Frederick Abrahams, a Human Rights Watch researcher who visited the city in July 1999, and who closely examined the destruction he found in the old town of Đakovica/Gjakovë to homes and other civilian objects.<sup>3337</sup> To Abrahams, it appeared the buildings had been set on fire from the inside. The walls were still standing but the wooden roofs had been burned.<sup>3338</sup> This description is consistent with the evidence of Andrés Riedlmayer, who visited the site in October 1999,<sup>3339</sup> that there was extensive damage to the historical city centre; nearly all the shops were burned out in a wide area covering several city blocks surrounding the Hadum Mosque, covering the entirety of the historic bazaar area designated for protection, with the exception of a row of shops near the bridge.<sup>3340</sup> His report states that the building interiors were burned out to rooflines.<sup>3341</sup> In Riedlmayer's analysis, there were no signs of the blast damage that would have been expected if the bazaar had really been hit by air strikes.<sup>3342</sup> In particular, he noted that over a widespread area, all the shops fronting the street were burned out and the roofs had collapsed, but the dividing walls between shops were mostly intact; in many cases the original roof tiles were still lined up along tops of walls, undisturbed and the houses just behind the shops are untouched, which would not be expected in the case of the widespread damage of an air strike.<sup>3343</sup> There is also an aerial or satellite photograph from the US Department of Defense website which depicts the mosque intact but the bazaar burning.<sup>3344</sup> This photograph was posted on the website in response to claims by the Yugoslav government that on the first night of the NATO airstrikes the Hadum Mosque had been hit and the surrounding bazaar destroyed. The photograph reveals that the Mosque remained intact while the bazaar was burning,<sup>3345</sup> which in the Chamber's finding is not consistent with the claim that it was bombing that caused the destruction which included the mosque.

870. On the basis of the above, the Chamber rejects the submission that NATO airstrikes were responsible for the extensive damage and destruction of the historical centre of Đakovica/Gjakovë, encompassing the Hadum Mosque, the adjoining Islamic Library, and the bazaar. It is satisfied that on 24-25 March 1999 this area was deliberately set on fire.

871. The Chamber now turns to the question of the identity of the perpetrators. Shryhete Dula did not see who set fire to the buildings she saw burning, including her own house. However, as she left, she saw policemen wearing camouflage blue uniforms approaching her house. When she

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<sup>3337</sup> Frederick Abrahams, T 3973.

<sup>3338</sup> Frederick Abrahams, T 3973.

<sup>3339</sup> Andrés Riedlmayer, T 7513.

<sup>3340</sup> Exhibit P 1098, p 6; Exhibit 1137, p 173; Exhibit 1105, p 1.

<sup>3341</sup> Exhibit P 1098, p 50; Exhibit 1105, p 1.

<sup>3342</sup> Andrés Riedlmayer, 7512-7513; Exhibit P 1106.

<sup>3343</sup> Andrés Riedlmayer, T 7509- 7511.

<sup>3344</sup> Exhibit P1106.

returned the following morning her house was completely burned.<sup>3346</sup> The Chamber is satisfied that the policemen who entered Dula's house were responsible for setting fire to it. Fuad Haxhibeqiri saw the old town burning in the early hours of 25 March 1999,<sup>3347</sup> but did not see who was responsible.<sup>3348</sup> He was informed over the phone by his brothers who were in their house in the Hadum/Carshia e Vjeter neighbourhood, as well as by a number of other residents from this neighbourhood, that at 0115 hours on 25 March, police and paramilitaries, working together, arrived in the neighbourhood<sup>3349</sup> which is in the historic centre of the city, and set fire to houses and shops owned by Kosovo Albanians.<sup>3350</sup> The accounts given to Haxhibeqiri are consistent with the statements of informants set out in András Riedlmayer's report, who witnessed Serbian police, civilians and military set fire to the Hadum Mosque and its adjoining Islamic Library. These together with the surrounding old bazaar area burned for several days.<sup>3351</sup> The *New York Times* in an article dated 11 July 1999, also reported that residents saw about 50 "Serbs in military dress", each carrying a five-litre gasoline can, walk toward the historical centre and that at 0115 hours, flames appeared from the rooftops of the old town.<sup>3352</sup>

872. The combination of these matters satisfies the Chamber that it was Serbian forces, in the form of Serbian police, that were responsible for setting fire to the historical centre on the first night of the NATO bombing campaign. The extensive burning of the old town, including the destruction of the Hadum Mosque and the adjoining Islamic Library were the result of a deliberate attack by Serbian forces on the night of 24-25 March 1999.<sup>3353</sup> The falsification of the MUP Staff report, which laid the blame for the fire in the historical centre of Đakovica/Gjakovë city on NATO bombing, provides further confirmation of the involvement of MUP forces in the destruction of the Mosque, the attached Library and the adjacent historical bazaar.

873. Police (mainly) threatened and killed Albanian residents early on 25 March 1999 in the Carshia-e-Madhe neighbourhood. Late that day, around 2300 hours, this conduct resumed in the Ćerim/Qerim neighbourhood where a number of Kosovo Albanian people were killed and houses were burnt.<sup>3354</sup>

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<sup>3345</sup> András Riedlmayer, T 7512-7513.

<sup>3346</sup> Shyhrete Dula, T 8363-8365; Shyhrete Dula, Exhibit P1268 p 4; Shyhrete Dula, T 8341-8342.

<sup>3347</sup> Fuad Haxhibeqiri, Exhibit P1068, p 6; Fuad Haxhibeqiri, T 6991-6992. See Exhibit P1069 (map of Đakovica/Gjakovë, marked by Haxhibeqiri, indicating the position of the Hadum mosque, his home and the street in which shops and houses were burnt).

<sup>3348</sup> Fuad Haxhibeqiri, Exhibit P1068, p 6; Fuad Haxhibeqiri, T 6991-6992.

<sup>3349</sup> Fuad Haxhibeqiri, Exhibit P1068, p 2.

<sup>3350</sup> Fuad Haxhibeqiri, T 6941-6944; Fuad Haxhibeqiri, Exhibit P1068, p 6.

<sup>3351</sup> Exhibit P1098, pp 51, 54.

<sup>3352</sup> Exhibit P1098, p 55; Exhibit P1108, p 3.

<sup>3353</sup> See *infra*, para 1830.

<sup>3354</sup> Fuad Haxhibeqiri, Exhibit P1068, p 7.

874. Because of these disturbances and events in Đakovica/Gjakovë, on or around 27 March 1999, Hani Hoxha, his wife Shahindere and their 15 year old daughter Flaka, together with the families of two of his neighbours, altogether 15 persons, sheltered in their basement.<sup>3355</sup> As Hani Hoxha went out into the courtyard, he heard shots being fired and saw three of his neighbours' houses burning.<sup>3356</sup> Two cars were also on fire.<sup>3357</sup> An attempt was made to break through the Hoxha's gate with a vehicle, but this was unsuccessful. Following this there was a successful attempt to break through the gate of Hoxha's neighbour, Shefqet Pruthi.<sup>3358</sup>

875. There was a tall wall between Hoxha's compound and Shefqet Pruthi's compound, so that Hani Hoxha had no direct view of the events occurring in the Pruthis' courtyard, but his account of what he heard is confirmed and given more detail by Arta Pruthi, an eye witness.<sup>3359</sup> The Chamber accepts the evidence of Hani Hoxha of these events to be generally reliable. A group of 20-30 people entered the neighbours' courtyard. As soon as they had entered, they set fire to the old house.<sup>3360</sup> Shefqet Pruthi went outside while his wife, Feti, and daughter, Arta, went onto the second floor of the new house also in the courtyard.<sup>3361</sup> Shefqet Pruthi started to run away but was pursued by the attackers and killed.<sup>3362</sup> Hani Hoxha heard gunshots and shouting in Serbian, including, swearing and insults on ethnic basis.<sup>3363</sup> Following the killing of her father, Arta Pruthi was taken away by the attackers who said to her, "We're going to have some fun with you."<sup>3364</sup> When Arta said that she was only 15 years old, one of the attackers kicked or slapped her and told her to go home.<sup>3365</sup> At approximately 0300 hours, Arta telephoned Hani Hoxha's daughter, Flaka, and told her that her father had been killed.<sup>3366</sup> The Chamber accepts that Shefqet Pruthi was killed by the intruders that night in the circumstances described because he was Kosovo Albanian. Shefqet Pruthi was a civilian taking no active part in hostilities at the time he was killed.

876. The attackers then went to the adjoining house of Avni Ferizi, the other neighbour of Hani Hoxha, and again broke through the gate with a vehicle.<sup>3367</sup> Avni Ferizi, his wife, Vjollca, and their three children were sheltering in the basement of their house. The attackers brought out the

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<sup>3355</sup> Hani Hoxha, Exhibit P879, p 2.

<sup>3356</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7359; Hani Hoxha, Exhibit P879, p 2.

<sup>3357</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7359.

<sup>3358</sup> Hani Hoxha, Exhibit P879, p 2.

<sup>3359</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7362; Hani Hoxha, T 5630.

<sup>3360</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7362, 7365; Hani Hoxha, Exhibit P879, p 2.

<sup>3361</sup> Hani Hoxha, Exhibit P879, p 2.

<sup>3362</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7360, 7363; Hani Hoxha, Exhibit P879, p 2.

<sup>3363</sup> Hani Hoxha, Exhibit P879, p 2.

<sup>3364</sup> Hani Hoxha, Exhibit P879, p 2.

<sup>3365</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7360; Hani Hoxha, Exhibit P879, p 2.

<sup>3366</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1538; Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7363; Hani Hoxha, Exhibit P879, p 2.

<sup>3367</sup> Hani Hoxha, Exhibit P879, p 2.

family.<sup>3368</sup> Hani Hoxha heard gun shots and swearing in Serbo-Croatian.<sup>3369</sup> He was told by Vjollca Ferizi that Avni Ferizi had been killed in this incident.<sup>3370</sup> He had been hit by five bullets.<sup>3371</sup> Later that day Hani Hoxha helped place Avni Ferizi's body into a coffin.<sup>3372</sup> The Chamber accepts that Avni Ferizi was shot dead by the intruders that night in the circumstances described because he was Kosovo Albanian. Avni Ferizi was a civilian taking no active part in hostilities at the time of his death.

877. Hani Hoxha recounted that on or about 28 March 1999, the wives of Shefqet Pruthi and Avni Ferizi – Feti Pruthi and Vjollca Ferizi – went to the local police and asked them to investigate the attacks.<sup>3373</sup> The police told them, “Go and complain to NATO.”<sup>3374</sup> Later, however, regular police officers with flak jackets came to the houses and had a quick look inside, but did not carry out any investigative actions.<sup>3375</sup> On the same day, a government hearse came to collect the bodies of Shefqet Pruthi and Avni Ferizi and took them to the graveyard, where they were buried.<sup>3376</sup>

878. At approximately 1800 hours on 28 March 1999, Hani Hoxha, Shahindere Hoxha and Flaka Hoxha moved to the compound of Hani Hoxha's other daughter, Tringa Vejsa, and son-in-law Lulzim Vejsa, situated on Miloš Gilić/Millosh Giliq Street in the Ćerim/Qerim neighbourhood.<sup>3377</sup> As they went to the compound, Hani Hoxha saw no civilians on the streets, only VJ and police in vehicles.<sup>3378</sup> On or around 30 March 1999, Shahindere Hoxha went to the Hoxhas' home and on her way back to Lulzim Vejsa's compound she was stopped by four police officers.<sup>3379</sup> One of the police officers was a former student of Shahindere Hoxha and told the others to leave her alone as she came from a good family.<sup>3380</sup> She was allowed to continue to Lulzim Vejsa's compound.

879. The evidence of large scale killings and burning of civilian property in the city of Đakovica/Gjakovë in March 1999 discussed above is confirmed by reports in the OSCE-KVM Bluebook.<sup>3381</sup> Other evidence discloses examples of this. For instance, an autopsy report of the United States Department of Defense, Armed Forces Institute of Pathology, indicates that on

<sup>3368</sup> Hani Hoxha, Exhibit P879, p 2.

<sup>3369</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7367.

<sup>3370</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3371</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3372</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3373</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3374</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7368; Hani Hoxha, Exhibit P879, p 3. Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1554, 1560.

<sup>3375</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1555; Hani Hoxha, Exhibit P879, p 3.

<sup>3376</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7357, 7367, 7369; Hani Hoxha, Exhibit P879, p 3.

<sup>3377</sup> Hani Hoxha, Exhibit P879, p 3; Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1539; Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7384.

<sup>3378</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3379</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3380</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3381</sup> Exhibit P1029, pp 133, 135, 40, 142, 151, 153.



26 March 1999, six male adult Kosovo Albanians were killed by gunshot wounds to the head by Serbian forces at Yemer Grezda Street in Đakovica/Gjakovë city.<sup>3382</sup>

880. The Chamber is satisfied, on the basis of the findings above, that beginning the night of 24 March 1999, Serbian forces forcibly and violently expelled Kosovo Albanian civilians from their homes in the city of Đakovica/Gjakovë, killing some occupants, and set fire to the Mosque, Library, houses and shops in the historic part of the city.

(b) Operation in the Ćerim/Querim neighbourhood 1-2 April 1999

881. An operation by the Serbian police took place on Miloš Gilić/Millosh Giliq Street in the Ćerim/Querim neighbourhood of Đakovica/Gjakovë on 1-2 April 1999, located in the north-eastern part of the city, in the vicinity of the bus station, to the right of the road leading to Dečan/Decane and north of the road leading to Klina/Kline.<sup>3383</sup> On 1 April, Novak Pitolić, the chief of the Đakovica/Gjakovë police went to every Albanian house in the Ćerim/Querim district and told the occupants not to leave the houses and that they were safe.<sup>3384</sup>

882. At approximately 2200 hours on 1 April 1999, large spotlights were cast on the Albanian houses in Đakovica/Gjakovë.<sup>3385</sup> Just over two hours later, on 2 April 1999 between 0005-0025 hours, Serbian police started knocking on the doors of the houses in Miloš Gilić/Millosh Giliq Street, and then torching the houses.<sup>3386</sup> Attacks began close to K74's house, located at 76 Miloš Gilić/Millosh Giliq Street.<sup>3387</sup> K74 was, at that time, in the basement of the house of his neighbour, Gezim Nagafci. He later went to his courtyard where he stayed until 0600.<sup>3388</sup> He heard and saw the Serbian forces shooting at the locks on the gates of houses, including the lock to Lulzim Vejsa's house.<sup>3389</sup> He also heard noises of vehicles, which he interpreted as the sound of vehicles breaking through the gates of houses to gain entry into the courtyards.<sup>3390</sup>

883. That same night, members of five Kosovo Albanian families (Čaka family, Hoxha family, Vejsa family, Haxhiavdija family and Nuci family) had gathered for protection in the basement of Lulzim Vejsa's pool hall located at 157 Miloš Gilić/Millosh Giliq Street.<sup>3391</sup> In the preceding days Serbian police from the neighbourhood, in uniform, regularly stood about and drank in front of

<sup>3382</sup> Exhibit P1161, ERN K0166424.

<sup>3383</sup> Exhibit P823, p 24; K74, T 7445-7453.

<sup>3384</sup> Lulzim Vejsa, Exhibit P978, p 2.

<sup>3385</sup> K74, Exhibit P1095, p 3; K74, Exhibit P1096 (*Milutinović* transcript), T 7528; K74, T 7435-7436, 7478.

<sup>3386</sup> Exhibit P903, p 2; Sami Parashumti, T 5993; Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4089-4090).

<sup>3387</sup> K74, Exhibit P1095, p 2; K74, Exhibit P1096 (*Milutinović* transcript), T 7508, 7521.

<sup>3388</sup> K74, Exhibit P1095, p 3; K74, Exhibit P1096 (*Milutinović* transcript), T 7521, 7535-7537.

<sup>3389</sup> K74, Exhibit P1095, p 5; K74, Exhibit P1096 (*Milutinović* transcript), T 7534.

<sup>3390</sup> K74, Exhibit P1096 (*Milutinović* transcript), T 7534.

<sup>3391</sup> Hani Hoxha, Exhibit 879, p 8; Hani Hoxha, T 5627-5629.

Lulzim Vejsa's pool hall.<sup>3392</sup> The pool hall and the house of Lulzim Vejsa were in the same compound.<sup>3393</sup> Only a few steps separated them.<sup>3394</sup> Since 28 March 1999, Dren Čaka (10 years old at the time of the events) and his family, consisting of his grandfather, Xhemil Čaka, his grandmother Nakije Čaka, his uncle Nehat Čaka, his father Ali Čaka, his mother Valbona Čaka and his three sisters Dalina, Delvina and Diona, who were 14, six and two years old, respectively, at the time of the events,<sup>3395</sup> had been sheltering in the basement of the pool hall, which was only two houses from their home.<sup>3396</sup>

884. In the night of 1 April 1999, the entrance to the compound at 157 Miloš Gilić/Millosh Giliq Street had been blocked by a car parked in front of the gate.<sup>3397</sup> At about 0015 hours on 2 April 1999, Hani Hoxha saw that the gate to the compound was moving. A vehicle was being driven against it in an apparent effort to break through.<sup>3398</sup> Then Serbian police knocked on the door.<sup>3399</sup> In total, some 24 or 25 Kosovo Albanian people had taken refuge at the pool hall, 21 of whom were in the basement (comprising women and children and one 50 year old man with a mental impairment<sup>3400</sup>), while three men Lulzim Vejsa, Behar Haxhiavdija (Lulzim Vejsa's brother-in-law) and Hani Hoxha were outside by the pool hall, keeping guard.<sup>3401</sup> Lulzim Vejsa heard police shouting for them.<sup>3402</sup> Previously it had been decided that should anything happen, the men would leave while the women and children would stay. It was thought that only the men were at risk.<sup>3403</sup> Having heard the shouts of the Serbian forces, Lulzim Vejsa and Behar Haxhiavdija left

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<sup>3392</sup> K74, Exhibit P1096, (*Milutinović* transcript), T 7530-7534; K74, Exhibit P1095, p 3.

<sup>3393</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2632-2634; Dren Čaka, T 8637-8639; Hani Hoxha, Exhibit P879, p 3; *see also* Exhibits P1297, P1298, P981 and P882 showing aerial photographs of the compound and surrounding houses.

<sup>3394</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2632; Dren Čaka, T 8692; Exhibit P981.

<sup>3395</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2630-2631.

<sup>3396</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2631-2632, 2634-2635; Dren Čaka, T 8633. Ali Čaka was Lulzim Vejsa's cousin.

<sup>3397</sup> Lulzim Vejsa, Exhibit P978, p 2.

<sup>3398</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1540; Hani Hoxha, Exhibit P879, p 3. *See also* K74, Exhibit P1096 (*Milutinović* transcript), T 7534.

<sup>3399</sup> Lulzim Vejsa, Exhibit P978, p 2; Lulzim Vejsa, T 6088-6089. The Chamber notes that the witness also stated that paramilitaries knocked on the door of the compound. However, since the witness gave no specific evidence that would support the idea that paramilitaries were also present and as he later describes the same forces as "soldiers" and "police", the Chamber is unable to conclude that paramilitary were among the forces at the house. The Chamber also notes that paramilitaries are not mentioned by other eye witnesses, Dren Čaka and Hani Hoxha.

<sup>3400</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2634-2635; Dren Čaka, T 8632-8634; Hani Hoxha, T 5628-5629.

<sup>3401</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2635-2636; Dren Čaka, T 8634; Lulzim Vejsa, Exhibit P978, p 2; Hani Hoxha, Exhibit P879, p 3; Hani Hoxha, T 5623-5624. The evidence is not entirely clear as to how many men there were in the pool hall. Dren Čaka said that his father, Ali Čaka, was also taking guard, but he is not included in the testimony of Lulzim Vejsa, who said there were only 24 people in total at the pool hall that night. Hani Hoxha said there were 24-25 people at the compound and also mentions Gani Hoxha among the men staying in the pool hall, but not on the night of 1 April. Hani Hoxha mentions speaking to Ali Čaka the morning of 2 April, but not being there the previous night during their escape.

<sup>3402</sup> Lulzim Vejsa, Exhibit P979, (*Milutinović* transcript), T 4090.

<sup>3403</sup> Hani Hoxha, Exhibit P879, p 3; Lulzim Vejsa, Exhibit P978, p 3.

the house from a small window located behind the building.<sup>3404</sup> Hani Hoxha told the other two that he wanted to see if anyone entered the courtyard and that he would join them in a few minutes.<sup>3405</sup> Behar and Lulzim jumped the wall that divided their courtyard from their neighbours. After waiting for Hani for a time,<sup>3406</sup> they started to pass from one courtyard to the next, waiting a couple of minutes for him in each, but Hani did not join them.<sup>3407</sup> About 30-45 minutes later, they saw that Lulzim Vejsa's house was in flames.<sup>3408</sup>

885. Hani Hoxha stayed for some minutes but left once the attackers had broken into the courtyard.<sup>3409</sup> Eight to 10 men broke into the compound.<sup>3410</sup> Hoxha saw that some of the men wore regular police uniforms while some wore camouflage uniforms; three or four of them wore masks.<sup>3411</sup> Hani Hoxha climbed over two walls and found shelter under some wooden boards, where he stayed for seven or eight hours, until dawn.<sup>3412</sup> During that time he could hear gun shots and people's voices. He heard someone say, "Spare me, don't kill me" in Albanian.<sup>3413</sup>

886. In the basement of Lulzim Vejsa's pool hall at about 0200 hours on 2 April 1999 Dren Čaka was woken up by his mother. She told him there were police officers in the building. They heard a loud noise. Then the door of the room opened and six men dressed in the uniform of Serbian police entered the room.<sup>3414</sup> They told the occupants to get out. They said they were searching for KLA fighters.<sup>3415</sup> The men wore blue and blackish patterned police uniforms,<sup>3416</sup> *i.e.* in the Chamber's finding the standard police camouflage uniforms, and were heavily armed with machine guns, AK-47s, and normal hand-guns.<sup>3417</sup> The policemen forced the group in a single-file line to go to the house of Lulzim Vejsa. The entrance door of the house was shut. One of Lulzim's daughters went ahead to open the door but a police officer fired and shot the door down.<sup>3418</sup> Inside the house, most of the group sat down in the living room, but some three or four stayed in the hallway. Two

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<sup>3404</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3405</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3406</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3407</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3408</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3409</sup> Hani Hoxha, Exhibit P879, p 3.

<sup>3410</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7379; Hani Hoxha, Exhibit P879, p 4.

<sup>3411</sup> Hani Hoxha, Exhibit P879, p 3; Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7374-7375.

<sup>3412</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1540; Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7376; Hani Hoxha, Exhibit P879, p 4.

<sup>3413</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1541; Hani Hoxha, Exhibit P879, p 4.

<sup>3414</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2636; Dren Čaka, T 8635.

<sup>3415</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2637-2638, 2664; Dren Čaka, T 8635.

<sup>3416</sup> Dren Čaka, T 8646-8647; T 8666-8667; Exhibits P1301 and D360.

<sup>3417</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2638-2639; Dren Čaka, T 8636.

<sup>3418</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2638, 2641; Dren Čaka, T 8635.

policemen were in the living room. There was another policeman outside.<sup>3419</sup> There was only candle light.<sup>3420</sup>

887. While sitting in the living room, Flaka Hoxha went to make some tea but was pushed by one of the policemen. A policeman by the door fired at her. There were also some shots fired through the window.<sup>3421</sup> Flaka fell to the ground. She appeared to be dead. Her mother, Shahindere Hoxha, started screaming and ran out. She was also shot.<sup>3422</sup> Lulzim Vejsa's baby daughter, Rita Vejsa, was then shot as she lay in the arms of Lulzim's wife, Tringa Vejsa. She dropped the baby and was also shot. Dren Čaka's mother, Valbona Čaka was then shot in the back and fell over Dren's baby sister, Diona Čaka.<sup>3423</sup> The policemen started to shoot everywhere.<sup>3424</sup> Dren Čaka was shot in the arm. Then the police fired at a closet which started to burn and set the house on fire.<sup>3425</sup> One of his sisters gave Dren Čaka a glove to press on his mouth in order to be able to breathe through the smoke.<sup>3426</sup> The policemen left. Dren Čaka got up. Arlind Vejsa (five years old) was still breathing although he had been shot many times. Dren Čaka tried to help him but as soon as he spoke a word the breathing stopped. Dren's baby sister had not been shot but was lying under the dead body of their mother. He could hear the baby crying but could not do anything to help her as his right arm was shot and the body of his mother was too heavy.<sup>3427</sup> He left. As he was escaping from the house, he saw that the three police officers who had been inside the house were smoking outside.<sup>3428</sup>

888. The Chamber is convinced that the account of the events just described, as given by Dren Čaka, who was 10 years old at the time of the events, was given honestly and reliably and accepts the veracity of the main facts he described. It rejects the Defence submission that due to his young age Čaka would not be able to distinguish between forces,<sup>3429</sup> noting that he was able to identify the police uniform in his evidence from a booklet with photographs of various uniforms<sup>3430</sup> as well as

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<sup>3419</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2642-2643.

<sup>3420</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2650; K74, Exhibit P1096, (*Milutinović* transcript), T 7521, 7535.

<sup>3421</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2644, 2647.

<sup>3422</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2644; Dren Čaka, T 8635.

<sup>3423</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2644; Dren Čaka, T 8643-8644.

<sup>3424</sup> Dren Čaka, T 8635.

<sup>3425</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2644; Dren Čaka, T 8640, 8644.

<sup>3426</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2644-2645.

<sup>3427</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2645; Dren Čaka, T 8644.

<sup>3428</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2642-2643, 2647-2650; Dren Čaka, T 8642-8646; Exhibit P1300.

<sup>3429</sup> Defence Final Brief, para 841.

<sup>3430</sup> Dren Čaka, T 8646-8647; Exhibit P1301.

the pattern of the uniform.<sup>3431</sup> Dren Čaka also had personal acquaintance with a policeman living in his neighbourhood who wore the same blue camouflage uniform.<sup>3432</sup>

889. The Chamber finds it established that 20 people were killed in the night of 1 April 1999 and early morning of 2 April 1999 at 157 Miloš Gilić/Millosh Giliq Street, as set out in Schedule G of the Indictment, of whom 12 were children, seven were women, and one was a 50 year old male (Hysen Gashi) who was mentally impaired.<sup>3433</sup> All were civilians taking no active part in hostilities. The Chamber is satisfied that they were killed because they were Kosovo Albanian. These individuals were:

Tringa Vejsa, Dorina Vejsa, Marigona Vejsa, Shihana Vejsa, Rita Vejsa, Arlind Vejsa, Fetije Vejsa, Hysen Gashi, Shahindere Hoxha, Flaka Hoxha, Valbona Čaka, Dalina Čaka, Delvina Čaka, Diona Čaka, Valbona Haxhiavdia, Doruntina Haxhiavdia, Egzon Haxhiavdia, Rina Haxhiavdia, Shirine Nuci, and Manushe Nuci.

890. The account of events given by Dren Čaka is further confirmed by Sami Parashumti, who lived across the street at 82 Miloš Gilić/Millosh Giliq Street.<sup>3434</sup> Parashumti testified that in the early hours of 2 April, he heard gunshots coming from the direction of the Vejsa family home, across the street from where he was standing.<sup>3435</sup> When the shooting stopped, he heard children screaming from the yard of the Vejsa family home “[t]hey are going to kill us”. About 15 minutes later, when Sami Parashumti had returned to his house, he heard a second burst of fire coming from the Vejsa family home.<sup>3436</sup> From the roof of his house, Sami Parashumti observed a police van with its lights switched off; he saw approximately 12 men leave this van and enter his yard.<sup>3437</sup> Three of these men wore cowboy hats, green camouflage uniforms, and had painted faces.<sup>3438</sup> In the Chamber’s finding this description is consistent with the uniform worn by the PJP of the MUP. The remaining nine men were wearing blue camouflage uniforms.<sup>3439</sup> He observed seven or eight other policemen, also wearing blue police camouflage uniforms, climb over the wall to the Cana family

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<sup>3431</sup> Dren Čaka, T 8666-8667; Exhibit D360.

<sup>3432</sup> Dren Čaka, T 8637.

<sup>3433</sup> Hani Hoxha, T 5623-5626.

<sup>3434</sup> Sami Parashumti, Exhibit P903, p 1.

<sup>3435</sup> Sami Parashumti, Exhibit P903, p 2; Sami Parashumti, T 5969; Exhibit P904.

<sup>3436</sup> Sami Parashumti, Exhibit P903, p 2.

<sup>3437</sup> Sami Parashumti, Exhibit P903, p 2; Sami Parashumti, T 5971-5972; *see also* Sami Parashumti, T 6002, 6003; Exhibit D220.

<sup>3438</sup> Sami Parashumti, Exhibit P903, p 2; Sami Parashumti, T 5972-5974; Exhibit P906, upper right photograph depicting uniform of these three individuals. The photo shows uniform material with a green, brown and yellow camouflage pattern.

<sup>3439</sup> Sami Parashumti, Exhibit P903, p 2; Sami Parashumti, T 5972-5974; Exhibit P906, upper left photograph indicating the uniform worn by the nine other individuals. The photo shows uniform material with two shades of blue camouflage pattern; *see also* Sami Parashumti, T 6012; Exhibit D222, uniform marked with number “1”. This is the standard police camouflage uniform.

home.<sup>3440</sup> Sami Parashumti saw approximately another 50 policemen along the street wearing the same dark blue police camouflage uniforms.<sup>3441</sup>

891. From the position on the roof of his house, Sami Parashumti observed a number of these men approach the Cana home, located next door at 80 Miloš Gilić/Millosh Giliq Street.<sup>3442</sup> Some entered the house and a few remained outside. At about 0145 hours, he heard Januz Cana's wife Ganimete scream to him, "[o]ur son is gone", and a few seconds later, he heard five distinct gunshots.<sup>3443</sup> About five minutes after this, he saw four policemen come out of the Cana home with Januz's daughter Shpresa, 43 years old, who was in pyjamas.<sup>3444</sup> One of the policemen ripped Shpresa's top open and pulled her hair. The witness heard Shpresa yell at this policeman, "[y]ou killed my father".<sup>3445</sup> The policemen then took Shpresa along the pathway towards the new house of the Cana family to a tunnel by the main road.<sup>3446</sup> One of these policemen had a knife. Shortly after they had gone inside the tunnel, he heard Shpresa scream.<sup>3447</sup> This was followed by a dreadful sound like an animal being slaughtered. Because of what he had seen and heard he imagined the worst for Shpresa Cana.<sup>3448</sup> These events related to the killings, in the Chamber's finding, of four members of the Cana family.<sup>3449</sup>

892. Dr. William C. Rodriguez III of the U.S. Department of Defense, Armed Forces Institute of Pathology, examined bodily remains found at 80 Miloš Gilić/Millosh Giliq Street on 25 June 1999, and concluded that they represented four family members, whose bodies were dispersed throughout the house, consisting of an elderly male and female, and a male and female estimated to be in their late 30s to early 40s at death.<sup>3450</sup> The Chamber notes that this confirms the evidence given by Parashumti related to the killings of the four Cana family members. It is satisfied that Januz Cana, Ganimete Cana, Shpresa Cana, and Fatmir Cana were killed on 1 April 1999 by MUP forces because they were Kosovo Albanian. All these individuals were civilians taking no active part in hostilities.

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<sup>3440</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 6006; Exhibit D220, wall dividing witness's parents' house and Cana house is between marking 9 and 11.

<sup>3441</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 5974; Exhibit P906, upper left uniform pattern.

<sup>3442</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 5975; Exhibit P904 (aerial photograph of the street, marked by Parashumti in court showing the location of his house, the Vejsa compound and the Cana house).

<sup>3443</sup> Sami Parashumti, Exhibit P903, p 3.

<sup>3444</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 6005.

<sup>3445</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 6005.

<sup>3446</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 6005; Exhibit D220, tunnel indicated by marking "12".

<sup>3447</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 6005.

<sup>3448</sup> Sami Parashumti, Exhibit P903, p 3.

<sup>3449</sup> The Chamber notes that a hearsay account given by K74 (*see* K74, Exhibit P1095, p 3) differs from this account based on an eye witness evidence which the Chamber accepts. *See* also Exhibit P756, p 217.

<sup>3450</sup> Exhibit P1161, pp 13-15.

893. While on the roof of his house from where he observed the events around him, Sami Parashumti realized that his own house was on fire.<sup>3451</sup> He jumped from the roof into his backyard and fled to the house of Afrim Berisha, about 35 metres behind his house and separated from his house by an empty space and a wall.<sup>3452</sup> Because there was a lot of smoke coming from his home, he and his family whom he had left there earlier had to leave Afrim Berisha's house. They went to the house of Sadik Krasniqi, directly behind Afrim's house. This house was unfinished, and there were many civilians hiding in it.<sup>3453</sup>

894. Many Albanian houses along the street were burnt that night.<sup>3454</sup> First, the house of Bardhyl Riza, which had been vacated, was set on fire.<sup>3455</sup> Then, the house of Fehmi Lleshi was burnt; Fehmi Lleshi and his wife Kimete Lleshi were taken away by the attackers and were never seen again. Their two children escaped through a hole in the wall.<sup>3456</sup> The house of Besim Bokshi was also burnt, as was the house of Esat Mullatahiri. The fifth house in this row of houses was not burned; it belonged to a Serb, Lubiša Raicević, a police reservist. The sixth house was connected to the Serb's house, and although it was not burnt,<sup>3457</sup> the attackers killed the inhabitants, including Hysen Deda (75 years old), Caje Deda (65 years old), Aferdita Deda Demjaha (38 years old) and Argjend Ylber Demjaha (5 years old).<sup>3458</sup> Mentor Deda (35 years old) survived. The houses of Ali Lapi, Gezim Nagafci, Jonuz Cana, Njazi Parashuti, Rezak Parashuti, Xhevdet Muhaxhiri, Agron Nagafci, Ragip Ballata, Shkelzen Vogli and Lulzim Vejsa were all burnt.<sup>3459</sup> The house of K74 was burnt and every room of his house had been machine-gunned.<sup>3460</sup>

895. When Lulzim Veja and Behar Haxhiavdija walked back to the Vejsa family home on the morning of 2 April at about 0700, after having spent the night in an abandoned house,<sup>3461</sup> they saw that Albanian homes in the Ćerim/Qerim district had been burnt while Serb houses and Kosovo Albanian homes adjacent to Serb homes had been left untouched.<sup>3462</sup> The Vejsa family home had

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<sup>3451</sup> Sami Parashumti, Exhibit P903, p 3.

<sup>3452</sup> Sami Parashumti, Exhibit P903, p 3; Sami Parashumti, T 5986.

<sup>3453</sup> Sami Parashumti, Exhibit P903, p 3.

<sup>3454</sup> K74, Exhibit P1095, pp 2-5; K74, Exhibit P1096 (*Milutinović* transcript), T 7534-7536; K74, T 7429.

<sup>3455</sup> K74, Exhibit P1095, p 2.

<sup>3456</sup> K74, Exhibit P1095, p 2.

<sup>3457</sup> K74, Exhibit P1095, p 2.

<sup>3458</sup> K74 heard about the death of Argjend Ylber Demjaha from Mentor Deda. See K74, Exhibit P1095, p 2; K74, Exhibit P1096, (*Milutinović* transcript), T 7511-7514.

<sup>3459</sup> K74, Exhibit P1095, pp 3-5; K74, Exhibit P1096 (*Milutinović* transcript), T 7509.

<sup>3460</sup> K74 did not personally witness the burning or shooting of his house, but concluded that that was what had happened after seeing bullet holes in the walls of his house when the attack was over. K74, Exhibit P1095, pp 3, 5-6; K74, T 7426-7427; K74, Exhibit P1096 (*Milutinović* transcript), T 7515.

<sup>3461</sup> Lulzim Vejsa, Exhibit P978, p 3. Lulzim Vejsa explained that as they thought that Serbian policemen only killed men and let women and children go, they thought their families were safe.

<sup>3462</sup> Lulzim Vejsa, Exhibit P978, p 3.

been burnt down and was being guarded by three policemen in blue reservist police uniforms.<sup>3463</sup> Lulzim Vejsa knew the three police reservists, who had all been mobilised in 1998-1999.<sup>3464</sup> Two of whom, Lubiša Raicević and Nenad Raicević, were brothers who lived 20 metres from his house, and the third, Novica Nedeljković, lived in another house also about 20 metres away.<sup>3465</sup> Lulzim Vejsa and his family had had good relations with the men and their families prior to the incident.<sup>3466</sup> As Lulzim Vejsa went past the reservist policemen, Lubiša Raicević said to him, “You see, Lulzim, what NATO did to us?”<sup>3467</sup> Lulzim Vejsa saw syringes and bottles in front of his pool hall.<sup>3468</sup>

896. At approximately 0730 hours, Hani Hoxha made his way back to Lulzim Vejsa’s compound. The compound had been burnt to the ground and there was smoke coming out of the basement where the women and children had been sheltering.<sup>3469</sup> Hani Hoxha did not see his wife and daughters again.<sup>3470</sup> He saw the burnt body of Lulzim Vejsa’s uncle, Hysen Gashi.<sup>3471</sup> Hani Hoxha went to a neighbour’s house where he met Dren Čaka.<sup>3472</sup> Dren Čaka told him that the attackers had said that they were going to execute all of them because they had asked for NATO and that the people in the basement were shot at a distance of 1 metre.<sup>3473</sup>

897. Lulzim Vejsa and Behar Haxhiavdija went to Lulzim’s paternal aunt’s house a further three houses away, and found his aunt, her husband and Hani Hoxha there. Lulzim’s cousin’s son Dren Čaka was also there; his right arm had been injured.<sup>3474</sup> Lulzim’s aunt explained that all the people who had stayed in the basement were dead except for Dren.<sup>3475</sup> Hani Hoxha and Behar Haxhiavdija went to Lulzim Vejsa’s house and saw that it was completely burnt down and that the basement was still in flame and smoke.<sup>3476</sup> They could not find any dead bodies, only pieces of human flesh.<sup>3477</sup> Dren Čaka was taken to the hospital by his aunt and grandfather.<sup>3478</sup>

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<sup>3463</sup> Lulzim Vejsa, Exhibit P978, p 3; Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4080-4081; Lulzim Vejsa, T 6102.

<sup>3464</sup> Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4087.

<sup>3465</sup> Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4083-4084; Lulzim Vejsa, T 6090-6091. *See also* K74, P1095, pp 4-5.

<sup>3466</sup> Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4086-4087; Lulzim Vejsa, T 6103.

<sup>3467</sup> Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4091.

<sup>3468</sup> Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4092.

<sup>3469</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1544; Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7377; Hani Hoxha, Exhibit P879, p 4.

<sup>3470</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1545.

<sup>3471</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7377; Hani Hoxha, Exhibit P879, p 4.

<sup>3472</sup> Hani Hoxha, Exhibit P879, p 4.

<sup>3473</sup> Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7378.

<sup>3474</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3475</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3476</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3477</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3478</sup> Lulzim Vejsa, Exhibit P978, p 3; Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2654, 2665.



898. It was the evidence of Frederick Abrahams, a researcher with Human Rights Watch that, shortly after the events described above, Faton Polloshka, a member of the Đakovica/Gjakovë city public works, entered Lulzim Vejsa's house and retrieved the 20 bodies, which had been burned beyond recognition.<sup>3479</sup> He told Abrahams that, in addition to those bodies at the Vejsa compound, he had retrieved 30 other bodies of people killed on 1 and 2 April 1999.<sup>3480</sup> Forensic evidence received by the Chamber and discussed in more detail later in this Judgement, confirms that some of the bodies from Lulzim Vejsa's house were moved to the Đakovica/Gjakovë public cemetery some time between 2 April 1999 and 25 May 1999. Dr. William C. Rodriguez III of the U.S. Department of Defence, Armed Forces Institute of Pathology examined remains found both at 157 Miloš Gilić/Millosh Giliq Street and at the Đakovica/Gjakovë public cemetery.<sup>3481</sup> He concluded that an exact number of victims could not be ascertained due to the burnt and fragmented condition of the remains. Nonetheless, the remains of at least 20 individuals were represented including one adult male, several adult females and many children.<sup>3482</sup>

899. Evidence indicates that a number of Kosovo Albanian men were killed at the Đakovica/Gjakovë bus station, located some 300 metres from Miloš Gilić/Millosh Giliq Street on or around 1 April 1999.<sup>3483</sup> Aleksandar Vasiljević, the then Assistant Head of the VJ Security Administration, received a report from Captain Sergei Perović that Đakovica/Gjakovë SUP chief, Milovan Kovačević, had his own Operational Pursuit Group (OPG) called Legija which was involved in the killing of 20 male Kosovo Albanians in April 1999 whose corpses were found at the Đakovica/Gjakovë bus station and left there for some days until some Roma people loaded these bodies onto vehicles, in Perović's view, on the orders of the police.<sup>3484</sup> This evidence is partially corroborated by the examination made by Dr. Rodriguez of the U.S. Department of Defense, Armed Forces Institute of Pathology on 28 June 1999 of burnt and calcined skeletal remains found at the Đakovica/Gjakovë bus station.<sup>3485</sup> The remains belonged to at least six adult males. On the remains of one body, there was clear evidence of a gunshot wound to the right scapula.<sup>3486</sup> The Report indicates that the men were killed on 1 April 1999.<sup>3487</sup>

900. As discussed earlier in this Judgement, on the basis of information from interviews of Kosovo Albanians conducted by the Council for the Defence of Human Rights and Freedoms (CDHRF), the CDHRF Chairman Fuad Haxhibeqiri concluded that Serbian forces killed about 60

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<sup>3479</sup> Frederick Abrahams, T 3975; Exhibit P756, p 220.

<sup>3480</sup> Exhibit P756, p 220.

<sup>3481</sup> Exhibit P1161, pp 2-10.

<sup>3482</sup> Exhibit P1161, p 9.

<sup>3483</sup> Lulzim Vejsa, T 6099; K74, T 7452; Exhibit P823, p 24.

<sup>3484</sup> Aleksandar Vasiljević, T 5735-5736.

<sup>3485</sup> Exhibit P1161, pp 11-13.

<sup>3486</sup> Exhibit P1161, p 12.

Kosovo Albanians in Miloš Gilić/Millosh Giliq Street that night.<sup>3488</sup> This is consistent with the evidence heard by the Chamber as to the systematic and large-scale killings in Miloš Gilić/Millosh Giliq Street and the surrounding neighbourhood on 1-2 April 1999.

901. The Chamber notes the evidence of Defence witness Miloš Đošan, at the relevant time stationed at the VJ Vinarski Podrum facility in the Ljug Bunar neighbourhood, some 500 metres from the Ćerim/Qerim neighbourhood, who stated that he heard and saw nothing of an operation the night of 1 April 1999.<sup>3489</sup> He also testified that had killings taken place, he would have been informed of them, but that no such information was given to him.<sup>3490</sup> The Chamber seriously doubts the credibility and reliability of Đošan's evidence. In previous proceedings, Đošan suggested that he had driven through the Ćerim/Qerim neighbourhood the night of 1 April 1999 after having assisted in pulling two wounded VJ soldiers from the P-15 radar installation which had been hit by NATO bombs earlier that evening, and had neither seen nor heard any signs of an operation.<sup>3491</sup> However, other evidence reveals that the P-15 radar installation was in fact hit the night of 31 March 1999,<sup>3492</sup> a fact confirmed by Đošan in his evidence in this trial.<sup>3493</sup> There is therefore no evidence that VJ units were present in the Ćerim/Qerim neighbourhood the night of the operation on 1 April 1999. Neither is the Chamber convinced by the assertion that the killings could not have taken place since Đošan was not informed about them. As discussed further below, the crimes were not reported by MUP forces as required by the law and there was a deliberate effort on the part of the MUP to avoid any proper investigation. It is therefore quite possible that Đošan may not have been informed about the killings.

902. The whole of the evidence above satisfies the Chamber that there was a planned deliberate offensive operation in the Ćerim/Qerim neighbourhood on 1-2 April 1999 by Serbian police, including members of the PJP and local and reserve police, in a systematic fashion, which involved the killing of unarmed Kosovo Albanian civilians, even women and children, and the destruction of the houses and property of Kosovo Albanian civilians. The operation was a direct response to the commencement of the NATO bombing campaign.

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<sup>3487</sup> Exhibit P1161, p 11.

<sup>3488</sup> Fuad Haxhibeqiri, Exhibit P1068, p 8.

<sup>3489</sup> Miloš Đošan, Exhibit D684 (*Milošević* transcript), T 45408.

<sup>3490</sup> Miloš Đošan, T 11467; Miloš Đošan, Exhibit D684 (*Milošević* transcript), T 45406.

<sup>3491</sup> Miloš Đošan, Exhibit D684 (*Milošević* transcript), T 45408.

<sup>3492</sup> Exhibit D689, p 1; Exhibit D958, p 8.

<sup>3493</sup> Miloš Đošan, T 11465.

(c) Expulsion from Đakovica/Gjakovë to Albania

903. Large numbers of Kosovo Albanians began leaving Kosovo and crossing the border to Albania from 24 March 1999.<sup>3494</sup> The closest border crossing to the city of Đakovica/Gjakovë is the Ćafa Prušit/Qafa-e-Prushit border crossing. The war diary of the 2<sup>nd</sup> Motorised Brigade of the 549<sup>th</sup> Motorised Battalion recorded that on 28 March 1999, some 2,000 people “passed by in the direction of the Ćafa Prušit border crossing”; on 29 March, about 1,000 people went towards the border crossing; on 30 March 1999, some 2,000 people crossed the Ćafa Prušit/Qafa-e-Prushit into Albania.<sup>3495</sup> The war diary entry stated that transport for the elderly and children was organised by the VJ.<sup>3496</sup> It also noted that “the Đakovica-Prizren road is jammed by refugee columns” and that VJ soldiers gave biscuits and juice to children in the groups.<sup>3497</sup> Entries for the following days record that about 1,000 people passed in the direction of the Ćafa Prušit/Qafa-e-Prushit border crossing on 31 March, leaving behind about 70 tractors in Žub/Zhub village, located on the road just before the border crossing;<sup>3498</sup> another 2,000 people “passed by” heading in the direction of the border crossing on 1 April.<sup>3499</sup> The MUP staff report covering security related events from 1-2 April 1999 states that during the course of 1 April 1999, around 1,500 Kosovo Albanians “set off from Klina and the outlying villages and from Đakovica towards the Ćafa Prušit border crossing”.<sup>3500</sup>

904. The evidence reveals there was a mass movement of Kosovo Albanian residents from the city of Đakovica/Gjakovë on 2 April 1999, and the days following, to Albania. The MUP Staff report covering security related events from 2-3 April 1999 states that early on 2 April 1999, 70,000 Kosovo Albanians “fled” to Albania via the Ćafa Prušit/Qafa-e-Prushit and Vrbnica/Vërbnicë border crossings.<sup>3501</sup> The report of 4 April 1999 states that in the period between 24 March 1999 to 4 April 1999, 38,180 “persons” crossed the Ćafa Prušit/Qafa-e-Prushit border crossing.<sup>3502</sup> The war diary of the 2<sup>nd</sup> Motorised Brigade of the 549<sup>th</sup> Motorised Battalion recorded that on 4 April 1999, some 4,000 “civilians went towards the Ćafa Prušit border crossing” and that transport was

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<sup>3494</sup> Exhibit P1058, p 6 (The MUP Staff report covering security related events from 27-28 March 1999 noted that on 27 March 1999, around 11,000 members of the “Šiptar ethnic minority” left Kosovo via the Vrbnica/Vërbnicë border crossing and while around 150 left via the Đeneral Janković/Han-i-Elezit border crossing to FYROM, and on 28 March 1999, around 5,000 members of the “Šiptar ethnic minority” left via the Vrbnica/Vërbnicë border crossing to the territory of the Republic of Albania).

<sup>3495</sup> Exhibit D37, pp 4-5.

<sup>3496</sup> Exhibit D37, p 5.

<sup>3497</sup> Exhibit D37, p 5.

<sup>3498</sup> Exhibit D37, p 5. The war diary notes that an inventory was made of the vehicles and technical goods.

<sup>3499</sup> Exhibit D37, p 6.

<sup>3500</sup> Exhibit P718, p 5.

<sup>3501</sup> Exhibit P697, p 6.

<sup>3502</sup> Exhibit P719, p 6.

organised for the elderly and children.<sup>3503</sup> While the places of origin of these refugees is not mentioned in the reports or the war diary, the Chamber notes that the evidence of Kosovo Albanians going to Albania through the Čafa Prušit/Qafa-e-Prushit border crossing is consistent with the oral evidence of persons who were expelled from Đakovica/Gjakovë city in the same time period, discussed below, who crossed the border to Albania through the Čafa Prušit/Qafa-e-Prushit border crossing.

905. At around 0700 hours on 2 April 1999, about 300 people who gathered in the Krasniqi home, left for Albania.<sup>3504</sup> On 1 or 2 April 1999, Shyhrete Dula saw a convoy of many people escorted by Serbian police and VJ soldiers walking past the temple known locally as “The Big Temple”, in which she had taken refuge for eight days with about 100 other people.<sup>3505</sup> The Chamber notes the Defence submission that Dula and her family had fled to the Temple because of the fear they felt after having seen the “suspicious behaviour” of Kosovo Albanian men (possibly KLA members) climbing perimeter walls of the garden and running from yard to yard.<sup>3506</sup> In fact, as Dula made clear in her evidence, and the Chamber accepts, the fear that led her and her family to seek refuge in the Temple was not the Kosovo Albanian men’s behaviour, but was rather the concern that she and her family should also avoid the threat that was causing the Kosovo Albanian men to flee.<sup>3507</sup> The people in the convoy were walking from the direction of the Čerim/Querim district of the city.<sup>3508</sup> She and her family joined the convoy.<sup>3509</sup> At two checkpoints along the road Shyhrete Dula and her family were asked by police, dressed in blue camouflage uniforms, to hand over their identity documents.<sup>3510</sup> Shyhrete Dula and the rest of the convoy were escorted to the Albanian border at Čafa Prušit/Qafa-e-Prushit, where their identification papers were again demanded by the police there before the convoy was allowed to cross into Albania.<sup>3511</sup> The convoy was escorted to the crossing by VJ forces.<sup>3512</sup>

906. At around 0900 – 0930 hours on 2 April, Lulzim Vejsa saw about 7,000 or 8,000 Kosovo Albanians from his neighbourhood moving down the street outside his house in cars, tractors or on foot.<sup>3513</sup> These displaced persons formed a column about three kilometres long.<sup>3514</sup> Hani Hoxha, Behar Haxhiavdija, Lulzim Vejsa and his aunt’s sons joined the column which eventually crossed

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<sup>3503</sup> Exhibit D37, p 7.

<sup>3504</sup> Exhibit P903, p 3; Sami Parashumti, T 5977.

<sup>3505</sup> Shyhrete Dula, Exhibit P1268, p 4.

<sup>3506</sup> Defence Final Brief, para 830.

<sup>3507</sup> Shyhrete Dula, Exhibit P1268, p 4.

<sup>3508</sup> Shyhrete Dula, Exhibit P1268, p 4; Shyhrete Dula, T 8329, 8393.

<sup>3509</sup> Shyhrete Dula, Exhibit P1268, p 4; Shyhrete Dula, T 8391-8392.

<sup>3510</sup> Shyhrete Dula, Exhibit P1268, p 4; Shyhrete Dula, T 8347, 8393-8395.

<sup>3511</sup> Shyhrete Dula, Exhibit P1268, p 4; Shyhrete Dula, T 8349, 8395.

<sup>3512</sup> Shyhrete Dula, Exhibit P1268, p 4.

<sup>3513</sup> Lulzim Vejsa, Exhibit P978, p 3. *See also* K74, T 7440.

<sup>3514</sup> Hani Hoxha, Exhibit P879, p 5.

the border into Albania.<sup>3515</sup> There were many Kosovo Albanians from the immediate neighbourhood in the column.<sup>3516</sup> Lulzim Vejsa gave evidence that all the people in the column knew what had happened to his family and were afraid that the same thing would happen to them.<sup>3517</sup> On their way to the border, friends from his neighbourhood told Lulzim Vejsa how other Kosovo Albanians had been killed, all of them men.<sup>3518</sup> Lulzim Vejsa saw burnt houses in the city and in the villages they passed through.<sup>3519</sup> K74 was also part of this convoy.<sup>3520</sup> As the column proceeded through Đakovica/Gjakovë, there were police and VJ on every street corner.<sup>3521</sup> The Chamber notes in this regard a report of the Đakovica/Gjakovë SUP signed by the SUP chief, Milovan Kovačević, dated 27 March 1999, which recorded that between 0000 and 2400 hours on 27 March 1999, “route security” was provided on the main roads leading out of Đakovica/Gjakovë, and that “no events or incidents of security interest” occurred during this time.<sup>3522</sup>

907. At 1000 hours on 2 April 1999, two policemen in a blue vehicle came to Doctor Gani Efendiu’s house in the Blloku-i-Ri neighbourhood of the city. Fuad Haxhibeqiri had taken shelter there after the CDRHF office had been searched by police and some of his colleagues had been arrested on 23 March 1999.<sup>3523</sup> At the time the police came to the door Fuad Haxhibeqiri hid in the house.<sup>3524</sup> He heard the police tell the doctor to leave within five minutes and to board a bus that was waiting near the church. The doctor tried to take his own car, but the police made him walk and told him to leave the garage door open and leave his car keys.<sup>3525</sup> Eight people then staying in Gani Efendiu’s house (the doctor, the doctor’s wife, their two sons and some neighbours) then left the house except for Fuad Haxhibeqiri, who was afraid that the police were looking for him because of his work at the CDHRF.<sup>3526</sup> When the police left, Fuad Haxhibeqiri went into the garden and hid in a water pump hole for some four days and nights until he considered it was safer for him to move.<sup>3527</sup>

908. As this convoy of people leaving Đakovica/Gjakovë reached the outskirts of the city, police ordered them to deposit their identification documents on the ground,<sup>3528</sup> or in a box,<sup>3529</sup> after which

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<sup>3515</sup> Lulzim Vejsa, T 6092-6093; Lulzim Vejsa, Exhibit P978, p 3.

<sup>3516</sup> Lulzim Vejsa, T 6093.

<sup>3517</sup> Lulzim Vejsa, Exhibit P978, p 3.

<sup>3518</sup> Lulzim Vejsa, Exhibit P978, p 4.

<sup>3519</sup> Lulzim Vejsa, Exhibit P978, p 4.

<sup>3520</sup> K74, T 7438, 7453-7454; K74, Exhibit P1095, p 6.

<sup>3521</sup> Hani Hoxha, Exhibit P879, p 5.

<sup>3522</sup> Exhibit D922, p 3.

<sup>3523</sup> Fuad Haxhibeqiri, Exhibit P1068, p 6; Fuad Haxhibeqiri, T 6994.

<sup>3524</sup> Fuad Haxhibeqiri, T 6996, 6988-6989, 6999-7000.

<sup>3525</sup> Fuad Haxhibeqiri, Exhibit P1068, p 6; Fuad Haxhibeqiri, T 6937, 6939, 6994-6996.

<sup>3526</sup> Fuad Haxhibeqiri, Exhibit P1068, p 7; Fuad Haxhibeqiri, T 6935-6936, 6937, 6990-6991, 6994-6995, 7002-7003.

<sup>3527</sup> Fuad Haxhibeqiri, Exhibit P1068, p 7; Fuad Haxhibeqiri, T 6937-6938, 7000.

<sup>3528</sup> Sami Parashumti, T 5978, 6014-6015.

they were allowed to proceed. The route of the convoy was from Đakovica/Gjacovë to Brekovac/Brekoc, on to Vogovo/Vogovë, and then to Žub/Zhub, where another group of about 250 displaced persons joined the convoy. Convoys of Kosovo Albanian displaced persons came from all directions.<sup>3530</sup> At about the same time K89 saw columns, mainly women, children, elderly and the infirm, pass by Žub/Zhub, from the direction of Đakovica/Gjakovë or its surrounding villages, and moving to Deva/Devë at the Albanian border where they crossed into Albania.<sup>3531</sup> The columns were escorted by members of the VJ infantry.<sup>3532</sup> As the columns of displaced persons were passing through Žub/Zhub, K89 saw identification documents of the people being torn up by members of the VJ.<sup>3533</sup> The main road to the customs office of Albania had been mined, so VJ members directed the column of displaced persons to another road by which they reached the border.<sup>3534</sup> The weak and elderly were helped by the VJ onto trucks which transported them to the border.<sup>3535</sup>

909. The convoy of displaced persons of which Lulzim Vejsa, Hani Hoxha and K74 were part, walked about nine to ten kilometres before reaching the Albanian border at Čafa Prušit/Qafa-e-Prushit at 1230 hours the same day, 2 April 1999.<sup>3536</sup> At the border, there was another checkpoint, manned by the VJ army. VJ soldiers in green camouflage uniforms held the displaced persons about three hours before letting them continue across the border into Albania.<sup>3537</sup> Again identification and other documents were required to be handed to the VJ.<sup>3538</sup> There were VJ tanks in the hills near the border.<sup>3539</sup> After the column reached the border, the VJ left them and went back without saying anything.<sup>3540</sup> It was estimated that there were between 10,000 and 15,000 people in the refugee column that day.<sup>3541</sup> As the column crossed the border into Albania a guard told the refugees to walk for two kilometres to a school, where they stayed until about 0300 hours the next morning when some trucks came and took them to the village of Krume.<sup>3542</sup>

<sup>3529</sup> Lulzim Vejsa, Exhibit P978, p 3; Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4081-4082; Lulzim Vejsa, T 6093-6094; Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1549; Hani Hoxha, Exhibit P880 (*Milošević* transcript), T 7381; Hani Hoxha, Exhibit P879, p 5.

<sup>3530</sup> Sami Parashumti, T 5978-5979. See also K74, T 7439, 7463.

<sup>3531</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9154, 9184.

<sup>3532</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9186.

<sup>3533</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9154-9155, 9186.

<sup>3534</sup> Sami Parashumti, T 5979. On the location of the mines near the border area, see also K89, Exhibit P1274, (*Milutinović* transcript), T 9186, 9228.

<sup>3535</sup> Sami Parashumti, T 5979; Hani Hoxha, Exhibit P879, p 5. Lulzim Vejsa and Hani Hoxha were also put on tractors. Lulzim Vejsa, Exhibit P978, p 4; K89, Exhibit P1274 (*Milutinović* transcript), T 9154-9155, 9186.

<sup>3536</sup> Lulzim Vejsa, Exhibit P978, p 3; Hani Hoxha, Exhibit P879, p 5; K74, Exhibit P1095, p 6.

<sup>3537</sup> Lulzim Vejsa, Exhibit P978, p 4; Lulzim Vejsa, Exhibit P979 (*Milutinović* transcript), T 4082; Hani Hoxha, Exhibit P879, p 5.

<sup>3538</sup> K74, Exhibit P1095, p 6; K74, T 7440-7441.

<sup>3539</sup> Hani Hoxha, Exhibit P879, p 5.

<sup>3540</sup> Lulzim Vejsa, Exhibit P978, p 4.

<sup>3541</sup> Hani Hoxha, Exhibit P881 (*Milutinović* transcript), T 1564.

<sup>3542</sup> Lulzim Vejsa, Exhibit P978, p 4.

910. Having hidden in a water pump hole for some four days, Fuad Haxhibeqiri left the Blloku-i-Ri neighbourhood in Đakovica/Gjakovë. He noticed that the neighbourhood was deserted.<sup>3543</sup> As he returned to his home he noticed that many houses and shops had been burnt down.<sup>3544</sup> From his home Fuad Haxhibeqiri saw in another neighbourhood a daily average of two or more houses being burnt. He saw paramilitaries set these houses on fire by throwing into the houses small plastic containers, containing petrol and shooting at these.<sup>3545</sup> Although Haxhibeqiri did not give a description of the persons he refers to as paramilitaries, the Chamber is satisfied that the witness was able to distinguish between police, military and paramilitaries since he had completed his military service in 1983-1984,<sup>3546</sup> and as Chairman of the CDHRF, he interviewed hundreds of Kosovo Albanians about human rights violations they had suffered during the course of 1998 and 1999, including asking them to identify (and distinguish between) the perpetrators.<sup>3547</sup> He also described the uniform worn by individuals he described as paramilitaries in a context discussed below, as being a camouflage uniform with armbands and bandannas,<sup>3548</sup> which the Chamber finds is consistent with what was worn by some paramilitaries at the time. Haxhibeqiri also saw police setting houses and shops on fire.<sup>3549</sup> While there were no residents to be seen, police and paramilitaries passed by his gate in Hadum/Carshia-e-Vjeter neighbourhood which is located in the old city.<sup>3550</sup>

911. Dren Čaka and his family members left Đakovica/Gjakovë sometime between 4 and 8 April 1999, some by car and some by truck. It took them three or four days to reach the border of Albania.<sup>3551</sup> Having crossed the border, Dren Čaka was taken to a field hospital in Kukës,<sup>3552</sup> and from there he was later taken by a helicopter to Tirana.<sup>3553</sup> In evidence is a video film taken of Dren Čaka in the field hospital in Kukës about half an hour after he crossed the border. It showed him lying on a camp bed in a tent set up for medical treatment.<sup>3554</sup>

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<sup>3543</sup> Fuad Haxhibeqiri, T 6940.

<sup>3544</sup> Fuad Haxhibeqiri, T 6941; Exhibit P1069.

<sup>3545</sup> Fuad Haxhibeqiri, Exhibit P1068, p 7; Fuad Haxhibeqiri, T 6940, 7012.

<sup>3546</sup> Fuad Haxhibeqiri, Exhibit P1068, p 7; Fuad Haxhibeqiri, T 6940, 7012.

<sup>3547</sup> Fuad Haxhibeqiri, Exhibit P1068, p 2.

<sup>3548</sup> Fuad Haxhibeqiri, Exhibit P1068, p 7; Fuad Haxhibeqiri, T 6952-6955, 6959, 6962, 6981.

<sup>3549</sup> Fuad Haxhibeqiri, T 7013-7014.

<sup>3550</sup> Fuad Haxhibeqiri, T 6994.

<sup>3551</sup> Fuad Haxhibeqiri, T 6940-6941, 7013-7014; Exhibit P1069.

<sup>3552</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2654-2655; Dren Čaka, T 8648-8649.

<sup>3553</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2656; Dren Čaka, T 8664.

<sup>3554</sup> Dren Čaka, Exhibit P1296 (*Milutinović* transcript), T 2660.

<sup>3554</sup> Dren Čaka, T 8657-8658; Exhibit P1302.

912. The direct evidence relied on by the Chamber has some further confirmation from accounts of the Refugee Task Force, as recorded in the OSCE publication “Human Rights Bi-Weekly” dated 1-15 April 1999.<sup>3555</sup>

913. The Defence argues that “the mixture of fear and chaos in Đakovica from the continuous bombing formed the reason why the population sought to leave, many going to the local train station to take a train directly to nearby Macedonia”.<sup>3556</sup> The Chamber finds no support for this submission in the evidence. Witnesses who testified about leaving the city of Đakovica/Gjakovë and joining the convoys on or around 2 April 1999 said they left because their houses, or the houses of other Kosovo Albanians, had been burnt<sup>3557</sup> or because they feared for their lives because of the actions of the Serbian forces.<sup>3558</sup> The Chamber accepts this evidence.

914. An order of VJ Commander Vuković dated 3 April 1999 states that the city of Đakovica/Gjakovë and the Peć/Pejë-Đakovica/Gjakovë-Prizren road will be controlled by MUP forces.<sup>3559</sup> Minutes of a meeting of senior police officials in Kosovo dated 4 April 1999 record that the Đakovica/Gjakovë SUP chief, Milovan Kovačević, was able to report that “all the assigned tasks had been successfully completed”. While the “assigned tasks” were not specified in the Minutes, Obrad Stevanović is reported to have said that the “first stage of anti-terrorist activities must be completed today and control over territory must be established...”, a sentiment then echoed by the Deputy Prime Minister of the Federal Government, Nikola Šainović.<sup>3560</sup> The circumstances indicate that the “assigned tasks” were related to this first stage of anti-terrorist activities, and the establishment of control over territory. In the case of Đakovica/Gjakovë this involved the forced expulsion of Kosovo Albanians from the city of Đakovica/Gjakovë. The Chamber finds that there was little evidence of KLA activity or presence in the city of Đakovica/Gjakovë from 24 March 1999 to early May 1999 and that the actions of the Serbian forces, if purported to be of an anti-terrorist nature, were blatantly disproportionate to any KLA threat that may have existed.

915. The Chamber is satisfied that thousands of Kosovo Albanians were deported from the town of Đakovica/Gjakovë in the first days of April 1999.

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<sup>3555</sup> Exhibit P874, pp 1-2. The report states that on 3 April 1999, the police were telling citizens to leave, and that one refugee buried 10 men, who had been executed by Serbian police because they were suspected to be KLA sympathisers. Another refugee had seen 30-40 bodies on the street of Đakovica/Gjakovë, including men, women and children. See Joseph Maisonneuve, T 5482-5483; Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11082.

<sup>3556</sup> Defence Final Brief, para 843.

<sup>3557</sup> Sami Parashumti, T 5977, 5980-5981; Exhibit P907, house “1” belonged to an elderly Serb woman, house “2” belonged to a Montenegrin family, and house “3” belonged to Xhemil Caka, who lived next door to the elderly Serb woman.

<sup>3558</sup> Hani Hoxha, Exhibit P879, p 5; Lulzim Vejsa, Exhibit P978, pp 3-4.

<sup>3559</sup> Exhibit D188, p 2.

<sup>3560</sup> Exhibit P764, p 4.



(d) Operation from 7-11 May 1999

916. There was a second operation by Serbian forces in the Cabrat neighbourhood of Đakovica/Gjakovë from 7-11 May 1999. Unlike the operation at the end of March and beginning of April 1999, there was intense fighting between KLA and government forces during the May operation.<sup>3561</sup> According to Nike Peraj, a member of the VJ, the military operation in May 1999 in Muhalla–e-Isufi and Cabrat Hill was led by VJ Colonel Milan Kotur, MUP Colonel Kovačević, and Reservists Commander Major Nikola Mičunović. These three attended twice-daily briefings in the same barracks where Peraj was stationed. Many civilians were killed during this operation.<sup>3562</sup> However, due to the lack of evidence as to the precise circumstances surrounding the deaths of these civilians and because they were killed during a period of active hostilities, the evidence does not allow the Chamber to make findings as to the commission of any crimes in this regard.

917. On or around 7 May 1999, the Hadum Mosque was subjected to further damage. Fuad Haxhibeqiri, who lived at a short distance from the mosque,<sup>3563</sup> heard an explosion and was able to see that the minaret was in two parts.<sup>3564</sup> He did not see who had caused this damage. This evidence is partially confirmed in the report of Andrés Riedlmayer, which contains a statement from a named informant that the mosque's minaret was "decapitated" with a shoulder-launched missile on 8 May 1999,<sup>3565</sup> and the rear of the adjoining Islamic Library was sheared off.<sup>3566</sup> The damage to the mosque and library on this occasion occurred while there was fighting on Cabrat Hill (on the west side of the city) between the KLA and Serbian forces.<sup>3567</sup> The mosque is located about 300 metres away from Cabrat Hill.<sup>3568</sup> In these circumstances and without direct eye witness evidence of how the damage occurred, the Chamber cannot rule out the possibility that the damage to the mosque and library on this occasion was an indirect result of combat activities taking place nearby. It recalls its earlier finding, however, that the initial burning of the Hadum Mosque and its adjoining Islamic Library in the early hours of 25 March 1999 was a deliberate attack by Serbian forces.

918. Around 8-10 May 1999 the office of the CDHRF was burnt; Mr Haxhibeqiri saw it being set alight by means of a match being applied to the curtains.<sup>3569</sup> He observed this from his rooftop

<sup>3561</sup> Exhibit P756, p 222; Fuad Haxhibeqiri, T 6945, 7009. *See also* Exhibit P958, p 4.

<sup>3562</sup> Nike Peraj, Exhibit P313, para 103. *See also* Fuad Haxhibeqiri, T 6945-6946.

<sup>3563</sup> Fuad Haxhibeqiri, T 6948-6949; Exhibit P1069.

<sup>3564</sup> Fuad Haxhibeqiri, T 6945, 7007-7008, 7009.

<sup>3565</sup> Exhibit P1098, p 54; Exhibit P1108, p 2; Andrés Riedlmayer, T 7517.

<sup>3566</sup> Andrés Riedlmayer, T 7517.

<sup>3567</sup> Fuad Haxhibeqiri, T 6945, 7009.

<sup>3568</sup> Fuad Haxhibeqiri, T 6945, 7006.

<sup>3569</sup> Fuad Haxhibeqiri, T 7012, 7018, 7031.

where he sat with his brother around 80-120 metres away.<sup>3570</sup> The man who set the curtain on fire wore a camouflage uniform and armbands; some others present wore bandannas. They were paramilitary soldiers.<sup>3571</sup> Although there is no more specific evidence which could support this, as noted earlier, the Chamber accepts that Haxhibeqiri was able to distinguish between forces, and therefore is satisfied that the men who set fire to the office of the CDHRF were paramilitary members. He also saw a group of up to 50 police and paramilitary forces burning shops in the Hadum neighbourhood on approximately 9 or 10 May 1999, at a distance of about 100 metres from his house.<sup>3572</sup> The Chamber finds that from 7-11 May 1999, police and paramilitaries set fire to a number of shops and businesses in the Hadum neighbourhood, including the office of the CDHRF.

(c) Investigations into events in Đakovica/Gjakovë city

919. There is no evidence that the Serbian authorities undertook any investigations into any of the crimes alleged in the Indictment as having been committed in Đakovica/Gjakovë city. By way of contrast, a report of the Đakovica/Gjakovë SUP signed by the SUP chief, Milovan Kovačević, dated 27 March 1999, does deal with aerial attacks by NATO on the *9 Jugovića* Barracks on 26 March 1999, which caused damage to “Serbian and Montenegrin houses” and injuries to two members of the VJ.<sup>3573</sup> An investigation was conducted by an investigating judge of the Đakovica/Gjakovë District Court at the scene of the attacks.<sup>3574</sup> This confirms that investigations could have been conducted during the relevant period. The MUP staff reports during the relevant period are also silent as to investigations into crimes alleged in the Indictment. The report concerning the events of 24 March 1999 noted only that members of the Đakovica/Gjakovë SUP apprehended five “persons of *Šiptar* ethnicity” and gave custody of them to the RDB, and that one suspected KLA member from Ramoc village was put into detention.<sup>3575</sup> Similarly, the only serious crime in Đakovica/Gjakovë city listed in the MUP staff report covering security related events on 27-28 March 1999 was that on 27 March 1999, police of the Đakovica/Gjakovë SUP caught seven persons in the act of aggravated theft from shops.<sup>3576</sup> Furthermore, there is no mention of any serious crimes occurring in Đakovica/Gjakovë city on 1-2 April 1999 in the MUP staff reports covering security related events.<sup>3577</sup> The only event in Đakovica/Gjakovë city on

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<sup>3570</sup> Fuad Haxhibeqiri, T 7012-7014, 7018.

<sup>3571</sup> Fuad Haxhibeqiri, T 7013-7014.

<sup>3572</sup> Fuad Haxhibeqiri, T 7013, 7031-7032.

<sup>3573</sup> Exhibit D922, p 2; Exhibit P1059, p 2.

<sup>3574</sup> Exhibit D922, p 2.

<sup>3575</sup> Exhibit D294, p 4.

<sup>3576</sup> Exhibit P1058, p 5; Exhibit P696, p 5.

<sup>3577</sup> Exhibit P697; Exhibit P718.

1 April 1999 reported is that a policeman shot himself in the foot in the courtyard of the Municipal Court.<sup>3578</sup>

920. Minutes of a meeting of senior police officials in Kosovo dated 4 April 1999 record that the Đakovica/Gjakovë SUP chief, Milovan Kovačević, reported that all the “assigned tasks” had been successfully completed and that 38 persons had been arrested for perpetrating crimes.<sup>3579</sup> However, there is no evidence which connects any of the crimes he referred to with crimes alleged in the Indictment.

921. It is submitted by the Defence that there was no investigation into the killings on Miloš Gilić/Millosh Giliq Street because the witnesses of the Miloš Gilić/Millosh Giliq Street killings did not report them to the SUP, so that the event “remained unknown to those who could have taken measures to investigate and prosecute”.<sup>3580</sup> The Chamber is not persuaded by this argument and finds that police were directly involved in the planning and execution of the many killings in the Ćerim/Qerim neighbourhood on 1-2 April 1999. This is the reason for the non-investigation and not any failure of the witnesses to make a formal report. These killings immediately followed the visit, in the Chamber’s finding, by Novak Pitolić, the chief of the Đakovica/Gjakovë police to every Kosovo Albanian house in the Ćerim/Qerim district, when Pitolić told the occupants not to leave the houses and that they were safe.<sup>3581</sup> This in the Chamber’s finding indicates the knowledge and complicity of the head of the local police in the planned operation that night. It is also noteworthy that the evidence of eye witnesses is consistent as to the involvement of coordinated groups of police in forced entry of homes, killings of occupants, men, women and children in large numbers, the deliberate burning of the homes, often including the bodies of the dead, and the forced evacuation of large numbers of Kosovo Albanians, including coordination of transport and travel routes of the evacuees. Moreover, the extent of the killings and material damage to the entire neighbourhood was such that the events could not have failed to come to the attention of the police, including the police commander, even in the absence of reports to the police.

922. Further, the Chamber notes that bodily remains of the victims of the killings at 157 Miloš Gilić/Millosh Giliq Street were found both at the initial crime site and at the Đakovica/Gjakovë public cemetery.<sup>3582</sup> While the remains at 157 Miloš Gilić/Millosh Giliq Street consisted only of burnt and fragmented skeletal elements, those found at the cemetery were badly burnt and

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<sup>3578</sup> Exhibit P718, p 5.

<sup>3579</sup> Exhibit P764, p 2.

<sup>3580</sup> Defence Final Brief, para 842.

<sup>3581</sup> Lulzim Vejsa, Exhibit P978, p 2.

<sup>3582</sup> Eric Baccard, T 7660-7661; Exhibit P1139, pp 37-39; Exhibit P1161, pp 2-10.

decomposed remains,<sup>3583</sup> indicating that the bodies were moved from the house to the cemetery, thereby preventing normal investigative and judicial processes. In the view of the Chamber, this is indicative of a deliberate cover-up by police.

(f) Perpetrators

923. As discussed above evidence of eyewitnesses indicates that the operation in Đakovica/Gjakovë city on 24 to 28 March 1999 was carried out by police forces wearing blue camouflage uniforms of the Serbian police and by VJ and paramilitary forces, that the operation in the Ćerim/Qerim neighbourhood on 1-2 April 1999 was carried out by police forces wearing the standard police blue camouflage uniforms; that policemen in blue camouflage uniforms were involved in directing the movement of convoys of evacuees and were at checkpoints between Đakovica/Gjakovë and the border crossing points. The uniforms worn are consistent with the uniforms of the regular and reserve police at the time.<sup>3584</sup> Further accepted documentary evidence establishes that six companies of the 23<sup>rd</sup> PJP detachment of the MUP were deployed to Đakovica/Gjakovë on 22 March 1999 in relation to “the carrying out of separate security assignments.”<sup>3585</sup> Other evidence indicated that there were also around 30 members of the JSO unit the “Frenkis” who were based in a building between Vllamzini Stadium and the Gymnasium School in the city of Đakovica/Gjakovë.<sup>3586</sup> In light of all this evidence the Chamber is satisfied that MUP forces, including PJP, present in Đakovica/Gjakovë and at checkpoints between Đakovica/Gjakovë and the Albanian border at the time of the events established above, participated in the operations in which Kosovo Albanians were forced to leave their houses and to travel to the border and cross into Albania, and in some cases those forces were involved in the killing of Kosovo Albanians and the burning and destruction of buildings.

924. The evidence of eyewitnesses regarding the involvement of VJ forces in the operation in Đakovica/Gjakovë on 24 to 28 March 1999 and the expulsion of civilians from the city in early April 1999 is consistent with documentary evidence in the case. An order issued by the command of the Priština Military District on 27 March 1999, *inter alia*, tasks the VJ 113<sup>th</sup> Military Territorial Detachment in coordination with the VJ 52<sup>nd</sup> Anti-Aircraft Defence to protect the Serbian population in Đakovica/Gjakovë and to establish combat control over the territory on the axes of

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<sup>3583</sup> Exhibit P1161, pp 2-10.

<sup>3584</sup> Exhibit P831, upper left photograph.

<sup>3585</sup> Exhibit P711, p 1 (Dispatch No 587 issued on 21 March 1999 by the Accused deploying PJP detachments to several SUPs in Kosovo, including Đakovica); Exhibits P1195, P1196, P1198, and P1199 are reports indicating that four companies of the 23<sup>rd</sup> PJP detachment were sent to Kosovo to carry out the tasks. Exhibit P1353 contains lists of members of the 123<sup>rd</sup> Intervention Brigade, 4<sup>th</sup> Company, 3<sup>rd</sup> Platoon of the Đakovica SUP PJP and the Đakovica SUP PJP OPG for payment of per diems for the period 15 March to 31 March 1999.

<sup>3586</sup> Nike Peraj, T 1324.

Đakovica/Gjakovë-Skivjane, Đakovica/Gjakovë-Zrze/Xërxë, and Đakovica/Gjakovë-Bec.<sup>3587</sup> On 31 March 1999, the Priština Corps Command ordered the Military Territorial Detachment, *inter alia*, to engage part of the Detachment in MUP and VJ activities aimed at “breaking up Šiptar, [*i.e.* Kosovo Albanian] terrorists focusing on the blockade and control of the territory”.<sup>3588</sup> The involvement of the VJ 52<sup>nd</sup> Artillery Rocket Battalion in operations in Đakovica/Gjakovë is confirmed by its war diary.<sup>3589</sup> In addition, the VJ 2<sup>nd</sup> Motorised Battalion of the 549<sup>th</sup> Motorised Brigade was operational at the VJ barracks in Đakovica/Gjakovë city as well as in the surrounding area and along the road leading from Đakovica/Gjakovë city to the border crossing at the relevant time.<sup>3590</sup> The Chamber is satisfied on the evidence, therefore that VJ forces present at these locations took part in joint operations with MUP forces in which Kosovo Albanians were expelled from Kosovo.

925. There was consistent evidence of Serbian paramilitary forces involved in the crimes committed in Đakovica/Gjakovë city during the Indictment period. In February or March 1999 Šešelj’s and Arkan’s paramilitary units arrived in the Đakovica/Gjakovë municipality, some in an organised fashion and others individually.<sup>3591</sup> One witness estimated that there were some 200 paramilitaries in the area of Đakovica/Gjakovë by the time the NATO bombing commenced. Most were members of either Arkan’s Tigers or Šešelj’s White Eagles.<sup>3592</sup>

926. Furthermore, documentary evidence demonstrates that the Headquarters and MUP Staff were well aware of the use of paramilitary forces and problems associated with them in early 1999 and at the relevant time. Vlastimir Đorđević sent a dispatch on 18 February 1999 to all the SUPs in Serbia and to the RDB, requesting them to “... establish complete control over volunteer and paramilitary units and their members.”<sup>3593</sup> Minister Stojiljković sent a further dispatch on 24 March 1999 to the Accused as chief of the RJB, the headquarters of the RJB organisational units, all the SUPs, MUP Staff in Priština/Prishtinë and all the traffic police stations, expressly referring back to the 18 February dispatch of the Accused, and tasking them to “...register all volunteers and paramilitary units and their members and keep them under control in case that you might need to engage them”.<sup>3594</sup> The Minutes of a meeting of senior police officials in Kosovo dated 4 April 1999

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<sup>3587</sup> Exhibit P896, p 4. See also Exhibit D356.

<sup>3588</sup> Exhibit P900.

<sup>3589</sup> Exhibit P958, pp 4-11.

<sup>3590</sup> Exhibit P37, pp 2-6.

<sup>3591</sup> Nike Peraj, Exhibit P313, para 38; Nike Peraj, T 1266.

<sup>3592</sup> Nike Peraj, T 1324.

<sup>3593</sup> Exhibit P356, p 3; Ljubinko Cvetic, T 6676, 6853.

<sup>3594</sup> Exhibit P702.

record General Sreten Lukić, the head of the MUP Staff, as noting the need to take “rigorous measures towards paramilitary units”.<sup>3595</sup>

## 2. Carragojs, Erenik and Trava Valleys

### (a) 24 March 1999 – 26 April 1999

927. On 25 March 1999, VJ reserve forces led by Nikola Mićunović aka “Dragan”, Commander of the Đakovica/Gjakovë Military Territorial Detachment,<sup>3596</sup> went to the villages of Deva/Devë and Babaj Boks/Babaj-i-Bokës where they executed eight civilian men.<sup>3597</sup> Witness Merita Dedaj was told by her uncles, Pjeter Deda and Gjon Deda, that Nikola Mićunović came to their house on or about 26 March 1999 and ordered the two men to help bury some bodies.<sup>3598</sup> They buried eight men in the village of Deva/Devë in a mass grave.<sup>3599</sup>

928. On the basis of information provided by Kosovo Albanians interviewed by the CDHRF, it was estimated by the Chairman Fuad Haxhibeqiri that throughout the villages of the municipality of Đakovica/Gjakovë 50 Albanian people were killed on 25 March 1999.<sup>3600</sup> While the Chamber is unable to establish the precise number of killings on the evidence before it, it accepts that Albanian people in the villages of the municipality were killed by Serbian forces on this day.

929. Towards the end of March 1999, Nikola Mićunović ordered Gjon Prelaj, a 15 year old civilian boy, to separate the men in the village of Korenica/Korenicë from the women and to tell these men to leave for the mountains.<sup>3601</sup> The women were ordered to remain in their houses until such time as they were to be directed to different locations by buses and other vehicles.<sup>3602</sup> On the same day, however, the men were ordered to return to their homes and the women stayed in the village.<sup>3603</sup>

930. On 27 March 1999, at 1430 hours, VJ forces led by Nikola Mićunović came to Merita Dedaj’s house in the village of Guska/Guskë and gave her and her relatives in the house one hour to leave.<sup>3604</sup> All the inhabitants of the village were expelled that day.<sup>3605</sup> At first, they were told by the VJ forces to go to Albania, but later they were sent by the same forces in the direction of

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<sup>3595</sup> Exhibit P764, p 3.

<sup>3596</sup> Lizane Malaj, T 809; Exhibit P900. See Exhibit P900; Nike Peraj, Exhibit P313, paras 21, 59.

<sup>3597</sup> Merita Dedaj, Exhibit P1030, p 2; Nike Peraj, Exhibit P313, para 51.

<sup>3598</sup> Merita Dedaj, Exhibit P1030, p 2; Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1415.

<sup>3599</sup> Merita Dedaj, Exhibit P1030, p 2.

<sup>3600</sup> Fuad Haxhibeqiri, Exhibit P1068, p 7.

<sup>3601</sup> Lizane Malaj, T 808-809.

<sup>3602</sup> Lizane Malaj, T 809.

<sup>3603</sup> Lizane Malaj, T 809.

<sup>3604</sup> Merita Dedaj, Exhibit P1030, p 2.

<sup>3605</sup> Merita Dedaj, T 6537.

Korenica/Korenicë.<sup>3606</sup> Korenica/Korenicë is a village in which there were about 70 houses at that time.<sup>3607</sup> Merita Dedaj and her family and the other villagers left Guska/Guskë for Korenica/Korenicë in a convoy of tractors and cars escorted by a group of VJ soldiers and two police cars.<sup>3608</sup> When they arrived in Korenica/Korenicë, the VJ and police ordered the women and children to stay in a meadow, while elderly and ill people were taken to one of the houses in Korenica/Korenicë.<sup>3609</sup> The villagers from Guska/Guskë stayed in Korenica/Korenicë for one week, after which they were ordered to leave.<sup>3610</sup> They joined a convoy of about 1,000 people, all Kosovo Albanians,<sup>3611</sup> who had been expelled from other neighbouring villages.<sup>3612</sup> The VJ stopped the convoy in Meja/Mejë and ordered the people to go back and stay in Korenica/Korenicë.<sup>3613</sup> However, Merita Dedaj and her family were able to stay at Prend Markaj's house in Meja/Mejë for the next three weeks, during which VJ soldiers and MUP patrolled the village.<sup>3614</sup> VJ soldiers ordered people to remain in the houses. The village was surrounded on all sides.<sup>3615</sup> The Chamber is satisfied that the offence of forcible transfer is established with respect to the people of the village of Guska/Guskë and approximately 1,000 people from neighbouring villages on 27 March and the following days.

931. On or around 28 March 1999, the 16<sup>th</sup> century mosque (the Mosque of Kel Hasan Aga or Xhamia e Hasan Ages)<sup>3616</sup> in Rogovo/Rogovë, a village located in the south eastern part of Đakovica/Gjakovë municipality, about one kilometre from the villages of Crkva/Bellacërkë and Celina/Celinë in Orahovac/Rahovec municipality, was blown up.<sup>3617</sup> As found earlier in this Judgement,<sup>3618</sup> on this day at around 1500 hours, Sabri Popaj saw that police wearing blue camouflage uniforms arrived at the mosque in Celina/Celinë in an APC and remained inside for about an hour.<sup>3619</sup> Shortly afterwards, Sabri Popaj was standing together with another villager Nazim Rexhepi in his field on the hilly side of the mountain from where he could see Bela Crkva/Bellacërkë, Celina/Celinë and Rogovo/Rogovë.<sup>3620</sup> He heard an explosion in the direction of

<sup>3606</sup> Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1400.

<sup>3607</sup> Lizane Malaj, T 805.

<sup>3608</sup> Merita Dedaj, Exhibit P1030, p 2; Merita Dedaj, T 6537-6538, 6542.

<sup>3609</sup> Merita Dedaj, Exhibit P1030, p 2.

<sup>3610</sup> Merita Dedaj, T 6539; Merita Dedaj, Exhibit P1030, p 2.

<sup>3611</sup> Merita Dedaj, T 6539.

<sup>3612</sup> Merita Dedaj, T 6539; Merita Dedaj, Exhibit P1030, p 3.

<sup>3613</sup> Merita Dedaj, Exhibit P1030, p 3; Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1426.

<sup>3614</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3615</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3616</sup> Exhibit P1098, p 59.

<sup>3617</sup> Sabri Popaj, T 7417; Exhibit P1082, p 15; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5679; Exhibit P1090 (photograph depicting the destroyed mosque in Rogovo/Rogovë, with markings made by Sabri Popaj during his testimony in the *Milutinović* trial indicating where the minaret used to be prior to the explosion).

<sup>3618</sup> *See supra*, paras 477.

<sup>3619</sup> Sabri Popaj, Exhibit P1082, p 15; Exhibit P1083 (*Milutinović* transcript), T 5681.

<sup>3620</sup> Celina/Celinë was located a kilometre and a half from Bela Crkva/Bellacërkë and Rogovo/Rogovë was 800 metres further from the Belaja River. In the field Sabri Popaj testified that he was standing on the side of the mountain

Bela Crkva/Bellacërkë and when he looked the mosque was no longer standing.<sup>3621</sup> He then heard and saw the mosque in Rogovo/Rogovë explode,<sup>3622</sup> and said, “Well, the mosque in Rogovo is not there anymore”.<sup>3623</sup> The Chamber accepts his evidence that the Celina/Celinë mosque was blown up first, followed by the mosque in Bela Crkva/Bellacërkë and then the mosque in Rogovo/Rogovë, all within a matter of minutes.<sup>3624</sup> Agim Jemini also heard an explosion while he was hiding in the periphery of Celina/Celinë village about one kilometre away and later the same day found the mosque there destroyed.<sup>3625</sup>

932. The destruction of the mosque in Rogovo/Rogovë was documented by András Riedlmayer in his report, which concluded that the minaret had been blown up with charges placed under the stairs, causing its complete destruction, and that the falling minaret had damaged the main dome of the mosque and smashed a large section of the portico roof.<sup>3626</sup> The exterior walls and dome were cracked in several places but remained standing.<sup>3627</sup> The Chamber notes that this evidence is consistent with evidence that police laid explosives inside the three mosques before leaving and detonating the devices, causing their destruction. The Chamber considered the discrepancy in the date of the attack on the mosque in Rogovo/Rogovë given by Riedlmayer, quoting his informant,<sup>3628</sup> on the one hand, *i.e.* 3 April 1999, and that given by Sabri Popaj, *i.e.* 28 March 1999, on the other, and was of the view that this was not a matter of any consequence.

933. The Chamber recalls its previous findings that the mosques in Celina/Celinë and Crkva/Bellacërkë were destroyed on or around 28 March 1999 by explosives detonated by members of the MUP<sup>3629</sup> and finds that the only reasonable inference from the evidence, that establishes that the mosques in each of the three towns which are located within a kilometre or so of each other were blown up consecutively in a matter of minutes, is that the mosque in Rogovo/Rogovë was destroyed in the same operation by the same forces.

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that allowed him to see Bela Crkva/Bellacërkë, Celina/Celinë and Rogovo/Rogovë. In cross-examination in *Milutinović* one of the Defence counsel raised the issue of whether Sabri Popaj was standing in the field or on the side of the mountain. The witness explained that the mountain was part of his field and that is where he was standing. Sabri Popaj, Exhibit P1082, p 11; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650, 5678-5679, 5729-5730.

<sup>3621</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5679, 5729-5730, 5650.

<sup>3622</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650.

<sup>3623</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5679.

<sup>3624</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650.

<sup>3625</sup> Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4241-4242.

<sup>3626</sup> Exhibit P1098, p 59; Exhibit P1090.

<sup>3627</sup> Exhibit P1098, p 59; Exhibit P1090.

<sup>3628</sup> Exhibit P1098, pp 59-60.

<sup>3629</sup> *See supra*, paras 477, 528.



934. On 4 April 1999 (Easter Monday), sometime in the afternoon,<sup>3630</sup> Milutin Prašcević,<sup>3631</sup> the senior officer in the State Security police unit in Đakovica/Gjakovë, went to the village of Korenica/Korenicë. Milutin Prašcević was wearing a blue police uniform and was armed with an automatic rifle and a pistol. With another policeman, also armed and wearing a blue uniform, Milutin Prašcević ordered Lizane Malaj and her family to leave their house and to leave their cars behind and to take only the tractors.<sup>3632</sup> They were ordered to go to Albania, taking the road from Korenica/Korenicë-Đakovica/Gjakovë which passes through Orize, Suvi Do/Suhadoll, Meja/Mejë and Barkoc.<sup>3633</sup> At the house of the Dedaj family,<sup>3634</sup> Milutin Prašcević, with other police, ordered those in the house to leave the village and go to Albania within three hours.<sup>3635</sup> This conduct was repeated by police throughout the village. Villagers left their houses immediately and a convoy was formed.<sup>3636</sup> The convoy set off as ordered but, at Suvi Do/Suhadoll, about one kilometre away,<sup>3637</sup> a local policeman, Aca Mičunović,<sup>3638</sup> together with another policeman,<sup>3639</sup> told them to go back to Korenica/Korenicë.<sup>3640</sup> They returned to their houses.<sup>3641</sup> The Chamber is satisfied that the offence of forcible transfer has been established with respect to the displacement of Kosovo Albanians from Korenica/Korenicë on 4 April 1999.

935. In early April 1999 a military police unit in the 2<sup>nd</sup> Battalion of the 549<sup>th</sup> Motorised Brigade of the VJ, commanded by Major Vuković,<sup>3642</sup> ordered Kosovo Albanians in several villages to leave their homes. This was pursuant to an oral order given either directly by the commander or via another officer.<sup>3643</sup> VJ evidence is that the people should be directed to Đakovica/Gjakovë, not to Albania.<sup>3644</sup> The first village in which the order was implemented was Žub/Zhub, which is south of Đakovica/Gjakovë. The unit went through the entire village, door to door, telling the villagers that they had to leave within two hours.<sup>3645</sup> They spoke to the villagers in Serbian.<sup>3646</sup> The villagers were expelled accordingly. The unit was involved in the expulsion of about nine or ten villages at this time.<sup>3647</sup> The villagers complied so that the villages were empty when the unit left.<sup>3648</sup> After

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<sup>3630</sup> Lizane Malaj, T 812.

<sup>3631</sup> Lizane Malaj, T 810, 858-859.

<sup>3632</sup> Lizane Malaj, T 810. *See* Exhibit P294.

<sup>3633</sup> Lizane Malaj, T 859-860.

<sup>3634</sup> Lizane Malaj, T 809.

<sup>3635</sup> Lizane Malaj, T 810-811.

<sup>3636</sup> Lizane Malaj, T 811.

<sup>3637</sup> Lizane Malaj, T 811.

<sup>3638</sup> Aca was Nikola Mičunović's brother. Lizane Malaj, T 838-839.

<sup>3639</sup> Lizane Malaj, T 860.

<sup>3640</sup> Lizane Malaj, T 811-812.

<sup>3641</sup> Lizane Malaj, T 812.

<sup>3642</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9401-9402; K90, T 1340-1341.

<sup>3643</sup> K90, Exhibit P321, para 41.

<sup>3644</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9273; K90, T 1434.

<sup>3645</sup> K90, Exhibit P321, para 43.

<sup>3646</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9302.

<sup>3647</sup> K90, Exhibit P321, para 44.

the population of a village left, individual soldiers looted from the deserted homes.<sup>3649</sup> The Chamber is satisfied that the offence of forcible transfer has been established with respect to these acts.

936. NATO bombers were active at this time in the skies above Đakovica/Gjakovë. A MUP daily review of current events and occurrences recorded that on 21 April 1999 at 0300 hours, NATO forces hit the “*Maja* refugee colony” in Đakovica/Gjakovë, using six to eight projectiles, and resulting in four civilian deaths and 20 injured people.<sup>3650</sup>

937. Later the same day, Milutin Prašcević, and four other policemen from the Đakovica/Gjakovë SUP were killed on the road leading from Madanaj towards the village of Meja/Mejë,<sup>3651</sup> which is located a few kilometres west of the city of Đakovica/Gjakovë,<sup>3652</sup> apparently in an ambush by “terrorist” forces.<sup>3653</sup> Their car was attacked at Shyt Hassanaj meadow<sup>3654</sup> in the middle of the village on the road that goes to Đakovica/Gjakovë, Meja/Mejë and Junik.<sup>3655</sup> One witness heard two detonations and then multiple shots from machine guns when he was in his courtyard and was later told about the killings by other villagers.<sup>3656</sup> Following the killings, the Serbian police started shooting at the houses in Meja/Mejë using sniper weapons.<sup>3657</sup> Bullets hit the windows of the house of witness Martin Pnishi’s brother Gjeloš. At this time, Martin Pnishi, his brother and 40 local villagers were in Gjeloš Pnishi’s house, together with some displaced persons from Morina/Morinë who had been expelled from their homes by Serbian forces.<sup>3658</sup> The neighbours stayed in the houses of Martin Pnishi and his brother during the night and then returned to their homes. No more police or military patrols came by the village for four or five days.<sup>3659</sup>

(b) 27-28 April 1999 Operation Reka

(i) Objectives and command

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<sup>3648</sup> K90, T 1485.

<sup>3649</sup> K90, Exhibit P321, paras 44, 45; K90, Exhibit P322 (*Milutinović* transcript), T 9299, 9303-9304; Exhibit P328 (indicating the villages the inhabitants of which were relocated); K90, T 1366-1367.

<sup>3650</sup> Exhibit D407, p 1.

<sup>3651</sup> Nike Peraj, Exhibit P313, para 58; Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45592; Miloš Došan, T 11475. See also Martin Pnishi, Exhibit P1033, p 2; Martin Pnishi, T 6562. Although the latter witness testified that this event occurred on 22 April, it notes that this date was challenged by the Defence and in view of other consistent evidence on the point, accepts that the incident more likely occurred on or around 20 April 1999.

<sup>3652</sup> Martin Pnishi, T 6556-6557; Exhibit P1544.

<sup>3653</sup> Exhibit P1544, p 2; Exhibit D407, p 1.

<sup>3654</sup> Martin Pnishi, Exhibit P1033, p 2; Exhibit P1544.

<sup>3655</sup> Martin Pnishi, T 6563.

<sup>3656</sup> Martin Pnishi, Exhibit P1033, p 2.

<sup>3657</sup> Martin Pnishi, Exhibit P1033, p 2.

<sup>3658</sup> Martin Pnishi, Exhibit P1033, p 2.

<sup>3659</sup> Martin Pnishi, T 6570.

938. A joint operation of the VJ and the MUP with the code name “Reka” was carried out in the Carragojs, Erenik and Trava valleys mainly on 27 and 28 April 1999.<sup>3660</sup> Several units of the VJ participated in the action, including the 2<sup>nd</sup> Battalion of the 549<sup>th</sup> Motorised Brigade led by Colonel Vlatko Vukovic,<sup>3661</sup> the 52<sup>nd</sup> Armoured Brigade, the 52<sup>nd</sup> Battalion of the Military Police, the 63<sup>rd</sup> Parachute Brigade<sup>3662</sup> and the 125<sup>th</sup> Motorised Brigade led by Colonel Dragan Zivanović.<sup>3663</sup> From the MUP, some 400 persons from Belgrade were sent to take part in the operation.<sup>3664</sup> They comprised PJP and included members of paramilitary groups,<sup>3665</sup> and they arrived in around 10 buses and some civilian vehicles shortly before 27 April 1999.<sup>3666</sup>

939. The Chamber received conflicting accounts of the objective of the operation as well as its command structure.

940. Nike Peraj, a Kosovo Albanian from Ramoc<sup>3667</sup> and a Captain in the 52<sup>nd</sup> Rocket Artillery Brigade of the VJ, attended an informal meeting of MUP and VJ officials held shortly after the killings of Prašević and other policemen from the Đakovica/Gjakovë SUP who had been killed in an ambush apparently by terrorist forces on 21 April 1999.<sup>3668</sup> Present at the meeting were Colonel Momir Stojanović (Military Security commander of the Priština Corps),<sup>3669</sup> Sreto Čamović (head of the State Security department, RDB, of the MUP in Đakovica/Gjakovë), Nikola Mičunović,<sup>3670</sup> Commander of the Reserve Units of the Territorial Defence (113<sup>th</sup> Military Territorial Detachment), MUP Colonel Kovačević (commander of the local MUP in Đakovica/Gjakovë),<sup>3671</sup> Captain Sergej Perović (Chief of Security of the 52<sup>nd</sup> Artillery Rocket Brigade),<sup>3672</sup> and a few others. According to Peraj, during this meeting Stojanović ordered Mičunović and Kovačević to carry out an operation in the Carragojs valley, which would involve the elimination of at least 100 “heads” and the burning of houses in retribution for the murder of Prašević.<sup>3673</sup> Kovačević suggested that approval should be sought before any such action and Stojanović said he would make the necessary arrangements. Soon after the meeting Captain Perović told Nike Peraj that his family would not come to harm

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<sup>3660</sup> Miloš Došan, T 11390-11391; Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45397-45399; *see also* Exhibits P958, pp 33-34; P950, pp 2-3.

<sup>3661</sup> Miloš Došan, T 11479.

<sup>3662</sup> Nike Peraj, Exhibit 313, para 65.

<sup>3663</sup> Exhibits P950, p 2; Exhibit P920, p 2; Miloš Došan, T 11479-11480.

<sup>3664</sup> Nike Peraj, Exhibit P313, para 65; K90, Exhibit P321, para 47.

<sup>3665</sup> K90, Exhibit P321, para 47.

<sup>3666</sup> K90, Exhibit P321, para 47; K90, T 1343.

<sup>3667</sup> Nike Peraj, T 1181.

<sup>3668</sup> Nike Peraj, Exhibit P313, para 59. *See supra*, para 937.

<sup>3669</sup> Nike Peraj, Exhibit P313, para 46; Milan Došan, Exhibit D684 (*Milošević* transcript), T 45440.

<sup>3670</sup> Nikola Mičunović was the godson of Milutin Prašević. Nike Peraj, Exhibit P313, para 58.

<sup>3671</sup> Nike Peraj, Exhibit P313, paras 35, 59.

<sup>3672</sup> Nike Peraj, Exhibit P313, para 59.

<sup>3673</sup> Nike Peraj, Exhibit P313, para 59. Momir Stojanović’s wife was the first cousin of Milutin Prašević. *See* Nike Peraj, T 1300.

during the operation.<sup>3674</sup> Colonel Stojanović assured Mičunović and Kovačević that he would provide protection from any repercussions, mentioning his close friendship with General Pavković.<sup>3675</sup> Nike Peraj was told by Nikola Mičunović that the valley of Carragojs was going to pay a high price.<sup>3676</sup>

941. The evidence of Nike Peraj was contested by two Defence witnesses, Miloš Došan, commander of the 52<sup>nd</sup> Artillery Rocket Brigade of the Air Defence of the VJ in Đakovica/Gjakovë and of the Đakovica/Gjakovë garrison,<sup>3677</sup> and Momir Stojanović, the Military Security commander of the Priština Corps.<sup>3678</sup> Both Miloš Došan and Momir Stojanović offered the opinion that the evidence of Nike Peraj about the meeting could not be true. In the evidence of Miloš Došan, Stojanović, although a senior VJ officer, could not have given any order to Mičunović or Kovačević.<sup>3679</sup> Došan's opinion relied on the normal established chains of command in the VJ and the MUP and had no regard to the apparent joint activities of the two forces and of the VJ Reserve which was also involved. The Chamber does not accept the validity of the assumptions upon which Došan appears to have based his opinion, namely that the VJ and the MUP were entirely distinct in their chains of command, that this distinction was preserved and observed in this time of unique defence emergency, and that in a situation such as that described by Nike Peraj it was not possible for a senior army officer to exercise effective command over VJ and police officers in a joint or cooperative operation.

942. Momir Stojanović testified that the role of the Security Section of the Priština Corps was limited to gathering information on terrorist activities (counter-intelligence) and prosecuting VJ members involved in criminality.<sup>3680</sup> He claimed that he did not have command over any unit and, therefore, he could not have been ordered to carry out a combat operation.<sup>3681</sup> This claim is contradicted by other evidence. K73 gave evidence about a joint operation involving an anti-terrorist squad of the 52<sup>nd</sup> Battalion of the Military Police and the 72<sup>nd</sup> Special Brigade in late January/early February 1999 under the command of Stojanović.<sup>3682</sup> In addition, the war diary of the 52<sup>nd</sup> Military Police Battalion recorded that on 13 April 1999, a special unit of this Battalion was "tasked" by the Chief of the Priština Corps Security Department, *i.e.* Stojanović, to capture a border post in Kamenica (Albania).<sup>3683</sup> In the context of the complex security situation that prevailed in

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<sup>3674</sup> Nike Peraj, Exhibit P313, para 60.

<sup>3675</sup> Nike Peraj, Exhibit P313, para 61.

<sup>3676</sup> Nike Peraj, Exhibit P313, para 58; Nike Peraj, T 1191.

<sup>3677</sup> Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45337, 45339; Miloš Došan, T 11338.

<sup>3678</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 196-83-19684; Momir Stojanović, T 11825-11826.

<sup>3679</sup> Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45591-45592.

<sup>3680</sup> Momir Stojanović, T 11686, 11860.

<sup>3681</sup> Momir Stojanović, T 11816.

<sup>3682</sup> K73, Exhibit P330, para 33; Exhibit P332 (*Milutinović* transcript), T 3314, 3317.

<sup>3683</sup> Exhibit P338, p 6.

Kosovo in 1999 and in light of documentary and oral evidence showing the involvement of military police battalions, in particular, from the 72<sup>nd</sup> Special Brigade and the 63<sup>rd</sup> Parachute Brigade, in combat operations,<sup>3684</sup> the Chamber finds Stojanović's evidence that he did not have any capacity to command units to be unreliable and lacking credibility.

943. Momir Stojanović further denied that he attended an informal meeting with Peraj, Kovačević, Čamović, Mičunović and Perović some days after the killing of his relative, Prašević,<sup>3685</sup> and that the operation was ordered against civilians in the Carragojs valley as reprisal action.<sup>3686</sup> It was his evidence that the operation had been planned by the VJ prior to the killings of the MUP officers and that its objective was the neutralising of terrorist elements in that area, where the VJ and MUP had sustained many losses.<sup>3687</sup> Although Milan Đošan testified that the basic goal of the operation was to neutralise the area, *i.e.* clear the area of terrorist elements,<sup>3688</sup> he added that, contrary to the evidence of Stojanović, another specific goal was “to catch the killers of those policemen”.<sup>3689</sup> He did maintain, however, that the killing and expulsion of civilians from the area was not an objective of the operation,<sup>3690</sup> and that he did not learn of crimes having been committed during the “Reka” action until late 2001 when he read the book “As Seen as Told”.<sup>3691</sup> The Chamber also noted the emphasis of Miloš Đošan in his evidence that he was not actually involved in the “Reka” operation; he merely inspected the positions of his unit at the time,<sup>3692</sup> and that his unit was led in the operation by his subordinate Major Zlatko Odak.<sup>3693</sup> The Chamber was left with the clear impression that the evidence of both Miloš Đošan and Momir Stojanović, at least in part, was influenced by self interest to minimise their own roles in Operation Reka and to present it as solely an operation directed against KLA fighters. Therefore, the Chamber approaches their evidence with great caution and is persuaded that it should accept the evidence of Nike Peraj about the material events.

944. The Carragojs Valley was an area of strategic and security concern for the VJ and MUP and NATO had been actively bombing in this region during April 1999. A combat report of the 125<sup>th</sup> Motorised Brigade to the Priština Corps, dated 25 April 1999, stated that around 200 persons taking part in combat activities against the forces of the Army of Yugoslavia were posing as displaced

<sup>3684</sup> Exhibit P1381. See K82, Exhibit P1314, para 5, Exhibit P1320 (*Milutinović* transcript), T 11744, 11746, 11800-11801; K82, T 8856-8857, 8883-8884, 8886; Ibrahim Rugova, Exhibit P285, p 9; Exhibit P286 (*Milošević* transcript), T 4224-4225; Bislim Zyrap, T 2449.

<sup>3685</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19787-19788.

<sup>3686</sup> Momir Stojanović, T 11912.

<sup>3687</sup> Momir Stojanović, T 11912-11914.

<sup>3688</sup> Miloš Đošan, T 11475.

<sup>3689</sup> Miloš Đošan, T 11478.

<sup>3690</sup> Miloš Đošan, T 11499.

<sup>3691</sup> Miloš Đošan, T 11499; Exhibit D703, p 2.

<sup>3692</sup> Miloš Đošan, T 11485.

<sup>3693</sup> Miloš Đošan, T 11492-11493.

persons in villages in this area.<sup>3694</sup> This indicates that VJ units were told that KLA members were living among the civilian population in the villages. Consistent with this is evidence of K73 that the soldiers participating in the operation had been told by Major Kopanja that KLA fighters had discarded their weapons and uniforms and were dressed in civilian clothing among the civilian population, as a result therefore, the MUP had lists with the names of the KLA soldiers and, in the operation, the population was to be directed to Korenica/Korenicë, where the MUP was, so that once in Korenica/Korenicë the MUP could arrest the KLA soldiers and then send the civilians back to their homes.<sup>3695</sup> Of course this confirms, and the Chamber therefore accepts, that one of the objectives of Operation Reka was to capture KLA fighters in the valley.

945. However, in view of the mainly consistent accounts of the Reka operation by VJ members K90, K73 and Nike Peraj, as well as of villagers Merita Dedaj, Lizane Malaj and Martin Pnishi, which the Chamber accepts, and the planned and coordinated nature of the operation by VJ and MUP forces, and in particular the way it was conducted, as discussed below, the Chamber is satisfied that the Reka operation also had major objectives which were much more sinister than Stojanović claimed - namely expelling (not merely to Korenica/Korenicë, but to Albania) Kosovo Albanian villagers from their homes en masse, and the killing of Kosovo Albanian men – regardless of KLA association – found in the area. The existence of yet a further motive is also confirmed, in the Chamber’s finding, by the killings, the destruction of property, and the expulsions, and is also supported by the evidence of Nike Peraj of the informal meeting days before the operation. This further motive was to punish the Kosovo Albanians in the area for their support of those responsible for killing MUP officer Milutin Prascević and his colleagues. Prascević was a relative of Momir Stojanović and godfather to Nikola Mićunović.

946. No written order or decision for the conduct of Operation Reka was available to be tendered in evidence, which suggests that the order was given orally or that any written order has been destroyed or made inaccessible. The combat reports of the 125<sup>th</sup> Motorised Brigade commanded by Colonel Dragan Živanović, of 27 and 28 April 1999 to the Priština Corps Command and Đakovica/Gjakovë Forward Command Post, signed by Živanović, state that some forces were engaged in “mopping up the terrain from ŠTŠ in the general area of Reka, in keeping with your decision” and clearing “the terrain of ŠTŠ in the general Reka sector, as per your decision”.<sup>3696</sup> The references to “your decision” in these two combat reports strongly indicate that the decision to conduct operation Reka came from the Priština Corps Command. This indicates that General Vladimir Lazarević was the overall commander of the operation. While the Chamber accepts that

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<sup>3694</sup> Exhibit P949, p 2.

<sup>3695</sup> K73, T 1523.

<sup>3696</sup> Exhibits P950, pp 1-2; P920, p 2.

the operation on the VJ side was led on the ground by Milan Kotur,<sup>3697</sup> and Priština Corps Chief of Staff Colonel Veroljub Zivković<sup>3698</sup> at the forward command post of the Priština Corps, the evidence on the role of General Lazarević is contested.

947. It was the evidence of Nike Peraj that the operation was coordinated from Đakovica/Gjakovë city by General Vladimir Lazarević and Lieutenant-Colonel Goran Jeftović the staff officer for operations in the Priština Corps.<sup>3699</sup> In Peraj's evidence, on 28 March 1999, he saw in the office of Lazarević at the VJ headquarters in Đakovica/Gjakovë a wall-sized map covered in clear talc which Jeftović was marking with details of the Reka operation.<sup>3700</sup>

948. The reports of Zivanović reveal that, for purposes of the VJ units, it is clear that the Priština Corps Command under General Lazarević, and its forward command post in Đakovica/Gjakovë, were directly concerned in the conduct of Operation Reka and were issuing orders, at least to participating army units, and receiving reports from these units. It would not be surprising that there were army officers below Lazarević with responsibility from him for the detailed conduct of the operation on the ground, as suggested by some evidence,<sup>3701</sup> but the Chamber does not accept other evidence<sup>3702</sup> that Lazarević had no involvement in Operation Reka, or that he could not have had ultimate command of the Operation. The absence of documentary or other evidence leaves the Chamber unable to reach conclusions as to the complete command structure for the Operation, including the role, if any, of Lazarević with respect to the police forces involved. It would be in accordance with other general evidence for the Joint Command in Priština/Prishtinë to have authorised this Operation and for orders for it to have emanated from General Lazarević. Whatever may be the full position, the Chamber accepts that, at least in relation to the VJ units involved, General Lazarević was in a position of command with officers under his direction exercising more detailed day to day control of Operation Reka.

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<sup>3697</sup> Miloš Došan, T 11475; Nike Peraj, Exhibit P313, para 63.

<sup>3698</sup> Momir Stojanović, T 11812.

<sup>3699</sup> Nike Peraj, Exhibit P313, para 65.

<sup>3700</sup> Nike Peraj, Exhibit P313, para 96.

<sup>3701</sup> Exhibits P950, p 2; P920, p 2; Nike Peraj, Exhibit P313, para 96.

<sup>3702</sup> Miloš Došan claimed that it would have been "physically impossible" for Lazarević to have commanded the operation since he was in Priština/Prishtinë on 27 April for a Priština Corps awards ceremony from approximately 1100 hours until at least 1300 hours. See Miloš Došan, T 11414, 11486, 11509, 11535. Similarly, Momir Stojanović denied that Lazarević was in charge of the Reka operation since he was not in Đakovica/Gjakovë at the time. See Momir Stojanović, T 11812. There is, however, evidence that Lazarević was in the relevant area at the time of the operation. Došan testified that Lazarević visited his unit on 28 April 1999. See Miloš Došan, T 11535. The war diary entry of the Howitzer Battalion of the 125<sup>th</sup> Motorised Brigade, stationed at the Košare/Koshare border post, recorded that the Commander and Chief of Staff of the Priština Corps, *i.e.* General Vladimir Lazarević and Zivković, visited the Brigade from 0900 to 1200 hours on 29 April 1999. Exhibit P921, p 2.

949. Based on the findings above, the Chamber is satisfied that Operation Reka was planned and ordered by the Priština Corps Command in conjunction with senior leaders of the MUP in Priština/Prishtinë and Belgrade.

(ii) Operation Reka as it unfolded

950. The Reka operation began at 0600 hours on 27 April 1999<sup>3703</sup> and ended at 1700 or 1800 hours on 28 April 1999.<sup>3704</sup> There was a VJ command post in the Catholic Church northwest of Ošek or Qafe e Osekuk<sup>3705</sup> which provided a clear view of the Carragojs valley and also a MUP command post in the Dervish prayer house in Dužnje/Duzhnjë village.<sup>3706</sup>

951. On 26 April 1999, the anti-terrorist platoon of the 52<sup>nd</sup> Battalion of the VJ Military Police, stationed in Junik, received an order from Major Stevo Kopanja to “clean the area from Albanians” and send Albanian civilians towards Korenica/Korenicë where the MUP had lists of names of “terrorists”.<sup>3707</sup> “Clean villages” were villages without members of the Kosovo Albanian community.<sup>3708</sup>

952. Two platoons of the VJ 52<sup>nd</sup> Military Police Battalion took part in the operation.<sup>3709</sup> The platoons were subordinated to the VJ 125<sup>th</sup> Motorised Brigade.<sup>3710</sup> VJ units had been stationed in static positions to the west of the Carragojs valley as a defence against KLA coming from Albania.<sup>3711</sup> Brigade-sized groups, including the VJ 63<sup>rd</sup> Parachute Brigade of the 52<sup>nd</sup> Military Police Battalion (together, approximately 500 men) and a PJP Brigade of the MUP (approximately 400 men), pushed down the valley burning houses and displacing civilians towards the paramilitary groups near Meja/Mejë.<sup>3712</sup> The first village “sealed” by the 52<sup>nd</sup> Military Police Battalion was Dobroš/Dobrosh and the “cleansing” started from there until the village of Korenica/Korenicë was reached.<sup>3713</sup> By the conclusion of the operation K73’s unit dealt with several villages, and covered

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<sup>3703</sup> Miloš Došan, T 11509; Exhibit P1540.

<sup>3704</sup> K73, Exhibit 330, para 41.

<sup>3705</sup> Nike Peraj, Exhibit P313, para 63, Nike Peraj, T 1205; Exhibit P314.

<sup>3706</sup> Nike Peraj, Exhibit P313, para 63; Exhibit P314.

<sup>3707</sup> K73, Exhibit P330, para 40; K73, T 1524; K73, Exhibit P332 (*Milutinović* transcript), T 3326, 3380.

<sup>3708</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3323-3324.

<sup>3709</sup> Momir Stojanović, T 11900-11901, 11904-11905; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19713-19714.

<sup>3710</sup> Momir Stojanović, T 11900-11901.

<sup>3711</sup> Nike Peraj, Exhibit P313, para 65; Exhibit P314.

<sup>3712</sup> Nike Peraj, Exhibit P313, para 65; Nike Peraj, T 1203; K73, Exhibit P330, para 41; K73, Exhibit P332 (*Milutinović* transcript), T 3327-3328.

<sup>3713</sup> K73, Exhibit P330, para 41; *see* Exhibit P337 showing the location of K73’s unit and the line of action of the 52<sup>nd</sup> Military Police Battalion, the 63<sup>rd</sup> Parachute Brigade and the PJP during the military operation described in the following paragraphs. K73’s unit was in the middle and the 63<sup>rd</sup> Parachute Brigade and the PJP were on the unit’s right and left flank respectively (K73, T 1533-1534). The line of action marked indicates the direction going from Dobroš/Dobrosh to Racaj, then Ramoc, and finally Korenica/Korenicë (K73, T 1534).



around eight kilometres.<sup>3714</sup> The Kosovo Albanian inhabitants in that area were predominantly Catholic.<sup>3715</sup> The VJ was also deployed in fixed positions along the Đakovica/Gjakovë-Dečani/Dečan road. This included some anti-aircraft batteries from the 52<sup>nd</sup> Armoured Brigade.<sup>3716</sup>

953. The Chamber accepts that paramilitary groups, the Tigers and the White Eagles, participated in the operation,<sup>3717</sup> notwithstanding evidence which denied any involvement in Kosovo of Serbian paramilitary forces.<sup>3718</sup> This issue is discussed further elsewhere in this Judgement.<sup>3719</sup> Armed groups affiliated with the MUP, which followed the 63<sup>rd</sup> Parachute Brigade and the MUP, burned the houses, using incendiary materials.<sup>3720</sup>

954. On 27 April 1999, units of the VJ, including the military police unit in the 2<sup>nd</sup> Battalion of the 549<sup>th</sup> Motorized Brigade, received an order to secure the area around the villages of Korenica/Korenicë and Meja/Mejë.<sup>3721</sup> The assignment was to carry out a blockade on the road between the intersection of Korenica/Korenicë and a part of the creek that goes towards Meja/Mejë.<sup>3722</sup> The task of the unit was to prevent KLA fighters withdrawing from the area. There were some 60 to 70 VJ soldiers engaged.<sup>3723</sup> Once the area was secured, a large number of police were deployed in the area.<sup>3724</sup> Some police were already in the area and others arrived in about 10 buses at about 0700-0730 hours. One group of the buses was from Đakovica/Gjakovë.<sup>3725</sup> The police entered villages in the area and randomly fired into houses. This caused most of the Kosovo Albanian population to leave the villages.<sup>3726</sup> The police also fired with a machine-gun mounted on an all-terrain vehicle.<sup>3727</sup> There was no resistance from the villages and no outgoing fire.<sup>3728</sup> K90 heard the sound of shooting in Korenica/Korenicë and saw that houses were burning.<sup>3729</sup> From the VJ command post, which was only 100 to 150 metres away from burning houses, K90 was able to see a large number of police in the area.<sup>3730</sup> Large columns of Albanian civilians from

<sup>3714</sup> K73, T 1523; K73, Exhibit P330, para 41.

<sup>3715</sup> K73, Exhibit P330, para 41.

<sup>3716</sup> Nike Peraj, T 1204; Exhibit P314.

<sup>3717</sup> Nike Peraj, T 1273; Nike Peraj, P313, para 44; K90, Exhibit P321, para 47.

<sup>3718</sup> Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45418, 45419, 45427, 45431, 45658, 45660; Miloš Došan, T 11415, 11512; Momir Stojanović, T 11810.

<sup>3719</sup> *See supra*, paras 208-215.

<sup>3720</sup> Nike Peraj, T 1202.

<sup>3721</sup> K90, Exhibit P321, para 48.

<sup>3722</sup> K90, T 1451, 1453.

<sup>3723</sup> K90, T 1465.

<sup>3724</sup> K90, Exhibit P321, para 48.

<sup>3725</sup> K90, T 1343-1344.

<sup>3726</sup> K90, Exhibit P321, para 48.

<sup>3727</sup> K90, T 1344-1345.

<sup>3728</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9315; T 1345

<sup>3729</sup> K90, Exhibit P321, para 53; K90, T 1345.

<sup>3730</sup> K90, Exhibit P321, para 53; K90, T 1345; Exhibit P323, a map with marking "VJ" indicates the location of the VJ command post; "1" the village of Korenica/Korenicë, with a line and the letter "P" the location where K90's squad of military police were; arrows marked with "2" the buses with the police that arrived around 0700 hours; Exhibit D36 (a map marked by the witness): "KM" indicates the location of the command post; arrow with "1", the

Korenica/Korenicë had been formed along the road to Đakovica/Gjakovë and moved off in that direction. The houses in the village of Korenica/Korenicë were then set on fire.<sup>3731</sup> There was another large column of villagers, some 500, from the villages of Meja/Mejë and Deva/Devë.<sup>3732</sup>

955. On 27 April 1999, at 0500 hours, a mixed Serbian force, including soldiers, paramilitaries and police, surrounded the village of Korenica/Korenicë.<sup>3733</sup> At around 0730 hours about 35 men of this force surrounded Lizane Malaj's courtyard.<sup>3734</sup> Some of the men wore masks, others had their faces painted,<sup>3735</sup> and they were armed with automatic rifles. They arrived in armoured vehicles (Lizane Malaj did not distinguish true tanks from other armoured vehicles) of which some were green and some blue. There were Pinzgauers and some men on foot.<sup>3736</sup> The armoured vehicles were marked with the flag of the former Yugoslavia.<sup>3737</sup> Lizane Malaj's 15 year old son, Blerim Malaj was outside the house when they arrived. He was made to lie on the ground.<sup>3738</sup> When Lizane Malaj's husband, Vat Malaj, came out of the house, he was ordered to call on all of the family to come outside, he did so and they all came outside.<sup>3739</sup> Blerim Malaj lay on the ground being held at gunpoint by a policeman wearing a blue camouflage uniform.<sup>3740</sup> In the meantime, another policeman, also wearing a blue camouflage uniform, went to the house of a brother of Lizane Malaj, Nikoll Kabashi. This policeman broke down the door, forced Kabashi and his family outside and demanded their personal documents, which were produced by Nikoll and 18 year old Andrush Kabashi.<sup>3741</sup> They too were then forced to lie on the ground together with Vat Malaj and a nephew, Arben Kabashi.<sup>3742</sup> Members of the Serbian forces then asked for the keys to the three cars standing nearby.<sup>3743</sup> As the keys could not be produced, Vat Malaj and Arben Kabashi were forced to demonstrate how to use wires to start the cars.<sup>3744</sup>

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line of the blockade of K90's unit; "2" the police checkpoint; "3" the house next to the checkpoint; "K" the location of the houses; "L" location where soldier Letić was; K90, T 1454-1455; 1459. The command post was about 120 metres from the checkpoint, K90, T 1459.

<sup>3731</sup> K90, Exhibit P321, para 48; K90, T 1344.

<sup>3732</sup> K90, Exhibit P321, para 52; K90, Exhibit P322 (*Milutinović* transcript), T 9322; 9365; Exhibit P323, arrow and "B" the direction in which the 500 people were walking and "C", the Orize village to where the column was moving.

<sup>3733</sup> Lizane Malaj, T 813-814, 865.

<sup>3734</sup> Lizane Malaj, T 813.

<sup>3735</sup> Lizane Malaj, T 814.

<sup>3736</sup> Lizane Malaj, T 814.

<sup>3737</sup> Lizane Malaj, T 815.

<sup>3738</sup> Lizane Malaj, T 815.

<sup>3739</sup> Lizane Malaj, T 815.

<sup>3740</sup> Lizane Malaj, T 815.

<sup>3741</sup> Lizane Malaj, T 816-817.

<sup>3742</sup> Lizane Malaj, T 815-816.

<sup>3743</sup> Lizane Malaj, T 816.

<sup>3744</sup> Lizane Malaj, T 816.

956. The 17 members of the Malaj and Kabashi families in the courtyard were of Albanian ethnicity. None had weapons.<sup>3745</sup> Those who were not lying on the ground were ordered to leave and to walk to Albania.<sup>3746</sup> Those who were lying on the ground were: Blerim Malaj, Vat Malaj, Nikoll Kabashi, Andrush Kabashi and Arben Kabashi. When Lizane Malaj had walked about 50 metres, she heard gunshots and screams coming from the courtyard she had just left and could identify her son's voice.<sup>3747</sup> She wanted to go back but a policeman in a blue uniform, who was sitting on an armoured vehicle pointed his gun at her and told her it would be better for her to continue on her way rather than go back and be executed.<sup>3748</sup> When she looked back, she could see that her house and houses in the village were on fire.<sup>3749</sup> Members of other families from the neighbourhood had also left their homes.<sup>3750</sup> The women and children were on the road walking while the men had been held in their courtyards.<sup>3751</sup> Lizane Malaj and members of her family were on the main road by around 0800 hours.<sup>3752</sup> Forensic evidence, discussed later in this Judgement, reveals that the bodies of the five males of Lizane Malaj's family, last seen by her in the courtyard of her home, were exhumed from a mass grave at the Batajnica SAJ Centre, near Belgrade, over two years later. She identified the bodies herself.<sup>3753</sup> All the bodies were collected in Orahovac/Rahovec, to where they had been transported by the ICRC<sup>3754</sup> and were re-buried in Meja/Mejë.<sup>3755</sup>

957. Also in evidence are forensic reports identifying the bodily remains of the individuals named above and, where possible, establishing the causes of death, which were gunshot wounds to the head.<sup>3756</sup> Lizane Malaj's evidence, which the Chamber accepts, was that there were no KLA members in her family.<sup>3757</sup> The Chamber is satisfied that all the the victims were unarmed civilians taking no active part in hostilities at the time they were killed. It further accepts that they were killed because they were Kosovo Albanian. The Chamber finds it established that Blerim Malaj, Vat Malaj, Nikoll Kabashi, Andrush Kabashi and Arben Kabashi were killed by Serbian forces on 27 April 1999 in Lizane Malaj's courtyard in the village of Korenica/Korenicë, as set out in Schedule H of the Indictment.

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<sup>3745</sup> Lizane Malaj, T 817-818.

<sup>3746</sup> Lizane Malaj, T 818.

<sup>3747</sup> Lizane Malaj, T 818-819.

<sup>3748</sup> Lizane Malaj, T 819.

<sup>3749</sup> Lizane Malaj, T 820.

<sup>3750</sup> Lizane Malaj, T 820.

<sup>3751</sup> Lizane Malaj, T 820.

<sup>3752</sup> Lizane Malaj, T 829.

<sup>3753</sup> Lizane Malaj, T 830.

<sup>3754</sup> Lizane Malaj, T 830.

<sup>3755</sup> Lizane Malaj, T 832.

<sup>3756</sup> Exhibits P99, pp 59-64, 75-81; P100, pp 18-24; P818, p 35, 39; P456, pp 37-39; P473, pp 21-22, 416, 452.

<sup>3757</sup> Lizane Malaj, T 840.

958. At 0630 hours on 27 April 1999, approximately nine men came to Prend Markaj's house in Meja/Mejë, where Merita Dedaj and her family were staying, and forced them to leave.<sup>3758</sup> The men wore uniforms similar to those worn by the army, and Merita Dedaj described them as VJ soldiers. However, they also wore scarves, bandannas, brown army hats and black masks to hide their faces.<sup>3759</sup> They spoke Serbian.<sup>3760</sup> They were yelling, pushing their guns against the people and shooting in the air.<sup>3761</sup> They robbed the men of their valuables and beat Bekim Markaj and Pashk Deda.<sup>3762</sup> They took the women and children out of the house and forced them to yell "Serbia" as loud as they could, and to raise three fingers in a "Chetnik" sign.<sup>3763</sup> While she was led away by these soldiers with the other women and children, Merita Dedaj turned around and saw that the men - Mark Deda, Pashk Deda, Linton Deda, Prend Markaj, Pashk Markaj, Mark Markaj, Bekim Markaj, Petrit Markaj and Skender Pjetri - had been forced to line up in the courtyard.<sup>3764</sup> None of the village men were armed and there were no weapons in the house.<sup>3765</sup> She then heard shots coming from the courtyard, looked back and saw the village men lying on the ground. She could not see whether they were alive or dead.<sup>3766</sup> The soldiers were about three metres away from the men.<sup>3767</sup> Merita Dedaj never saw these village men alive again. Her family later learned that their bodies had been found in mass graves at the Batajnica SAJ Centre, near Belgrade. Some of the bodies were later returned by Serbia.<sup>3768</sup> The body of Mark Deda, having been found at Batajnica, was later reburied in Guska/Guskë.<sup>3769</sup>

959. As other forensic evidence which is discussed later in this Judgement establishes, the bodily remains of all these village men, except for Skender Pjetri, were exhumed from the Batajnica SAJ Centre, near Belgrade, and forensically identified.<sup>3770</sup> In those cases where it was possible, forensic analysis established that the men had died of gunshot wounds.<sup>3771</sup> Although Skender Pjetri's body was not among those remains found at the Batajnica SAJ Centre, the Chamber is satisfied on the basis of the eye witness evidence of Merita Dedaj that he was also killed along with those men

<sup>3758</sup> Merita Dedaj, Exhibit P1030, p 3; Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1401.

<sup>3759</sup> Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1401, 1429. While Merita Dedaj describes the men at her house as "VJ soldiers", the description of the clothes worn by the men involved in the operation is not altogether consistent with the regular VJ uniform, leaving open that the men may have been from a paramilitary force rather than regular VJ. However, in view of the involvement of the 52<sup>nd</sup> Military Police Battalion and the 63<sup>rd</sup> Parachute Brigade in this operation, the Chamber accepts that those taking part in the operation were predominantly members of those VJ units.

<sup>3760</sup> Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1401, 1429.

<sup>3761</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3762</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3763</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3764</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3765</sup> Merita Dedaj, Exhibit P1030, p 4.

<sup>3766</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3767</sup> Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1401.

<sup>3768</sup> Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1402.

<sup>3769</sup> Lizane Malaj, T 832.

<sup>3770</sup> Exhibits P98, pp 16-24, 73-79; P100, pp 1-7, 43-49, 56-63, 64-73, 91-97; P818, p 25, 40; P120, pp 24-36.

whose bodies were later recovered in Serbia. Merita Dedaj's evidence, which was uncontested, was that none of her family were members of the KLA.<sup>3772</sup> The Chamber is satisfied that all the victims were unarmed civilians taking no active part in hostilities at the time they were killed outside Prend Markaj's house in Meja/Mejë. It further accepts that they were killed because they were Kosovo Albanian men.

960. The Chamber finds it established that Mark Deda, Pashk Deda, Linton Deda, Prend Markaj, Pashk Markaj, Mark Markaj, Bekim Markaj, Petrit Markaj and Skender Pjetri were killed on 27 April 1999, as set out in Schedule H of the Indictment.

961. On 27 April 1999 at 0700 hours Martin Pnishi noticed that large numbers of the VJ and police had arrived in Meja/Mejë and started to shoot outside his house.<sup>3773</sup> At 0730 hours Martin Pnishi saw a man named Kolë Duzhmani, owner of the petrol station in Korenica/Korenicë, riding a bicycle towards Korenica/Korenicë.<sup>3774</sup> Duzhmani was stopped by four men. Two were members of the MUP and two were thought by Martin Pnishi to be "Russian soldiers". Duzhmani was forced to Martin Pnishi's house by the four men under threat from machine guns. The policemen wore masks and light green camouflage uniforms with stripes.<sup>3775</sup> One of them had ranks on his uniform in the form of a star and a bar.<sup>3776</sup> The two soldiers spoke in a mix between Serbian and Russian<sup>3777</sup> and were dressed in the same blue and grey uniforms which Martin Pnishi believed were worn by Serbian paramilitary forces. They had machine guns and big knives, and did not wear masks.<sup>3778</sup> The four men and their prisoner stopped in front of the entrance to Martin Pnishi's house. He went out and opened the front gate. The police asked him who was inside the house and he told them that his paralyzed wife and his son were there. They then ordered him to leave because they were going to burn the house.<sup>3779</sup> They told him to go to Albania. They behaved in a threatening manner, firing their weapons into the ground and into the air.<sup>3780</sup> He ran into the courtyard and put his sick wife on a wheelbarrow. When he asked the "Russian soldiers" if he should join the convoy towards Albania, one of them opened the well and ordered him to jump into it, telling him "No,

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<sup>3771</sup> Exhibits P456, pp 68-70, 201-203, 207-210; P473, pp 37-38, 41-42, 413, 484; P474, pp 344-346.

<sup>3772</sup> Merita Dedaj, Exhibit P1030, p 4.

<sup>3773</sup> Martin Pnishi, Exhibit P1033, p 2.

<sup>3774</sup> Martin Pnishi, Exhibit P1033, p 3; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1481.

<sup>3775</sup> Martin Pnishi, Exhibit P1033, p 3; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1444 and 1456.

<sup>3776</sup> Martin Pnishi, Exhibit P1033, p 3.

<sup>3777</sup> Martin Pnishi, T 6579-6580.

<sup>3778</sup> Martin Pnishi, Exhibit P1033, p 3; Martin Pnishi, T Exhibit P1034 (*Milutinović* transcript), 1444. The Chamber notes that during the examination on 29 June 2009, the witness wished to make a correction concerning the colour of the uniforms, clarifying that the uniforms were actually "grass-coloured", but this seems to have been the result of a misunderstanding rooted in the multiple meaning of the Albanian word "verdhe". (Martin Pnishi, T 6546-6547). When asked, the witness made it clear that he had not actually changed anything in his testimony (Martin Pnishi, T 6558).

<sup>3779</sup> Martin Pnishi, Exhibit P1033, p 3.

<sup>3780</sup> Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1443.

your place is here in the well”.<sup>3781</sup> When he refused, the soldier asked if his son was a KLA member. Martin Pnishi answered that his wife was sick and that the son had to help her, and the soldier proceeded to kick him, making him fall down, and then kicked him again after he had fallen to the ground.<sup>3782</sup>

962. Some person called the “Russian soldiers” over the radio and asked them if Gjelosh Kola was there. The “Russian soldiers” confused the name with the name Kolë Duzhmani, who was their prisoner, and said that he was there. Martin Pnishi then heard the person on the other end of the radio give the order: “...Umosti ga...”, meaning “...Destroy him...” The two “Russian soldiers” and the two MUP officers grabbed Kolë Duzhmani and took him to the front gate of the adjoining house of Martin Pnishi’s brother. Martin Pnishi later heard multiple gunshots coming from his brother’s house. He did not see Duzhmani alive at any time after that.<sup>3783</sup> A little later, the four men set the house of Martin Pnishi’s brother’s on fire.<sup>3784</sup> After events described a little later, some 19 days later, Martin Pnishi returned to the house and found the body of Kolë Duzhmani on the cement floor in the kitchen. There were multiple bullet holes all over his body and over the wall of the room.<sup>3785</sup> Martin Pnishi asked the police for permission to bury the body of Kolë Duzhmani, which they gave. Since they couldn’t take his body to his home village Korenica/Korenicë, they buried him in the cemetery at Jahoc.<sup>3786</sup>

963. The bodily remains of Kolë Duzhmani were later exhumed at the Batajnica SAJ Centre, near Belgrade, and forensically identified.<sup>3787</sup> Forensic analysis established that the cause of death was from multiple projectile wounds.<sup>3788</sup> There is no evidence that Kolë Duzhmani was a member of the KLA. The evidence of Martin Pnishi indicates he may have been killed as a result of being mistaken for another person called Gjelosh Kola. Although it is a matter of conjecture whether the state of preservation of the remains after some 19 days is normal, this is not a matter that has been further explored, nor does it alter the Chamber’s finding, based on eyewitness and forensic evidence, that Kolë Duzhmani died as a result of multiple gunshot wounds. The Chamber is satisfied and finds that he was an unarmed civilian taking no active part in hostilities when he was killed and that he was killed because he was a Kosovo Albanian man. On the basis of the above,

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<sup>3781</sup> Martin Pnishi, T 6578.

<sup>3782</sup> Martin Pnishi, Exhibit P1033, p 3.

<sup>3783</sup> Martin Pnishi, Exhibit P1033, p 3; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1445.

<sup>3784</sup> Martin Pnishi, Exhibit P1033, p 4.

<sup>3785</sup> Martin Pnishi, Exhibit P1033, p 4; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1446-1447. The body had not been burned or charred, and seemed to have been preserved by the smoke. Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1447, 1516.

<sup>3786</sup> Martin Pnishi, T 6585; Martin Pnishi Exhibit P1034 (*Milutinović* transcript), T 1481.

<sup>3787</sup> Exhibit P477, p 58 (listed as Pal Kol Duzhmani); Exhibit P576, pp 455-462; Exhibit P818, p 26.

<sup>3788</sup> Exhibit P474, pp 126-128.

the Chamber finds it established that Kolë Duzhmani was killed on 27 April 1999 in Meja/Mejë, as set out in Schedule H of the Indictment.

964. While Kolë Duzhmani was being taken to the adjoining house, Martin Pnishi went to the second floor of his house and saw from there that his sister-in-law Grisha and her 12 year old son Kriste had opened the front gate.<sup>3789</sup> Soldiers and policemen came up to her and started hitting her with the machine gun butts and threatened her son with a knife, holding it against his throat and threatening to cut it. Grisha grabbed her son, was hit again, and then fled down towards the main road where she joined a convoy of other people who were already there.<sup>3790</sup>

965. At around 0930 hours on 27 April 1999, Martin Pnishi saw a huge crowd coming from the villages of Guska/Guskë, Korenica/Korenice and Junik passing on the main road outside, travelling by means of tractors, cars, horse carriages and on foot.<sup>3791</sup> The Serbian forces had set up a checkpoint at the intersection between Meja/Mejë and Orize. At the checkpoint stood police forces with armoured vehicles, VJ soldiers and paramilitary units, who made the civilians drop their identification cards on the ground. The men were then forced to lay down with their face on the ground and their hands on their head and some men were taken and locked in the school at the entrance to the village.<sup>3792</sup> He could hear women and children screaming.<sup>3793</sup> Among those who were separating the men from the women and children in Meja/Mejë was Dragutin Stojanović, nicknamed Guta, the police commander in Ponoshec/Ponoševac.<sup>3794</sup> Stojanović also blocked the road at the intersection near the school with a car he had seized from Martin Deda, a villager of Guska/Guskë.<sup>3795</sup> At 1030 hours, all the Serbian forces in the area gathered near the school. Martin Pnishi told his son to flee towards Jahoc. He then took his paralysed wife and dragged her to his godfather's house in Jahoc, arriving at about 1100 hours.<sup>3796</sup>

966. At 1145 hours, Martin Pnishi saw five armed and uniformed men, one of whom he could identify as Predrag Stanojević, a policeman from the Đakovica/Gjakovë police,<sup>3797</sup> pushing seven young Kosovo Albanian men in front of them from the school in Meja/Mejë towards the Ura e Traves bridge.<sup>3798</sup> At the Meja/Mejë side of the bridge, the policemen lined up the young men. One of the police went to the middle of the bridge, while the others stayed, guarding the young

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<sup>3789</sup> Martin Pnishi, Exhibit P1033, pp 3-4.

<sup>3790</sup> Martin Pnishi, Exhibit P1033, pp 3-4.

<sup>3791</sup> Martin Pnishi, Exhibit P1033, p 4.

<sup>3792</sup> Martin Pnishi, Exhibit P1033, p 4.

<sup>3793</sup> Martin Pnishi, Exhibit P1033, p 4.

<sup>3794</sup> Martin Pnishi, Exhibit P1033, p 5; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1448.

<sup>3795</sup> Martin Pnishi, Exhibit P1033, p 5.

<sup>3796</sup> Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1480-1481; Martin Pnishi, T 6580.

<sup>3797</sup> Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1448.

<sup>3798</sup> Martin Pnishi, Exhibit P1033, p 4; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1493-1494.

men. The policeman who stood in the middle of the bridge shot the seven young men with his machine gun and all seven fell dead to the ground. Martin Pnishi went to the bridge shortly after but did not recognise any of the victims.<sup>3799</sup> The Chamber notes that there is no evidence that these seven men were members of the KLA. The circumstances of their deaths were such that they were unarmed, prisoners in the custody of the police, and were not taking any active part in hostilities. The Chamber is satisfied that they were all killed on account of being Kosovo Albanian.

967. At about 0800 hours on 27 April 1999<sup>3800</sup> Major Vuković sent K90, a military policeman in the 2<sup>nd</sup> Battalion of the 549<sup>th</sup> motorised brigade, to check what was happening at the crossroad near the village of Korenica/Korenicë.<sup>3801</sup> There were about 30 armed policemen who were members of the PJP<sup>3802</sup> positioned at the crossroad. They were stopping the columns of people from villages in the area.<sup>3803</sup> They were armed with the type of automatic rifle used by the regular police.<sup>3804</sup> These police were separating men from the women and children, checking paperwork and appeared to be stealing money from the people. The women and children were allowed to continue towards Đakovica/Gjakovë.<sup>3805</sup> The men were taken under gunpoint to a compound.<sup>3806</sup> The compound contained a large house and two smaller buildings; the wall surrounding it was not high.<sup>3807</sup> There were about 10 policemen inside the yard who were members of the PJP.<sup>3808</sup> The men were taken into one of the smaller houses in the compound. A prolonged sound of automatic fire was then heard, following which the police left the building.<sup>3809</sup> K90 looked into one of the small houses. It contained the bodies of men. K90 could not say how many but he could not see the floor for the bodies. He spoke to a policeman and told him that he had been sent by Major Vuković to find out what was happening. The policeman responded that they “were slaughtering Šiptars”,<sup>3810</sup> and made it clear that it was none of the army’s business what they were doing.<sup>3811</sup> K90 saw at least three to four groups of village men being taken to the compound. The groups numbered from five to over ten people.<sup>3812</sup> K90 reported to Major Vuković what he had seen,<sup>3813</sup> but he was not aware of

<sup>3799</sup> Martin Pnishi, Exhibit P1033, p 4.

<sup>3800</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9329. The Chamber notes that the witness was unable to specify with certainty that this incident occurred on 27 or 28 April 1999. However, in view of the evidence of several other witnesses who testified, the Chamber is satisfied that the events occurred on 27 April 1999.

<sup>3801</sup> K90, Exhibit P321, para 53.

<sup>3802</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9329.

<sup>3803</sup> K90, Exhibit P321, para 54.

<sup>3804</sup> K90, T 1360; Exhibit P326, weapon No 1.

<sup>3805</sup> K90, Exhibit P321, para 54.

<sup>3806</sup> K90, Exhibit P321, para 55.

<sup>3807</sup> K90, Exhibit P321, para 58.

<sup>3808</sup> K90, T 1535-1536; Exhibit P324 (circle and “VJ” indicates the location of the VJ command posts; “A”, the crossroad with 30 policemen; “E” the yard where the police took the separated men, K90, T 1350).

<sup>3809</sup> K90, Exhibit P321, para 59.

<sup>3810</sup> K90, T 1461.

<sup>3811</sup> K90, Exhibit P321, para 60; K90, Exhibit P322 (*Milutinović* transcript), T 9331, 9366; K90, T 1354.

<sup>3812</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9274; K90, T 1351-1352.

<sup>3813</sup> K90, Exhibit P321, para 61.



Vuković taking further action such as talking to the police or calling anyone on the radio.<sup>3814</sup> All the men were Kosovo Albanians and the Chamber is satisfied that this was the reason they were killed. The Chamber finds that although there is no evidence as to whether the men who were killed in the compound were members of the KLA, they were unarmed, in police custody and not taking any active part in hostilities when they were killed.

968. K90 was also asked to establish what had caused the shooting injuries of three VJ soldiers in the area.<sup>3815</sup> He was ordered by Major Vuković to go with the ambulance. On the way he saw at least four bodies, one of which was of a woman, along the road near the entrance of Korenica/Korenicë.<sup>3816</sup> The bodies were not dressed in uniforms and there were no weapons.<sup>3817</sup> K90 spoke to a VJ soldier from the unit of the injured soldiers who told him that the police were shooting in all directions. The entire area was surrounded and secured by the VJ so there appeared to K90 to be no way that any KLA fighters could be in the area or in a position to shoot at VJ.<sup>3818</sup> In any event, there was no fire from the Kosovo Albanian side which confirmed that there was no KLA and the VJ was not shooting at the time the soldiers were injured.<sup>3819</sup> All three injured soldiers were taken to an outpatient hospital at Đakovica/Gjakovë. Two of the soldiers thought that they had been injured by stray bullets fired by the police.<sup>3820</sup>

969. K90 reported back to Major Vuković who instructed him to go to Meja/Mejë and escort the civilians through to Đakovica/Gjakovë. K90 went to Meja/Mejë with a soldier and escorted over 100 Kosovo Albanian villagers to the bridge before Đakovica/Gjakovë which was about two kilometres away. There was a checkpoint at the bridge and the civilians were allowed to pass because K90 told the police and soldiers there that this was an order from Major Vuković.<sup>3821</sup> K90 returned to the crossroad where he saw a group of about eight to 10 men, between 20 and 30 years old, being escorted by police towards the crossroad from the direction of the VJ command post.<sup>3822</sup> As the group approached the crossroad they were diverted towards the compound.<sup>3823</sup> The men were forced to sing Serbian nationalistic songs as they walked to the compound.<sup>3824</sup> K90 then heard

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<sup>3814</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9331.

<sup>3815</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9428; K90, Exhibit P321, para 62.

<sup>3816</sup> K90, Exhibit P321, para 63.

<sup>3817</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9335; K90, T 1347; Exhibit P323: number “4” marks the location of the bodies mentioned in para 63; “Q” marks the location of the two wounded soldiers.

<sup>3818</sup> K90, Exhibit P321, para 63. *See also* K90, Exhibit P321, para 62; K90, Exhibit P322 (*Milutinović* transcript), T 9450-9451.

<sup>3819</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9331, 9452.

<sup>3820</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9334.

<sup>3821</sup> K90, Exhibit P321, para 64.

<sup>3822</sup> K90, Exhibit P321, paras 61, 65; K90, T 1462.

<sup>3823</sup> K90, Exhibit P321, para 65.

<sup>3824</sup> K90, Exhibit P321, para 55.

the sound of shooting from the compound.<sup>3825</sup> Nothing in evidence indicates that the men were KLA; all were unarmed, in the custody of the police when they were shot. They were not taking an active part in hostilities. The Chamber is satisfied that they were all killed on account of being Kosovo Albanian. K90 returned to the command post. Major Vuković told him that they were pulling back to the barracks. The police in the area withdrew by bus one hour before the VJ.<sup>3826</sup> Before the police left, the small houses in the compound where the men had been shot were set on fire.<sup>3827</sup> K90 did not personally see the houses set on fire.<sup>3828</sup> The following day he returned and found that only the foundations of the houses remained.<sup>3829</sup> The policemen who had arrived in the area the previous morning on buses, the policemen at the crossroads and those in the courtyard, all as described earlier, were wearing blue uniforms with green bullet proof vests, and with white writing on the sleeves and on the back of the vests.<sup>3830</sup>

970. On 27 April 1999, Nike Peraj and Captain Perović went to Meja/Mejë. They arrived in Orize at 1500 hours wearing their VJ uniforms and carrying weapons. They were stopped at a checkpoint, in front of the store of Krist Sokoli. MUP Inspector Rašović was in charge of the checkpoint.<sup>3831</sup> At the checkpoint, there were Special Police from the Đakovica/Gjakovë MUP station wearing blue camouflage uniforms and reservist police in solid blue uniforms.<sup>3832</sup> The Special Police were armed with automatic weapons with foldable butts while Inspector Rašović had a nine millimetre pistol. The reservists carried semi-automatic rifles with bayonets on top and TT revolvers.<sup>3833</sup> Nike Peraj saw four bodies in the grass behind the toilets of the school opposite the checkpoint, about 30-40 metres away. They appeared to be men aged 30-40 and had been kicked in the face with boots as suggested by the injuries on their face.<sup>3834</sup> Nike Peraj inquired with Inspector Rašović about male villagers who had been stopped at the checkpoint but was told that no men were detained in the school. Rašović advised that Peraj and Captain Perović, who was part of a three-member commission established for “mopping up the terrain”,<sup>3835</sup> should not go to Meja/Mejë as it was dangerous.<sup>3836</sup> Nevertheless, Peraj and Captain Perović continued towards Meja/Mejë. On the way, they came upon 10 Albanian families from the area and escorted them back past the

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<sup>3825</sup> K90, Exhibit P321, paras 55-65; K90, Exhibit P322 (*Milutinović* transcript), T 9339.

<sup>3826</sup> K90, Exhibit P321, para 66.

<sup>3827</sup> K90, Exhibit P321, para 66; K90, T 1365.

<sup>3828</sup> K90, Exhibit P322 (*Milutinović* transcript), T 9339.

<sup>3829</sup> K90, T 1365-1366.

<sup>3830</sup> See Exhibit P326, Nos 6 and 7 (showing patches of the MUP); K90, T 1357, 1359, 1361, 1362.

<sup>3831</sup> Nike Peraj, Exhibit P313, para 68; Nike Peraj, T 1185, 1207-1208; Exhibit P315.

<sup>3832</sup> Nike Peraj, T 1208-1209.

<sup>3833</sup> Nike Peraj, T 1209-1210.

<sup>3834</sup> Nike Peraj, Exhibit P313, para 69.

<sup>3835</sup> Nike Peraj, T 1188.

<sup>3836</sup> Nike Peraj, Exhibit P313, para 70; Nike Peraj, T 1186.

checkpoint in Orize. These families told them about people killed near the Hasanaj house in Meja/Mejë.<sup>3837</sup>

971. Captain Perović and Nike Peraj headed back towards Meja/Mejë at around 1530 hours. Before arriving they came upon 20-30 VJ soldiers who had been there since around midnight the previous night. The lieutenant in command told Nike Peraj that the male villagers abducted from among the displaced persons were in Meja/Mejë.<sup>3838</sup> Upon arrival in Meja/Mejë, Nike Peraj and Captain Perović found the bodies of 20 dead men lying in a meadow near the Hasanaj house,<sup>3839</sup> about 30 metres away from a checkpoint in Meja/Mejë.<sup>3840</sup> Nike Peraj observed powder burns on the heads of some victims indicating they had been shot at close range.<sup>3841</sup>

972. Nike Peraj saw three gas canisters on the ground as well as a pile of torn identification documents.<sup>3842</sup> There were 12 Kosovo Albanian men lined up against the wall of a store near the checkpoint and tractors loaded with women and children. Captain Perović spoke with Milan Šćepanović who wore a MUP blue camouflage uniform with a MUP patch.<sup>3843</sup> Šćepanović ordered the men lined up against the wall to turn to see if Nike Peraj could recognize any relatives. He could not, but he told Šćepanović that he knew the men because they were from his valley and that they had not done anything. Šćepanović replied they were separatists and terrorists.<sup>3844</sup> Nike Peraj said to Captain Perović that he too should go line up because there was no difference between him and the men against the wall. In the meantime, paramilitary soldiers were approaching. Captain Perović called the VJ Lieutenant they had recently been in touch with on the radio and ordered him to come with his soldiers.<sup>3845</sup> When Šćepanović saw the VJ soldiers approaching he ordered his men to withdraw. Šćepanović released the 12 men lined up against the wall and ordered them onto the tractors.<sup>3846</sup> Nike Peraj then escorted about 10 Albanian families through the MUP checkpoint in Meja/Mejë.<sup>3847</sup> Captain Perović ordered the Lieutenant and VJ soldiers to escort the tractors to Orize.<sup>3848</sup>

973. Nike Peraj, Captain Perović and a soldier headed towards Madanaj village. In Meja/Mejë, Nike Peraj saw three jeeps occupied by Arkan's Tigers paramilitaries, whom he recognized from

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<sup>3837</sup> Nike Peraj, Exhibit P313, para 71; Nike Peraj, T 1186.

<sup>3838</sup> Nike Peraj, Exhibit P313, para 72; Nike Peraj, T 1186.

<sup>3839</sup> Nike Peraj, Exhibit P313, para 73; Nike Peraj, T 1186.

<sup>3840</sup> Nike Peraj, T 1211; Exhibit P315.

<sup>3841</sup> Nike Peraj, Exhibit P313, para 74.

<sup>3842</sup> Exhibit D34, para 8.

<sup>3843</sup> Nike Peraj, Exhibit P313, para P00313 para 75; Nike Peraj, T 1186.

<sup>3844</sup> Nike Peraj, Exhibit P313, para 76.

<sup>3845</sup> Nike Peraj, Exhibit P313, para 77; Nike Peraj, T 1186.

<sup>3846</sup> Nike Peraj, Exhibit P313, para 78.

<sup>3847</sup> The families helped included those of Kole Shyti, Zef Pnishi, Sadri Beka, Nue Mark Mirashi, Sokol Jetishi, and Hasan Idrizi. Nike Peraj, Exhibit P313, para 82.

the barracks in Đakovica/Gjakovë.<sup>3849</sup> As they travelled, about 600 metres from the Shyt Hasanaj meadow, Nike Peraj saw four dead bodies on the left side and then seven more bodies in a pile. These were all men aged 20-50.<sup>3850</sup> After this, Nike Peraj and Captain Perović escorted two Kosovo Albanian families from Meja/Mejë to Orize. At the checkpoint they requested the police to not harm another two families that were about to pass through. Nike Peraj and Captain Perović then headed to Korenica/Korenicë. Along the way they saw one dead body lying near the house of Nike Peraj's brother-in-law.<sup>3851</sup> In Korenica/Korenicë houses were on fire and there was a checkpoint, manned by three or four policemen.<sup>3852</sup> That evening, after 2200 hours, Nike Peraj was at Brigade Headquarters in Đakovica/Gjakovë. He observed Major Zdravko Vintar, Chief of the Information and Morale Organ of the 52<sup>nd</sup> Artillery Rocket Brigade, preparing a report which stated that 74 terrorists had been killed in Korenica/Korenicë and 68 terrorists killed in Meja/Mejë.<sup>3853</sup>

974. During the first day of the operation, on 27 April 1999, the anti-terrorist unit of the VJ 52<sup>nd</sup> Military Police Battalion expelled hundreds of Kosovo Albanian civilians from their villages. The unit worked in coordination with the VJ 63<sup>rd</sup> Parachute Brigade, who were on their left flank, and with whom they had both visual and radio contact, and the PJP Brigade, who were on their right flank, and with whom they had radio contact.<sup>3854</sup> Once the civilians had left, their houses were set on fire.<sup>3855</sup>

975. In the village of Ramoc,<sup>3856</sup> situated between Dobroš/Dobrosh and Korenica/Korenicë, Captain Sasa Antić, commander of the anti-terrorist unit of the VJ 52<sup>nd</sup> Military Police Battalion,<sup>3857</sup> took three civilian men who were prominent members of the village, together with a man from the village of Skivjane/Skivjan whom the unit had found earlier in the surrounding woods, as hostages for the night, while the rest of the villagers were expelled to Korenicë/Korenica.<sup>3858</sup> At some point in the night of 27 April 1999, three or four KLA fighters walked into the village of Ramoc not realising that a VJ unit was present.<sup>3859</sup> A VJ soldier who was on guard heard the voices of the KLA fighters and – apparently thinking that they were VJ soldiers – shouted at them to quieten down.<sup>3860</sup> The KLA fighters immediately opened fire upon the VJ soldier, killing him.<sup>3861</sup> A “short

<sup>3848</sup> Nike Peraj, Exhibit P313, para 78; Nike Peraj, T 1186.

<sup>3849</sup> Nike Peraj, Exhibit P313, para 80; Nike Peraj, T 1187.

<sup>3850</sup> Nike Peraj, Exhibit P313, para 79.

<sup>3851</sup> Nike Peraj, Exhibit P313, para 81; Nike Peraj, T 1187.

<sup>3852</sup> Nike Peraj, T 1215; Exhibit P315.

<sup>3853</sup> Nike Peraj, Exhibit P313, para 83, para 86; *see also* Nike Peraj, T 1301-1306.

<sup>3854</sup> K73, T 1526-1527, 1529.

<sup>3855</sup> K73, Exhibit P330, para 42; K73, T 1524-1525.

<sup>3856</sup> Exhibit P338, p 12.

<sup>3857</sup> K73, Exhibit P330, para 28.

<sup>3858</sup> K73, Exhibit P330, para 43; K73, T 1527; K73, Exhibit P332 (*Milutinović* transcript), T 3331.

<sup>3859</sup> K73, T 1527-1528.

<sup>3860</sup> K73, T 1528.

but fierce exchange of fire” between the KLA fighters and the members of the anti-terrorist unit of the 52<sup>nd</sup> Military Police Battalion ensued.<sup>3862</sup> The following morning, on 28 April 1999, VJ soldiers from the unit found the body of one of the KLA fighters who was wearing a German uniform used by the KLA and was carrying a rocket propelled grenade launcher. He had been shot between his eyes.<sup>3863</sup> This incident was the only time that the unit came across KLA fighters in the course of the Reka Operation.<sup>3864</sup> During the operation, K73 heard shooting from the direction of the PJP Brigade positioned to the right of the unit and was later told by the PJP Brigade that they had had “firing contact” with KLA fighters and had killed three of them.<sup>3865</sup> Given other consistent and substantial evidence of PJP firing activity directed against Kosovo Albanian civilians on 27-28 April 1999, discussed above, the Chamber is left in doubt whether the sound of shooting heard by K73 was in the course of combat activity between the PJP and the KLA.

976. Captain Antić ordered that the body of the KLA fighter referred to in the preceding paragraph be placed in a sitting position in the first house in Ramoc and that the entire village should be burned in retaliation for the killing of the VJ soldier.<sup>3866</sup> According to K73, this was the only time a specific order to burn a village was given to the unit.<sup>3867</sup> After the burning of the village of Ramoc, the unit moved to another village, taking with them the four Kosovo Albanian hostages that had stayed with them overnight. When they arrived in that village, Captain Antić contacted the PJP via radio.<sup>3868</sup> When the PJP arrived, the commander of the PJP requested that the four hostages be handed over to him because they were civilians, falling under police jurisdiction. When the four hostages were handed over by Captain Antić, the commander of the PJP called one of his officers and said: “these four assholes belong to you”. The PJP officer took the hostages to the nearby woods and a minute later multiple gunshot sounds were heard from the woods.<sup>3869</sup> The PJP officer returned from the woods with the plastic ties that had been on the wrists of the hostages. He said with a smile on his face, “I was too fair, I gave them a cigarette and they were smoking and crying because they understood what was going to happen”. K73 testified that when the members of his unit heard the gunshots, they shouted at the PJP commander who replied, “mind your business; the Siptars killed this man’s brother”, referring to the PJP officer who had taken the four hostages to the woods.<sup>3870</sup> Evidence indicates that the four Kosovo Albanian men were civilians. Indeed, their handover from the VJ Military Police to the PJP was ostensibly based on fact that they were “not

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<sup>3861</sup> K73, Exhibit P330, para 44.

<sup>3862</sup> K72, T 1528.

<sup>3863</sup> K73, T 1528; K73, Exhibit P330, para 44; K73, Exhibit P332 (*Milutinović* transcript), T 3332.

<sup>3864</sup> K73, T 1529.

<sup>3865</sup> K73, T 1529-1530.

<sup>3866</sup> K73, T 1528; K73, Exhibit P332 (*Milutinović* transcript), T 3329, 3392.

<sup>3867</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3329.

<sup>3868</sup> K73, Exhibit P330, para 45; K73, T 1531, 1553.

<sup>3869</sup> K73, Exhibit P330, para 4; K73, T 1531.

prisoners of war. They were not terrorists. They were nothing. They were civilians” and therefore came within the jurisdiction of the regular police, rather than the military police.<sup>3871</sup> Moreover, they were unarmed, wearing civilian clothes, in police custody, and were taking no active part in hostilities. The Chamber is satisfied that they were all killed on account of being Kosovo Albanian.

977. On 28 April 1999, the anti-terrorist unit of the VJ 52<sup>nd</sup> Military Police Battalion moved to Korenica/Korenicë. There were no civilians.<sup>3872</sup> The village was burning and there were approximately one hundred policemen from the PJP<sup>3873</sup> who were wearing the standard blue camouflage uniform.<sup>3874</sup> K73 asked one of the policemen where the civilians were and he answered: “We sent them out on a trip”.<sup>3875</sup>

978. The operation continued on 28 April 1999. Nike Peraj went to the MUP command post in Dužnje/Duzhnjë where he helped two other Kosovo Albanian families to pass through after assuring the MUP, including senior officers, that they were not KLA.<sup>3876</sup> On the same day, Nike Peraj and Captain Perović travelled into the valley and then to the command post Qafe e Osekut. The houses in the villages in the valley were on fire, and the operation was still under way.<sup>3877</sup>

979. Human Rights Watch researcher Frederick Abrahams testified that he and other colleagues based in Albania near the border first heard from Kosovo Albanian women refugees arriving in Albania from Kosovo the morning of 27 April 1999 that they had been separated from their men. Refugees arriving around midday said that they saw men kneeling by the side of the road in Meja/Mejë in the detention of police.<sup>3878</sup> Women arriving at the end of the day said there were even larger numbers. At least two refugees said that they saw dead bodies that had been piled up on the side of the road and they estimated the number of bodies as close to 300.<sup>3879</sup> Once the fighting was over, HRW investigators went to Meja/Mejë to investigate. A colleague of Frederick Abrahams, Joanne Mariner, went there on 14 June 1999 and saw a few dead bodies on the side of the road precisely where the refugees had said they were, as well as remnants of personal identity documents and effects.<sup>3880</sup> Frederick Abrahams went to Meja/Mejë in July 1999 and conducted lengthy

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<sup>3870</sup> K73, T 1532.

<sup>3871</sup> K73, T 1531.

<sup>3872</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3333.

<sup>3873</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3333, 3438; K73, T 1535; K73, Exhibit P330, para 46.

<sup>3874</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3438.

<sup>3875</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3334.

<sup>3876</sup> Nike Peraj, Exhibit P313, para 84.

<sup>3877</sup> Nike Peraj, T 1218-1219.

<sup>3878</sup> Frederick Abrahams, T 3969.

<sup>3879</sup> Frederick Abrahams, T 3970; Exhibit P756, p 231.

<sup>3880</sup> Frederick Abrahams, T 3970; Exhibit P756, p 233.

interviews with villagers whose accounts were consistent with those which refugees had given in Albania.<sup>3881</sup>

980. As noted earlier, save for the short unplanned firefight in the village of Ramoc on 27 April 1999 between four KLA fighters and members of a VJ unit, there is little evidence of KLA activity or presence in the valley at the relevant time.<sup>3882</sup> Even if the operation was one purely based on the objective of neutralising the KLA in the area, the actions of the Serbian forces during the operation were clearly disproportionate to any KLA threat that may have existed.

(c) Convoy to Albania

981. A convoy composed of Kosovo Albanian women and children left the villages in the area of Meja/Mejë and Korenica/Korenicë and headed towards Đakovica/Gjakovë city on 27 April 2009.<sup>3883</sup> VJ soldiers and police were lining the road and forcing the people to walk on and not to stop anywhere.<sup>3884</sup> The convoy travelled through Korenica/Korenicë-Đakovica/Gjakovë-Prizren-Verbica/Vërbnicë and then to the border with Albania.<sup>3885</sup> Those in the convoy passed through a number of checkpoints, one by the Tabaku bridge, Ura e Tabakeve, on the road from Korenica/Korenicë towards Đakovica//Gjakovë,<sup>3886</sup> which were manned by Serbian police and soldiers.<sup>3887</sup> From that checkpoint on, they were directed toward Prizren and were not allowed to leave the road.<sup>3888</sup> From Prizren, they proceeded through Verbica/Vërbnicë to the border with Albania at Café Morina/Morinë.<sup>3889</sup> Serbian forces escorted the convoy throughout the journey to the border and did not allow them to rest or to have any food or drink.<sup>3890</sup> At the border, the Serbian police took identification documents from the people in the convoy and those on tractors were forced to remove and hand over registration plates from their tractors.<sup>3891</sup> The convoy reached the border of Albania on 28 April 1999 at 1300 hours and crossed into Albania.<sup>3892</sup>

982. Between Korenica/Korenicë and Meja/Mejë, shortly before arriving in Meja/Mejë, from a distance of about 50 metres, Merita Dedaj saw eight bodies covered with blankets. She saw VJ soldiers putting the bodies on a VJ truck and heard one of the soldiers telling the driver to go to

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<sup>3881</sup> Frederick Abrahams, T 3970.

<sup>3882</sup> *See supra*, para 975.

<sup>3883</sup> Merita Dedaj, Exhibit P1030, p 3; Lizane Malaj, T 820-821; Exhibit P295.

<sup>3884</sup> Lizane Malaj, T 821.

<sup>3885</sup> Lizane Malaj, T 821. *See also* Nike Peraj, T 1216-1217; Nike Peraj, Exhibit P315.

<sup>3886</sup> Lizane Malaj, T 823; Exhibit P295 (checkpoint marked as 10).

<sup>3887</sup> Lizane Malaj, T 823.

<sup>3888</sup> Lizane Malaj, T 823; Exhibits P295, P296.

<sup>3889</sup> Lizane Malaj, T 827.

<sup>3890</sup> Lizane Malaj, T 828.

<sup>3891</sup> Lizane Malaj, T 828.

<sup>3892</sup> Lizane Malaj, T 829.

Đakovica/Gjakovë.<sup>3893</sup> The convoy arrived in Đakovica/Gjakovë on 27 April 1999. When the people in the convoy tried to stop at the Liberty Park near the Isa Greyda Hospital, police, wearing blue camouflage uniforms and baseball caps, came and told them that they were not allowed to rest and that they had to go to Albania.<sup>3894</sup> One witness heard police say “You either go straight to Albania, or we will execute you”.<sup>3895</sup> At the town of Bistražin/Bishtazhin the people in the convoy were stopped at a police check-point and were kept for two to three hours before being allowed to continue.<sup>3896</sup> At this check-point, there were two columns of people: one composed of women and children and the second comprised of men. The police separated 10 young men from the rest, among them Merita Dedaj’s cousin Gustin Markaj, who later told her that he and the other young men had been kept in the basement of a house in Ćerim/Qerim district for 10 days, after which he and another man, Arben Kqiri, were released. He understood the other young men were sent to Albania,<sup>3897</sup> however Gustin Markaj told Merita Dedaj that after the war he was informed by the relatives of the other young men that they never returned to their homes.<sup>3898</sup>

983. When some refugees who had been in the convoy eventually returned to Guska/Guskë, they found their houses looted and the cattle killed.<sup>3899</sup> Similarly, when Lizane Malaj’s family returned to Kosovo on 3 July 1999, the village of Korenica/Korenicë had been completely burnt, except for 10 or so houses, which were damaged and looted.<sup>3900</sup> The houses in their courtyard had been burnt down, as were the three cars they had left behind.<sup>3901</sup> The houses that remained were generally uninhabitable;<sup>3902</sup> doors and windows were broken, furniture had been trashed, walls had been damaged, and the houses had been looted.<sup>3903</sup> The tractor belonging to the family of Lizane Malaj, which had been left at her home, had been taken away.<sup>3904</sup>

984. The Chamber is satisfied that the offences of forcible transfer and deportation have been established with respect to the villages of Junik, Dobroš/Dobrosh, Ramoc, Meja/Mejë, Orize, Korenica/Korenicë, Guska/Guskë, and other villages in this area on 27 and 28 April 1998.

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<sup>3893</sup> Merita Dedaj, Exhibit P1030, p 3.

<sup>3894</sup> Merita Dedaj, Exhibit P1030, p 4.

<sup>3895</sup> Lizane Malaj, T 828.

<sup>3896</sup> Merita Dedaj, Exhibit P1030, p 4.

<sup>3897</sup> Merita Dedaj, Exhibit P1030, p 4.

<sup>3898</sup> Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 6541; Merita Dedaj, Exhibit P1030, p 4.

<sup>3899</sup> Merita Dedaj, Exhibit P1030, p 4.

<sup>3900</sup> Lizane Malaj, T 873, 876.

<sup>3901</sup> Lizane Malaj, T 829.

<sup>3902</sup> Lizane Malaj, T 874.

<sup>3903</sup> Lizane Malaj, T 876.

<sup>3904</sup> Lizane Malaj, T 876.



(d) Disposal, exhumation and identification of bodies

985. The Chamber received evidence about the collection of bodies of victims killed during Operation Reka in and around Meja/Mejë and Korenica/Korenicë. On 27 April 1999, when Merita Dedaj was in the convoy travelling from Korenica/Korenicë to Meja/Mejë, she saw VJ soldiers loading eight dead bodies onto a VJ truck, which was ordered to go to Đakovica/Gjakova.<sup>3905</sup> On 29 April at 0930 hours Nike Peraj saw two civilian trucks transporting bodies. The trucks were heading towards Đakovica/Gjakovë. A police Lada Niva jeep was escorting the trucks.<sup>3906</sup> The workers on the trucks wore orange uniforms. He thought there were some 20 bodies on each truck.<sup>3907</sup> The trucks were covered with tarpaulin, but when the wind lifted the tarpaulin, he could see body parts.<sup>3908</sup> A man nicknamed “Nexha” was head of the “commission of cleansing of the area and for the collection of bodies” and gave orders to VJ major Ljubiša Živković, another member of this commission.<sup>3909</sup>

986. Martin Pnishi witnessed the bodies of the seven young men killed at the bridge by policemen on 27 April 1999 being collected the next Sunday, 2 May 1999, by Roma people known to him.<sup>3910</sup> They placed the bodies on a tractor. Later, a big truck came to Meja/Mejë from Đakovica/Gjakovë to pick up the bodies. Two hours later, the truck and the tractor left Meja/Mejë and headed towards the Đakovica/Gjakovë public cemetery. Martin Pnishi could not see the bodies on the truck,<sup>3911</sup> but later spoke to the Roma leader of those who collected the bodies, Hamdija Alitaj, and was told that he “had loaded up to 412 [...] corpses here and in Korenica/Korenicë”.<sup>3912</sup>

987. As detailed elsewhere in this Judgement,<sup>3913</sup> in late April 1999, a MUP officer tasked K72, an excavator operator working for a private construction company in Đakovica/Gjakovë,<sup>3914</sup> with the job of excavating bodies buried near the Bistražin/Bishrazhin bridge. The bodies were all male and were all in civilian clothes.<sup>3915</sup> Policemen present during the excavation told K72 there were about 100 bodies.<sup>3916</sup> Some Roma loaded these bodies onto two small trucks.<sup>3917</sup> Some 20 days

<sup>3905</sup> Merita Dedaj, Exhibit 1030, p 3.

<sup>3906</sup> Nike Peraj, Exhibit P313, para 86; Nike Peraj, T 1228.

<sup>3907</sup> Nike Peraj, Exhibit P313, paras 86, 88.

<sup>3908</sup> Nike Peraj, Exhibit P313, para 88.

<sup>3909</sup> Nike Peraj, Exhibit P313, para 87; Nike Peraj, T 1188.

<sup>3910</sup> The witness identifies the leader of the “gypsies” who collected the seven bodies near the bridge as Hamdi Alitaj from Brekoc and his sons, named Halit and Sahit. Martin Pnishi, Exhibit P1033, p 5; Martin Pnishi, Exhibit P1033, p2; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1526.

<sup>3911</sup> Martin Pnishi, Exhibit P1033, pp 4-5.

<sup>3912</sup> Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1526.

<sup>3913</sup> See *infra*, paras 1275-1285.

<sup>3914</sup> K72, T 8919-8920, 8957-8960.

<sup>3915</sup> K72, T 8927-8928, 8981.

<sup>3916</sup> K72, T 8928.

after this, K72 was again asked by a policeman to dig bodies out of individual graves marked with wooden poles from the public cemetery of Brekovac/Brekoc, located three to four kilometres from Đakovica/Gjakovë city, near the VJ barracks.<sup>3918</sup> All the bodies K72 dug up were male and all were in civilian clothes.<sup>3919</sup> K72 observed shot wounds on the bodies.<sup>3920</sup> Five or six Roma loaded the bodies on a trailer and transported them out of the cemetery to a larger truck with a tarpaulin, which was used to cover the bodies.<sup>3921</sup> K72 was unable to indicate the number of bodies he dug up, but the exhumation process of the bodies took 12 hours, suggesting a large number.<sup>3922</sup> Since this was the lengthiest operation that K72 was involved in, the Chamber notes that it is likely that the number of bodies was significantly higher than 100. Two days later, K72 was tasked by a policeman to excavate bodies in Guska/Guskë,<sup>3923</sup> where there were three rows each of three or four individual unmarked graves.<sup>3924</sup> All the bodies were male and dressed in civilian clothes.<sup>3925</sup> K72 excavated more bodies from a wooded area close by, where there were unmarked graves each containing one or two bodies.<sup>3926</sup> The bodies dug up were of adult males dressed in civilian clothes.<sup>3927</sup> A number of Roma loaded the bodies onto a small truck with a trailer.<sup>3928</sup> After he had completed the exhumations of the bodies at Guska/Guskë, K72 was threatened by one of the policemen in blue uniform present at the site that he would be killed if he “talked too much”.<sup>3929</sup> K72 did not know where the trucks were headed that carried the bodies he had exhumed from the three sites.<sup>3930</sup>

988. The Chamber finds from the above evidence that the bodies of a number of the men killed during Operation Reka were exhumed from their initial burial sites in the Carragojs Valley, including near the Bistražin/Bishtazhin bridge, the public cemetery of Brekovac/Brekoc and in Guska/Guskë, and loaded onto trucks. These exhumations were organised by MUP personnel and MUP personnel were present as bodies were clandestinely excavated and transported from the original places of burial. VJ were also involved in the removal of some of the bodies.

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<sup>3917</sup> K72, T 8927, 8929. K72, at the time, thought that one of these two smaller trucks was a refrigerated truck. During cross-examination, however, he states that it was a truck that looked identical to a refrigerated truck only it does not have a refrigerating system on it (*see* T 8975-8976).

<sup>3918</sup> K72, T 8932-8933, 8951; Exhibit P1323, marking “2” indicating the approximate location of the cemetery near Brekovac.

<sup>3919</sup> K72, T 8935-8936, 8981.

<sup>3920</sup> K72, T 8935.

<sup>3921</sup> K72, T 8934-8935, 8937.

<sup>3922</sup> K72, T 8935.

<sup>3923</sup> K72, T 8939, 8951; Exhibit P1323, marking “3” indicating the location of Guska/Guskë.

<sup>3924</sup> K72, T 8939-8941.

<sup>3925</sup> K72, T 8941, 8981.

<sup>3926</sup> K72, T 8943.

<sup>3927</sup> K72, T 8943, 8981.

<sup>3928</sup> K72, T 8940-8941.

<sup>3929</sup> K72, T 8944-8945.

<sup>3930</sup> K72, T 8980, 8937.

989. As discussed in more detail elsewhere in the Judgement, several trucks loaded with bodies arrived at the Batajnica SAJ Centre near Belgrade in the course of April and May of 1999.<sup>3931</sup> These bodies were buried in mass graves at the training ground by MUP personnel. Batajnica is some 420 kilometres from the Carragojs Valley.

990. The Batajnica site was subject to forensic examination and exhumations in June-July 2001.<sup>3932</sup> The detailed findings of the Chamber in this regard are discussed in a separate section of the Judgement.<sup>3933</sup> At the mass grave sites at Batajnica, the remains of 744 bodies were identified by the International Commission on Missing Persons.<sup>3934</sup> The Office of Missing Persons and Forensics of UNMIK (OMPF) had compiled a list of 344 persons who were missing from Meja/Mejë on 27-28 April 1999.<sup>3935</sup> The names of these 344 persons are listed in Schedule H of the Indictment. The list includes those 15 persons named by eye witnesses as having been killed by Serbian forces, as described above. The bodies of all but one of these victims (namely, Skender Pjetri) were among those identified from Batajnica. Based on the evidence before the Chamber, in addition to those 14 individuals named by eye witnesses whose bodies were found at Batajnica, 281 of the persons listed in Schedule H of the Indictment were also identified among the remains found at Batajnica.<sup>3936</sup> All of the bodies exhumed from the mass grave sites in Batajnica which were found to have come from Đakovica/Gjakovë were male, except two (namely, Kllaudie Mala and Monika Mala), of varying age, and – where it could be determined – were wearing civilian clothing. Forensic evidence established that 172 of these 281 persons had died as a result of gunshot injuries.<sup>3937</sup> The cause of death was not ascertained for the remaining 109 persons identified in the mass grave at Batajnica who also went missing on 27-28 April 1999 in and around Meja/Mejë and Korenicë/Korenica.<sup>3938</sup>

991. The numbers of male human remains, originally temporarily buried around Đakovica/Gjakovë, most of whom had been killed by gunshot, who (where known) were wearing civilian clothes, and the glaring facts that in such large numbers, and with so many others, they had

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<sup>3931</sup> See *infra*, paras 1325-1352.

<sup>3932</sup> Dušan Dunjić, Exhibit P526 (witness statement), paras 3, 5, 6, 7; Dušan Dunjić, T 3228, 3237; Branimir Aleksandrić, Exhibit P507 (witness summary), para 3; Branimir Aleksandrić, T 3012, 3027. See further, *infra*, para 1478-1504.

<sup>3933</sup> See *infra*, para 1478-1504.

<sup>3934</sup> Exhibit P818, pp 14-55.

<sup>3935</sup> Exhibit P477; Jose Pablo Baraybar, Exhibit P453, para 31; Jose Pablo Baraybar, T 2550-2551.

<sup>3936</sup> Exhibits P98, P99, P456, P472, P473, P474, P576 and P818. In total from the municipality of Đakovica/Gjakovë 295 individuals were exhumed from Batajnica 2, 5 and 8, see *infra*, para 1493, 1500, 1506.

<sup>3937</sup> This figure does not include the 15 victims identified by eye witnesses discussed earlier in this Chapter, see *supra* para 956, 958, 960; Exhibit P454, p 14.

<sup>3938</sup> The Chamber did not receive autopsy reports for 11 of these individuals. For the remaining 98 individuals the cause of death could not be ascertained due to the incomplete, destroyed, or decomposed state of remains, Jose Pablo Baraybar, T 2665-2666; see also Exhibits P98; P99; P472; P474; P576; see *infra*, para 1494-1495, 1501-

been re-buried later, clandestinely, in mass graves near Belgrade in Serbia, on MUP land, some 420 kilometres from the places where they were killed, generally is consistent with and confirmatory of the accounts of the killing of Kosovo Albanian males at the hands of MUP and other Serbian forces in the area in which Operation Reka was conducted late in April 1999. The Chamber is satisfied that the only reasonable inference on the basis of the clear and universal evidence of what occurred in the area on those days, the fact that these bodies were all buried in mass graves in the Batajnica SAJ Centre, and, where it could be ascertained (in 172 cases), that all had been killed by gunshot wounds, is that these 281 persons were killed by Serbian forces.

992. Hence, in addition to its findings on specific killings discussed above, the Chamber is satisfied that the following 281 individuals were killed in and around Meja/Mejë and Korenicë/Korenica by Serbian forces engaged in Operation Reka mainly on 27-28 April 1999:

Mark Abazi; Pashk Abazi; Pjeter Abazi; Bekim Ademaj; Shemsi Ademaj; Isuf Ademi; Mazllum Ademi; Liridon Ahmetaj; Ahmet Ahmeti; Ahmet Ahmeti; Blerim Ahmeti; Hysen Ahmeti; Adem Aliaj; Agron Aliaj; Ali Aliaj; Sali Aliaj; Zenun Aliaj; Arben Aliaj; Ymer Avdullahu; Avdyli Avdyli; Bajrush Avdyli; Hysen Avdyli; Muhedin Avdyli; Lavdim Bajraktari; Ali Bajrami; Shaban Bajrami; Syle Bajrami; Xhafer Bajrami; Xhavit Bajrami; Ali Bala; Bajram Bala; Mehmet Bala; Perparim Bala; Ragip Baliu; Demush Bardheci; Idriz Bardheci; Haki Batusha; Armend Beqaj; Bajram Beqaj; Bedri Beqaj; Brahim Beqaj; Dritan Beqaj; Emin Beqaj; Kujtim Beqaj; Milazim Beqaj; Ramadan Beqaj; Rasim Beqaj; Tafe Beqaj; Ymer Beqaj; Albert Beqiraj; Arsim Beqiraj; Syle Beqiraj; Tahir Beqiraj; Halil Berisha; Avni Binaku; Binak Binaku; Ismet Bobi; Fiqrih Cuni; Muharrem Cuni; Sutki Cuni; Frrok Dedaj; Gjon Dedaj; Mikel Dedaj; Pjeter Dedaj; Deli Deliu; Ali Demaj; Agron Duzhmani; Frane Duzhmani; Gezim Duzhmani; Gostin Duzhmani; Manuel Duzhmani; Marjan Duzhmani; Mikel Duzhmani; Pashk Duzhmani; Male Fazlija; Haxhi Fetaj; Robert Gashi; Brahim Gaxherri; Xhafer Gaxherri; Deme Gjocaj; Ardian Gjokaj; Asllan Golaj; Avdi Golaj; Idriz Golaj; Musa Golaj; Rame Golaj; Rexhe Golaj; Skender Hadergjonaj; Faik Hajredini; Hysni Hajredini; Qamil Hajredini; Gjon Hasanaj; Luan Hasanaj; Shyt Hasanaj; Mentor Haxha; Afrim Haxhiu; Avdi Haxhiu; Florim Haxhiu; Tahir Haxhiu; Ardian Hoxha; Bajram Hoxha; Blendian Hoxha; Fitim Hoxha; Hajrullah Hoxha; Naim Hoxha; Ramiz Hoxha; Rifat Hoxha; Binak Hyseni; Hysni Ibrahim; Masar Idrizi; Demë Islamaj; Bajram Isufi; Isa Isufi; Besim Kameri; Gëzim Kameri; Muharrem Kamberi; Rustem Kameri; Shpend Kameri; Nikolle Komani; Fran Komani; Pashk Komani; Mikel Kqira; Pashk Kqira; Luz Kqira; Albert Krasniqi; Mark Krasniqi; Ndue Krasniqi; Pjeter Krasniqi; Hasan Kuqi; Shpend Kuqi; Ilmi Kurpali; Haki Kurtaj; Isa Kurtaj; Muhamet Kurtaj; Sami Kurtaj;

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1502, 1506; *see infra*, Schedule: Victim Charts. This figure does not take into account the findings in relation to the cause of death of the 15 victims discussed earlier in this Chapter, *see supra* paras 956, 958, 960.

Kllaudie Mala; Kol Mala; Monika Mala; Blerim Maloku; Burim Maloku; Petrit Maloku; Ymer Maloku; Besim Malushaj; Shefki Mulashaj; Dede Markaj; Gezim Marku; Gjovalin Markaj; Milan Markaj; Sokol Markaj; Agron Mehmeti; Arben Mehmeti; Gani Mehmeti; Hysen Mehmeti; Hysni Mehmeti; Muharrem Mehmeti; Quash Mehmeti; Rame Mehmeti; Sami Mehmeti; Marash Merturi; Bajram Meta; Ismet Miftari; Brahim Miroci; Fahredin Miroci; Isuf Miroci; Sokol Miroci; Kole Nreaj; Nue Ndue; Ahmet Neziri; Sokol Ndue (Nuo); Sokol Nuza; Shpend Osmani; Avdyll Pajaziti; Gani Pajaziti; Haxhi Pajaziti; Ismet Pajaziti; Muje Pajaziti; Qerim Pajaziti; Shkelzen Pajaziti; Shpend Pajaziti; Smajl Pajaziti; Zenel Pajaziti; Uke Pepaj; Gasper Pjetri; Ilirjan Pjetri; Ardian Prelaj; Driton Prelaj; Gjergj Prelaj; Sokol Prelaj; Tome Prelaj; Mark Prendi; Pal Prendi; Prend Prendi; Robert Prendi; Sokol Prendi; Vitor Prendi; Hajdar Qestaj; Adem Rama; Bujar Rama; Nijazi Rama; Sadri Rama; Sezaj Rama; Zenun Rama; Zeqir Rama; Rame Ramaj; Tahir Ramaj; Adem Rexha; Anton Rexhaj; Avni Rexha; Bashkim Rexha; Iber Rexha; Ruzhdi Rexha; Hamza Rexhaj; Isuf Rexhaj; Xhevdet Rexhaj; Bekim Rrustemi; Dan Rrustemi; Xhafer Rrustemi; Iber Sadiku; Ismet Sadiku; Osman Sadiku; Ramiz Sadiku; Sadik Sadiku; Hysni Sadriu; Rexhep Sadriu; Shaqir Sadriu; Osman Salihaj; Bajram Salihu; Beqir Selmanaj; Nexhat Selmanaj; Ali Selmani; Baki Selmani; Burim Selmani; Jonuz Selmani; Ujkan Selmani; Xheme Selmani; Deme Shala; Agim Shehu; Ahmet Shehu; Bujar Shehu; Ismet Shehu; Mehmet Shehu; Rame Shehu; Elvis Shoshi; Naser Shoshi; Perparim Shoshi; Gani Smajli; Filip Sokoli; Kastriot Sokoli; Kriste Sokoli; Simon Sokoli; Ismet Syla; Rexhep Syla; Bajram Syla; Bajram Tahiraj; Halil Tahiraj; Isuf Tahiraj; Osman Tahiraj; Ramadan Tahiraj; Rrustem Tahiraj; Selman Tahiraj; Xhevdet Tahiraj; Uke Xhemajli; Hasan Xhemajli; Isa Xhemajli; Miftar Xhemajli; Rifat Xhemajli; Xhemajl Xhemajli; Elez Ymeri; Halit Ymeri; Hasan Ymeri; Hysen Ymeri; Musa Ymeri; Xhafer Ymeri; Zenel Ymeri; Bajram Zenuni; Xhevat Zenuni; Zenel Zenuni; Hasan Zeqiri; Arber Zyberi; Gani Zyberi; Skender Zyberi.

993. There is no evidence about the fate of 48 individuals listed as missing from Meja/Mejë on the OMPF Consolidated List of Missing Persons, who are also listed in Schedule H of the Indictment. Although it is likely that these persons were also killed in the course of Operation Reka by Serbian forces, in the absence of further evidence the Chamber is unable to make a finding in this regard. These individuals are:

Male Ahmeti; Afrim Avdyli; Mehmet Avdyli; Pajazit Avdyli; Mentor Beqaj; Ahmet Berisha; Ismail Binaku; Istref Curri; Izet Curri; Martin Deda; Shani Fazilijaj; Lulzim Gashi; Hasan Gaxheri; Elson Hasanaj; Mitër Hasanaj; Ndue Hasanaj; Fadil Hoxha; Gafurr Hykosmanaj; Ali Ibrahimi; Pjeter Kacoli; Tom Kacoli; Lazer Krasniqi; Anto Lleshi; Vilson Malaj; Esad Malushaj; Mehmet Mehmeti; Naim Nimanaj; Pashk Ndreaj; Nrec Nreaj; Halil Pajaziti; Idriz Pajaziti; Mark Palokaj; Gjergj Prendi; Leonard Prendi; Tahir Rexhaj; Esat Sahiti; Xhavit Salcaj; Nimon Salihu; Sherif Selmani;

Shpend Selmani; Zenun Selmani; Gjergj Sokoli; Alban Xhemajli; Ilija Xhemajli; Muharrem Xhemajli; Shkelzen Xhemajli; Shpend Xhemajli; Gani Ymeri.

994. The Chamber notes that Mark Markaj was, in error, listed twice in Schedule H of the Indictment.<sup>3939</sup>

995. Hence the Chamber is satisfied that 296 of the 344 victims listed in Schedule H of the Indictment were killed by Serbian forces.

(c) Investigations into events in the Carragojs Valley

996. No evidence was adduced at trial by either party as to any investigation into the events at Carragojs Valley on 27-28 April conducted by the Đakovica/Gjakovë SUP or any other Serbian civil authorities. The only police criminal report in evidence of the Đakovica/Gjakovë SUP from the relevant time pertains to a “terrorist attack” against the five police officers including Milutin Prašević on 21 April 1999.<sup>3940</sup> This report stated that a forensic team had examined the crime scene and that officers of the Đakovica/Gjakovë SUP had taken all necessary measures and steps towards apprehending the perpetrators of the crime.<sup>3941</sup> This confirms that criminal investigations were still able to be carried out at this time, in spite of the ongoing armed conflict. Nevertheless, the Chamber observes that the removal from the area of the bodies of many Kosovo Albanian people killed, mainly on 27-28 April 1999, eventually in most cases to the Batajnica SAJ Centre at the end of April and in May 1999, which the Chamber has found was planned and carried out by MUP forces or with their participation, would directly impede any investigation. The Chamber is entirely persuaded by the evidence, and finds, that the movement and clandestine burial or reburial of bodies from Kosovo in the relevant period was pursuant to a deliberate and coordinated plan to conceal crimes committed by MUP and other Serbian forces and to prevent any investigation into those crimes.

997. The VJ could also investigate crimes committed by its personnel. On 28 April 1999, Momir Stojanović, Chief of the Security Section in the Command of the Priština Corps, received a verbal account of Operation Reka, *i.e.* a report of his subordinate security organs and a report from the commander of the 52<sup>nd</sup> Military Police Battalion, that VJ and MUP units participated in the operation and that, as a result of the operation, a large number of civilians left their homes towards Đakovica/Gjakovë.<sup>3942</sup> It is Stojanović’s evidence that the information he received at the time did

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<sup>3939</sup> See *infra*, Section XVI, Schedule H.

<sup>3940</sup> Exhibit P1544.

<sup>3941</sup> Exhibit P1544, p 2.

<sup>3942</sup> Momir Stojanović, T 11927-11928, 11932.

not state or lead him to believe that the civilians left their homes as a result of forced expulsions.<sup>3943</sup> He testified that, in his knowledge, the VJ never expelled unarmed civilians in 1998 or 1999. Further, he affirmed that had this occurred, he would have been informed of it.<sup>3944</sup> Stojanović further denied receiving any information that civilians had been killed during this operation.<sup>3945</sup> He claimed that he only learnt some years later through the media that bodies were found in the Batajnica SAJ Centre.<sup>3946</sup> Stojanović also claimed that although he held the position of Chief of Security of the VJ between 2003 and 2005, he did not conduct any investigation into the bodies found in Batajnica because he did not receive such a request from the state judiciary and because it was difficult to gain access to the site for security reasons.<sup>3947</sup> Further, he claimed that in the archives of the military security service of that period (2003-2005), he found no information indicating or leading him to believe that crimes were committed in this area of Kosovo.<sup>3948</sup>

998. The Chamber is unable to accept the evidence of Momir Stojanović. Stojanović, as Chief of the Security Section in the Command of the Priština Corps, was responsible for all military counter-intelligence, in particular, the monitoring and intercepting of terrorist activity.<sup>3949</sup> He was also in charge of monitoring any criminal activity within the army or any links between criminal activity within the army and external factors within the territory.<sup>3950</sup> It was part of the responsibility of Stojanović, therefore, to find information relevant to such issues, particularly of crimes committed by VJ members or units and of anything related to terrorist activity. It is inconceivable that he would not have had information about the participation of VJ units in the Reka operation, ostensibly an anti-terrorist action, or about the forced expulsions and the killings of villagers throughout the days of the operation. The Chamber notes that Sergei Perović, Chief of Security in the 52<sup>nd</sup> Rocket and Artillery Brigade, had the responsibility to give morning and evening reports to Stojanović.<sup>3951</sup> The Chamber accepts the evidence of Nike Peraj that Perović accompanied Peraj on 27 April 1999 to several locations in and around Mejë/Meja, witnessed shootings of civilians, observed dead bodies of civilians near police checkpoints, and together with Peraj, helped several families to cross the checkpoints unharmed.<sup>3952</sup> There is evidence that Perović reported to Aleksandar Vasiljević, the then Assistant Head of the VJ Security Administration, that MUP Colonel Kovačević had his own

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<sup>3943</sup> Momir Stojanović, T 11928-11929.

<sup>3944</sup> Momir Stojanović, T 11930-11931.

<sup>3945</sup> Momir Stojanović, T 11933.

<sup>3946</sup> Momir Stojanović, T 11938.

<sup>3947</sup> Momir Stojanović, T 11940-11941.

<sup>3948</sup> Momir Stojanović, T 11942.

<sup>3949</sup> Momir Stojanović, T 11827, 11860.

<sup>3950</sup> Momir Stojanović, T 11860.

<sup>3951</sup> Momir Stojanović, T 11877-11878.

<sup>3952</sup> Nike Peraj, Exhibit P313, paras 67-81. The Chamber notes that in his statement, Nike Peraj purposely substituted the name Ljubisa Živković for Sergei Perović because the latter had asked Peraj not to name him. Nike Peraj, T 1184-1189.

operational pursuit group called Legija which was involved in the killing of 20 people whose corpses were found at the Đakovica/Gjakovë bus station and left there for some days in April 1999, before being loaded onto vehicles by some Roma pursuant to an order of the police.<sup>3953</sup> The Chamber does not accept that Perović would report these matters to Vasiljević but not to Stojanović. On the receipt of such information, as the Chamber finds occurred, it was the duty of Stojanović to ensure an investigation into suggested crimes by VJ personnel, including by personnel of the VJ units which were working in concert with MUP forces during Operation Reka.

999. It is also the finding of the Chamber that Stojanović's explanation for not conducting an investigation into possible crimes committed by VJ forces during Operation Reka, particularly in Mejë/Meja, once bodies were discovered at the Batajnica SAJ Centre, is implausible. There is no justification for the suggestion that the VJ required a request from the state judiciary to initiate an investigation into crimes allegedly committed by VJ forces. As pointed out by Stojanović in previous proceedings, Article 30 of the Law on the Army of Yugoslavia provides that the military security service has the same rights, powers and duties as those of the police,<sup>3954</sup> and in accordance with the Law on Criminal Procedure and the Law on Military Courts, the military security service participates in actions that precede the institution of criminal proceedings.<sup>3955</sup> Secondly, it is nonsensical that the Chief of Security could not obtain access to a MUP property such as the Batajnica SAJ Centre for security reasons; even international forensic teams were able to gain access at the same time.

1000. The Chamber finds that the only proper inference from the evidence it has received is that Momir Stojanović was informed of the crimes committed by VJ, MUP and other Serbian forces in the Reka operation but took no steps to investigate them, contrary to the obligations of his office. His failure to institute investigations of VJ criminality in Operation Reka, both at the time of the events and later when the bodies of victims of the operation were found at the Batajnica SAJ Centre, is persuasive evidence of the complicity of the VJ in the cover-up of the crimes committed in the Carragojs Valley by VJ, MUP, and other Serbian forces.

(f) Perpetrators

1001. The Chamber accepts, from witness and documentary evidence, that the following Serbian forces were involved in Operation Reka which was conducted in the Carragojs, Trava and Erenik valleys mainly on 27-28 April 1999:

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<sup>3953</sup> Aleksandar Vasiljević, T 5734-5736.

<sup>3954</sup> Exhibit P43, p 8.

<sup>3955</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19686.



1002. A military police unit in the 2<sup>nd</sup> Battalion of the 549<sup>th</sup> motorised brigade of the VJ commanded by Major Vlatko Vuković took part in Operation Reka. It participated in a systematic effort to force Kosovo Albanians in a number of villages to leave their homes.<sup>3956</sup> The unit was given an order to secure the area around the villages of Korenica/Korenicë and Meja/Mejë by carrying out a blockade on the road.<sup>3957</sup> A combat report dated 27 April 1999 signed by Major Vuković stated that since 0600 hours, part of the unit had been blocking the road between the villages of Korenica/Korenicë, Ripaj/Rrypaj and Madanaj.<sup>3958</sup> The war diary of the same Battalion confirms this, reporting that on 27 April, at 0600 hours, the axis of Korenica/Korenicë-Meja/Mejë-Orize-Kodra e Kikes was blocked off.<sup>3959</sup> The following day, the combat report from Major Vuković noted that “[b]lockade by part of the unit of the line coinciding with the Korenica-Ripanj-Madanaj road is underway” and that certain troops had been assigned a firing position.<sup>3960</sup> The report indicated that there were 48 officers, 48 non-commissioned officers and 1,908 privates from that brigade participating in the operation.<sup>3961</sup> The war diary similarly recorded that on 28 April, “a part of the unit is blocking off the Reka feature” and on 29 April, “a part of the unit is closing off the Reka sector”.<sup>3962</sup> The war diary also noted on 29 April that at 1920 hours, civilians were moving out of villages to Albania.<sup>3963</sup>

1003. An infantry company of the 52<sup>nd</sup> Rocket Artillery Brigade commanded by Miloš Došan was involved in the operation in Meja/Mejë.<sup>3964</sup> This unit had the assignment of holding the blockade line as envisaged.<sup>3965</sup> Their task was to prevent terrorist forces from the area of Reka from coming into the area of Đakovica/Gjakovë.<sup>3966</sup> One or two anti-aircraft batteries of this brigade were also stationed on a side of the Carragojs valley.<sup>3967</sup> The war diary of the Brigade recorded that on 27 April 1999 at 0800 hours, “the ‘Reka’ clean-up operation began” with the participation of the 1<sup>st</sup> manoeuvre Battalion, the 1<sup>st</sup> rifle platoon and the 2<sup>nd</sup> rifle platoon of the Command Battalion and that the “Reka operation was carried out according to the plan and dynamics”.<sup>3968</sup> The war diary noted that the Reka operation commenced “as scheduled” in the absence of the commander, Miloš

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<sup>3956</sup> K90, Exhibit P320, paras 41-44, 48; K90, Exhibit P322 (*Milutinović* transcript), T9401-9403, 9273, 9302; K90, T 1434.

<sup>3957</sup> K90, Exhibit P321, para 48; K90, T 1453.

<sup>3958</sup> Exhibit P926.

<sup>3959</sup> Exhibit D37, p 11.

<sup>3960</sup> Exhibit P927, p 1.

<sup>3961</sup> Exhibit P927, p 2.

<sup>3962</sup> Exhibit D37, p 12.

<sup>3963</sup> Exhibit D37, p 12.

<sup>3964</sup> Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45437-45438.

<sup>3965</sup> Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45696.

<sup>3966</sup> Miloš Došan, Exhibit D684 (*Milošević* transcript), T 45437, 45438.

<sup>3967</sup> Nike Peraj, T 1204.

<sup>3968</sup> Exhibit P958, p 33.

Došan, and the Chief of Staff, Colonel Veroljub Zivković, by the “command organs”.<sup>3969</sup> The war diary recorded that the unit was still engaged in the Reka operation on 28 April 1999. At 0800-1500 hours, the brigade commander and the Chief of Operations visited the “3<sup>rd</sup> SARD PVO” and checked the position; they spotted some omissions and assigned specific tasks,<sup>3970</sup> and that the “Chief of Staff is in charge of the intervention unit in the Reka operation” and that there was a daily reporting to the brigade commander at 1800 hours.<sup>3971</sup>

1004. The 52<sup>nd</sup> Battalion of the Military Police, commanded by Major Stevo Kopanja,<sup>3972</sup> was involved in the Reka operation,<sup>3973</sup> as confirmed by its war diary.<sup>3974</sup> The Battalion’s 63<sup>rd</sup> Parachute Brigade also participated in the operation in a coordinated action.<sup>3975</sup> The 52<sup>nd</sup> Battalion of the Military Police had been resubordinated to the 152<sup>nd</sup> Military Police Company, which was part of the 125<sup>th</sup> Motorised Brigade.<sup>3976</sup>

1005. The 125<sup>th</sup> Motorised Brigade, commanded by Colonel Dragan Živanović, took part in the Reka operation. The combat reports of 27 and 28 April 1999 to the Priština Corps Command and Đakovica/Gjakovë forward command post signed by Živanović stated that some forces were engaged in “mopping up the terrain from ŠTŠ in the general area of Reka, in keeping with your decision” and clearing “the terrain of ŠTŠ in the general Reka sector, as per your decision”.<sup>3977</sup> The combat report of 27 April 1999 specified that part of the forces were to continue “mopping up the general area of Reka in a concerted action with the MUP.”<sup>3978</sup> A regular combat report to the Priština Corps of 28 April 1999 stated that Operation Reka was completed successfully on 28 April 1999, and that one member of the unit had been wounded.<sup>3979</sup>

1006. The Đakovica/Gjakovë Military Territorial Detachment, commanded by Major Nikola Mičunović aka “Dragan”,<sup>3980</sup> was part of the Serbian forces participating in the Reka operation. Evidence shows that Mičunović and his forces had been active in the area since the end of

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<sup>3969</sup> The Chamber notes that Miloš Došan gave a different interpretation of the entry, which was: “Due to the absence of the commander (in the 2<sup>nd</sup> and 4<sup>th</sup> SARD PVO) and the Chief of Staff (action Reka) meaning he took part in action Reka, the command organs continued their work according to plan. That is to say that they continued with their daily briefings as scheduled otherwise”. Miloš Došan, T 11396-11397. The Chamber does not accept that continuing with “work according to plan” merely refers to daily briefings. The documentary evidence clearly indicates that the command organs commenced with a previously agreed plan of Operation Reka on 27 April 1999.

<sup>3970</sup> Exhibit P958, p 35.

<sup>3971</sup> Exhibit P958, p 35.

<sup>3972</sup> Momir Stojanović, T 11818-11820; T 12008-12009.

<sup>3973</sup> K73, T 1533-1534.

<sup>3974</sup> Exhibit P338, pp 11-12 (noting the killing of a soldier in the village of Ramoc, which lies to the north-west of Mejë/Meja).

<sup>3975</sup> K73, T 1533-1534; Nike Peraj, Exhibit P313, para 65.

<sup>3976</sup> Momir Stojanović, T 11819.

<sup>3977</sup> Exhibits P950, p 2; P920, p 2.

<sup>3978</sup> Exhibit P950, p 3.

<sup>3979</sup> Exhibit P921, p 2.

<sup>3980</sup> Exhibit P900.

March 1999. An order of the Priština Corps Command signed by Colonel Zlatomir Pešić of 27 March 1999 tasked the 113<sup>th</sup> Military Territorial Detachment in coordination with the 52<sup>nd</sup> Artillery Rocket Brigade “to guard the *Devet Jugovića* and *Metohija* barracks, and protect the Serbian population in the city of Đakovica”.<sup>3981</sup> It was further ordered to establish “combat control over the territory on the axes of Đakovica-Skivjane village, Đakovica-Zrze, and Đakovica-Bec”.<sup>3982</sup> At a meeting of the MUP and the VJ Garrison Command on or around 31 March 1999, it was agreed that the Detachment would be tasked, *inter alia*, with taking part in MUP and VJ activities “aimed at breaking up Šiptar terrorists, focusing on the blockade and control of the territory”.<sup>3983</sup> Nikola Mičunović and the VJ forces under his command came to the villages of Guska/Guskë and Korenica/Korenicë at the end of March 1999 and ordered the villagers to leave.<sup>3984</sup> Mičunović attended the informal meeting, discussed earlier, in the days following the killing of MUP officer Milutin Prašević, who was Mičunović’s godfather,<sup>3985</sup> in which the Reka operation was planned. Nike Peraj specifically recalled being told by Mičunović that the valley of Carragojs was going to pay a high price.<sup>3986</sup> Given the involvement of Mičunović and forces under his command in the forced expulsion of Kosovo Albanians from their villages in late March 1999, Mičunović’s part in the planning of operation Reka in the days just before the event, and the involvement of the VJ 52<sup>nd</sup> Rocket Artillery Brigade, with whom the Military Territorial Detachment was working, in the Reka operation, the Chamber is persuaded that the Đakovica/Gjakovë Military Territorial Detachment took part in Operation Reka.

1007. It is the Chamber’s finding that Operation Reka was a joint activity of the VJ and the MUP with other Serbian forces. The PJP as well as local police were heavily involved. Six companies of the 23<sup>rd</sup> PJP detachment were in the area of Đakovica/Gjakovë from the end of March 1999 for a period of 40 days.<sup>3987</sup> A combat report of the 125<sup>th</sup> Motorised Brigade dated 25 April 1999 to the Priština Corps Command and the Đakovica/Gjakovë forward command post indicated that a company of the PJP 73<sup>rd</sup> Territorial Detachment was attached to the VJ 125<sup>th</sup> Motorised Brigade and deployed in the sector including Korenica/Korenicë village.<sup>3988</sup> Most pertinently, a combat report of the 125<sup>th</sup> Motorised Brigade to the Priština Corps command and the Đakovica/Gjakovë

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<sup>3981</sup> Exhibit P896, p 4.

<sup>3982</sup> Exhibit P896, p 4.

<sup>3983</sup> Exhibit P900.

<sup>3984</sup> Marita Dedaj, Exhibit P1030, p 2; Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1415; Lizane Malaj, T 808-809.

<sup>3985</sup> Nike Peraj, Exhibit P313, para 58.

<sup>3986</sup> Nike Peraj, Exhibit P313, para 58; Nike Peraj, T 1191.

<sup>3987</sup> Exhibit P711, p 1 (Dispatch No 587 issued on 21 March 1999 by the Accused deploying PJP detachments to several SUPs in Kosovo – members of the 1, 3, 4, 5 and 6 (Subotica – Sombor) companies of the 23<sup>rd</sup> PJP Detachment were sent to the Đakovica/Gjakovë SUP); Exhibits P1193, P1195, P1196, P1198, and P1199 are reports indicating that four companies of the 23<sup>rd</sup> PJP detachment (totaling 420 PJP members) were sent to Kosovo to carry out the tasks.

<sup>3988</sup> Exhibit P949, p 2.

forward command post dated 27 April 1999 stated that the forces were “mopping up the area of Reka in a concerted action with the MUP”.<sup>3989</sup> The coordination of VJ and MUP activity continued on 28 March 1999. A war diary entry of the 52<sup>nd</sup> Artillery Rocket Brigade of 28 March 1999 records that several VJ anti-aircraft platoons were sent by the Priština/Prishtinë Corps Chief of Staff Zivković to reinforce the MUP detachment in the Junik area.<sup>3990</sup>

1008. The Chamber is satisfied that between 21 and 27 April 1999, around 400 additional PJP members and paramilitary personnel arrived in the Đakovica/Gjakovë area in buses.<sup>3991</sup> These MUP forces were used in coordination with the VJ forces discussed above in Operation Reka.<sup>3992</sup> Local police and police reservists were also used. The uniforms worn by some of the forces who expelled villagers and killed indicate both local police and PJP members.<sup>3993</sup> The local police commander in Ponošec/Ponoševac was recognised among the police in Meja/Mejë-Orize,<sup>3994</sup> and a local policeman was among those policemen who killed seven young men at the Ura e Traves bridge.<sup>3995</sup> Police including PJP members were taking groups of men from the columns of villagers to compounds near the checkpoints, where they were shot.<sup>3996</sup> PJP members wearing blue camouflage uniforms and reservist police in solid blue uniforms were at the checkpoint near Orize.<sup>3997</sup> Local MUP officer Milan Šćepanović, who wore a MUP blue camouflage uniform with a MUP patch,<sup>3998</sup> ordered men under his command to line up 12 male villagers near the checkpoint near Meja/Mejë, apparently for execution.<sup>3999</sup> A PJP officer shot and killed four men who had been held hostage by the VJ, after the men were handed over by VJ Captain Antić.<sup>4000</sup> Some 100 policemen wearing the standard blue uniform of local police were in the village of Korenicë/Korenica as it burned on 28 April 1999.<sup>4001</sup> Evidence also indicates the presence of members of the JSO during the operation. Two members of the the JSO unit, the “Frenkis”, wearing the particular Frenki hats, arrived with PJP members in a civilian car days before the commencement of the operation.<sup>4002</sup>

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<sup>3989</sup> Exhibit P950, p 3.

<sup>3990</sup> Exhibit P958, p 6.

<sup>3991</sup> K90, Exhibit P321, para 47; K90, T 1343-1344; Nike Peraj, Exhibit P313, para 65; Nike Peraj, T 1202-1203.

<sup>3992</sup> Nike Peraj, Exhibit P313, para 65; Nike Peraj, T 1203; K90, Exhibit P321, para 48.

<sup>3993</sup> Lizane Malaj, T 814, 865; Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1401, 1429; Martin Pnishi, Exhibit P1033, p 3; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1444 and 1456.

<sup>3994</sup> Martin Pnishi, Exhibit P1033, p 5; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1448.

<sup>3995</sup> Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1448.

<sup>3996</sup> K90, T 1535-1536; K90, Exhibit P321, paras 55 65; K90, Exhibit P322 (*Milutinović* transcript), T 9339.

<sup>3997</sup> Nike Peraj, T 1208-1209.

<sup>3998</sup> Nike Peraj, Exhibit P313, para 75; Nike Peraj, T 1186.

<sup>3999</sup> Nike Peraj, Exhibit P313, paras 76-78.

<sup>4000</sup> K73, T 1532.

<sup>4001</sup> K73, T 1535; K73, Exhibit P330, para 46; K73, Exhibit P332 (*Milutinović* transcript), T 3333, 3438.

<sup>4002</sup> K90, Exhibit P320, para 47.

1009. On the basis of the above evidence, the Chamber is satisfied that MUP officers, both local police, including local reservist police, and PJP members sent especially for the operation directly participated with other Serbian forces in Operation Reka.

1010. Paramilitaries also participated in operation Reka, alongside the police. On 27-28 April 1999 paramilitary groups were stationed around Meja/Mejë, awaiting the arrival of the villagers who had been expelled from their houses in the villages by VJ and police forces.<sup>4003</sup> Three jeeps containing Arkan's Tigers paramilitaries were in Meja/ Mejë.<sup>4004</sup> Merita Dedaj observed that some of the forces who came to her family compound on 27 April 1999 wore scarves, bandannas, brown army hats, and black masks to hide their faces,<sup>4005</sup> a description consistent with the dress of paramilitary forces as was the dress and equipment of two of the men in the compound of Martin Pnishi on 27 April.<sup>4006</sup>

1011. The Chamber is aware that K73, whose evidence it considers as generally reliable, did not see any paramilitary members where his unit was located during Operation Reka.<sup>4007</sup> However, the evidence indicates that paramilitary forces were working with the police, rather than with the VJ to whom K73 was attached, and the numbers of paramilitaries were rather limited, so that this evidence does not foreclose that paramilitaries were participating. The Accused Vlastimir Đorđević and Defence witness, Miloš Đošan, also testified that there were no paramilitaries in Kosovo.<sup>4008</sup> The assertion of Đorđević is contradicted by documentary evidence which demonstrates Đorđević's and the MUP Staff's knowledge of the use of paramilitaries at the time. A dispatch sent by Đorđević to all organisational units of the RJB in MUP headquarters on 18 February 1999 tasked them to "establish complete control over volunteer and paramilitary units and their members".<sup>4009</sup> Minister Stojiljković sent a further dispatch on 24 March 1999 to the Accused as Chief of the RJB, the headquarters of the RJB organisational units, all the SUPs, MUP headquarters in Priština/Prishtina and all the traffic police stations, referring back to the 18 February dispatch, and tasking them to "...register all volunteers and paramilitary units and their members and keep them

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<sup>4003</sup> Nike Peraj, Exhibit P313, para 65; Nike Peraj, T 1203.

<sup>4004</sup> Nike Peraj, Exhibit P313, para 80; Nike Peraj, T 1187.

<sup>4005</sup> Merita Dedaj, Exhibit P1031 (*Milutinović* transcript), T 1401, 1429.

<sup>4006</sup> Martin Pnishi, Exhibit P1033, p 3; Martin Pnishi, Exhibit P1034 (*Milutinović* transcript), T 1444. The Chamber notes that during the examination on 29 June 2009, the witness wished to make a correction concerning the colour of the uniforms, clarifying that the uniforms were actually "grass-coloured", but this seems to have been the result of a misunderstanding rooted in the multiple meaning of the Albanian word "verdhe", which the interpreter pointed out (Martin Pnishi, T 6546-6547). When asked, the witness made it clear that he had not actually changed anything in his testimony (Martin Pnishi, T 6558).

<sup>4007</sup> K73, T 1564.

<sup>4008</sup> Vlastimir Đorđević, T 9546; Miloš Đošan, Exhibit D684 (*Milutinović* transcript), T 45418, 45419, 45427, 45431, 45658, 45660; Miloš Đošan T 11512, 11415.

<sup>4009</sup> Exhibit P356, p 3.

under control in case that you might need to engage them”.<sup>4010</sup> The Minutes of a meeting with senior police officials in Kosovo dated 4 April 1999, the same month in which the Reka operation occurred, record Sreten Lukić, the head of the MUP Staff in Priština, as noting the need to take “rigorous measures towards paramilitary units”.<sup>4011</sup>

1012. Miloš Došan’s claim is similarly not credible. In addition to other evidence of the presence of Serbian paramilitary forces in Kosovo, the Chamber has detailed elsewhere in this Judgement<sup>4012</sup> the involvement of members of the Skorpions and of the Pauk Spiders paramilitary group, headed by Jugoslav Petrusic, which was attached to the 125th Brigade of the Priština Corps and deployed in Kosare, Đakovica/Gjakovë municipality, from 15 April 1999 to 5 May 1999.<sup>4013</sup>

### **I. Gnjilane/Gjilan municipality**

1013. On 27 March 1999 the command of the Priština Military District issued an order tasking the VJ Gnjilane Military Territorial Detachment in cooperation with the 175<sup>th</sup> Infantry Brigade, the 78<sup>th</sup> Motorised Brigade, and MUP forces, to protect the Serbian population and guard roads, military facilities, and other features of importance for the FRY. The order also specifically tasked the same forces with establishing full combat control over the territory and waging combat against “ŠTS” (Albanian terrorist groups).<sup>4014</sup> An order of the Joint Command of 13 April 1999 tasked the Priština Corps with providing support to MUP forces in “sealing off, routing and destroying” Kosovo Albanian terrorist forces in the area of Mount Žegovačka Planina.<sup>4015</sup> While this area lies to the east of Gnjilane/Gjilan town and the villages of Prilepnica/Prilepničë, Nosalje/Nosaljë, Žegra/Zhegër, Vladovo/Lladovë and Vlačica/Llashticë, events at which will be discussed below, lie to the west and south west of Gnjilane/Gjilan town and, therefore, the order does not concern directly these villages, it is a clear indication of VJ and MUP coordinated presence in Gnjilane/Gjilan municipality at a time material to the events below. Witnesses, whose evidence will be address below, and whom the Chamber accepts as generally honest and reliable, confirm the presence of what were apparently VJ reservists, in the Chamber’s finding part of the Gnjilane Territorial Detachment, acting in cooperation with the VJ and MUP forces in some locations.

1014. The Chamber finds that regular and reserve VJ and MUP forces, often acting in cooperation, conducted operations in the villages of the municipality of Gnjilane/Gjilan and surrounding villages

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<sup>4010</sup> Exhibit P702.

<sup>4011</sup> Exhibit P764, p 3.

<sup>4012</sup> See *supra*, paras 204-216.

<sup>4013</sup> Aleksandar Vasiljević, T 5663; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19778.

<sup>4014</sup> Exhibit P896, item 8.

<sup>4015</sup> Exhibit P766, p 2.

at the time of the events established below. Other Serbian forces including paramilitary forces also participated in some cases.

### 1. Prilepnica/Përlepticë

1015. The village of Prilepnica/Përlepticë, situated in the municipality of Gnjilane/Gjilan, is located in a canyon. It has two main roads – one in the eastern part of the village and the other in the western part – one on each side of a river. At the time of the events described below, Prilepnica/Përlepticë had approximately 350 to 360 households and 3,000 inhabitants. The ethnic composition of Prilepnica/Përlepticë was predominantly Kosovo Albanian.<sup>4016</sup> Some 30 Roma families and five or six Serbian families also lived in Prilepnica/Përlepticë.<sup>4017</sup> In April 1999, displaced persons from the Drenica region were sheltering in Prilepnica/Përlepticë.<sup>4018</sup>

1016. On 6 April 1999, at around 0810 hours, Abdylhaqim Shaqiri, the Imam of Prilepnica/Përlepticë, while at his mother's house near the mosque, heard multiple shots coming from all sides of the village. He went to the southern part of the village, from where most of the gunshots were heard.<sup>4019</sup> He was dressed in his Imam clothing, a long black robe, and was wearing a white hat "usually worn by those who go to the Haxh".<sup>4020</sup> As he walked along the main road, he met a Serbian soldier who was holding two villagers, Xelil and Shelik Shaqiri, prisoner.<sup>4021</sup> Further away, a group of 10-15 soldiers dressed in SMB olive-green-grey uniforms were firing repetitively in the air.<sup>4022</sup> Two or three of the soldiers were dressed in green-yellow camouflage uniforms.<sup>4023</sup> The soldier holding the two villagers wore a black bandanna.<sup>4024</sup> The Chamber notes its earlier finding that VJ reservists wore either plain/solid green or SMB uniforms or green camouflage uniforms.<sup>4025</sup> The soldier told Abdylhaqim Shaqiri that they had received information that there was a KLA presence in Prilepnica/Përlepticë and that the civilians had to be evacuated.<sup>4026</sup> There were many other soldiers standing nearby.<sup>4027</sup> The soldiers explained that they had been ordered "from above" to mine the village and the dam at 1200 hours on the following day.<sup>4028</sup> The villagers

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<sup>4016</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2770.

<sup>4017</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2916-2917.

<sup>4018</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2962.

<sup>4019</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2772, 2836.

<sup>4020</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2772.

<sup>4021</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2772, 2836-2837, 2839.

<sup>4022</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2772-2773.

<sup>4023</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2772-2773.

<sup>4024</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2773, 2840, 2847.

<sup>4025</sup> *See supra*, para 176.

<sup>4026</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2772, 2848.

<sup>4027</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2838. Abdylhaqim Shaqiri later found out that Serbian soldiers searched people's home and took 100-150 villagers prisoners in a house, Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2775, 2797, 2839.

<sup>4028</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2783, 2850.

were given two hours to leave the village and were to go in the direction of Uroševac/Ferizaj.<sup>4029</sup> As the village Imam, Abdylhaqim Shaqiri used the loudspeaker of the mosque's minaret and made an evacuation announcement, urging the villagers to gather in the field located in the southern part of the village.<sup>4030</sup>

1017. The villagers gathered on the eastern and western roads of the village, divided by the river.<sup>4031</sup> Abdylhaqim Shaqiri asked to speak to the officer in charge and was escorted for some 200 metres to the other end of the village where he met three officers dressed in the same green-yellow camouflage uniforms as the two or three soldiers in the group Abdylhaqim Shaqiri encountered earlier. They had military belts usually worn by soldiers.<sup>4032</sup> They were carrying pistols and caps on their shoulders.<sup>4033</sup> The officers introduced themselves as the regular army defending their country.<sup>4034</sup> Abdylhaqim Shaqiri tried to explain that there was no KLA presence in Prilepnica/Përlepnice.<sup>4035</sup> Abdylhaqim Shaqiri further tried to explain that the village was surrounded on all sides by Serb populated villages and that the continuation of shelling would cause harm to the Serb population living in the villages near Prilepnica/Përlepnice.<sup>4036</sup> The officers, however, claimed that the KLA was responsible for firing from the eastern, northern and western part of Prilepnica/Përlepnice.<sup>4037</sup> One of the officers, who was referred to by the others as "Russ", and was perhaps 42-43 years old, took Abdylhaqim Shaqiri aside and explained to him that they received information that Prilepnica/Përlepnice was going to be bombed by NATO forces and that they were going to stop this "by all means".<sup>4038</sup> He told Abdylhaqim Shaqiri that the villagers had to leave Prilepnica/Përlepnice in the direction of Uroševac/Ferizaj within two hours because he was "duty-bound to lay mines in all the village streets and the surrounding hills".<sup>4039</sup> He advised

<sup>4029</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2782.

<sup>4030</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2772-2774, 2780, 2849.

<sup>4031</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2775, 2918.

<sup>4032</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2776.

<sup>4033</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2775.

<sup>4034</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2780-2781.

<sup>4035</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2777.

<sup>4036</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2777-2778. Abdylhaqim Shaqiri testified that Prilepnica/Përlepnice was surrounded by seven Serbian villages, Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2777.

<sup>4037</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2777.

<sup>4038</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2849-2850; Exhibit D94, p 3. The Chamber notes that Abdylhaqim Shaqiri did not include this evidence about the officer nicknamed "Russ" in his written statements dated 25 April 1999 (Exhibit D94, p 3); 19 and 22 June 2001 (Exhibit D95, p 2) or in the correction of the statements dated 5 February 2002 (Exhibit D96). The Chamber accepts that this was an omission in the earlier statements, and is not a fresh "invention". It accepts the truth of the witness's present evidence. This discrepancy does not, in the view of the Chamber, render his evidence unreliable.

<sup>4039</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2850; Exhibit D94, p 3.



Abdylhaqim Shaqiri to flee to the neighbouring villages.<sup>4040</sup> The officer “Russ” told Abdylhaqim Shaqiri that the order to evacuate Prilepnica/Përlepnicë came from Belgrade.<sup>4041</sup>

1018. The officer nicknamed “Russ” took Abdylhaqim Shaqiri in his Pinzgauer and they drove to the place where the villagers of Albanian and Roma ethnicity had gathered.<sup>4042</sup> There were 20 to 30 soldiers there. The people had been stopped by soldiers on a road while making their way to the southern part of the village.<sup>4043</sup> Abdylhaqim Shaqiri observed that the western part of the village had been plundered. He was told by a villager that some people had been beaten and their documents had been seized. Abdylhaqim Shaqiri told the officer “Russ” what the person had said and “Russ” ordered the documents to be given back to the villagers.<sup>4044</sup> However, soldiers threw the documents near a wall.<sup>4045</sup>

1019. While the people were on the road soldiers fired shots in the air. One Serbian soldier was injured by a bullet that had ricocheted.<sup>4046</sup> The officer “Russ” and two others put this soldier in the Pinzgauer and ordered the soldiers to withdraw. The people remained in Prilepnica/Përlepnicë while the soldiers departed in the direction of Gnjilane/Gjilan town.<sup>4047</sup> The soldiers gave no further instructions to the villagers. The order to leave the village within two hours was not countermanded.<sup>4048</sup>

1020. Abdylhaqim Shaqiri and other villagers tried to contact the chief of the police in Gnjilane/Gjilan town in order to gain permission to stay.<sup>4049</sup> They also tried to meet Vlado Denić, a Serb, who was deputy director of the local hospital and related to a member of the military staff in Gnjilane/Gjilan,<sup>4050</sup> hoping that his mediation would help to obtain permission to stay.<sup>4051</sup> However, the group did not succeed in these efforts.<sup>4052</sup>

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<sup>4040</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2779.

<sup>4041</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2779. As noted in footnote 4038, Abdylhaqim Shaqiri did not include the reference to the origin of the order in his earlier statements mentioned above. The Chamber accepts the honesty and reliability of this aspect of the witness’s evidence. However, it has no adequate basis on which to evaluate the truth of what was said by “Russ” to the witness about the origin of the order. The circumstances indicate that “Russ” and the others may have been fabricating accounts of the KLA shooting from east, north and west of the village – and of the order from Belgrade – to overcome resistance to the achievement of their orders to empty the village. The Chamber is unable to make a finding on the origin of the order.

<sup>4042</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2779.

<sup>4043</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2779-2780.

<sup>4044</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2779.

<sup>4045</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2779.

<sup>4046</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2781.

<sup>4047</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2781-2782.

<sup>4048</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2782.

<sup>4049</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2782-2783.

<sup>4050</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2782-2785.

<sup>4051</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2782.

<sup>4052</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2785-2786.

1021. Abdylhaqim Shaqiri and the villagers with him went back to Prilepnica/Përlepticë. Abdylhaqim Shaqiri made a further announcement through the mosque's loudspeakers that Prilepnica/Përlepticë must be evacuated and requested that the people meet on the main road Gnjilane/Gjilan-Bujanovc/Bujanoc in Bunar.<sup>4053</sup>

1022. At around 1400 hours on 6 April 1999, Abdylhaqim Shaqiri led a column of more than 3,000 villagers of Albanian and Roma ethnicity and 400 vehicles east in the direction of Dobërçane/Dobërçan village, on the road passing through to Kosovska Kamenica/Kamenicë and Bujanovc/Bujanoc in Kosovska Kamenica/Kamenicë municipality.<sup>4054</sup> The Serb resident families stayed in Prilepnica/Përlepticë.<sup>4055</sup> The road was mined and there were Serbian police and military forces at the village of Kmetovce/Kmetofc.<sup>4056</sup> The police wore blue uniforms. They also had a white cloth with a ribbon on the arm.<sup>4057</sup> The soldiers were dressed in olive-green-grey uniforms,<sup>4058</sup> which appears to be a reference to the solid green/SMB uniforms worn by VJ reservists. The police looked at the convoy but did not interfere. The soldiers, however, stopped the convoy and asked Abdylhaqim Shaqiri where they were heading to and for what reason. The soldiers let the convoy pass through when Abdylhaqim Shaqiri explained that the villagers had been ordered to leave by the army.<sup>4059</sup> The Defence submits that by asking where the convoy was going, these soldiers showed that there was no coordinated plan to remove the villagers.<sup>4060</sup> The Chamber will consider the issue of whether there was a plan to remove residents of Kosovo from their home towns and villages later in this Judgement. The Chamber notes, nevertheless, that the apparent lack of knowledge of one group of soldiers in one village is not a reliable indication of the existence, or of the absence of, a coordinated plan.

1023. From the village of Kmetovce/Kmetofc the convoy moved on to Dobërçane/Dobërçan village.<sup>4061</sup> Abdylhaqim Shaqiri wanted the convoy to move to Trnovc, an Albanian inhabited village in Serbia next to Bujanovac/Bujanoc.<sup>4062</sup> He led the convoy of more than 3,000 people

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<sup>4053</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2788.

<sup>4054</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2788, 2835, 2883. By going east, Abdylhaqim Shaqiri disobeyed the order to go in the direction of Uroševac/Ferizaj.

<sup>4055</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2868.

<sup>4056</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2788-2789, 2864-2865.

<sup>4057</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2789; Abdylhaqim Shaqiri, T 3902.

<sup>4058</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2789; Abdylhaqim Shaqiri, T 3902.

<sup>4059</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2789, 2864, 2951; Abdylhaqim Shaqiri, T 3902, 3904.

<sup>4060</sup> Defence Final Brief, para 848.

<sup>4061</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2790.

<sup>4062</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2790.

through the administrative border crossing between Serbia and Kosovo, where a bridge divided the two. From there, the convoy went in the direction of Trnovc.<sup>4063</sup>

1024. The convoy was finally stopped in Serbia, four or five kilometres before Končul, by the Kosovska Kamenica/Kamenicë local police. Policemen told the people that they had orders from the chief of police in Gnjilane/Gjilan that the villagers could safely return to Prilepnica/Përlepticë.<sup>4064</sup> A small number of people from the convoy then returned to Prilepnica/Përlepticë on the night of 6 April 1999. Others stayed with relatives in other villages.<sup>4065</sup> Some 70-80 per cent of the villagers had returned to Prilepnica/Përlepticë by 7 April.<sup>4066</sup> The returning people found that over 100 houses in the western part of the village had been burned, while the rest had been damaged, demolished or looted. However, Serb houses located in the eastern part of the village remained intact.<sup>4067</sup> The Defence submits that the events demonstrate that the villagers had been asked to leave “temporarily and for their own protection”.<sup>4068</sup> The Chamber will deal more fully with the reasons for Kosovo Albanians leaving their homes in Prilepnica/Përlepticë later in the Judgement. However, it will record here its finding that the demands of the soldiers and threats of the village being mined on the following day, as well as the fact that only the non-Serb population left the village, persuade the Chamber that on 6 April 1999 the residents of Prilepnica/Përlepticë were forcibly displaced from their village.

1025. On 13 April 1999, at around 1200-1230 hours, Abdylhaqim Shaqiri was approached by two prominent Serbs from Gnjilane/Gjilan town who were VJ reserve officers.<sup>4069</sup> They were dressed in army yellow-green camouflage uniforms but were not armed.<sup>4070</sup> They told Abdylhaqim Shaqiri that they had received an order that the population had to leave Prilepnica/Përlepticë once again.<sup>4071</sup> They explained that this order had come from the Supreme Staff in Belgrade.<sup>4072</sup> One of the Serbs, Djilas Mladenović, explained to Abdylhaqim Shaqiri and other villagers who had come to Abdylhaqim Shaqiri’s house, that on 6 April 1999 the villagers were moved out of Prilepnica/Përlepticë by the paramilitary army and now the regular army would be in charge. However, Abdylhaqim Shaqiri noted that the soldiers who came on 6 April 1999 and those who

<sup>4063</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2790.

<sup>4064</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2793-2795; Exhibit P731.

<sup>4065</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2794, 2796.

<sup>4066</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2796, 2970.

<sup>4067</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2796, 2835-2836, 2902.

<sup>4068</sup> Defence Final Brief, para 848.

<sup>4069</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2799, 2803.

<sup>4070</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2799.

<sup>4071</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2800.

<sup>4072</sup> The Chamber notes that Abdylhaqim Shaqiri did not include this allegation in any written statement prior to his testimony before the Tribunal (Exhibit D94, p 5; Exhibit D95, p 4; Exhibit D96, p 2). The Chamber repeats its comments as to footnotes 4038 and 4041 and accepts that this was an omission in the earlier statements, and is not

came on 13 April wore the same yellow-green camouflage uniforms.<sup>4073</sup> The Chamber considers from the evidence that it is probable that the soldiers were less than honest with the Imam on more than one occasion during these events. It is not likely that it was a different force of soldiers on 13 April. Djilas Mladenović also pointed out that Abdylhaqim Shaqiri had disobeyed the order to lead the convoy in the direction of Uroševac/Ferizaj and instead had left in the direction of Bujanovac/Bujanoc.<sup>4074</sup>

1026. During the conversation between Abdylhaqim Shaqiri, villagers and the two local Serbs from Gnjilane/Gjilan who had joined the reserve forces, a third soldier entered Abdylhaqim Shaqiri's yard and distributed Kalashnikov rifles to the two Serb men.<sup>4075</sup> Abdylhaqim Shaqiri requested a police or military escort if he was to organise movement of villagers from the village. The soldiers agreed to convey this demand to their staff.<sup>4076</sup> Within the next hour the two reserve officers left a message for Abdylhaqim Shaqiri that an escort would be provided demanding that the villagers be at a nearby well at 0800 hours on the following day.

1027. Other villagers went to the police in Gnjilane/Gjilan town in order to try to stop the displacement. When they returned they informed Abdylhaqim Shaqiri that they had been told that "the army had taken the situation into their hands and that the police could no longer do anything about it".<sup>4077</sup> By that time the army had encircled the village and kept the villagers from fleeing.<sup>4078</sup>

1028. By 0730 hours the following morning, the population of Prilepnica/Përlepticë was on the road, in tractors, motor cultivators and cars.<sup>4079</sup> At one end of the village, an APC similar to that used on 6 April 1999, manned by three men was positioned.<sup>4080</sup> They asked Abdylhaqim Shaqiri if he needed a bus or fuel and said that the escort was waiting for the villagers at the well. From the well Abdylhaqim Shaqiri led the convoy a short distance in the direction of the main road. There they stopped, waiting for the escort. A black Mercedes car apparently carrying senior officers came by. The officers in the Mercedes had a brief conversation with a soldier or a police reservist standing by the convoy, following which this person contacted the military staff in Gnjilane/Gjilan

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a fresh "invention". It accepts the truth of his present evidence. This difference does not, in the view of the Chamber, render his evidence unreliable.

<sup>4073</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2799, 2802.

<sup>4074</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2801.

<sup>4075</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2803. The two men were reserve soldiers from Gnjilane/Gjilan who had previously have civilian employment, Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2799, 2800, 2802; Abdylhaqim Shaqiri, T 3896.

<sup>4076</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2803.

<sup>4077</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2804.

<sup>4078</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2805, 2822.

<sup>4079</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2805.

<sup>4080</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2805-2806, 2975.

via radio.<sup>4081</sup> Abdylhaqim Shaqiri was told that the escort would arrive in five minutes and they were ordered to go in the direction of Uroševac/Ferizaj.<sup>4082</sup>

1029. After five minutes a regular traffic policeman came to the convoy to act as an escort and the approximately 3,000 villagers from Prilepnica/Përlepticë, together with about a further 1,000 people who had come from other villages, started to move out of Prilepnica/Përlepticë.<sup>4083</sup>

1030. The policeman escorted the convoy through Gnjilane/Gjilan to Livoč/Livoç-i-Epërm where the convoy's escort was changed. From there a white Zastava car driven by a traffic policeman from Gnjilane/Gjilan town and three other policemen escorted the convoy in the direction of FYROM.<sup>4084</sup> In Livoč/Livoç-i-Epërm, Abdylhaqim Shaqiri saw the last remaining inhabitants of that village getting onto a bus. That bus and another bus from Žegra/Zhegër followed the convoy for a part of the way.<sup>4085</sup>

1031. The convoy passed through Parteš/Paresh, Radivojce/Radivojc and Klokot/Kllokot in Vitina/Viti municipality. From Klokot/Kllokot the convoy, instead of going in the direction of Uroševac/Ferizaj, was directed by police through Vitina/Viti and Doganović/Doganaj in the direction of FYROM.<sup>4086</sup> On their way, Abdylhaqim Shaqiri observed that many Kosovo Albanian villages were deserted; there was not a single inhabitant.<sup>4087</sup>

1032. The convoy passed through several checkpoints. A checkpoint in Klokot/Kllokot was manned by the police together with people wearing various uniforms.<sup>4088</sup> In Doganović/Doganaj, the convoy was stopped for three hours at a military checkpoint manned by men in olive-green uniforms.<sup>4089</sup> Approximately five to six kilometres from the FYROM border, the convoy of over 500 vehicles was stopped at a checkpoint by an army officer wearing an olive-green uniform.<sup>4090</sup> The officer ordered Abdylhaqim Shaqiri to tell people to line up by their cars, 50 by 50.<sup>4091</sup> As soon as he returned to his own car Abdylhaqim Shaqiri was badly beaten by another – more junior – soldier, until he lost consciousness.<sup>4092</sup> During the beating, the officer stepped in and apologised

<sup>4081</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2806-2807.

<sup>4082</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2807.

<sup>4083</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2811, 2884, 2886, 2918.

<sup>4084</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2814.

<sup>4085</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2812.

<sup>4086</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2814, 2823, 2973.

<sup>4087</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2816.

<sup>4088</sup> Abdylhaqim Shaqiri, T 3906.

<sup>4089</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2817; Exhibit P732.

<sup>4090</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2817.

<sup>4091</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2817, 2956.

<sup>4092</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2818-2819.

for his soldier's conduct.<sup>4093</sup> After making his apologies, the officer escorted the people to the border.<sup>4094</sup>

1033. Before crossing the border from Kosovo into FYROM, the police escorted the convoy to the person in charge of the Serbian border police station.<sup>4095</sup> The chief of the border police, dressed in a solid blue police uniform,<sup>4096</sup> ordered the villagers to leave their vehicles in a field, with car keys, licenses and documentation inside.<sup>4097</sup> None of those vehicles were ever recovered by their owners.<sup>4098</sup> The villagers from Prilepnica/Përlepnicë spent the first night and the next day in the zone between the two borders.<sup>4099</sup> On the following days buses from FYROM took the refugees to various camps in FYROM.<sup>4100</sup>

1034. After his return to Prilepnica/Përlepnicë in June 1999, Abdylhaqim Shaqiri found the village burned to the ground, destroyed and looted.<sup>4101</sup> The mosque and the library which had existed for over 150 years were also burned.<sup>4102</sup>

1035. The Chamber is satisfied that on 14 April 1999 a convoy of not less than 4,000 people, including 3,000 people from Prilepnica/Përlepnicë and some 1,000 from other nearby villagers were forced by Serbian forces to leave Prilepnica/Përlepnicë and were deported to FYROM. The Chamber is satisfied that directed by Serbian police these people crossed the border into FYROM.

## 2. Žegra/Zhegër and Nosalje/Nosaljë

1036. The village of Žegra/Zhegër is located 12 kilometres to the south of Gnjilane/Gjilan town and close to the Serbian and FYROM borders.<sup>4103</sup> At the time of the events alleged in the Indictment Žegra/Zhegër had a population of approximately 4,000 people of predominantly Albanian ethnicity. There were 900 Kosovo Albanian houses.<sup>4104</sup> There were also less than 100 Serb houses in Žegra/Zhegër<sup>4105</sup> but the evidence varies as to the precise number.

<sup>4093</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2818-2819.

<sup>4094</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2819-2820, 2887, 2900-2901.

<sup>4095</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2820.

<sup>4096</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2822, 2955.

<sup>4097</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2820, 2956.

<sup>4098</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2820-2821.

<sup>4099</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2820.

<sup>4100</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2820.

<sup>4101</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2821.

<sup>4102</sup> Abdylhaqim Shaqiri, Exhibit P729 (*Milutinović* transcript), T 2949.

<sup>4103</sup> Qamil Shabani, Exhibit P786, p 2; Exhibit P789.

<sup>4104</sup> K81, Exhibit P791, statement of 30 May 1999, p 3.

<sup>4105</sup> Qamil Shabani estimates the number as 97, Qamil Shabani, Exhibit P786, p 2. According to K81 there were approximately 900 Kosovo Albanian houses and 30-40 Serb houses in Žegra/Zhegër, K81, Exhibit P792, witness statement of 30 May 1999, p 3. The Chamber remains satisfied that the population of Žegra/Zhegër was predominantly Kosovo Albanian.

1037. In mid March 1999, Serbian forces, who wore military clothing, and “paramilitary” forces, positioned themselves at the entrance of Žegra/Zhegër and in the surrounding mountains close to the village.<sup>4106</sup> A checkpoint was set up at a factory at the entrance of Žegra/Zhegër, which was manned by 15 to 20 men, wearing “regular military uniforms” and armed with AK47 automatic weapons.<sup>4107</sup> Because they were older they were thought to be reservists. APCs and tanks were also seen at the checkpoint.<sup>4108</sup> Members of the Serbian forces moved into four or five Kosovo Albanian houses forcing their occupants to leave. Their headquarters was established at the agricultural co-operative.<sup>4109</sup> The forces patrolled the streets of Žegra/Zhegër asking for people’s documents.

1038. On 28 March 1999, the Serb families in Žegra/Zhegër marked their homes by putting a piece of white cloth on the door.<sup>4110</sup> On the same day, at 1800 hours, Serbian forces described by a witness as “paramilitaries”<sup>4111</sup> went to houses in Žegra/Zhegër, apparently looking for prominent people of Albanian ethnicity. They were assisted by local Serbs.<sup>4112</sup> There is hearsay evidence of the killings of villagers by Serbian forces in late March 1999,<sup>4113</sup> including the killing of Shyqeri Tahiri, a local LDK leader, who was killed on 28 March 1999 and Ukshin Ukshini on 30 March 1999.<sup>4114</sup>

1039. On 29 March 1999, soldiers along with what a witness identified as paramilitary forces went house by house ordering people to leave.<sup>4115</sup> The Chamber recalls that minutes of a meeting of Chiefs of SUPs in Kosovo, PJP detachment commanders, and SAJ and JSO commanders held in the

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<sup>4106</sup> Qamil Shabani, Exhibit P786, pp 2-3. Qamil Shabani did not provide a description of the paramilitary forces. His evidence, however, is confirmed by K81. K81 testified that around 25 March 1999 the VJ together with armed men in civilian clothes came to the adjacent village of Vladovo/Lladovë and that they were stationed in the depot of a battery factory located at the entrance to Žegra/Zhegër. K81 also testified that there were Serbian villagers accompanying them, K81, Exhibit P793 (*Milutinović* transcript), T 7080. Local residents were told that the men in civilian clothes were Arkan’s Tigers but the origin of this information is not revealed in the evidence. These men were older than the VJ soldiers, had long beards, and were armed with automatic weapons, K81, Exhibit P791, witness statement of 30 May 1999, p 2.

<sup>4107</sup> Qamil Shabani, Exhibit P786, pp 2-3.

<sup>4108</sup> Qamil Shabani, Exhibit P786, p 2.

<sup>4109</sup> Qamil Shabani, Exhibit P786, p 3.

<sup>4110</sup> Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2700-2703; Qamil Shabani, Exhibit P786, p 2; Qamil Shabani Exhibit P787, para 5.

<sup>4111</sup> Qamil Shabani did not describe the forces operating on 28 March 1999. However, he defined the term “paramilitary” as meaning someone who is working with the police but who is not a regular police officer and he recognised them by their irregular uniforms, including the use of handkerchiefs (bandannas) on their heads and other items, like masks, cockades with the four S’s, Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2756. The Chamber notes that the symbol with the four S’s was on the patches of the SAJ forces, *see supra*, para 76.

<sup>4112</sup> Qamil Shabani, Exhibit P786, p 3. Qamil Shabani was later told by Albanians in the village that members of the Serb community, *inter alia*, Sinisha Paviq the MUP inspector in Gnjilane/Gjilan, had compiled a list of prominent Albanians who should be killed, Qamil Shabani, Exhibit P787, para 5.

<sup>4113</sup> Qamil Shabani, Exhibit P787, para 7; K81, Exhibit P791, statement of 30 May 1999, p 2 (testimony to the same incident and the killing of another person). In particular Qamil Shabani testified that Ukshin Ushini was shot dead on 30 March 1999. He learned this from Ukshin Ushini’s son.

<sup>4114</sup> Qamil Shabani, Exhibit P786, p 3; K81, Exhibit P791, statement of 30 May 1999, p 3.

<sup>4115</sup> Qamil Shabani, Exhibit P786, p 2.

MUP Staff in Priština/Prishtinë on 4 April 1999 record the chief of SUP Gnjilane/Gjilan referring to problems with volunteers in Žegra/Zhegër<sup>4116</sup> and accepts that paramilitary forces also participated in this operation.

1040. The forces shot at inhabitants and entered houses in order to drive their inhabitants out.<sup>4117</sup> Out of fear of the Serbian forces in the evening of the same day about 1,300 villagers left Žegra/Zhegër and headed towards the hills in the direction of Donja Stubla/Stubëll-e-Poshtme in Vitina/Viti municipality, about 10 kilometres away.<sup>4118</sup> They were on foot.<sup>4119</sup> They spent the night on a hill called Kusljevica and on the following morning, as shots could no longer be heard from Žegra/Zhegër, went back to the village.<sup>4120</sup>

1041. On or about 30 March 1999 Serbian forces again shot at houses as they drove through the village in their APCs.<sup>4121</sup> The same group of 1,300 villagers, who had left the village the night before, left immediately after the shooting resumed. They went in the direction of the hill of Kusljevica. Serbian forces were shooting at the people while they were fleeing.<sup>4122</sup> These Serbian forces comprised army, police in blue uniforms and paramilitaries.<sup>4123</sup> The group headed towards Donja Stubla/Stubëll-e-Poshtme on foot and arrived there one hour later.<sup>4124</sup> Most stayed there for five weeks,<sup>4125</sup> but about 500 left for FYROM three weeks after arriving.<sup>4126</sup> The Defence submits that the villagers left the village by their own free will, and that there was no coordinated plan to remove villagers from the village.<sup>4127</sup> The Chamber will deal with these issues later in this Judgement, however, the Chamber will record here its finding that the evidence discussed above discloses that on 29 and 30 March 1999 the residents of Žegra/Zhegër left the village out of fear caused by the shooting and other behaviour of the Serbian forces. The Chamber does not accept, however, that it has been proved that Serbian forces caused the movement of the residents of Žegra/Zhegër from Donja Stubla/Stubëll-e-Poshtme to FYROM some three to five weeks after their arrival in Donja Stubla/Stubëll-e-Poshtme.

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<sup>4116</sup> Exhibit P764, p 2.

<sup>4117</sup> Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2684.

<sup>4118</sup> Qamil Shabani, Exhibit P786, p 3; Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2685.

<sup>4119</sup> Qamil Shabani, Exhibit P786, p 4.

<sup>4120</sup> Qamil Shabani, Exhibit P786, p 3; Qamil Shabani Exhibit P788 (*Milutinović* transcript), T 2716.

<sup>4121</sup> Qamil Shabani, Exhibit P786, p 3; Qamil Shabani, Exhibit P787, para 8; Qamil Shabani Exhibit P788 (*Milutinović* transcript), Qamil Shabani, T 2684-2685.

<sup>4122</sup> Qamil Shabani, Exhibit P786, pp 3-4; Qamil Shabani, Exhibit P787, para 9; Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2685; Qamil Shabani, T 4512-4513.

<sup>4123</sup> Qamil Shabani, Exhibit P787, para 9. Qamil Shabani saw different vehicles, owned by the Army and he identified them on a chart depicting different types of vehicles, Exhibit P318, Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2688-2689; Qamil Shabani, T 4490. Qamil Shabani saw, in the vicinity of his village, forces wearing the uniforms depicted on picture No 9 of Exhibit P325, and No 4 and No 6, Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2689-2690.

<sup>4124</sup> Qamil Shabani, Exhibit P786, p 4; Qamil Shabani, T 4492.

<sup>4125</sup> Qamil Shabani, Exhibit P786, p 4; Qamil Shabani, T 4493.



1042. On or about 6 April 1999 Serbian forces attacked nearby villages, including Rimnik/Ribnik, Gornja Budrika/Budrikë-e-Eperme and Mogila/Mogillë in Vitina/Viti municipality and the villages of Nosalje/Nosaljë and Vladovo/Lladovë in Gnjilane/Gjilan municipality.<sup>4128</sup> The inhabitants of these villages also went to Donja Stubla/Stubëll-e-Poshtme where the people from Žegra/Zhegër had taken refuge, so that there were about 20,000 people there.<sup>4129</sup> Serbian forces were stationed in Gornja Stubla/Stubëll-e-Epërme, about one kilometre away from Donja Stubla/Stubëll-e-Poshtme and in the surrounding area, and were monitoring the situation.<sup>4130</sup>

1043. On or about 20 April 1999, about 1,500 people left Donja Stubla/Stubëll-e-Poshtme and returned to their villages in Vitina/Viti municipality as there appeared to be no Serbian forces there at that time.<sup>4131</sup> After this day some 500 to 1000 people, mainly women, children and elderly, left Donja Stubla/Stubëll-e-Poshtme each day. A witness testified that they went to FYROM out of fear and because they did not have any food.<sup>4132</sup> As noted a few paragraphs above, the Chamber does not accept as proven that this movement was caused by Serbian forces.

1044. On 2 May 1999, a group of about 600 people, including 200 from Žegra/Zhegër, left for FYROM.<sup>4133</sup> They set out at 1900 hours towards the village of Goden in Vitina/Viti municipality.<sup>4134</sup> From there, they walked through the Jucufovce Mahala, where about 60 people joined their column.<sup>4135</sup> The column continued to the mountains of Seferaj where these displaced persons stayed during the night.<sup>4136</sup> They did not see army or police on their way to the mountains.<sup>4137</sup>

1045. On 3 May 1999, at 0500 hours, the group left the mountains of Seferaj and at 1400 hours reached the area of Rustaj in Gnjilane/Gjilan municipality.<sup>4138</sup> There the convoy encountered regular and “paramilitary” soldiers.<sup>4139</sup> The witness does not provide any description of the paramilitary soldiers so that the Chamber is not able to identify reliably whether these were indeed paramilitary soldiers. The soldiers called for their commander. In the meantime men were

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<sup>4126</sup> Qamil Shabani, Exhibit P786, p 4.

<sup>4127</sup> Defence Final Brief, para 853.

<sup>4128</sup> Qamil Shabani, Exhibit P786, p 4.

<sup>4129</sup> Qamil Shabani, Exhibit P786, p 4.

<sup>4130</sup> Qamil Shabani, Exhibit P786, p 4.

<sup>4131</sup> Qamil Shabani, Exhibit P786, p 4.

<sup>4132</sup> Qamil Shabani, Exhibit P786, p 4.

<sup>4133</sup> Qamil Shabani, Exhibit P786, p 5; Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2721-2722; Qamil Shabani, T 4493, 4501.

<sup>4134</sup> Qamil Shabani, Exhibit P786, p 5.

<sup>4135</sup> Qamil Shabani, Exhibit P786, p 5.

<sup>4136</sup> Qamil Shabani, Exhibit P786, p 5.

<sup>4137</sup> Qamil Shabani, Exhibit P786, p 5.

<sup>4138</sup> Qamil Shabani, Exhibit P786, p 5; Qamil Shabani, T 4493; Exhibit P789.

<sup>4139</sup> Qamil Shabani, Exhibit P786, p 5.

separated by the soldiers from women. Both men and women were searched.<sup>4140</sup> The men were ordered by the Serbian forces to kneel down and keep their hands above their heads. During this time they were threatened that they would be killed, but eventually the soldiers let the men join the group of women.<sup>4141</sup> From Rustaj, the convoy was escorted by 30 or more “paramilitaries and soldiers” to a hill near the FYROM border about one hour away.<sup>4142</sup> There some of the men were threatened and were accused of intending to join the KLA in Albania.<sup>4143</sup> Eventually, the group was ordered to go in the direction of Preševo in Serbia where another group of regular and paramilitary soldiers was expected to be waiting for them.<sup>4144</sup> However, as there was no escort, the people in the convoy decided not to go to Preševo but towards FYROM, which was about 90 minutes walk away.<sup>4145</sup> On their way they came across another group of 300 displaced persons, including people from Žegra/Zhegër, coming from the direction of Preševo. These people joined the convoy.<sup>4146</sup>

1046. On 4 May, the convoy crossed the border into FYROM in the area of the mountains of Lojane.<sup>4147</sup> Although there were Serbian soldiers in trenches nearby, the convoy of refugees was not stopped.<sup>4148</sup>

1047. For reasons stated in more detail later in this Judgement, the Chamber is satisfied that the offence of forcible transfer has been established with respect to Žegra/Zhegër.

1048. When residents of Žegra/Zhegër eventually returned to their village in June 1999 they found approximately 120 Albanian houses totally burned and some 420 houses partially burned. The Serb houses remained intact.<sup>4149</sup>

### 3. Vladovo/Lladovë and Vlačica/Llashticë

1049. The village of Vladovo/Lladovë is situated in the municipality of Gnjilane/Gjilan approximately one kilometre to the north of Žegra/Zhegër. In 1999 Vladovo/Lladovë had

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<sup>4140</sup> Qamil Shabani, Exhibit P786, p 5; Qamil Shabani Exhibit P788 (*Milutinović* transcript), T 2724; Qamil Shabani, T 4493, 4500.

<sup>4141</sup> Qamil Shabani, Exhibit P786, p 5; Qamil Shabani, T 4494, 4500.

<sup>4142</sup> Qamil Shabani, Exhibit P786, p 5. The estimates of the number of escorts varies. In this trial the estimate was 70 “militaries and paramilitaries” (Qamil Shabani, T 4494) but in an earlier statement the witness had suggested 30 or more (Qamil Shabani, Exhibit P786, p 5). The Chamber does not consider that this inconsistency goes to material elements of Qamil Shabani’s evidence. It does not render his evidence unreliable.

<sup>4143</sup> Qamil Shabani, Exhibit P786, p 5.

<sup>4144</sup> Qamil Shabani, Exhibit P786, p 6; Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2724.

<sup>4145</sup> Qamil Shabani, Exhibit P786, p 6; Qamil Shabani, T 4517.

<sup>4146</sup> Qamil Shabani, Exhibit P786, p 6; Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2725.

<sup>4147</sup> Qamil Shabani, Exhibit P786, p 6; Qamil Shabani, T 4495.

<sup>4148</sup> The convoy was led by an Albanian person who knew the way and who guided them in exchange of some German Marks, Qamil Shabani, Exhibit P788 (*Milutinović* transcript), T 2726.

<sup>4149</sup> Qamil Shabani, Exhibit P787, para 19.

approximately 100 houses and was divided into three hamlets.<sup>4150</sup> The village of Vlaštica/Llashticë is situated about two to three kilometres away from Vladovo/Lladovë. A mountain area called the Black Mountain or Kodra-e-Zeze<sup>4151</sup> is about three kilometres from Vladovo/Lladovë and is just around the village of Vlaštica/Llashticë.<sup>4152</sup>

1050. On or around 25 March 1999 VJ and some “armed civilians” arrived in the area around the village of Vladovo/Lladovë. A checkpoint was set up at a factory, situated at the entrance of Žegra/Zhegër.<sup>4153</sup> The men in civilian clothes were described as having long beards and wearing “partial uniforms” with no identifying patches or symbols on them.<sup>4154</sup> They were much older than the soldiers and were armed with automatic guns. The villagers were told that these were Arkan’s men<sup>4155</sup> but there is no satisfactory evidence to support this. These armed “civilians” drove civilian vehicles with civilian registration plates.<sup>4156</sup> The VJ used vehicles, including army buses, heavy trucks and other types of vehicles, all with VJ registration.<sup>4157</sup> The provocations of the VJ towards the villagers started to become more “severe”.<sup>4158</sup> The situation in the village deteriorated on account of the intimidating behaviour of these forces.<sup>4159</sup>

1051. On or about 29 March 1999 some of the Kosovo Albanian people from Vladovo/Lladovë left towards the area of the Black Mountain (Kodra-e-Zeze) because of the Serbian military presence nearby.<sup>4160</sup> Among them were men, women, elderly and children.<sup>4161</sup> A witness spent two weeks in hiding on a hill in the area of the Black Mountain (Kodra-e-Zeze) and from his vantage point in the mountains, this witness was able to monitor events in Žegra/Zhegër, Vladovo/Lladovë and Vlaštica/Llashticë.<sup>4162</sup> He saw soldiers, along with what the witness described as paramilitaries, looting, stealing and setting fire to houses in Vladovo/Lladovë.<sup>4163</sup>

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<sup>4150</sup> K81, Exhibit P791, statement of 30 May 1999, pp 1-2.

<sup>4151</sup> K81, Exhibit P791, statement of 30 May 1999, pp 2-3.

<sup>4152</sup> K81, T 4530, 4579.

<sup>4153</sup> See *supra*, para 1037.

<sup>4154</sup> K81, Exhibit P791, statement of 30 May 1999, p 2.

<sup>4155</sup> K81, Exhibit P791, statement of 30 May 1999, p 2; Exhibit P793 (*Milutinović* transcript), T 7086. The origin of this information is not revealed in evidence.

<sup>4156</sup> K81, Exhibit P791, statement of 30 May 1999, p 1.

<sup>4157</sup> K81, Exhibit P791, statement of 30 May 1999, p 1.

<sup>4158</sup> K81, Exhibit P791, statement of 30 May 1999, p 1.

<sup>4159</sup> K81, Exhibit P791, statement of 30 May 1999, p 1.

<sup>4160</sup> K81, Exhibit P791, statement of 30 May 1999, p 3.

<sup>4161</sup> K81, Exhibit P793 (*Milutinović* transcript), T 7079.

<sup>4162</sup> K81, Exhibit P791, statement of 30 May 1999, p 3; K81, Exhibit P793 (*Milutinović* transcript), T 7081-7082, T 7074-7075; K81, T 4530-4531, 4559-4562; Exhibit D116, a map where K81 marked the villages of Žegra/Zhegër, Vladovo/Lladovë, Vlaštica/Llashticë and the hill.

<sup>4163</sup> K81, Exhibit P791, statement of 30 May 1999, p 2; K81, Exhibit P793 (*Milutinović* transcript), T 7082; K81, 4531-4532.

1052. On or around 2 April 1999 at about 1530 hours a group of six villagers, including three women, left the mountain to go back to Vladovo/Lladovë.<sup>4164</sup> When this group was about 500-600 metres away from Vladovo/Lladovë VJ soldiers in dark green uniforms opened fire on them. Three of the group were wounded, the other three, including one woman, were killed.<sup>4165</sup> Three more people were killed in Vladovo/Lladovë by VJ soldiers apparently on the same day.<sup>4166</sup> On the same day, those Kosovo Albanian residents of Vladovo/Lladovë who had not fled their homes until that time, were brought to the mosque by Serbian forces.<sup>4167</sup> VJ soldiers ordered the people at the mosque to bury the six dead bodies and to do this before the VJ re-entered the village the next day. The dead were buried. The people were also ordered to leave Vladovo/Lladovë.<sup>4168</sup> The residents left. Nobody from Vladovo/Lladovë dared to return.<sup>4169</sup>

1053. For reasons stated in detail later in this Judgement, the Chamber is satisfied that the offence of forcible transfer has been established with respect to Vladovo/Lladovë.

1054. On or about 6 April 1999, Serbian forces were observed looting and setting houses in Vlaštica/Llashticë on fire.<sup>4170</sup> These forces were VJ soldiers and police.<sup>4171</sup> They were accompanied by men from Žegra/Zhegër in civilian clothes, who assisted the VJ and police by directing them to houses of local LDK activists.<sup>4172</sup> On that day, two of the men who were normally in civilian clothes were wearing dark blue police uniforms.<sup>4173</sup> Despite the fact that there was no resistance from the villagers, the joint Serbian forces entered the houses of Kosovo Albanians, forced the inhabitants out, looted the houses and finally set the houses on fire.<sup>4174</sup>

1055. The mosque in Vlaštica/Llashticë was the first building in the village that was set on fire. It was heavily damaged and its library destroyed by a fire lit by VJ forces.<sup>4175</sup>

1056. On or about 11 April 1999 VJ troops wearing dark green uniforms were again observed around the village of Vlaštica/Llashticë.<sup>4176</sup> VJ and police forces collected the population and

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<sup>4164</sup> K81, Exhibit P791, statement of 30 May 1999, p 2.

<sup>4165</sup> K81, T 4566-4572. The names of the victims are Hevzi Ajeti (aged 28 years), Ganimete Ajeti (aged 22 years, female) and Ahmet Ajeti (aged 39 years). Ahmet Ajeti was an LDK activist, K81, Exhibit P791, statement of 30 May 1999, p 2.

<sup>4166</sup> K81, T 4572-4573, 4590; K81, Exhibit P793 (*Milutinović* transcript), T 7082. The names of the victims are Daut Mahmuti (aged 30 years), Zijadin Mahmuti (aged 30 years, female) and Beqir Mahmuti (aged 40 years), K81, Exhibit P791, statement of 30 May 1999, p 2.

<sup>4167</sup> K81, T 4572.

<sup>4168</sup> K81, T 4590. K81, Exhibit P791, statement of 1 February 2002, p 2.

<sup>4169</sup> K81, T 4590.

<sup>4170</sup> K81, T 4530-4531.

<sup>4171</sup> K81, T 4530-4531.

<sup>4172</sup> K81, Exhibit P791, statement of 30 May 1999, p 3; K81, Exhibit P793 (*Milutinović* transcript), T 7070, 7081.

<sup>4173</sup> K81, Exhibit P791, statement of 30 May 1999, p 3.

<sup>4174</sup> K81, Exhibit P793 (*Milutinović* transcript), T 7081.

<sup>4175</sup> K81, T 4535; K81, Exhibit P791, statement of 30 May 1999, p 3. See also *infra*, paras 1838-1841.

<sup>4176</sup> K81, Exhibit P792, statement of 30 May 1999, p 3; K81, T 4579.

directed a part of it towards Preševo in Serbia.<sup>4177</sup> Many tractors carrying villagers from Vlačica/Llashticë proceeded in the direction of Preševo. In the same area three other Kosovo Albanian men were carrying an older man on a blanket. Three or four VJ soldiers in green uniforms fired on the men with automatic weapons. The bullets hit the man on the blanket and the men carrying him ran for cover. The older man was killed. He was buried in an unmarked grave in the village of Beqir.<sup>4178</sup>

1057. For reasons stated in more detailed later in this Judgement the Chamber is satisfied that the offence of deportation has been established with respect to the events in Vlačica/Llashticë on 6-11 April 1999.

1058. A witness observed that on or around 12 April 1999 VJ forces were present in the village of Žub/Zhub near the area of the Black Mountain or Kodra-e-Zeze. These forces expelled people from the village.<sup>4179</sup> About 70 residents were seen fleeing from Žub/Zhub.<sup>4180</sup>

1059. An undetermined number of Kosovo Albanian people, who had fled their homes in early March gathered in the area of Sefer in the municipality of Gnjilane/Gjilan, from where they left for Preševo in Serbia.<sup>4181</sup> The journey took them 12 hours by foot.<sup>4182</sup> There is also evidence that Serbian police and army maltreated some Kosovo Albanians who had arrived in Preševo.<sup>4183</sup>

1060. On 13 April 1999 at about 1100 hours a convoy of some 1,000 Kosovo Albanians from Kosovo was formed in Preševo.<sup>4184</sup> People from Vladovo/Lladovë joined this convoy<sup>4185</sup> which went to FYROM via the villages of Miratovać/Miratovc and Stankovec in FYROM.<sup>4186</sup> The convoy consisted of people of different ages, including elderly, women and children.<sup>4187</sup> The convoy was escorted to the FYROM border by VJ forces in dark green uniforms and Serbian police in dark blue uniforms on tractors that had been seized earlier from Kosovo Albanians.<sup>4188</sup> At Miratovać/Miratovc the convoy was ordered to stop and their escort searched the group and seized

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<sup>4177</sup> K81, T 4579.

<sup>4178</sup> K81, Exhibit P792, statement of 30 May 1999, p 4.

<sup>4179</sup> K81, Exhibit P791, statement of 30 May 1999, p 4; K81, Exhibit P793 (*Milutinović* transcript), T 7072; K81, T 4582.

<sup>4180</sup> K81, Exhibit P792, statement of 30 May 1999, p 4. Exhibit D116, a map where K81 marked the village of Žub/Zhub with the number seven.

<sup>4181</sup> K81, Exhibit P791, statement of 30 May 1999, p 4; Exhibit D116, a map where K81 marked the village of Sefer with the number six.

<sup>4182</sup> K81, Exhibit P791, statement of 30 May 1999, p 4; K81 Exhibit P793 (*Milutinović* transcript), T 7076.

<sup>4183</sup> K81, T 4538, 4543-4544.

<sup>4184</sup> K81, Exhibit P791, statement of 30 May 1999, p 4; K81, T 4545, 4547.

<sup>4185</sup> K81, Exhibit P792, statement of 30 May 1999, p 4.

<sup>4186</sup> K81, Exhibit P792, statement of 30 May 1999, p 4; K81, T 4545, 4547.

<sup>4187</sup> K81, T 4537.

<sup>4188</sup> K81, T 4545.

all identification papers.<sup>4189</sup> The convoy finally crossed the FYROM border through the village of Tabanovce and arrived in Stankovec, FYROM at 0400 hours on 14 April 1999.<sup>4190</sup>

1061. Some months after these events, villagers of Vladovo/Lladovë returned to find that houses in their village had been burnt and looted.<sup>4191</sup> There is evidence that some 25 Kosovo Albanian residents of Vlačica/Llashticë were killed by Serbian forces during the events described above.<sup>4192</sup>

#### **J. Uroševac/Ferizaj municipality**

1062. On 27 March 1999 the Military District Command in Priština/Prishtinë issued an order tasking the 64<sup>th</sup> Military Territorial Detachment in cooperation with MUP forces, to establish combat control of the territory on the axes of Uroševac/Ferizaj—Tankosić/Tankosiq, Uroševac/Ferizaj—Doganović/Doganaj, and Uroševac/Ferizaj—Srpski Babuš/Babush-i-Serbëve.<sup>4193</sup> The villages of Biba/Bibaj, Sojevo/Sojevë, Staro Selo/Fshati-i-Vjeter, and Mirosavlje/Mirosalë, events at which are to be discussed below, are to both sides of the Uroševac/Ferizaj—Tankosić/Tankosiq axes, in the immediate proximity of the road connecting Uroševac/Ferizaj with Tankosić/Tankosiq. Eyewitnesses of the events described below have identified the presence of VJ and MUP forces in the villages of Biba/Bibaj, Sojevo/Sojevë, Staro Selo/Fshati-i-Vjeter, and Mirosavlje/Mirosalë on 1 April 1999 and the following days. The Chamber, therefore, finds that both VJ and MUP forces were present and acting in cooperation to establish combat control in the villages of Biba/Bibaj, Sojevo/Sojevë, Staro Selo/Fshati-i-Vjeter, and Mirosavlje/Mirosalë at the time of the events described below. Entries for 29 and 31 March 1999 in the war diary of the 243<sup>rd</sup> Mechanised Brigade of the VJ which was deployed in Uroševac/Ferizaj municipality indicate that volunteers kept arriving and that they were issued with personal weapons.<sup>4194</sup> While in some cases, witnesses may have mistakenly identified volunteers, reservists or territorial forces as paramilitary forces, in other cases the identification of paramilitary forces appears to the Chamber to be soundly based so that the Chamber accepts the presence of some Serbian paramilitary forces.

1063. The Chamber finds that VJ and MUP acted in coordination in ensuring the movement of tens of hundreds of displaced persons from the villages of Biba/Bibaj, Sojevo/Sojevë, Staro Selo/Fshati-i-Vjeter, and Mirosavlje/Mirosalë and other villages to and across the border into FYROM, as it will be discussed below.

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<sup>4189</sup> K81, T 4537, 4544, 4545.

<sup>4190</sup> K81, Exhibit P792, statement of 30 May 1999, p 4.

<sup>4191</sup> K81, T 4542.

<sup>4192</sup> K81, T 4538-4539.

<sup>4193</sup> Exhibit P896, p 3.

<sup>4194</sup> Exhibit P956, pp 5-7.

## 1. Biba/Bibaj and Sojevo/Sojevë

1064. The village of Biba/Bibaj is located in Uroševac/Ferizaj municipality, to the east of the town of Uroševac/Ferizaj. In 1999 the village had approximately 1,000 inhabitants, all of whom were Kosovo Albanians. There were approximately 100 houses in the village.<sup>4195</sup> Sojevo/Sojevë is located some two to three kilometres to the east of Biba/Bibaj and some five kilometres from Uroševac/Ferizaj.

1065. During the night of 24/25 March 1999 residents of Biba/Bibaj saw two APCs passing by the village on the way to Sojevo/Sojevë. As APCs were used by both VJ and some MUP forces the Chamber is not able to determine, on this evidence, whether these Serbian forces were VJ or MUP. The APCs opened fire on houses close to the road.<sup>4196</sup> After this incident all villagers who had houses along the main road moved from those houses further into the village.<sup>4197</sup> On 27 March 1999 residents of Biba/Bibaj moved to Sojevo/Sojevë because Biba/Bibaj had become overcrowded with displaced persons from other villages.<sup>4198</sup>

1066. On 1 April 1999 a VJ unit moved into the school in Sojevo/Sojevë.<sup>4199</sup> A group of VJ soldiers with three tanks and anti-aircraft cannons were stationed in the village on 2 April 1999.<sup>4200</sup> On 3 or 4 April 1999 another VJ tank was deployed close to the main road in Sojevo/Sojevë.<sup>4201</sup>

1067. On 6 April 1999 at 0800 hours a Serbian force comprising about 18 armed and uniformed men entered the village of Sojevo/Sojevë. This group comprised soldiers and two police officers.<sup>4202</sup> The soldiers wore green uniforms with red berets and carried automatic weapons and knives.<sup>4203</sup> Again, the Chamber is not able, from this evidence, to identify the unit from which these men came. One witness described these soldiers as paramilitary soldiers, but in the absence of more detailed evidence the Chamber cannot confirm this. The police had blue camouflage uniforms.<sup>4204</sup> It was later learned that the commander of this group was Novic Mijović,<sup>4205</sup> who at the time lived in Uroševac/Ferizaj town and was with the VJ.<sup>4206</sup>

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<sup>4195</sup> Bedri Hyseni, Exhibit P808, p 2. The Defence submits the credibility of Bedri Hyseni should not be accepted due to discrepancies in his testimony, Defence Final Brief, para 860. While there are some discrepancies in his testimony of certain events, in the Chamber's finding he is an honest and reliable witness. The Chamber has accepted his evidence to the extent relied on below.

<sup>4196</sup> Bedri Hyseni, Exhibit P808, p 2; Bedri Hyseni, Exhibit P809, p 5.

<sup>4197</sup> Bedri Hyseni, Exhibit P809, p 5.

<sup>4198</sup> Bedri Hyseni, Exhibit P808, p 2; Bedri Hyseni, Exhibit P809, p 5; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3108-3110; Bedri Hyseni, T 4903.

<sup>4199</sup> Bedri Hyseni, Exhibit P809, p 5.

<sup>4200</sup> Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3097.

<sup>4201</sup> Bedri Hyseni, Exhibit P808, p 2.

<sup>4202</sup> Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3097.

<sup>4203</sup> Bedri Hyseni, Exhibit P808, p 3; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3137-3138.

<sup>4204</sup> Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3137-3138.

1068. These armed men went to the Limanaj neighbourhood of Sojevo/Sojevë and set fire to houses there. Some 90 per cent of the houses there were burnt as a result.<sup>4207</sup> One family alone lost 14 houses.<sup>4208</sup> As a result of these fires, two Kosovo Albanian men, Qerim Ajvazi and Hamit Hali, died.<sup>4209</sup> The smoke from the burning of the houses in Sojevo/Sojevë could be seen from nearby villages that day, and on the following day people in Miroslavje/Mirosalë could still observe houses in Sojevo/Sojevë burning.<sup>4210</sup>

1069. These armed men then continued to the Shulhaj neighbourhood of Sojevo/Sojevë, again setting houses on fire. Two of the soldiers approached the house of Nazmi and Haxhere Nebihu in this neighbourhood. Nazmi, who was paralyzed, was indoors at the time and his wife was outside.<sup>4211</sup> When she saw the soldiers coming closer, Haxhere started to run towards the house. She was screaming and the two soldiers raised their rifles. A short burst of fire was heard and Haxhere fell to the ground. One of the soldiers went inside the house and shortly thereafter a second burst of fire was heard.<sup>4212</sup> These events were observed by a witness hiding only some 100 to 120 metres from Nebihu's house.<sup>4213</sup> That evening, villagers were able to approach the house and discovered the bodies of Nazmi and Haxhere Nebihu in their house. Bullet wounds could be seen in the chest of Nazim Nebihu.<sup>4214</sup> In the Chamber's finding both Nazmi and Haxhere Nebihu were shot dead that day by these Serbian soldiers. Nazmi and Haxhere Nebihu were civilians.

1070. As the Serbian force was advancing in Sojevo/Sojevë that morning, 6 April 1999, approximately 200 of the Kosovo Albanian people from the village, mainly women, children and the elderly, fled into the woods. In the woods they split up into two groups, some went in the direction of Kamena Glava/Komogllave, others went to a forested area known as Ljubizanis.<sup>4215</sup> The Serbian force saw the villagers who were fleeing to Kamena Glava/Komogllave and stopped them. The Serbian force took their valuables from the villagers and then ordered them to walk to the town of Uroševac/Ferizaj.<sup>4216</sup>

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<sup>4205</sup> Bedri Hyseni, Exhibit P808, p 3; Exhibit P810 (*Milutinović* transcript), T 3098.

<sup>4206</sup> Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3129-3130.

<sup>4207</sup> Bedri Hyseni, Exhibit Exhibit P809, p 5; Bedri Hyseni, Exhibit P809, p 6; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3112; Bedri Hyseni, T 4866, 4906.

<sup>4208</sup> Exhibit P809, p 6; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3112.

<sup>4209</sup> Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3097; Bedri Hyseni, Exhibit P808, p 3; Bedri Hyseni, T 4866.

<sup>4210</sup> Florim Elmi Krasniqi, Exhibit P631, p 4.

<sup>4211</sup> Bedri Hyseni, Exhibit P808, p 2; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3135.

<sup>4212</sup> Bedri Hyseni, Exhibit P808, p 3; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3135-3136; Bedri Hyseni, T 4866.

<sup>4213</sup> Bedri Hyseni, Exhibit P808, p 2; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3135.

<sup>4214</sup> Bedri Hyseni, Exhibit P808, p 3; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3136.

<sup>4215</sup> Bedri Hyseni, T 4866-4868.

<sup>4216</sup> Bedri Hyseni, T 4867.



1071. The other villagers, who fled towards the forested area of Ljubizanis, spent some four days in the woods. They heard constant firing from anti-aircraft weapons coming from the surrounding area.<sup>4217</sup> After four days, on 10 April, these villagers met another group of villagers also coming from Sojevo/Sojevë<sup>4218</sup> who told them that the regular army stationed at the Sojevo/Sojevë school had given them an order, in the form of an ultimatum, to leave the village and go to the town of Uroševac/Ferizaj. The villagers hiding in the forest decided to join this group. On the same day they continued with them towards Uroševac/Ferizaj.<sup>4219</sup> On their way they observed tanks and anti-aircraft vehicles stationed in the yard of the agricultural cooperative and other yards in Sojevo/Sojevë and more than 100 VJ soldiers there.<sup>4220</sup> When they passed by Biba/Bibaj they could also see VJ tanks and anti-aircraft launchers and some 70 VJ soldiers in the village.<sup>4221</sup>

1072. Before reaching Uroševac/Ferizaj members of the MUP traffic police turned these villagers back and ordered them to proceed to Gnjilane/Gjilan.<sup>4222</sup> On the way to Gnjilane/Gjilan the convoy of villagers stopped in the village of Slatina/Sllatinë in Vitina/Viti municipality where displaced Kosovo Albanians from several villages had gathered. A witness estimated that more than 10,000 displaced persons arrived there.<sup>4223</sup> Those from Sojevo/Sojevë stayed in Slatina/Sllatinë for some 10 to 12 days.<sup>4224</sup>

1073. On 22 April 1999 Bedri Hyseni and his family, who had been travelling with the persons displaced from Sojevo/Sojevë, left Slatina/Sllatinë and went to Uroševac/Ferizaj town.<sup>4225</sup> After staying in the town for a few days, however, they decided to leave and go to FYROM as the conditions in Uroševac/Ferizaj were such that it was not possible for them to stay.<sup>4226</sup>

1074. On 27 or 28 April 1999 a group of about 40 displaced persons went to a bus station one and a half kilometres from where they were staying in Uroševac/Ferizaj town and paid a driver to take them to Kačanik/Kaçanik and the border. On the road they saw convoys of other people moving along the road.<sup>4227</sup> In Kačanik/Kaçanik the bus was stopped at a checkpoint manned by VJ soldiers, police officers and police and army reservists. Two Serbian reservists, whom a witness knew to be reserve police, ordered the displaced persons to get off the bus and produce their identification

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<sup>4217</sup> Bedri Hyseni, Exhibit P809, p 6.

<sup>4218</sup> Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3097; Bedri Hyseni, Exhibit P809, p 6; Bedri Hyseni.

<sup>4219</sup> Bedri Hyseni, Exhibit P809, p 6; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3112.

<sup>4220</sup> Bedri Hyseni, Exhibit P809, p 6; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3112.

<sup>4221</sup> Bedri Hyseni, Exhibit P808, p 3.

<sup>4222</sup> Bedri Hyseni, Exhibit P808, p 3; Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3141.

<sup>4223</sup> Bedri Hyseni, Exhibit P808, p 3; Bedri Hyseni, Exhibit P809, p 6.

<sup>4224</sup> Bedri Hyseni, Exhibit P809, p 6.

<sup>4225</sup> Bedri Hyseni, Exhibit P810 (*Milutinović* transcript), T 3102, 3111.

<sup>4226</sup> Bedri Hyseni, Exhibit P809, p 7. *See infra*, footnote 4273.

<sup>4227</sup> Bedri Hyseni, Exhibit P809, p 7.

documents.<sup>4228</sup> They first asked the displaced persons for mobile phones and cameras and when there was no response they separated two or three younger men and started questioning them. They were assisted by a policeman wearing a blue or black uniform with a light blue strip of 20 centimetres hanging from his right arm.<sup>4229</sup> Eventually the young men were allowed to return to the other displaced persons and the bus was allowed to proceed to the border.<sup>4230</sup>

1075. The bus continued to the border with FYROM at Đeneral Janković/Han-i-Elezit, where some 30 policemen dressed in dark blue camouflage uniforms were positioned 300 to 400 metres from the road.<sup>4231</sup> A long line of Kosovo Albanian people was standing along the road to the border and the police had them cross the border in groups of 10.<sup>4232</sup> A witness who crossed the border at Đeneral Janković/Han-i-Elezit on 27 or 28 April 1999 testified that his personal documents were not taken away from him.<sup>4233</sup>

1076. For reasons expressed in detail a little later in this Judgement the Chamber is satisfied that the offence of forcible transfer has been established with respect to the displacement of Kosovo Albanian people from Sojevo/Sojevë on 6 April 1999 and the following days. For reasons stated in detail later in this Judgement, the Chamber is satisfied that the offence of deportation has been established with respect to displacement from the town of Uroševac/Ferizaj on 27/28 April 1999.

## 2. Staro Selo/Fshati-i-Vjeter

1077. Staro Selo/Fshati-i-Vjeter is located three kilometres to the east of Uroševac/Ferizaj town, along the Priština/Prishtinë-Skopje road. In 1999 some 103 Kosovo Albanian and some 13 Serb families lived in Staro Selo/Fshati-i-Vjeter.<sup>4234</sup>

1078. On 2 April 1999, at around 0830 hours, about 40 to 50 VJ soldiers entered Staro Selo/Fshati-i-Vjeter, coming from the road between Uroševac/Ferizaj and Gnjilane/Gjilan.<sup>4235</sup> These soldiers wore green-brown camouflage uniforms and green berets with the VJ metal badge and were supported by five green tanks.<sup>4236</sup> A resident of Staro Selo/Fshati-i-Vjeter tried to run away with his son but a soldier told him not to go, saying that the soldiers were members of the

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<sup>4228</sup> Bedri Hyseni, Exhibit P808, p 3; Bedri Hyseni, Exhibit P809, p 7; Bedri Hyseni, T 4870-4871, 4913. The two men wore green camouflage uniforms and had the insignia of a two-headed eagle on their right arm; they carried automatic rifles, Bedri Hyseni, Exhibit P808, p 4.

<sup>4229</sup> Bedri Hyseni, Exhibit P808, p 4; Bedri Hyseni, Exhibit P809, p 7; Bedri Hyseni, T 4870-4871.

<sup>4230</sup> Bedri Hyseni, Exhibit P808, p 4.

<sup>4231</sup> They appeared organised, standing in groups of three, Bedri Hyseni, T 4871.

<sup>4232</sup> Bedri Hyseni, T 4871.

<sup>4233</sup> Bedri Hyseni, Exhibit P809, p 7; Bedri Hyseni, T 4913.

<sup>4234</sup> Bajram Bucaliu, Exhibit P824, p 2; Exhibit P827 (*Milutinović* transcript), T 2981-2982; Bajram Bucaliu, T 5056.

<sup>4235</sup> Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2060; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2981.

regular army and that the villagers should not be afraid of them.<sup>4237</sup> The soldiers occupied six empty houses at the entrance of Staro Selo/Fshati-i-Vjeter, which belonged to Kosovo Albanians who had moved in with other villagers closer to the centre. The soldiers marked one of the Serbian houses by painting the letter S four times on it (other Serbian families in the village refused to have their houses marked).<sup>4238</sup>

1079. On 3 April 1999 the soldiers asked the villagers about the structure of the village and told them to hand over their weapons if they had any. Two hunting rifles were handed over by the villagers. The soldiers also asked whether there were any KLA members in the village, to which the villagers answered that there were none. The next day, the soldiers searched the houses for weapons, but did not find any.<sup>4239</sup> On 4 April, the soldiers took trucks belonging to residents of the village without giving their owners receipts or compensation.<sup>4240</sup>

1080. On 5 April 1999 at around 0800-0900 hours the soldiers left the village in the direction of Gnjilane/Gjilan, after burning some of the houses they had occupied.<sup>4241</sup> On the same day, at around 1500 hours, another Serbian force of some 80 armed men, the villagers believed they were paramilitary soldiers, entered the village from the Priština/Prishtinë-Skopje road.<sup>4242</sup> Members of this force went from house to house. In one house they asked a man for his identification documents while threatening his family by pointing their automatic rifles at them. The man was then forced to show his tractor to the soldiers. The paramilitaries told the man that he should not leave the village, since one of the roads leading to Uroševac/Ferizaj and Gnjilane/Gjilan had been blocked and that it was impossible to leave without obtaining a special permission from the military.<sup>4243</sup>

1081. The paramilitary soldiers told a villager that they were Serbs coming from Sombor and Apatin, which are located in Serbia, close to the Hungarian border. Their ages varied between 18 and 60; they had long hair and beards.<sup>4244</sup> A witness described them as wearing VJ type

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<sup>4236</sup> Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2060; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2981.

<sup>4237</sup> Bajram Bucaliu, Exhibit P824, p 2; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2062, 2118.

<sup>4238</sup> Bajram Bucaliu, Exhibit P824, p 2.

<sup>4239</sup> Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2061-2062; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2984.

<sup>4240</sup> Bajram Bucaliu, Exhibit P824, p 2; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2062; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript) T 3021-3023, 3046.

<sup>4241</sup> Bajram Bucaliu, Exhibit P824, p 3; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2063, 2087-2088; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2984, 3034-3035.

<sup>4242</sup> Bajram Bucaliu, Exhibit P824, p 3; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2985.

<sup>4243</sup> Bajram Bucaliu, Exhibit P824, p 3; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2985; Bajram Bucaliu, T 5055.

<sup>4244</sup> Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2985.

camouflage uniforms, caps and “Kokarda” (a special hat used by “Chetnik” groups).<sup>4245</sup> On their arms there were insignias of a human skull with a cross and on the other side an eagle and the acronym “SCP”, which was understood to mean the Serbian Chetnik Movement.<sup>4246</sup> These paramilitary soldiers carried light weapons: automatic rifles and long knives.<sup>4247</sup> The residents of Staro Selo/Fshati-i-Vjeter were terrified by the presence of these soldiers in the village.<sup>4248</sup>

1082. Between 5 and 14 April 1999 these paramilitary soldiers remained in the village imposing a curfew on the villagers, not allowing them to leave their houses between 1900 and 0700 hours. The villagers were told they could be shot without warning if they broke the curfew.<sup>4249</sup> All motor vehicles of the villagers were taken by the paramilitary soldiers, who drove some of them around in the village. A villager, acting on the orders of the paramilitary soldiers, collected money from his neighbours, while members of the paramilitary force escorted him.<sup>4250</sup> The paramilitaries threatened the villagers, telling them that there would be many “mass graves”, and that the villagers would be used as human shields and “cannon fodder” and would have to fight together with the Serbs should “Clinton’s infantry” come.<sup>4251</sup> For some nine or 10 days, 25 young villagers were forced by these paramilitary soldiers to dig defensive trenches.<sup>4252</sup>

1083. It appears that on 14 April 1999 word spread among the Kosovo Albanian villagers that three members of the Zeka family in Staro Selo/Fshati-i-Vjeter had been killed by masked soldiers in their house. There is no other evidence of this. There is no evidence of the finding of bodies.<sup>4253</sup> The Chamber cannot make any finding about this matter. On that same day, because of the behavior of the Serbian force in the village in the past 10 days and for fear of further killings, almost all the Kosovo Albanian inhabitants of Staro Selo/Fshati-i-Vjeter, about 500-600 people, left the village on foot and went to Uroševac/Ferizaj town.<sup>4254</sup> Only the Serb families and an elderly

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<sup>4245</sup> Bajram Bucaliu, T 5054.

<sup>4246</sup> Bajram Bucaliu, Exhibit P824, p 3; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2065; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2986-2987.

<sup>4247</sup> Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2095; Bajram Bucaliu, T 5054. There is also a suggestion that the paramilitaries told residents of Staro Selo/Fshati-i-Vjeter that they were “Šešelj’s volunteers” and that they “had done the same thing in Bosnia and now had come to defend Kosovo”, Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2987. In the Chamber’s view, while this may have been said, it is more likely that these men were from Sombor and Apatin.

<sup>4248</sup> Bajram Bucaliu, Exhibit P824, p 3; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2095.

<sup>4249</sup> Bajram Bucaliu, Exhibit P824, p 3; Bajram Bucaliu Exhibit P826 (*Milošević* transcript), T 2066; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 3023.

<sup>4250</sup> Bajram Bucaliu, Exhibit P824, p 4; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2095.

<sup>4251</sup> Bajram Bucaliu, Exhibit P824, p 4; Bajram Bucaliu, Exhibit P825, p 3; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2097; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2987; Bajram Bucaliu, T 5086.

<sup>4252</sup> Bajram Bucaliu, Exhibit P824, p 4; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2066, 2095-2096.

<sup>4253</sup> Bajram Bucaliu, Exhibit P824, p 4; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2066-2067, 2092.

<sup>4254</sup> Bajram Bucaliu, Exhibit P824, p 5; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2067, 2126-2127.

couple remained. After the war, the burned bodies of the elderly couple were discovered in the village.<sup>4255</sup>

1084. When Bajram Bucaliu returned to his house in Staro Selo/Fshati-i-Vjeter after the war, he saw that about 40 houses had been burnt in the village. Except for one Serb house, both Serb and Albanian houses had been damaged and burned.<sup>4256</sup>

1085. The villagers from Staro Selo/Fshati-i-Vjeter, who had gone to Uroševac/Ferizaj on 14 April 1999, stayed there with relatives. That same day, tanks could be seen in the centre of Uroševac/Ferizaj and at checkpoints manned by VJ. Police were at entrances to neighbourhoods. Soldiers had taken over and were living in houses belonging to Kosovo Albanians in the town. No vehicles were allowed in the town. Many people could be seen walking towards the train station.<sup>4257</sup>

1086. For reasons expressed in detail later in this Judgement, the Chamber is satisfied that the offence of forcible transfer has been established with respect to Staro Selo/Fshati-i-Vjeter.

### 3. Mirosavlje/Mirosalë

1087. The village of Mirosavlje/Mirosalë is situated to the north-east of Uroševac/Ferizaj town towards the border with Gnjilane/Gjilan municipality. In 1999 the village had approximately 3,000 inhabitants almost all of whom were Kosovo Albanians. There were some 160 houses in the village of which only one belonged to a Serb family.<sup>4258</sup>

1088. On 4 April 1999, around noon, a large convoy of vehicles of military green colour passed by Mirosavlje/Mirosalë on the main road from Gnjilane/Gjilan to Uroševac/Ferizaj. The convoy included four large trucks which towed cannons to the village of “Softaj” (Softovic/Softoviq), from where the cannons fired at targets in different directions including towards the village of Zlatare/Zllatare, located near Mirosavlje/Mirosalë, where four people were killed and five wounded by the artillery fire.<sup>4259</sup> These deaths are not specifically alleged in the Indictment.

1089. At about 1300 hours on 5 April 1999, residents of Mirosavlje/Mirosalë heard the sound of shelling and automatic weapon fire coming from the direction of Pojatište/Pojatë village. A witness was told that six elderly men from Pojatište/Pojatë were shot at by VJ soldiers, although not all of

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<sup>4255</sup> Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2067, 2092; Bajram Bucaliu, T 5096-5097.

<sup>4256</sup> Bajram Bucaliu, Exhibit P825, p 5; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2071-2072, 2109; Bajram Bucaliu, T 5089, 5111-5112.

<sup>4257</sup> Bajram Bucaliu, Exhibit P824, p 5; Bajram Bucaliu, Exhibit P825, p 4; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2067, 2126-2127.

<sup>4258</sup> Florim Elmi Krasniqi, Exhibit P631, p 2.

the six were killed.<sup>4260</sup> These deaths are not specifically alleged in the Indictment. About 1,000 displaced villagers arrived later in Miroslavlje/Miroslalë from Pojatište/Pojatë, Muhadžer Prelez/Prelez-i-Muhaxherëve, Muhovce/Muhoc and other villages in Uroševac/Ferizaj municipality.<sup>4261</sup> Displaced Kosovo Albanians told the villagers in Miroslavlje/Miroslalë that tanks had come along the main road from Uroševac/Ferizaj towards their villages and that Serbian soldiers then told them to leave as soon as possible.<sup>4262</sup>

1090. On 8 April 1999 several military vehicles approached Miroslavlje/Miroslalë from Sojevo/Sojevë including one tank with a Serbian flag on it and some APCs. When the vehicles approached the village soldiers jumped off and started running towards the houses, making people in the village panic and flee. The residents, with those taking refuge in the village, fled in different directions, some through the woods, others, in the opposite direction.<sup>4263</sup> The Chamber accepts the evidence that the people fled in fear for their lives, having seen or heard what the Serbian military had done in surrounding villages.<sup>4264</sup>

1091. Some residents and displaced Kosovo Albanians headed towards the main road to Uroševac/Ferizaj in a convoy of vehicles including cars, tractors and trailers. On the road they encountered what appeared to be a military roadblock. Two soldiers stopped the first car of the convoy. The men in the car left it with the soldiers and ran to one of the trailers. The convoy then continued towards the town of Uroševac/Ferizaj.<sup>4265</sup>

1092. There were about hundred villagers and 20 tractors in the convoy from Miroslavlje/Miroslalë.<sup>4266</sup> At another military checkpoint in the village of Sojevo/Sojevë,<sup>4267</sup> there were five tanks;<sup>4268</sup> a soldier took photos of every tractor. It was apparent that soldiers had hidden a number of civilian cars and trucks in some of the garages in the village, together with additional tanks. Carpets and blankets had been used to cover the vehicles and tanks. The convoy was allowed to pass the checkpoint although soldiers shouted ethnic insults at them.<sup>4269</sup>

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<sup>4259</sup> Florim Elmi Krasniqi, Exhibit P631, p 2.

<sup>4260</sup> On 5 April 1999, Florim Elmi Krasniqi spoke with a resident of the village of Pojatište/Pojatishte who told him that he and five elderly men had been taken outside the village by one of the VJ soldiers who had then opened fire on them, killing or wounding some of them, Florim Elmi Krasniqi, Exhibit P631, p 3.

<sup>4261</sup> Florim Elmi Krasniqi, Exhibit P631, p 3.

<sup>4262</sup> Florim Elmi Krasniqi, Exhibit P631, pp 3-4.

<sup>4263</sup> Florim Elmi Krasniqi, Exhibit P630 (*Milutinović* transcript), T 3082.

<sup>4264</sup> Florim Elmi Krasniqi, Exhibit P631, p 5.

<sup>4265</sup> Florim Elmi Krasniqi, Exhibit P631, p 5.

<sup>4266</sup> Florim Elmi Krasniqi, Exhibit P631, p 5.

<sup>4267</sup> Florim Elmi Krasniqi, Exhibit P631, pp 5-6.

<sup>4268</sup> Florim Elmi Krasniqi, Exhibit P631, pp 5-6.

<sup>4269</sup> Florim Elmi Krasniqi, Exhibit P631, pp 5-6.

1093. Along the way between Mirosavlje/Mirosalë and Uroševac/Ferizaj, houses and vehicles had been destroyed and were burning. VJ soldiers and tanks stood beside the road; the soldiers were cleaning their weapons, occasionally pointing them towards the convoy.<sup>4270</sup>

1094. At the outskirts of Uroševac/Ferizaj town there was a police checkpoint where regular traffic policemen directed the convoy to Skopje in FYROM.<sup>4271</sup> Most of the displaced Kosovo Albanians in the convoy, therefore went to FYROM, however, some turned back to Uroševac/Ferizaj town, using back roads and arrived there on the same day, 8 April 1999<sup>4272</sup> but were forced to leave again and cross into FYROM a week later because it was impossible to stay in the conditions in Uroševac/Ferizaj.<sup>4273</sup>

1095. On 14 April 1999, Florim Elmi Krasniqi, who was in the group of villagers from Mirosavlje/Mirosalë who had returned to Uroševac/Ferizaj, tried to leave the town by train with his family but could not since the train was very crowded. After the departure of the train buses started arriving at the train station charging money for a place to the border. Florim Elmi Krasniqi left on one of the buses going to the town of Đeneral Janković/Han-i-Elezit on the border with FYROM.<sup>4274</sup> Along the road from Uroševac/Ferizaj there were trenches, apparently excavated for tanks. In Đeneral Janković/Han-i-Elezit regular policemen stopped the buses and asked the passengers for identification documents. The policemen checked a few of the identification documents and handed them back to the people on the bus Florim Elmi Krasniqi was on.<sup>4275</sup> The buses were then taken to the police station where some of the people were told to get off. The policemen demanded money from the Kosovo Albanians. After some hours of waiting, families with children were allowed to pass across the border without paying. They were told to walk down the middle of the railway tracks and across the border to FYROM.<sup>4276</sup>

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<sup>4270</sup> Florim Elmi Krasniqi, Exhibit P631, p 6.

<sup>4271</sup> Florim Elmi Krasniqi, Exhibit P631, p 6.

<sup>4272</sup> Florim Elmi Krasniqi, Exhibit P631, p 6.

<sup>4273</sup> Florim Elmi Krasniqi gave evidence that he was hearing about killings and massacres by Serbian forces every day and that he felt it was too dangerous to stay, Florim Elmi Krasniqi, Exhibit P632, p 6. Bedri Hyseni testified that Uroševac/Ferizaj had been cleansed of Kosovo Albanians and that those Kosovo Albanians who still remained in the town had to stay indoors most of the time as movement in town was forbidden. There were police and paramilitaries in the town and constant shooting could be heard, Bedri Hyseni, Exhibit P809, p 7; Bedri Hyseni, T 4869-4870. Bajram Bucaliu testified that there were tanks in the centre of Uroševac/Ferizaj and that there were manned checkpoints at critical locations throughout town, Bajram Bucaliu, Exhibit P825, p 4. In these circumstances the Chamber is satisfied that the conditions in Uroševac/Ferizaj in the second half of April 1999 were such that Kosovo Albanians present did not have a genuine choice but to leave towards the nearest safe location which was FYROM.

<sup>4274</sup> Florim Elmi Krasniqi, Exhibit P630 (*Milutinović* transcript), T 3055.

<sup>4275</sup> Florim Elmi Krasniqi, Exhibit P631, p 6.

<sup>4276</sup> Florim Elmi Krasniqi, Exhibit P631, p 7.

#### 4. Railway station at Uroševac/Ferizaj town

1096. During the morning of 15 April 1999, about 4,000 to 5,000 Kosovo Albanians, including some of the people who had fled from Staro Selo/Fshati-i-Vjeter, tried to leave Uroševac/Ferizaj town and go to FYROM, taking the train which passed through to Đeneral Janković/Han-i-Elezit. There were about 10 policemen at the station who tried to maintain order. They stopped and questioned some younger men.<sup>4277</sup> An estimated 1,500-2,500 people eventually managed to board the train. Altogether, there were over 3,000 people in the train. There were lightly armed policemen in solid blue uniforms aboard the train.<sup>4278</sup>

1097. At Đeneral Janković/Han-i-Elezit railway station the passengers waited for some hours, not being allowed to leave the train. There were police and military on both sides of the rail tracks. Buses also arrived, bringing more Kosovo Albanians to Đeneral Janković/Han-i-Elezit. The people on the buses were allowed to cross the border, but the train with its passengers returned to Uroševac/Ferizaj a few hours later. There is some suggestion in the evidence that the train could not pass the border on 15 April 1999 because FYROM officials did not allow it.<sup>4279</sup>

1098. On the morning of 16 April 1999, some of the displaced Kosovo Albanians once again boarded a train to Đeneral Janković/Han-i-Elezit. This train went past Đeneral Janković/Han-i-Elezit station and continued further.<sup>4280</sup> VJ soldiers were on tractors on the road beside the railway. The train stopped suddenly. Policemen inside the train and VJ soldiers outside told the Kosovo Albanian refugees onboard to get off the train and walk in a line on the railway tracks. The refugees were told that the ground beside the tracks had been mined. The police made sure no one walked beside the railway tracks. The police did not explicitly tell the Kosovo Albanians to go to FYROM, but escorted them to the border. It is clear from the circumstances, in the Chambers finding, that the Kosovo Albanian people had no option but to cross into FYROM. The VJ soldiers made insulting gestures towards the refugees walking by.<sup>4281</sup>

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<sup>4277</sup> Bajram Bucaliu, Exhibit P825, p 4; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2068; Bajram Bucaliu, T 5058-5059.

<sup>4278</sup> Bajram Bucaliu, Exhibit P824, p 5; Bajram Bucaliu, Exhibit P825, p 4; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2068-2069; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2991; Bajram Bucaliu, T 5059.

<sup>4279</sup> Bajram Bucaliu, Exhibit P824, p 5; Bajram Bucaliu, Exhibit P825, p 4; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2069; Bajram Bucaliu, Exhibit P827 (*Milutinović* transcript), T 2990; Bajram Bucaliu, T 5057-5058.

<sup>4280</sup> Bajram Bucaliu, Exhibit P824, p 5; Bajram Bucaliu, Exhibit P825, p 4.

<sup>4281</sup> Bajram Bucaliu, Exhibit P824, p 5; Bajram Bucaliu, Exhibit P825, p 5; Bajram Bucaliu, Exhibit P826 (*Milošević* transcript), T 2070, 2110-2112; Bajram Bucaliu, T 5060.



1099. The refugees arrived at the FYROM border at about 1000 hours on 16 April 1999. They were registered there and taken by bus to Stenkovec camp in Bradza, FYROM. No identification documents were taken from them.<sup>4282</sup>

1100. The evidence of witnesses who had left towns and villages and later crossed to FYROM, having travelled from Uroševac/Ferizaj by rail, is consistent with other evidence that there was an increased number of trains on that route and that police were at the station. Usually, there were four trains per day from the Uroševac/Ferizaj railway station to Đeneral Janković/Han-i-Elezit and across to Skopje.<sup>4283</sup> Normally, the trains would consist of two to three passenger carriages, on Saturdays there were four.<sup>4284</sup> However, from 31 March to 3 April 1999 the number of trains going through the Uroševac/Ferizaj railway station increased.<sup>4285</sup> There were also trains with more carriages than usual.<sup>4286</sup> Trains going to Đeneral Janković/Han-i-Elezit were full, while those coming back were empty.<sup>4287</sup> Some trains were escorted by police.<sup>4288</sup>

## **K. Kaçanik/Kaçanik municipality**

### **1. Kotlina/Kotlinë and Ivaja/Ivajë**

1101. The village of Ivaja/Ivajë is located four to five kilometres to the north of the village of Kotlina/Kotlinë, in the Kačanik/Kaçanik municipality. In March 1999, it had approximately 600 to 700 inhabitants.<sup>4289</sup>

1102. On 8 March 1999, shells fell on the village of Ivaja/Ivajë.<sup>4290</sup> The shelling initially came from positions to the east, west and north of the village. Tanks were later observed in the village.<sup>4291</sup> Smoke rising from Ivaja/Ivajë was observed from the nearby village of Kotlina/Kotlinë.<sup>4292</sup> A witness who visited Ivaja/Ivajë a few days after 8 March 1999 described how the mosque had been burnt and destroyed and that the minaret had been partly destroyed. Most of the houses had either been burnt or knocked down. Other buildings were still smoking from fire. Pets and farm animals

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<sup>4282</sup> Bajram Bucaliu, Exhibit P824, p 5; Bajram Bucaliu, T 5094.

<sup>4283</sup> Bajram Buklaiu, Exhibit P825, p 2.

<sup>4284</sup> Bajram Bukaliu, Exhibit P825, p 2; Bajram Bukaliu, Exhibit P826 (*Milošević* transcript), T 2054.

<sup>4285</sup> Bajram Bukaliu, Exhibit P826 (*Milošević* transcript), T 2129-2133; Bajram Bukali, Exhibit P827 (*Milutinović* transcript), T 2995-3001; Exhibit P829.

<sup>4286</sup> Bajram Bukaliu, Exhibit P826 (*Milošević* transcript), T 2055-2058.

<sup>4287</sup> Bajram Bukaliu, Exhibit P826 (*Milošević* transcript), T 2129-2133.

<sup>4288</sup> Bajram Bukaliu, Exhibit P826 (*Milošević* transcript), T 2055-2058.

<sup>4289</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3209; Hazbi Loku, Exhibit P652, p 2.

<sup>4290</sup> Hazbi Loku, Exhibit P652, p 2.

<sup>4291</sup> Hazbi Loku, Exhibit P652, p 2.

<sup>4292</sup> Hazbi Loku, Exhibit P652, p 2.

had been killed.<sup>4293</sup> There is evidence suggesting that fighting between the Serbian forces and the KLA may have taken place in Ivaja/Ivajë.<sup>4294</sup> One civilian was killed at this time.<sup>4295</sup>

1103. The village of Kotlina/Kotlinë is situated in a valley between elevated areas in the municipality of Kačanik/Kaçanik.<sup>4296</sup> In February and March 1999, Kotlina/Kotlinë had a population of approximately 450 to 500 inhabitants. The population of Kotlina/Kotlinë was exclusively Kosovo Albanian.<sup>4297</sup> Kotlina/Kotlinë is divided into three neighbourhoods: Dreshec/Drašec, Donja Reka/Reka-e-Poshme and Gornja Reka/Reka-e-Eperme.<sup>4298</sup> One of Kotlina/Kotlinë's roads connects it to Ivaja/Ivajë four to five kilometres away, one leads to the asphalt road to Kačanik/Kaçanik, one goes to Globočica/Glloboçicë, which is a bordering village to FYROM, and another leads to Straza/Strazhë village. Kotlina/Kotlinë had a mosque, three schools and a clinic.<sup>4299</sup>

1104. Just before the NATO bombing commenced, the municipality of Kačanik/Kaçanik, and in particular the area of Kotlina/Kotlinë, was known as a significant "hotspot" because it had a combination of KLA activity and was considered by Serbian forces as a key area.<sup>4300</sup> Prior to 28 February 1999, the KLA moved into the region of Kačanik/Kaçanik and formed a force of 120 to 160 fighters. The KLA are recorded to have told the population in the region to move out, nearly all of whom did so by 27 February 1999.<sup>4301</sup> On 27 February 1999, four armed men wearing camouflage uniforms with KLA insignia are reported to have come to Kotlina/Kotlinë and confiscated hunting rifles before driving the villagers into the woods.<sup>4302</sup>

1105. General Karol John Drewienkiewicz, the chief of Operations and Deputy Head of Mission of operations for the Kosovo Verification Mission (KVM), confirmed that from late-February to mid-March 1999, a large operation involving a number of VJ Brigades and MUP forces took place in the Kačanik/Kaçanik area. In his assessment, because of its nature and complexity, this operation was planned and ordered at least at the VJ Corps level. The VJ and the MUP were on the offensive at this stage and typically they would seal off areas where they were conducting operations, denying entry to the KVM verifiers. A cordon would be set up by the VJ, and the MUP

<sup>4293</sup> Hazbi Loku, Exhibit P652, p 2; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3152; Hazbi Loku, T 3670.

<sup>4294</sup> Hazbi Loku, Exhibit P652, p 2; Hazbi Loku, Exhibit P653 (*Milutinović* transcript) T 3209-3210; Hazbi Loku, T 3636-3637, 3671.

<sup>4295</sup> Hazbi Loku, T 3670; Hazbi Loku, Exhibit D85.

<sup>4296</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3153.

<sup>4297</sup> Hazbi Loku, T 3689; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3149.

<sup>4298</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3239.

<sup>4299</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3153, 3155; Exhibit P654.

<sup>4300</sup> John Crosland, Exhibit P1400, para 71; Bislim Zyrapi, T 2484.

<sup>4301</sup> Radomir Mitić, T 12712-12713; Exhibit D844.

<sup>4302</sup> Radomir Mitić, T 12712-12713; Exhibit D844.

would then sweep the area within.<sup>4303</sup> According to Drewienkiewicz, the VJ operation in Kačanik/Kaçanik began on 8 March 1999 and was successful in pushing the KLA off the high ground on either side of the defile, but primarily the west side. After having secured Kačanik/Kaçanik, the VJ placed platoon or section-sized units at key locations along the road to the Đeneral Janković/Hani-i-Elezit border crossing into Albania.<sup>4304</sup>

1106. Hazbi Loku was a resident of Kotlina/Kotlinë at the time of the events described below. He testified that while there was KLA presence across Kačanik/Kaçanik municipality, including in Ivaja/Ivajë, there were never any KLA units in Kotlina/Kotlinë.<sup>4305</sup> While some young people from Kotlina/Kotlinë were known KLA members, they had left to join the KLA's ranks in the mountains.<sup>4306</sup>

1107. On 9 March 1999, at about 0400 hours, rockets were fired over Kotlina/Kotlinë and illuminated the sky for approximately 20 seconds.<sup>4307</sup> A witness believed that rockets came from four positions, namely, Globočica/Glloboçicë, Gorance/Garance, the main asphalt road Kačanik/Kaçanik-Hani-i-Elezit and from upper Kačanik/Kaçanik. Globočica/Glloboçice, Gorance/Garancë and the main road Kačanik/Kaçanik-Hani are located approximately four or five kilometres from Kotlina/Kotlinë and they are visible to the naked eye.<sup>4308</sup> Serbian forces had been positioned in the area for months prior to 9 March 1999 on roads and at checkpoints.<sup>4309</sup>

1108. As rockets were fired over Kotlina/Kotlinë, the residents came out in the houses' yards. As the rockets suggested the presence of Serbian forces, about 30 young men were sent outside the village to see where they were located.<sup>4310</sup> Most of the young men came under sniper fire approximately 100 metres beyond the perimeter of Kotlina/Kotlinë.<sup>4311</sup>

1109. The men who returned reported that the Serbian forces had blocked the road to Ivaja/Ivajë and that they had heard tanks rumbling in that direction.<sup>4312</sup> The women, children and elderly of the village then set off in a convoy through Drošec/Droshec on the road in the direction of

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<sup>4303</sup> Karol John Drewienkiewicz, Exhibit P996, para. 190.

<sup>4304</sup> Karol John Drewienkiewicz, Exhibit P996, para. 191.

<sup>4305</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript) T 3183–3185, 3191, 3227, 3234, 3241.

<sup>4306</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript) T 3185.

<sup>4307</sup> Hazbi Loku, Exhibit P652, p 2; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3151; Hazbi Loku, T 3638.

<sup>4308</sup> Hazbi Loku, Exhibit P652, pp 2, 4; Hazbi Loku, T 3637-3639, 3657, 3677, 3679-3680; Hazbi Loku, Exhibit P654.

<sup>4309</sup> Hazbi Loku, Exhibit P652, p 4; Hazbi Loku, T 3637-3639, Hazbi Loku, Exhibit P654.

<sup>4310</sup> Hazbi Loku, Exhibit P652, p 2; Hazbi Loku, T 3677-3678.

<sup>4311</sup> Hazbi Loku, T 3678.

<sup>4312</sup> Hazbi Loku, T 3678.

Globočica/Glloboçičë.<sup>4313</sup> Some 60 to 70 male residents, aged between 16 and 45 years old, including handicapped persons, hid in the gullies and ravines around the village.<sup>4314</sup>

1110. After the convoy of women, children and elderly had travelled about a kilometre, armed forces believed to be VJ and also police in blue camouflage uniforms, blocked the convoy passing through the Drošec/Droshec neighbourhood towards the border with FYROM near Globočica/Glloboçičë. These forces fired warning shots in the direction of the convoy. Prevented from going any further, the convoy walked back 300 metres along the road and hid in a ravine.<sup>4315</sup> At this moment, three green tanks and two dark blue APCs, advanced ahead of the Serbian forces who were moving on foot towards Kotlina/Kotlinë.<sup>4316</sup> Serbian forces on foot also advanced from Ivaja/Ivajë toward Kotlina/Kotlinë. The sound of the gunfire and vehicles passing was heard from a ravine near Kotlina/Kotlinë.<sup>4317</sup> At this moment, two houses in Kotlina/Kotlinë were burning and several others had been knocked down.<sup>4318</sup> The sound of gunfire and vehicles from Kotlina/Kotlinë could no longer be heard from the ravine after about 1530 hours. Later in the evening of 9 March 1999 and during the following few days, all villagers returned to Kotlina/Kotlinë.<sup>4319</sup> They observed that the houses and shops had been looted, the cars had been stolen, the insides of the houses had been damaged by gunfire and the animals had been shot or injured by gunfire.<sup>4320</sup>

1111. Approximately six days after 9 March 1999, the bodies of Emrlah Kuqi<sup>4321</sup> and Milaim Loku were found by other villagers in the vicinity of Kotlina/Kotlinë. These two young men had been missing since, with others, they went out from Kotlina/Kotlinë to find the location of the Serbian forces on the morning of 9 March 1999.<sup>4322</sup> Milaim Loku's body had been shot through the right side of his head and he had a wound from front to back through the right side of his body. There were two bullet holes in Emrlah Kuqi's body on the upper right side of his back and two bullet holes through the left side of his jacket. Milaim Loku and Emrlah Kuqi were wearing civilian clothes and did not have any weapons.<sup>4323</sup> There is no eye-witness evidence with respect to the circumstances of the death of Milaim Loku and Emrlah Kuqi. They were buried but their bodies were not found by the national expert forensic experts who conducted crime scene investigations and forensic examinations of the bodies of persons in Kotlina/Kotlinë. Therefore, the

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<sup>4313</sup> Hazbi Loku, T 3678.

<sup>4314</sup> Hazbi Loku, Exhibit P652, p 3; Hazbi Loku, T 3678-3679.

<sup>4315</sup> Hazbi Loku, Exhibit P652, p 3; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3238.

<sup>4316</sup> Hazbi Loku, Exhibit P652, p 3.

<sup>4317</sup> Hazbi Loku, Exhibit P652, p 3.

<sup>4318</sup> Hazbi Loku, Exhibit P652, p 3.

<sup>4319</sup> Hazbi Loku, Exhibit P652, p 3.

<sup>4320</sup> Hazbi Loku, Exhibit P652, p 4.

<sup>4321</sup> Also identified as Emrlah Kuqi.

<sup>4322</sup> Hazbi Loku, Exhibit P652, p 3.

<sup>4323</sup> Hazbi Loku, Exhibit P652, p 3.

Chamber is not able to be satisfied of the circumstances of the deaths of Milaim Loku and Emrlah Kuqi.

1112. About two weeks later, on 24 March 1999, at about 0630 hours, Kotlina/Kotlinë was shelled for a second time. The shelling continued until 0900 hours.<sup>4324</sup> The source of the shelling was not identified but VJ tanks were positioned in Globočica/Glloboçice and in other locations from which they could have shelled the village. The shelling had been directed towards the outskirts of Kotlina/Kotlinë.<sup>4325</sup> When the shelling ceased, at approximately 0900 hours, Serbian infantry troops escorted by tanks entered Kotlina/Kotlinë from the directions of Globočica/Glloboçicë, Straza/Strazhe and Ivaja/Ivajë.<sup>4326</sup> The male population of the village fled in small groups towards a ravine to the south and towards the hill to the north of Kotlina/Kotlinë.<sup>4327</sup> The troops and tanks were seen to be an obvious threat of danger to them in the circumstances. A tank arrived at the top of the hill as one of the groups of men fleeing from the village reached the hill. The men on the hill were captured by the Serbian forces and beaten with rifle butts, kicked and knocked down the hill.<sup>4328</sup> Some members of these Serbian forces wore green camouflage uniforms and green berets. While this description is not fully consistent with the uniform usually worn by VJ, the Chamber is satisfied that only VJ forces were equipped to undertake the shelling of Kotlina/Kotlinë. Other Serbian forces present that day wore the blue uniforms of the police and blue camouflage bullet proof vests. Some of the forces in police uniforms wore black masks with holes for the eyes and mouth, some wore red bandannas around their heads. “Policija” was written in white letter on the back of some of their uniforms.<sup>4329</sup> This description is generally consistent with the uniforms worn by MUP forces.

1113. In the meantime, the women, children and elderly voluntarily gathered in a field south of Kotlina/Kotlinë.<sup>4330</sup> Before the arrival of the forces, the villagers had agreed between themselves that the women, children and elderly would go to an open area in order to be visible and safe. The Serbian forces split into groups: some went with the women, children and elderly, some went with the captured on the hill, and some went to the village. At approximately 1200 hours, the Serbian forces had gathered the entire population still in Kotlina/Kotlinë in the field. They separated the

<sup>4324</sup> Hazbi Loku, Exhibit P652, p 4; Hazbi Loku, T 3637-3639.

<sup>4325</sup> Hazbi Loku, Exhibit P652, p 4; Hazbi Loku, T 3637-3639, 3657-3658, 3679-3680; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3210; Exhibit D85.

<sup>4326</sup> Hazbi Loku, Exhibit P652, p 4; Hazbi Loku, T 3637-3639.

<sup>4327</sup> Hazbi Loku, Exhibit P652, p 4; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3158, 3195, 3198; Hazbi Loku T 3641; Exhibit P656. The events in Kotlina/Kotlinë were observed from a distance of 400 metres from a fortress the top of a ravine by a witness using hunting binoculars, although the events could be seen with the naked eye.

<sup>4328</sup> Hazbi Loku, Exhibit P652, pp 4-5.

<sup>4329</sup> Hazbi Loku, Exhibit P652, p 5.

<sup>4330</sup> Hazbi Loku, Exhibit P652, p 4; Hazbi Loku, T 3641; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3155; Exhibit P656.

elderly men from the group, made them to lie down, asked them questions about the KLA and mistreated them.<sup>4331</sup> Idriz Kuçi, a Kosovo Albanian man, approximately 55 or 60 years old wearing a traditional Albanian white cap, was taken away by four or five men wearing police uniform.<sup>4332</sup>

1114. At 1500 hours that day, two military trucks with canvas backs arrived in Kotlina/Kotlinë. The Serbian forces made as many of the women, children and elderly men as possible climb inside. The trucks then drove to the town of Kačanik/Kaçanik.<sup>4333</sup> The remaining women, children and elderly men had to walk behind the trucks.<sup>4334</sup>

1115. On the same day, shortly after the departure of the women, children and elderly men,<sup>4335</sup> approximately 150 members of the Serbian forces forced the group estimated to comprise 20 men, who had been captured on the hill to the north of Kotlina/Kotlinë, along a footpath to two large holes or wells located to the north of the village, at the entrance of Kotlina/Kotlinë.<sup>4336</sup> The captured men had their hands above their heads in a manner which indicated to a witness that their hands were tied, but he could not be sure of this. When they reached the wells, they were beaten by their captors. Their cries were heard in the valley.<sup>4337</sup> Two or three of the man captured at the hill were then thrown into the wells. The others attempted to struggle but were beaten again, severely, during which one or two of the men may have been shot. Eventually, all of the men were picked up by their captors and thrown into the two wells. After the men were thrown in, the wells were mined.<sup>4338</sup> At the same time, some Serbian forces were seen in the village apparently preparing to burn houses. Shortly thereafter, buildings in the village were set on fire.<sup>4339</sup> A school and several houses were burnt, including the houses of Baki Kuçi and Nuredin Kuçi.<sup>4340</sup>

1116. After a time, a loud explosion was heard and dust and a cloud of smoke rose in the air above the area of the wells.<sup>4341</sup> At around 1830 hours, the Serbian forces left in the direction of

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<sup>4331</sup> Hazbi Loku, Exhibit P652, p 5.

<sup>4332</sup> Hazbi Loku, T 3680.

<sup>4333</sup> Hazbi Loku, Exhibit P652, p 5; Hazbi Loku, P653 (*Milutinović* transcript), T 3156-3157.

<sup>4334</sup> Hazbi Loku, Exhibit P652 p 5; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3156-3157.

<sup>4335</sup> Hazbi Loku, Exhibit P652, p 6; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3230-3231.

<sup>4336</sup> Hazbi Loku, Exhibit P652 pp 4-6; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3158-3159, 3180-3181, 3195-3196, 3229; Hazbi Loku, T 3643, 3651-3653, 3662, 3681; Exhibit P660; Exhibit D80; Exhibit D81. The events were observed from a hillside to the south of Kotlina/Kotlinë, less than 600 metres from the wells, which were on a hillside to the north of Kotlina/Kotlinë. These holes had been dug as well shafts for water but were dry at the time.

<sup>4337</sup> Hazbi Loku, Exhibit P652, p 6; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3160, 3229-3230.

<sup>4338</sup> Hazbi Loku, Exhibit P653, T 3160.

<sup>4339</sup> Hazbi Loku, Exhibit P652, p 6.

<sup>4340</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3165; Exhibit P658; Hazbi Loku, T 3644-3645.

<sup>4341</sup> Hazbi Loku, Exhibit P652, p 6; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3160, 3233. The witness was not certain whether some men were shot before being thrown into the wells and his evidence at times has omitted this. See for example Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3160, 3233 and Hazbi Loku, T 3634, where he does not refer to shooting. In the Chamber's finding, despite this, the witness's evidence was honest and generally reliable. In view of this and of the forensic evidence considered later in this Judgement, the Chamber

Kaçanik/Kaçanik.<sup>4342</sup> The Chamber accepts the evidence of a witness that he saw all of the men that had been captured at the hill executed and massacred at the wells area by Serbian forces in this manner. More than 20 men were later found to be dead in the wells.<sup>4343</sup>

1117. After the Serbian forces had left Kotlina/Kotlinë, the men who had been hiding came back to the village. They found Idriz Kuçi's body (55 years old) in Liman Loku's yard. He had been shot in the back of the head at close range. He had small wounds on the back of his head and the front of his face was blown away.<sup>4344</sup> Vejsel Vlashi's body (55 years old) was also discovered in one of the rooms of the second level of the same house. He had been shot several times in the chest and the lower half of his body had been badly burned.<sup>4345</sup> Zimer Loku (67 years old) was found with a wound in his chest and a right leg and left arm bleeding heavily. He died later that day. He had been seen to collapse while walking towards the women and children earlier that day but there is no evidence of the circumstances of his being shot.<sup>4346</sup>

1118. On 25 March 1999, at around 2200 hours, 48 men left Kotlina/Kotlinë and went to FYROM. Three men remained in the village to bury Vejsel Vlashi, Idriz Kuçi and Zimer Loku.<sup>4347</sup> Their bodies were buried in the courtyard of Kotlina/Kotlinë's mosque. In September 1999, their remains were recovered by an Austrian forensic team.<sup>4348</sup> The forensic analysis found that the men had died of gunshot wounds. Idriz Kuçi was last seen being taken away by four or five men wearing police uniforms. His dead body was discovered a few hours later, he had been shot in the back of the head at close range. The Chamber is satisfied that Idriz Kuçi was killed by Serbian police on 24 March 1999 in Kotlina/Kotlinë. At the time of his death, he was unarmed and in the custody of Serbian police and therefore he was taking no part in the hostilities. However, there is no evidence about the circumstances of the shooting of Vejsel Vlashi and Zimer Loku. Therefore, the Chamber cannot exclude the possibility that these two men were KLA taking part in hostilities at the time

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accepts that some of the men in the wells were shot by their captors, but cannot determine whether some of those were shot before being thrown into the wells.

<sup>4342</sup> Hazbi Loku, Exhibit P652, p 5; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3212-3213. The Chamber rejected a Defence's contention that the eye witness could not have seen all that he described at the site of the wells. The Chamber accepts that he viewed the events at the wells from a position higher than the wells and the village. Although the area around the wells is wooded, these events occurred in March, before the trees developed their spring leaves so that tree growth did not obstruct his vision. He was less than 600 metres to the well sites and although he could see with his naked eyes, he also used hunting binoculars. See Hazbi Loku, T 3687-3688.

<sup>4343</sup> Hazbi Loku, T 3626; See *supra*, paras 1423-1427, 1742.

<sup>4344</sup> Hazbi Loku, Exhibit P652, p 5; Hazbi Loku, T 3666-3667, Exhibit D84.

<sup>4345</sup> Hazbi Loku, Exhibit P652, p 5; Hazbi Loku, T 3680.

<sup>4346</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3213; Hazbi Loku, T 3665; Exhibit D84, p 2.

<sup>4347</sup> Hazbi Loku, Exhibit P652, p 6; Exhibit P655.

<sup>4348</sup> See *supra*, paras 1428-1436.

they were killed. This part of the evidence will be discussed in more details later in the Judgement.<sup>4349</sup>

1119. In the meantime, the women, children and elderly who were sent to Kačanik/Kaçanik, stayed there with the local population. Others were sent to the police station in Uroševac/Ferizaj where they were maltreated for two or three days before they were released. The people from Kotlina/Kotlinë who were sent to Kačanik/Kaçanik stayed there for a few days but when an offensive by Serbian forces started in the area, they left and went to FYROM.<sup>4350</sup>

1120. In the autumn of 1999, after the KFOR had entered Kosovo and Kotlina/Kotlinë's residents had returned to the village, Austrian forensic experts exhumed and identified the remains of no less than 22 men from the wells. At the time the forensic team arrived, the villagers had already begun exhuming the well and had reached a depth of 5.8 metres in the upper well and a depth of 7.2 metres in the lower well.<sup>4351</sup> The bodies of 22 men were identified as Ismail Kuqi, Nexhadi Kuqi, Xhemjal Kuqi, Agim Loku, Garip Loku, Ibush Loku, Ismajl (Ismail) Loku, Izijah Loku, Naser R. Loku, Sabit Loku, Neshat Rexha, Sali M. Vlashi, Atmir Loku, Bajram Loku, Cen Loku, Ismet Loku, Mahi Loku, Sabri Loku, Naser (Nasir) F. Loku, Danush Kuqi (Kuci), Sherif Kuqi (Kuci), Minah Kuqi (Kuci).<sup>4352</sup> The forensic examination revealed that the cause of death was related to an explosion and that many of the victims had also been shot. However, the forensic experts were unable to ascertain whether the men who had been shot had died from bullet wounds or from the explosion.<sup>4353</sup>

1121. Later, a village council was convened for the reburial. Its members decided that the bodies of the men killed on 9 and 24 March 1999 were to be buried in the school yard, except for eight who were to be buried in the KLA martyrs' cemetery in Kačanik/Kaçanik.<sup>4354</sup> There is evidence that the decision was taken to bury the eight men in the martyrs' cemetery because they had contributed to the "national cause", prior to 24 March 1999.<sup>4355</sup> The tombstones in the martyr's cemetery bore a KLA emblem and an engraving depicting the deceased.<sup>4356</sup>

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<sup>4349</sup> See *supra*, paras 1436.

<sup>4350</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3157.

<sup>4351</sup> Eric Baccard, Exhibit P1167, p 7.

<sup>4352</sup> See *supra*, para 1431; Eric Baccard, Exhibit P1139, p 48; Exhibit P1167, p 6; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3162-3164, 3188-3189, 3193; Hazbi Loku, T 3646-3649, 3659; Exhibit P659. The body of Adnan Refik Loku, identified as having been killed by Serbian forces on the same day, was not found by the forensic team. Therefore, the Chamber cannot make any finding with respect to his death.

<sup>4353</sup> See *supra*, paras 1433-1436.

<sup>4354</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3167-3158, 3247; Hazbi Loku, T 3691.

<sup>4355</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3191-3192.

<sup>4356</sup> Exhibit D79; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3163-3164, 3170, 3183, 3185-3186, 3189, 3191, 3201-3205; Hazbi Loku, T 3658-5659, 3679, 3691. The Chamber cannot be satisfied that the engraving on the tombstones of Neshat Rexha and Xhemjal Kuqi depicts the deceased wearing a KLA uniform.



1122. The chief of the police of Uroševac/Ferizaj SUP gave evidence that in March 1999, a coordinated action was carried out in the villages of Ivaja/Ivajë and in Kotlina/Kotlinë.<sup>4357</sup> A PJP company of the Uroševac/Ferizaj SUP, a PJP company of the Gnjilane/Gjilan SUP, together with the VJ took part in this operation. The operation was said to be aimed at “destroying” between 150 and 200 KLA members thought to be in the area and to take control of the territory.<sup>4358</sup> Following this operation, on 24 March 1999, an investigation was conducted in the village of Kotlina/Kotlinë by the forensic department of Uroševac/Ferizaj SUP. According to their forensic report, dated 24 March 1999, the bodies of KLA fighters were found next to weapons and equipment. Pieces of KLA uniforms and bunkers where KLA fighters were thought to have been hiding were found and photographed.<sup>4359</sup>

1123. There is also evidence that on 21 March 1999, an order of the 243<sup>rd</sup> Mechanised Brigade imposed a blockade in the general sector of Kotlina/Kotlinë.<sup>4360</sup> The order commands the deployment of troops on the early morning of 23 March 1999 and the night of 23 and 24 March 1999 to take control of the territory around Kotlina/Kotlinë and the road leading from Đeneral Janković/Han-i-Elezit to Kačanik/Kaçanik and destroy KLA forces.<sup>4361</sup> It is noted in this order that MUP forces were stationed in Kačanik/Kaçanik with the task of maintaining law and order.<sup>4362</sup> A combat report from the VJ 243<sup>rd</sup> Mechanised Brigade, dated 24 March 1999, indicates that forces of Combat Group 3, in coordination with forces of the VJ 57 Border Battalion and two companies of the PJP, carried out a blockade of the general area of the villages of Straza/Strazha and Kotlina/Kotlinë on the Bojevo-Globočica/Glloboçica axis, where the Albanian “terrorist forces” were apparently concentrated. The report states that 26 “terrorists” were “liquidated” and about 20 firearms were captured. The report further states that an investigating judge came after the end of the operation in order, *inter alia*, to identify the bodies.<sup>4363</sup>

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<sup>4357</sup> Radomir Mitić, T 12714, 12728-12829; *See also* Exhibit P935. There is also evidence that at the end of January or the beginning of February 1999, the 52<sup>nd</sup> Battalion of the VJ took part in a joint operation with the VJ 72<sup>nd</sup> Special Brigade against KLA forces in the area close to the border with FYROM called Đeneral Janković/Han i Elezit. On 17 March 1999, the 3<sup>rd</sup> Army Command directed the Sabotage and Reconnaissance Battalion of the 72<sup>nd</sup> Special Brigade to engage in actions against the KLA in the broad area of the municipality of Kačanik/Kaçanik. (Aleksandar Vasiljević, Exhibit P895, p 1.)

<sup>4358</sup> Radomir Mitić, T 12714, 12728-12829; *See also* Exhibit P935.

<sup>4359</sup> Radomir Mitić, T 12175; D846, p 8.

<sup>4360</sup> Exhibit P935, p 1.

<sup>4361</sup> Exhibit P935, pp 1-2.

<sup>4362</sup> Exhibit P935, p 1.

<sup>4363</sup> Exhibit P937.

1124. In light of the evidence above, the evidence clearly establishes, in the Chamber's finding, that VJ and MUP, including the PJP, were involved in the events in the village of Kotlina/Kotlinë in March 1999 and that they were functioning jointly in this operation.<sup>4364</sup>

1125. The Chamber has given careful attention to the credibility of eye-witness Hazbi Loku, including the contention that he could not have seen all he described, his possible KLA affiliation and variation or incompleteness of his account. In particular, the Chamber has carefully considered the absence of reference to gunshots in his evidence of these events in this or the *Milutinović et al* trial. In an earlier statement, which is in evidence, he did indicate that there may have been gunshots at the wells. But he remained uncertain of this and did not include shooting in his evidence of what he observed. The evidence is not specific about his activities in the 30 minutes or so that passed between the men being thrown into the wells and the sound of the explosions. Much was happening in the village at that time and it appears that Hazbi Loku may have been observing events in the village which was burning. It may be that the sound of shots was common place that day and did not attract his attention. His observation or recollection may be incomplete. While the evidence is not clear about these matters, having weighed the evidence and its impression of the witness carefully, and also the forensic evidence which is discussed elsewhere in this Judgement, the Chamber is persuaded that the witness was honest in his recounting of the events and that his recollection is generally reliable, although not complete. The Chamber accepts the evidence of the eyewitness that he saw all of the men "executed and massacred" at the wells that day. In the finding of the Chamber, the men thrown into the wells had not been shot or killed elsewhere and then brought to the wells and thrown in. They were forced to go to the wells to be beaten there and eventually thrown in before explosive devices in the wells were set off. The evidence does not enable a positive finding as to whether any of the men were shot at the wells site before being thrown into the wells, or after they were thrown in, although it is established that at least 10 of the men were shot at the wells site. In the Chamber's finding, however, all the men died at the wells. Those who had not died before the explosions were killed by explosion in each well.<sup>4365</sup>

1126. The Chamber also observes that even if some or all of the men whose remains were recovered from the wells had been members of the KLA (which is not demonstrated by the evidence), the circumstances in which they were killed by Serbian forces shows that they were unarmed, prisoners of a large armed Serbian force, and not in a position to take any active part in armed conflict. The Chamber is satisfied that all the men killed by Serbian forces at the wells were

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<sup>4364</sup> The Command notes the support of the MUP in the surrounding area. It specifically lists the unit's involved in the operation including a PJP company who was deployed along the axis from the village of Gajre to Ivaja and the BOV-3 Platoon and the Combat group BG-21 was specifically tasked with blockading the Đeneral Janković/Han-i-Elezit to Kačanik/Kaçanik road (Exhibit P935, pp 1-2).

Kosovo Albanians. The Chamber is further satisfied that Serbian forces forcibly expelled Kosovo Albanian civilians from their homes in Kotlina/Kotlinë.

## 2. Kaçanik/Kaçanik

1127. On 17 March 1999, the 3<sup>rd</sup> Army Command directed the Sabotage and Reconnaissance Battalion of the 72<sup>nd</sup> Special Brigade to engage in actions against the KLA in the broad area of the municipality of Kačanik/Kaçanik.<sup>4366</sup>

1128. A resident of Kačanik/Kaçanik town observed increased police activity in the town of Kačanik/Kaçanik in early March 1999.<sup>4367</sup> From 24 March 1999 to 27 March 1999, frequent shooting coming from the direction of the police station in Kačanik/Kaçanik was heard.<sup>4368</sup> On 27 March 1999, early in the morning, a rocket was fired at Shaip Dema's house, in Bob village. Bob village is adjacent to Kačanik/Kaçanik and located across the Lepece River.<sup>4369</sup> Shaip Dema's house had previously been used by the OSCE.<sup>4370</sup> The Chamber finds that there is no identification of the persons responsible for firing the rocket.<sup>4371</sup>

1129. Later that morning, between 1000 and 1030 hours, three Jeeps and a white 4x4 vehicle arrived at a lime factory, which is located across the Lepece River from the town of Kačanik/Kaçanik.<sup>4372</sup> Around 20 to 30 men wearing blue and white camouflage uniforms and two men in green and brown camouflage patterned uniforms came out of the Jeeps.<sup>4373</sup> The Chamber is satisfied that these descriptions are generally consistent with uniforms worn respectively by the regular police and the SAJ.<sup>4374</sup> The MUP forces crawled or walked towards the factory.<sup>4375</sup> There is some evidence that Lubisha, the Deputy Commander at the police station in Kačanik/Kaçanik, was present and that he was in charge of this operation.<sup>4376</sup> However, the evidence does not enable the Chamber to make a positive finding that this was the case. Men in police uniforms went inside the factory and took position in the windows of the upper floor of the factory. Other men in VJ

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<sup>4365</sup> See *supra*, paras 1428-1445.

<sup>4366</sup> Aleksandar Vasiljević, Exhibit P895, p 1.

<sup>4367</sup> Isa Raka, Exhibit P664, para 8.

<sup>4368</sup> Isa Raka, Exhibit P664, para 8; Isa Raka T 3536.

<sup>4369</sup> Isa Raka, Exhibit P664, para 11; Isa Raka, Exhibit P665 (*Milutinović* transcript), T 3536.

<sup>4370</sup> Isa Raka, Exhibit P664, para 11; Exhibit P666; Isa Raka P665 (*Milutinović* transcript), T 3518, 3535-3536; T 3548-3549.

<sup>4371</sup> The Defence submits that KLA forces were responsible for this attack. The Defence relies on a MUP report stating that on 27 March 1999, between 1600 and 1700 hours, KLA forces positioned in the lime factory in Bob village launched an attack against at VJ vehicles. The Chamber finds that this occurred several hours after an eye-witness saw the rocket being fired. Defence Final Trial Brief, para 875;

<sup>4372</sup> Isa Raka, Exhibit P664, para 12; Isa Raka, Exhibit P668; Isa Raka, T 3729.

<sup>4373</sup> Isa Raka, Exhibit P664, p 3.

<sup>4374</sup> See *supra*, paras 53-55, 76.

<sup>4375</sup> Isa Raka, T 3737-3738; Isa Raka, Exhibit P664, paras 12-14; Isa Raka, Exhibit P665 (*Milutinović* transcript), T 3537-3538.

<sup>4376</sup> Isa Raka, T 3729-3730; Isa Raka, Exhibit P664, para 13.

uniforms took positions by the tanks at the factory.<sup>4377</sup> At approximately 1030 hours, these men fired at the houses on the other side of the Lepece River using sniper rifles and a rocket launcher. The firing lasted around one hour. During the shooting, a grenade hit the house in which a witness was staying.<sup>4378</sup> Two guards working in the factory were killed.<sup>4379</sup> Their bodies were not recovered.<sup>4380</sup> There is hearsay evidence that two other people, including Jonuz, a man walking by the river in Kačanik/Kaçanik and Ilaz Nika, an elderly man who was in his house, were also shot and killed.<sup>4381</sup> Sherife Raka, a pregnant woman, was hit by a bullet fired from the direction of the lime factory located across the Lepece River as she was walking through the courtyard of her house.<sup>4382</sup> She died subsequently on 6 April 1999 in a hospital in Skopje, FYROM, of blood loss and poisoning from the dead foetus which had died after she was hit by a bullet. There is no evidence of any return firing. No forensic evidence has been tendered with respect to these people. Therefore, the Chamber is unable to make any finding with respect to these deaths.

1130. On 28 March 1999, residents of other parts of Kačanik/Kaçanik started leaving town after they had heard that police were going from house to house and that they had taken away two men and killed another.<sup>4383</sup> There is no evidence which confirms that the police had killed a man or taken two others. Nevertheless, having heard these things, in fear, a group of 500 to 1000 people from Kačanik/Kaçanik town, including Isa Raka, left for FYROM through the woods. On 29 March 1999, the group crossed the border to FYROM.<sup>4384</sup> On 16 July 1999, upon his return from FYROM, Isa Raka observed that his house in Kačanik/Kaçanik town had been damaged.<sup>4385</sup> The Chamber is satisfied that Kosovo Albanians in Kačanik/Kaçanik were forced to leave by the shooting and killings of the Serbian forces.

### 3. Vata/Vataj, Dubrava/Lisnaje and Slatina/Sllatinë

1131. The hamlet of Vata/Vataj is located in or by the village of Dubrava/Lisnaje, in the north-western part of Kačanik/Kaçanik municipality.<sup>4386</sup> At the time of the events described below,

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<sup>4377</sup> Isa Raka, T 3730; Isa Raka, Exhibit P664, para 14; Exhibit P666.

<sup>4378</sup> Isa Raka, Exhibit P664, para 15.

<sup>4379</sup> Isa Raka, T 3738; Isa Raka, Exhibit P664, para 17.

<sup>4380</sup> Isa Raka, P665 (*Milutinović* transcript), T 3540; Isa Raka, T 3735-3736, 3738; Isa Raka, Exhibit P664, para 17; Isa Raka, Exhibit D92, p 3. These events were reported to Isa Raka.

<sup>4381</sup> Isa Raka, Exhibit P664, paras 17-21.

<sup>4382</sup> Isa Raka, Exhibit P664, paras 17-21; Isa Raka, Exhibit P665 (*Milutinović* transcript), T 3548.

<sup>4383</sup> Isa Raka, Exhibit P664, para 22; Isa Raka T 3739-3742; Exhibit D92.

<sup>4384</sup> Isa Raka Exhibit P664, paras 22-23; Isa Raka, Exhibit P665 (*Milutinović* transcript), T 3257.

<sup>4385</sup> Isa Raka Exhibit P664, para 28.

<sup>4386</sup> Sada Lama, Exhibit P661, p 2; Exhibit P663.

Vata/Vataj had 43 households. Vata/Vataj is divided into the neighbourhood of Lama, Caka and Tifeku.<sup>4387</sup>

1132. When NATO commenced its bombing campaign, in the evening of 24 March 1999,<sup>4388</sup> Serbian forces began shelling villages in the area of Vata/Vataj. NATO bombed during the daytime and Serbian forces shelled during the night.<sup>4389</sup> Only the VJ had artillery and tanks capable of shelling in this area. During the shelling, Vata/Vataj's residents hid by a stream in the woods. During March and April 1999, Serbian forces also shelled several of the surrounding villages.<sup>4390</sup>

1133. On or about 6 April 1999, around 20 KLA soldiers occupied a house in Vata/Vataj and started digging trenches.<sup>4391</sup> Half of them had uniforms and the others had civilian clothes.<sup>4392</sup> There were Serbian forces on the main road from where Vata/Vataj was visible.<sup>4393</sup> Meanwhile, residents of Vata/Vataj, fearing hostilities between the KLA and Serbian forces, attempted to go to Macedonia. However, the residents came under shelling in the Ljuboten Mountains and they decided to return to their village.<sup>4394</sup> On 12 April 1999, KLA soldiers left Vata/Vataj. They told the population to leave the village because Serbian forces were on their way.<sup>4395</sup>

1134. On 13 April 1999, at around 0500 hours, four Pragas and six dark colour military trucks were seen disembarking approximately 100 men.<sup>4396</sup> These men had camouflage uniforms with a blue and brown colour pattern.<sup>4397</sup> One witness suggested that these forces were VJ.<sup>4398</sup> While the uniform description is not consistent with the uniform usually worn by VJ, the fact that the forces were operating Pragas and military trucks satisfy the Chamber that VJ forces were present.<sup>4399</sup> Other evidence satisfies the Chamber that, in addition to VJ forces, members of the PJP were also present and that they acted together with the VJ in this operation.<sup>4400</sup> Further, a combat report from the 243<sup>rd</sup> Mechanised Brigade, dated 13 April 1999, discloses that there was a coordinated action

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<sup>4387</sup> Sada Lama, Exhibit P661, pp 1-2, 5; Exhibit P663; Exhibit D90; Exhibit D89.

<sup>4388</sup> Sada Lama, T 3716, 3724-3725; Sada Lama, Exhibit P661, p 3.

<sup>4389</sup> Sada Lama, T 3716; Sada Lama, Exhibit P661, p 3.

<sup>4390</sup> Sada Lama T 3719; Sada Lama, Exhibit P661, p. 3

<sup>4391</sup> Sada Lama, Exhibit P661, p 2; Exhibit D88.

<sup>4392</sup> Sada Lama, T 3714-3715, 3722.

<sup>4393</sup> Sada Lama, Exhibit P661, p 2.

<sup>4394</sup> Sada Lama, Exhibit P661, p 3.

<sup>4395</sup> Sada Lama, Exhibit P661, p 2; Sada Lama, T 3714-3715; Sada Lama, Exhibit P662 (*Milutinović* transcript), T 3264-3265.

<sup>4396</sup> Sada Lama, Exhibit P661, p 3.

<sup>4397</sup> Sada Lama, T 3698.

<sup>4398</sup> Sada Lama, Exhibit P661, p 3.

<sup>4399</sup> John Crosland, Exhibit P1400, paras 7, 13.

<sup>4400</sup> Sada Lama, T 3698; *See supra*, para 64. While the evidence on uniforms discussed in more details later in the Judgement reveal that the PJP wore blue tiger-stripe camouflage uniforms at the time of this operation, the Chamber notes that the purpose of camouflage patterns is to confuse the eye of the onlooker and can make it difficult to identify the actual colours forming the pattern.

involving that VJ unit and the PJP of the Uroševac/Ferizaj SUP in the area of Slatina/Sllatinë, during which 14 “terrorists” were killed.<sup>4401</sup>

1135. The Serbian forces entered Vata/Vataj.<sup>4402</sup> Soon after the trucks left, the Pragas took positions in different parts of the village and the men surrounded Vata/Vataj.<sup>4403</sup> Other armed men wore red and black bandannas. Some had plain black uniforms and some had dark camouflage uniforms, all of which were different from the uniforms worn by the men who arrived in the trucks and Pragas. One witness suggested that these men were “Arkan’s army”.<sup>4404</sup> While these is evidence that black uniforms were worn by some paramilitary units and that one of the paramilitary unit, known as Arkans’s Tigers, occasionally wore black bandanas or tied red ribbons around their heads,<sup>4405</sup> the Chamber is not able to make a finding on this evidence. However, whatever unit they belonged to, it is clear that they acted together with VJ and PJP in this operation.

1136. On the same morning, two other groups of soldiers were seen near the village of Vata/Vataj. One of these was a group of approximately 150 armed men that surrounded the village of Slatina/Sllatinë, located east of Vata/Vataj in Kačanik/Kaçanik municipality. The other group came to Slatina/Sllatinë from the direction of Brod/Brod in Strpce/Shterpce municipality.<sup>4406</sup> Slatina/Sllatinë is located approximately halfway between Vata/Vataj and Brod/Brod.<sup>4407</sup>

1137. On 13 April at 0545 hours, the Pragas and the Serbian forces opened fire in the direction of some villagers of Vata/Vataj as they walked on a path leading to a hiding place in the Ljuboten Mountains.<sup>4408</sup> However, the shots passed over the villagers and frightened them, which may have been the intention. Unhurt but fearing for their lives, the villagers fled to the Ljuboten Mountains. Approximately 300 people from Vata/Vataj and other villages who had sought refuge in the Ljuboten Mountains.<sup>4409</sup>

1138. At around 0630 hours, VJ soldiers captured four residents of Vata/Vataj and made them walk up and down the village. They were killed that day.<sup>4410</sup> While some evidence of this event is hearsay, it is well confirmed because much later that day, the bodies of the four men were found on

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<sup>4401</sup> Exhibit P947; Exhibit P663. Evidence indicates that in early March 1999, the KLA attempted to recruit all able-bodied men in Slatina/Sllatina, a village in the vicinity of Vata/Vataj, to join its ranks; Radomir Mitić, T 12713-12734; Exhibit D 845.

<sup>4402</sup> Sada Lama, T 3718; Sada Lama, Exhibit P661, p 3.

<sup>4403</sup> Sada Lama, Exhibit P661, p 3.

<sup>4404</sup> Sada Lama, Exhibit P661, pp 2-3; Sada Lama, T 3698.

<sup>4405</sup> See *supra*, paras 211-213; Nike Peraj, T 1270-1273; Martin Pnishi, Exhibit P1033, p 5.

<sup>4406</sup> Sada Lama, Exhibit P661, p 3

<sup>4407</sup> Exhibit P663.

<sup>4408</sup> Sada Lama, Exhibit P661, p 4; Sada Lama, Exhibit P662 (*Milutinović* transcript), T 3267-3268.

<sup>4409</sup> Sada Lama, Exhibit P661, p 4.

a path above the gorge.<sup>4411</sup> The four men were Mahmut Caka (45 years old), Hebib Lami (Lama) (18 years old), Brahim Lami (Lama) (52 years old) and Rraman Lami. At least two of the bodies had been mutilated, including that of Rraman Lami, who had his eyes cut out.<sup>4412</sup> The four men were dressed in civilian clothes and had no weapons.<sup>4413</sup> The shooting by the Serbian soldiers in Vata/Vataj resumed for a time in the mid-afternoon before the Serbian forces left the village. On that day, most of the houses in Caka and of Tifeku, two neighbourhoods of Vata/Vataj, were burnt.<sup>4414</sup>

1139. On 14 April 1999, the bodies of Mahmut Caka, Hebib Lami, Brahim Lami and Rraman Lami and seven other unidentified bodies found in the hamlets of Caka and Tifeku were buried in the cemetery in Vata/Vataj.<sup>4415</sup> A few months later, in July 1999, Canadian and Austrian forensic experts exhumed and conducted autopsies on 11 bodies from Vata/Vataj cemetery. The autopsies concluded that the cause of death was gunshot wounds and that the victims were male aged between 15 and 52 years old. Although the identity of the bodies was not studied by the forensic experts, the names of the 11 victims, as marked on the gravestones, are recorded in their forensic report.<sup>4416</sup> This evidence satisfies the Chamber that Mahmut Caka, Hebib Lami, Brahim Lami and Rraman Lami were killed by Serbian forces in Vata/Vataj on 13 April 1999. All were all were Kosovo Albanian. They were not taking any active part in hostilities when they were killed.

1140. On 14 and 15 April 1999, out of fear, all remaining villagers in Vata/Vataj fled the village. Some went to FYROM through Dragomas where the people were asked for money by VJ soldiers and some went to the border crossing in Globočica/Glloboçicë.<sup>4417</sup> On 17 July 1999, when villagers returned, they found that many houses in Vata/Vataj had been burnt and others looted.<sup>4418</sup> The Chamber is satisfied that the Kosovo Albanians in the village were forced to leave by the shooting and killings of the Serbian forces.

1141. The Indictment also alleges that on or about 25 May 1999, Serbian forces attacked the village of Dubrava/Lisnaje, which is also in the municipality of Kačanik/Kaçanik, killing several Kosovo Albanian residents of Dubrava/Lisjane, and that many residents of Dubrava/Lisjane formed

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<sup>4410</sup> Sada Lama T 3719-3720, 3722; Sada Lama, Exhibit P662 (*Milutinović* transcript), T 3259-3260, 3265; Sada Lama, Exhibit P661, p 4. The events were reported to a witness by his wife, who observed the events from a hiding place from a distance of 300 meters.

<sup>4411</sup> Exhibit P663; Sada Lama, T 3722.

<sup>4412</sup> Sada Lama, T 3722; Sada Lama, Exhibit P661, pp 4-5, Sada Lama, Exhibit P662 (*Milutinović* transcript), T 3260-3261.

<sup>4413</sup> Sada Lama, T 3722- 3724; Sada Lama, Exhibit P661, p 5.

<sup>4414</sup> Exhibit P661, p 5.

<sup>4415</sup> Exhibit D91; Sada Lama, T 3709-3712.

<sup>4416</sup> *See supra*, paras 1447-1449.

<sup>4417</sup> Sada Lama, T 3701; Exhibit P663; Sada Lama, Exhibit P661, p 5.

<sup>4418</sup> Sada Lama, Exhibit P661, p 5.

a convoy of tractors and trailers and fled to FYROM.<sup>4419</sup> No evidence was called to support these allegations. The Chamber finds that the events alleged in the Indictment with respect to Dubrava/Lisjane have not been established.

#### L. Dečani/Deçan municipality

1142. The events discussed below took place in the village of Beleg and in neighbouring villages which are located in the central part of Dečani/Deçan municipality, to the east and south of Dečani/Deçan town.

1143. In 1998 and early 1999 KLA were present in the area of Dečani/Deçan. In March 1999, the command of the Dukagjin operational zone was in the village of Glodane/Gllogjan although its location varied. The 131<sup>st</sup>, 132<sup>nd</sup>, 133<sup>rd</sup> and 134<sup>th</sup> brigades were operating in this zone.<sup>4420</sup>

1144. On 26 March 1999 Serbian police and military forces arrived in the village of Drenovac/Drenoc.<sup>4421</sup> Police positioned themselves in the village which caused some residents of Drenovac/Drenoc to leave.<sup>4422</sup> As residents left smoke and flames were already seen to be coming from houses in the village.<sup>4423</sup> Some of the residents who left Drenovac/Drenoc fled to the village of Beleg.<sup>4424</sup> More residents of Drenovac/Drenoc fled to Beleg on the following day.<sup>4425</sup> Serbian forces were also active in other villages in the area causing displaced persons from Carrabreg/Crnobreg, Slup/Sllup and other neighbouring villagers also to gather in Beleg at this time.<sup>4426</sup>

1145. On or about 28 March 1999 people in Beleg heard shots being fired, as well as shelling<sup>4427</sup> and the sound of tanks approaching the village.<sup>4428</sup> They saw police and VJ soldiers arrive in the village.<sup>4429</sup> Some of the police officers were recognized as coming from neighbouring towns.<sup>4430</sup>

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<sup>4419</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Confidential Annex I, Pre-Trial Brief, Prosecution’s Submission Pursuant to Rule 65ter(e) with Confidential Annex I, Annex II and Annex III”, 1 September 2008, para 237; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Prosecution’s Notice in Respect of its Rule 65ter Witness List with Annex A”, 12 December 2008.

<sup>4420</sup> Byslim Zyrapi, T 2475-2476. See also K20, Exhibit P1280, p 3.

<sup>4421</sup> K58, Exhibit P1080, p 2; K58, T 7307.

<sup>4422</sup> K58, T 7307, 7311-7313; Mehmet Mazrekaj, Exhibit P675, pp 4-5; Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript), T 5802. Two witnesses also heard that the police had told some residents to leave the village, K58, T 7311; Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript) T 5801.

<sup>4423</sup> K58, T 7313.

<sup>4424</sup> K58, Exhibit P1080, p 2; Mehmet Mazrekaj, Exhibit P675, pp 4-5.

<sup>4425</sup> Mehmet Mazrekaj, Exhibit P675, p 5; Mehmet Mazrekaj, T 3874.

<sup>4426</sup> K20, Exhibit P1280, p 3; K20, Exhibit P1282 (*Milutinović* transcript), T 10055.

<sup>4427</sup> K20, T 8496; K58 Exhibit P1080, p 3; K58, Exhibit P1081 (*Milutinović* transcript), T 7470-7471; K58, T 7314. The Chamber notes that the evidence is inconclusive as to whether the sound of shelling came from shelling of Beleg or from neighbouring villages.

<sup>4428</sup> K20, Exhibit P1281 (*Milošević* transcript), T 2516; K20, T 8496.

<sup>4429</sup> K20, Exhibit P1281 (*Milošević* transcript), T 2515; Mehmet Mazrekaj, Exhibit P675, p 5; Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript), T 5808; Mehmet Mazrekaj, T 3842. See also K58, Exhibit P1080, p 3,



The police forces who arrived in Beleg were wearing regular police uniforms without camouflage patterns but with badges with the word “police” written in Cyrillic on their arms.<sup>4431</sup> There were also older soldiers who wore grass-green uniforms with camouflage patterns and caps. Witnesses thought these may have been members of paramilitary groups but the evidence is not sufficient to determine whether these were members of the VJ reserve or of paramilitary units.<sup>4432</sup> The use of tanks confirms the presence of VJ forces.

1146. The next morning at about 0600 hours Serbian forces surrounded one of the houses<sup>4433</sup> in the village. A police officer wearing blue camouflage uniform and carrying an automatic rifle entered it through the window and told its inhabitants that they had to leave.<sup>4434</sup> Outside the house there were APCs, heavy weapons and Pragas with two-barrelled weapons mounted on them. The vehicles were blue camouflage colour and the weapons, green camouflage.<sup>4435</sup> More than one hundred armed men<sup>4436</sup> were seen in the village on that day.<sup>4437</sup> Some wore green camouflage uniforms and green helmets,<sup>4438</sup> others had blue camouflage uniforms and wore black hats.<sup>4439</sup> The inhabitants of this house were taken by Serbian forces to a basement where there were already members of three other families.<sup>4440</sup> More people were brought in the course of the day, and soon there were at least 300 people there, many of them children.<sup>4441</sup> There was shooting outside the basement.<sup>4442</sup> An armed policeman stood guard during the whole time.<sup>4443</sup> A police officer, dressed in blue camouflage uniform, was giving orders to the other armed men and appeared to be a

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testifying that police forces and paramilitaries arrived in Beleg on 27 March 1999. During his evidence in the *Milutinović* trial, Mehmet Mazrekaj testified that he saw VJ, police and paramilitaries, Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript), T 5808-5809.

<sup>4430</sup> Mehmet Mazrekaj, Exhibit P675, p 6; Exhibit P676 (*Milutinović* transcript), T 5808-5809, 5811.

<sup>4431</sup> K58, Exhibit P1081 (*Milutinović* transcript), T 7464. While one description of the uniforms says they were grey most described the colour of the uniforms as blue. They are a grey-blue blend. These uniforms are consistent with the regular police uniforms worn by local police.

<sup>4432</sup> The PJP units of the MUP wore green camouflage uniforms, the SAJ units of the MUP wore green and brown tiger strip camouflage uniforms and the regular VJ forces wore green camouflage uniforms, *see supra*, paras 64, 76, 162.

<sup>4433</sup> K20, Exhibit P1280, p 2.

<sup>4434</sup> K20, Exhibit P1280, p 2; K20, Exhibit P1281 (*Milošević* transcript), T 2518.

<sup>4435</sup> K20, Exhibit P1280, p 2.

<sup>4436</sup> Villagers spoke of all the armed men as soldiers but in the Chamber’s findings this was not enough for identification of the men as all being members of the VJ.

<sup>4437</sup> K20, T 8498.

<sup>4438</sup> K20, Exhibit P1280, p 2; K20, Exhibit P1282 (*Milutinović* transcript), T 10062-10063; Exhibit P1283, photograph No 6, which is consistent with the uniforms of the PJP or the VJ.

<sup>4439</sup> K20, Exhibit P1280, pp 2-3, which is consistent with the uniforms worn by the police.

<sup>4440</sup> K20, Exhibit P1281 (*Milošević* transcript), T 2521.

<sup>4441</sup> K20, Exhibit P1280, p 3; K20, T 8498-8499; K20, Exhibit P1281 (*Milošević* transcript), T 2564-2565.

<sup>4442</sup> K20, Exhibit P1279, p 3; K20, Exhibit P1281 (*Milošević* transcript), T 2522.

<sup>4443</sup> K20, T 8491.

commander.<sup>4444</sup> Speaking in Albanian he told the people in the basement: “You asked for NATO, now they will come and save you”.<sup>4445</sup>

1147. In the meantime<sup>4446</sup> VJ soldiers and police surrounded another house in the village and opened fire on it. The people inside the house, some 100 of them, were ordered to leave the house.<sup>4447</sup> The man who walked out first was shot by a policeman wearing a regular police uniform.<sup>4448</sup> Shortly thereafter, another man from the house was shot twice by the same policeman.<sup>4449</sup> Witnesses later learned that both men had died.<sup>4450</sup> The body of one of the men was seen in close proximity to the house on the following day.<sup>4451</sup>

1148. The people from this house were then taken to the basement where other people had been taken earlier,<sup>4452</sup> and afterwards to the yard where some of them were beaten by Serbian police forces.<sup>4453</sup> One of the villagers, Mehmet Mazerkaj, a teacher, was beaten by a policeman identified as Zoran Đurišić (Gjurishiq) who had been one of his students in the local school.<sup>4454</sup> Policemen<sup>4455</sup> then took the men in groups of four or five, to another basement to be “checked”.<sup>4456</sup> When they came back the men carried their clothes; some were in their underwear.<sup>4457</sup> After the men, the young girls were taken to the basement to be bodily searched and sometimes forced to remove their clothes,<sup>4458</sup> the women were given the same treatment.<sup>4459</sup> On the floor in the basement where the checking took place there was a cloth on which villagers were required to leave their valuables and

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<sup>4444</sup> K20, Exhibit P1280, p 3; K20, Exhibit P1281 (*Milošević* transcript), T 2523; K20, T 8492, 8494. This person wore a hat with a square shaped brim in front, K20, T 8500.

<sup>4445</sup> K20, Exhibit P1280, p 3.

<sup>4446</sup> While K58 and Mehmet Mazrekaj had stated that this happened on 28 March 1999, considering their evidence as a whole and in particular that the events described took place in the course of two days and a night, and other relevant evidence the Chamber accepts that the events described took place on 29 March 1999.

<sup>4447</sup> K58, Exhibit P1080, p 3; K58, T 7318.

<sup>4448</sup> K58, Exhibit P1080, p 3; K58, T 7318. The Chamber notes that when shown samples of insignias the witness indicated that the insignias she saw resembled “approximately” the insignias depicted as No 5 and No 7 in Exhibit P327. (K58, T 7309-7310) Insignia No 5 is the insignia of the military police and insignia No 7 is the insignia of the regular police. The two insignias are similar in shape. The Chamber’s finding above is based on the fact that the two insignias were identified, that the two insignias resemble each other, and on the Chamber’s evaluation of the overall witness’s evidence with respect to the forces.

<sup>4449</sup> K58, Exhibit P1080, p 4; K58, T 7318.

<sup>4450</sup> K58, Exhibit P1080, p 4; K58, T 7319.

<sup>4451</sup> Mehmet Mazrekaj, Exhibit P675, pp 6-7.

<sup>4452</sup> See K20, Exhibit P1279, p 3; K20, Exhibit P1281 (*Milošević* transcript), T 2521.

<sup>4453</sup> K58, Exhibit P1080, p 4; K58, Exhibit P1081 (*Milutinović* transcript), T 7466; K58, T 7319. See also K20, T 8491-8492, testifying that the beatings took place in a field.

<sup>4454</sup> K58, Exhibit P1080, p 5; K58, Exhibit P1081 (*Milutinović* transcript), T 7487; Mehmet Mazrekaj, Exhibit P675, p 7; Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript), T 5835.

<sup>4455</sup> K20, T 8492.

<sup>4456</sup> K58, Exhibit P1080, pp 4-5; Mehmet Mazrekaj, Exhibit P675, p 8; K20, Exhibit P1279, pp 3-4.

<sup>4457</sup> K58, Exhibit P1080, pp 4-5. See also K20 Exhibit P1279, p 3.

<sup>4458</sup> K58, Exhibit P1081 (*Milutinović* transcript), T 7473; K20, Exhibit P1279, p 4.

<sup>4459</sup> K58, Exhibit P1080, p 5; K20, Exhibit P1279, p 4.

personal documents.<sup>4460</sup> However, all golden valuables of the women were returned the following day by a policeman.<sup>4461</sup> During the day houses in the village were set on fire by the Serbian forces.<sup>4462</sup>

1149. After the checking was completed the detainees were held in the same place, or in a field, until the evening when they were moved to other buildings.<sup>4463</sup> The men were then taken to the second floor of the house where the checking had taken place earlier.<sup>4464</sup> The women and a few elderly men were taken to two rooms and a stable in another house.<sup>4465</sup> They were guarded by Serbian forces.<sup>4466</sup>

1150. At about 2200 or 2300 hours men came to one of the rooms where the women and children were taken.<sup>4467</sup> These men wore solid green uniforms<sup>4468</sup> or green camouflage.<sup>4469</sup> A witness testified that they had the words police written in Serbian on their arms.<sup>4470</sup> One of them, who spoke Albanian, told the people in the room that they needed people to help clean the house and wash the dishes.<sup>4471</sup> Some older women offered to help but the soldiers told them to stay in the room. The soldiers then checked the faces of the people in the room using a flashlight and took out five young women.<sup>4472</sup> Two returned almost immediately.

1151. The remaining three young women were taken to different rooms in a burned house nearby which was being used as a base by the soldiers.<sup>4473</sup> One of the soldiers took one of the young women to a bathroom without windows or doors, undressed her and raped her. The girl was screaming and the soldier put a piece of cloth against her mouth and threatened her.<sup>4474</sup> During the rape a police officer was standing at the door on guard, occasionally pointing his flashlight to see what was happening. When the soldier who raped the girl left, the police officer slapped her in the

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<sup>4460</sup> K58, Exhibit P1081 (*Milutinović* transcript), T 7501, 7488-7490; K58, Exhibit P1079, p 5; K58, T 7298, 7320, 7324; Mehmet Mazrekaj, Exhibit P675, p 8. See also Mehmet Mazrekaj, T 3846, testifying that a golden ring was taken away from one of the men in the process of checking.

<sup>4461</sup> K58, T 7325; K58, Exhibit P1080, p 6.

<sup>4462</sup> Mehmet Mazrekaj, T 3846-3847; Mehmet Mazrekaj, Exhibit P675, p 8.

<sup>4463</sup> K58, Exhibit P1080, p 5; K20, Exhibit P1280, p 4; K20, Exhibit P1281 (*Milošević* transcript), T 2525-2526.

<sup>4464</sup> Mehmet Mazrekaj, Exhibit P675, p 8; K20, Exhibit P1281 (*Milošević* transcript), T 2525-2526; K20, Exhibit P1280, p 4.

<sup>4465</sup> K58, Exhibit P1080, pp 5-6; K58, T 7325; Mehmet Mazrekaj, Exhibit P675, p 8; K20, Exhibit P1280, p 4.

<sup>4466</sup> K58, Exhibit P1080, pp 5-6.

<sup>4467</sup> K58, Exhibit P1081 (*Milutinović* transcript), T 7467-7468; K20, Exhibit P1281 (*Milutinović* transcript), T 10063-10064.

<sup>4468</sup> K20, T 8494; K20 Exhibit P1281 (*Milošević* transcript) T 2526.

<sup>4469</sup> K58, T 7329-7330.

<sup>4470</sup> K58, Exhibit P1081 (*Milutinović* transcript), T 7477-7478.

<sup>4471</sup> K20, Exhibit P1282 (*Milutinović* transcript), T 10064; K20, Exhibit P1280, p 4; K20, Exhibit P1281 (*Milošević* transcript), T 2558; K58, T 7299, 7343; K58, Exhibit P1079, p 6.

<sup>4472</sup> K20, Exhibit P1279, p 4; K58, Exhibit P1080, p 6; K58, T 7299. Two were sent back immediately, K20, Exhibit P1279, p 4, K20, Exhibit P1281 (*Milošević* transcript), T 2527.

<sup>4473</sup> K20, Exhibit P1279, p 5; K20, T 8503.

<sup>4474</sup> K20, Exhibit P1279, p 5.

face and she lost consciousness. A second, third and fourth soldier, wearing green camouflage uniforms, came in and each raped the girl.<sup>4475</sup> After this the police officer, who spoke Albanian, told the girl to tell the others that she had been cleaning.<sup>4476</sup> The screaming of the other two young women who had been taken away by soldiers could be heard during the night.<sup>4477</sup>

1152. After taking away the first group of young women soldiers returned to the room where the people were staying to look for more girls. This happened on four or five occasions and some 20 young women were taken away.<sup>4478</sup> When they were brought back they were crying and had dishevelled hair. One of them told her mother that she had been raped.<sup>4479</sup>

1153. On 30 March 1999 at 0800 or 0900 hours the man who appeared to the villagers to be a commander, in police uniform, arrived at the rooms where the women and children were held and ordered them to leave for Albania.<sup>4480</sup> At about the same time a police officer came to the second floor of the house where the men were and asked whether anyone had a tractor. Those who had tractors or other vehicles were told to take the women and children to Dečani/Deçan town and Đakovica/Gjakovë.<sup>4481</sup> Accordingly, shortly thereafter, a convoy of tractors and vehicles with the women and children and some men set off from Beleg.<sup>4482</sup> Along the way, some other displaced persons from other villages joined the convoy so that there were hundreds of Kosovo Albanians travelling on trucks and tractors.<sup>4483</sup> Despite some inconsistency in the evidence, the Chamber accepts that police and army vehicles travelled with the convoy to the border.<sup>4484</sup> The convoy passed through checkpoints where the people were asked for their personal documents.<sup>4485</sup> The convoy crossed over the Albanian border near Kukës in the evening of 30 March 1999, or on the following day.<sup>4486</sup> At the border, when asked to produce their identification documents the refugees

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<sup>4475</sup> K20, Exhibit P1279, p 5.

<sup>4476</sup> K20, Exhibit P1279, p 5.

<sup>4477</sup> K20, Exhibit P1279, p 6.

<sup>4478</sup> K58, Exhibit P1080, p 6; K58, T 7299.

<sup>4479</sup> K58, Exhibit P1081 (*Milutinović* transcript), T 7468; K58, Exhibit P1080, p 6.

<sup>4480</sup> K20, Exhibit P1279, p 6; K58, Exhibit P1079, p 7; K58, T 7300.

<sup>4481</sup> Mehmet Mazrekaj, Exhibit P675, pp 9-10; Mehmet Mazrekaj, T 3847.

<sup>4482</sup> K20, T 8505.

<sup>4483</sup> K20, Exhibit P1281 (*Milošević* transcript), T 2563; K20, T 8495; K58, Exhibit P1080, p 7; K58, T 7330; Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript), T 5812. This number includes the Albanians from other villages that joined the convoy afterwards.

<sup>4484</sup> On the evidence of K58 the convoy was escorted by the police, K58, Exhibit P1081 (*Milutinović* transcript), T 7469. On Mehmet Mazrekaj's evidence, three APCs, one belonging to the VJ and the other two to the police, led or escorted the convoy, Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript), T 5812. K20 testified that the convoy was not accompanied by the police or by army members, K20, Exhibit P1281 (*Milošević* transcript), T 2534, 2563.

<sup>4485</sup> K58, Exhibit P1279, p 7.

<sup>4486</sup> K20, Exhibit P1281 (*Milošević* transcript), T 2534; K58, Exhibit P1080, p 7.

told the Serbian border authorities that their personal documents had already been taken from them.<sup>4487</sup>

1154. Of the approximately 60 men who were taken to the second floor of a building in Beleg on 29 March 1999, 10 were released on the following day to drive the women and children to Albania.<sup>4488</sup> The remaining men have not been heard of since that day and are still unaccounted for.<sup>4489</sup>

1155. Following the end of hostilities in the summer of 1999, when residents of the area were able to return, they observed that all houses in Beleg had been burnt down.<sup>4490</sup>

1156. For reasons explained in detail later in this Judgement the Chamber is satisfied that the offence of deportation has been established with respect to Beleg.

1157. In addition to the findings made above as to the presence of both VJ and MUP forces, including local MUP and PJP, in Beleg and the immediate vicinity and their activities there, the Chamber also notes the consistency of these findings with documentary evidence from the Serbian forces. In the Chamber's finding, the documentary evidence further confirms the presence of VJ and MUP forces in the immediate area of Beleg, under joint orders to protect the Serbian population in Dečani/Deçan, to establish combat control of the territory in that area, and to "close off" specific axes. Within a few days of the events discussed, VJ forces were further charged to support MUP forces in smashing and destroying terrorists in sectors in the immediate vicinity of Beleg.

1158. In particular Exhibit P1189 is a dispatch issued by the Accused on 2 March 1999 ordering that one manoeuvre company from the 21<sup>st</sup> and 22<sup>nd</sup> PJP detachment and one territorial company from the 72<sup>nd</sup> PJP detachment are sent to Dečani/Deçan for a period of 40 days.<sup>4491</sup> An order of the Priština/Prishtinë Military District Command of 27 March 1999 which tasks the VJ 177<sup>th</sup> Military Territorial Detachment in coordination with forces of the VJ 125<sup>th</sup> Motorised Brigade and the MUP, *inter alia*, to protect the Serbian population in the town of Dečani/Deçan and to establish combat control of the territory and close off the axes of Dečani/Deçan—Peć/Pejë.<sup>4492</sup> A further order of the Joint Command issued on 2 April 1999 tasks the VJ 125<sup>th</sup> Motorised Brigade with providing support for MUP forces in "smashing and destroying" terrorists in the sectors of villages including

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<sup>4487</sup> K20, Exhibit P1281 (*Milošević* transcript), T 2534; Mehmet Mazrekaj, Exhibit P676 (*Milutinović* transcript), T 5838; Mehmet Mazrekaj, T 3852-3853.

<sup>4488</sup> K20, Exhibit P1279, p 6; K20, Exhibit P1281 (*Milošević* transcript), T 2565; Mehmet Mazrekaj, Exhibit P675, pp 9-10.

<sup>4489</sup> K20, Exhibit P1279, p 6; K58, Exhibit P1080, pp 6-7; K58, Exhibit P1081 (*Milutinović* transcript), T 7468; K58, T 7301.

<sup>4490</sup> K20, Exhibit P1282 (*Milutinović* transcript), T 10060.

<sup>4491</sup> Exhibit P1189, p 1.

Maznik, Papić/Papiq, Rznić/Irznik, and Glodane/Gllogljan.<sup>4493</sup> The villages of Papić/Papiq, Rznić/Irznik, and Glodane/Gllogljan are in the immediate vicinity of the village of Beleg. While the order postdates the events described above, the Chamber accepts that the order is indicative of the presence of VJ and MUP forces in the area at the time of the events as the operations identified in the order could not be carried out if these forces were not then at these locations or in close proximity.

1159. The Chamber also finds that VJ and MUP forces acted in coordination in the movement of hundreds of displaced persons from Beleg and other villages in the immediate vicinity to cross the border into Albania.

1160. The Chamber further finds that Serbian forces, in particular PJP of the MUP, burnt the houses of Kosovo Albanians in Beleg as and after the population, or at least most women, children and elderly, were sent off to go to Albania.

#### **M. Vučitrn/Vushtrri municipality**

1161. The municipality of Vučitrn/Vushtrri is located in the centre of Kosovo and borders the municipality of Podujevo/Podujevë to the east, Kosovska Mitrovica/Mitrovicë to the north, Srbica/Skenderaj to the west and Glogovac/Gllogoc and Obilic/Obiliq to the south.

##### **1. KLA and Serbian controlled territory in March 1999 and April 1999**

1162. Evidence indicates that in March 1999, the KLA controlled approximately 80 per cent of the territory of Vučitrn/Vushtrri municipality.<sup>4494</sup> In particular, the KLA controlled the area between the villages of Slakovce/Sllakoc and Donja Sudimlja/Studime-e-Poshtme, except for the neighbourhood of Rašica/Rashica, the neighbourhood of Llapzoviq in Samodreža/Samodrezhë and Cecelija/Ceceli.<sup>4495</sup> There is also evidence that at around the same time, VJ and Serbian police forces held the town of Vučitrn/Vushtrri, the neighbourhood of Rašica/Rashica in Donja Sudimlja/Studime-e-Poshtme and the villages located on the main road between Mitrovica/Mitrovicë, Vučitrn/Vushtrri and Priština/Prishtinë, including Novo Selo

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<sup>4492</sup> Exhibit P896, item 6.4.

<sup>4493</sup> Exhibit P1235, item 5.1.

<sup>4494</sup> Shukri Gerxhaliu, Exhibit P512, para 6.

<sup>4495</sup> Shukri Gerxhaliu, Exhibit P512, para 6; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2494-2499, 2531-2532; Shukri Gerxhaliu, T 3107-3109, 3143; Exhibit P514; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2459.

Begovo/Novoselle-e-Begut and Redakovc.<sup>4496</sup> Evidence also indicates that VJ forces held Gorji Svračak/Sfracaku-i-Epërme at the end of April 1999.<sup>4497</sup>

## 2. Vučitrn/Vushtrri town

1163. On 27 March 1999, Serbian forces, some wearing blue camouflage uniforms and others green camouflage uniforms, arrived at a school in Vučitrn/Vushtrri town.<sup>4498</sup> A witness, Sabit Kadriu, observed two Serbs wearing civilian clothes entering a house opposite the school. Shortly thereafter, he saw this house and the neighbouring house burning.<sup>4499</sup> The witness also observed Serbian forces wearing green camouflage uniforms in the vicinity of the burning houses.<sup>4500</sup>

1164. The same day in the evening, the old part of Vučitrn/Vushtrri and the town centre were burnt. The minaret of a 17<sup>th</sup> century mosque located in the town centre was burnt and fell down. The surrounding buildings belonging to the mosque were also burnt.<sup>4501</sup> Shouting and the sound of doors being broken could be heard.<sup>4502</sup> On 28 March 1999, in the morning, shooting was heard in the town.<sup>4503</sup> On 29 March 1999 in the morning, three or four bodies were found on a street nearby the old Vučitrn/Vushtrri Bridge.<sup>4504</sup>

1165. Evidence confirms that at the time, blue camouflage uniforms were worn by police and that green camouflage uniforms were worn by the VJ and the PJP of the MUP.<sup>4505</sup> The presence of MUP and VJ forces in Vučitrn/Vushtrri town is supported by an order issued by the Military District Command and dated 27 March 1999, redeploying the 54 Military Territorial Detachment of the Priština/Prishtinë Military Sector to Vučitrn/Vushtrri town. This order tasked the VJ units to act, in coordination with MUP forces, to establish control of the Vučitrn/Vushtrri area.<sup>4506</sup> Another document indicates the presence of two platoons of the 3<sup>rd</sup> Company of the PJP in Vučitrn/Vushtrri municipality at the time.<sup>4507</sup>

1166. On 1 April 1999 at around 0840 hours, people in Vučitrn/Vushtrri town heard voices shouting and telling the people to leave. These voices were those of police who were wearing blue

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<sup>4496</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2494-2500, 2531-2533, 2538, 2592; Shukri Gerxhaliu, Exhibit P512, para 6; Shukri Gerxhaliu, T 3107-3109, 3142-3144.

<sup>4497</sup> Shukri Gerxhaliu, Exhibit P512, para 6; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2499-2500, 2531-2533; Shukri Gerxhaliu, T 3109; Exhibit P514.

<sup>4498</sup> Sabit Kadriu, Exhibit P515, p 12.

<sup>4499</sup> Sabit Kadriu, Exhibit P515, p 12.

<sup>4500</sup> Sabit Kadriu, Exhibit P515, p 12.

<sup>4501</sup> Sabit Kadriu, Exhibit P515, p 12.

<sup>4502</sup> Sabit Kadriu, Exhibit P515, p 12.

<sup>4503</sup> Sabit Kadriu, Exhibit P515, p 12.

<sup>4504</sup> Sabit Kadriu, Exhibit P515, p 12.

<sup>4505</sup> See *supra*, paras 53-54, 64, 162.

<sup>4506</sup> Exhibit P896, p 6.

<sup>4507</sup> Exhibit P1186, p 1.

camouflage uniforms. The residents were told to go to the cemetery.<sup>4508</sup> Three policemen were telling residents to be quick<sup>4509</sup> and Sabit Kadriu recognized one of the policemen to be Dragan Petrović, the Commander of Vushtrri/Vučitrn police station.<sup>4510</sup> He also saw a policeman beat, with the butt of his gun, a man who refused to leave his home.<sup>4511</sup>

1167. When the people of Vuçitrn/Vushtrri town arrived at the cemetery, there were no Serbian forces present.<sup>4512</sup> However, three buses from the private company Hajra were waiting, as they had been instructed by the police.<sup>4513</sup> A bus-driver told the people that the police had instructed him to take them to FYROM.<sup>4514</sup> Most of the people at the cemetery boarded the buses, but because of a lack of space, some people had to walk behind.<sup>4515</sup> Sabit Kadriu did not board the bus and was able to reach the house of the KLA commander in Gornja Sudimlja/Studime-e-Epërme.<sup>4516</sup> This house was full of people who had left their villages.<sup>4517</sup> On 2 April 1999, Sabit Kadriu moved on to Cecelija/Ceceli, which was under KLA control.<sup>4518</sup>

### 3. Donji Svracak/Sfaraçak-i-Poshtëm

1168. The village of Donji Svracak/Sfaraçak-i-Poshtëm is situated on a plain in the municipality of Vuçitrn/Vushtrri. The neighbouring village of Gornji Svracak/Sfaraçak-i-Epërm, is located on an elevated area north of Donji Svracak/Sfaraçak-i-Poshtëm.<sup>4519</sup> In March 1999, there were approximately 80 Albanian households and 10 Serbian households in the lower part of Donji Svracak/Sfaraçak-i-Poshtëm.<sup>4520</sup> The village of Gornji Svracak/Sfaraçak-i-Epërm is visible to the naked eye from Donji Svracak/Sfaraçak-i-Poshtëm.<sup>4521</sup>

1169. In March 1999, VJ forces had taken position in the neighbourhood of Llapzoviq in the village of Samodreža/Samodrezhë and in the hills of Gornji Svracak/Sfaraçak-i-Epërm, on the Donja Sudimlja/Studime-e-Poshtme side.<sup>4522</sup>

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<sup>4508</sup> Sabit Kadriu, Exhibit P515, pp 12-13.

<sup>4509</sup> Sabit Kadriu, Exhibit P515, p 13.

<sup>4510</sup> Sabit Kadriu, Exhibit P515, p 13; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5071-5072.

<sup>4511</sup> Sabit Kadriu, Exhibit P515, p 13.

<sup>4512</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5122; Sabit Kadriu, Exhibit P515, p 13.

<sup>4513</sup> Sabit Kadriu, Exhibit P515, p 13.

<sup>4514</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5122; Sabit Kadriu, Exhibit P515, p 13.

<sup>4515</sup> Sabit Kadriu, Exhibit P515, p 13.

<sup>4516</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5123; Sabit Kadriu, Exhibit P515, p 13.

<sup>4517</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5123.

<sup>4518</sup> Sabit Kadriu, Exhibit P515, p 13.

<sup>4519</sup> Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2418, 2420; Fedrije Xhafa, T 3083-3084; Exhibit P511.

<sup>4520</sup> Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2418; Fedrije Xhafa, T 3064.

<sup>4521</sup> Fedrije Xhafa, T 3084.

<sup>4522</sup> Fedrije Xhafa, T 3068; Fedrije Xhafa, Exhibit P510, para 3; Exhibit P511.



1170. On 27 March 1999, all the Serbian families left Donji Svracak/Sfaraçak-i-Poshtëm for the village of Nedakovac/Nedakofc.<sup>4523</sup> On the next day, Fedrije Xhafa, an Albanian resident of lower Donji Svracak/Sfaraçak-i-Poshtëm, heard heavy weapon fire and observed that the houses in Gornji Svracak/Sfaraçak-i-Epërm were burning.<sup>4524</sup> Because of the events and fearing for their safety, with only a few exceptions, all Albanian families left Donji Svracak/Sfaraçak-i-Poshtëm in a convoy.<sup>4525</sup> The convoy travelled through the village of Gornja Dubnica/Dumnicë-e-Epërme and Samodreža/Samodrezhë, before stopping in Vesekovce/Vesekoc.<sup>4526</sup> Fedrije Xhafa's father, her uncle and her cousin, who had remained in Donji Svracak/Sfaraçak-i-Poshtëm, were nevertheless forced to leave the village shortly after the convoy because of danger to the Kosovo Albanian people from sniper shots coming from the direction of Nedakovac/Nedakofc. The Albanian families were not allowed to return to the village at this time.<sup>4527</sup>

1171. At the end of the war, when the residents of Donji Svracak/Sfaraçak-i-Poshtëm were able to return to the village, they found that the houses belonging to Albanian families were burnt and that the houses of Serbian families were not damaged.<sup>4528</sup>

#### 4. Donja Sudimlja/Studime-e-Poshtme and Slakovce/Sllakoc

1172. The village of Donja Sudimlja/Studime-e-Poshtme is divided into the neighbourhood of Lower Mohalla and the neighbourhood of Upper Mohalla. Upper Mohalla is also known as Rašica/Rashica.<sup>4529</sup> It is situated on an elevated area of Donja Sudimlja/Studime-e-Poshtme.<sup>4530</sup> On 28 and 29 March 1999, Serbian forces were present in Donji Svracak/Sfaraçak-i-Poshtëm and in Rašica/Rashica.<sup>4531</sup> Donja Sudimlja/Studime-e-Poshtme came under Serbian shelling and other weapon fire, causing the population to flee towards the surrounding hills.<sup>4532</sup> On 29 March 1999, Serbian forces, believed to be local Vuçitrn/Vushtrri police, came to Donja Sudimlja/Studime-e-Poshtme and told the residents they had 15 minutes to leave the village or face the consequences.<sup>4533</sup> Villagers then fled to the hills surrounding the village. The lower part of Donja Sudimlja/Studime-e-Poshtme came under small arms fire, while Rašica/Rashica was under shelling

<sup>4523</sup> Fedrije Xhafa, T 3045, 3066-3068, 3085, 3088; Fedrije Xhafa, Exhibit P510, para 2; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2420, 2455-2456.

<sup>4524</sup> Fedrije Xhafa, T 3045, 3066-3068, 3085, 3088; Fedrije Xhafa, Exhibit P510, paras 2-3; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2420, 2455-2456; Exhibit P511.

<sup>4525</sup> Fedrije Xhafa, T 3045, 3066-3068, 3085, 3088; Fedrije Xhafa, Exhibit P510, para 2; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2420-2421, 2455-2456.

<sup>4526</sup> Fedrije Xhafa, T 3045, 3066-3069, 3085, 3088; Fedrije Xhafa, Exhibit P510, para 2; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2420, 2455-2456; Exhibit P511.

<sup>4527</sup> Fedrije Xhafa T 3087-3088; Fedrije Xhafa Exhibit, P510, para 2.

<sup>4528</sup> Fedrije Xhafa, T 3062; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2424.

<sup>4529</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2499-2500.

<sup>4530</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2499-2500; Shukri Gerxhaliu, Exhibit P512, para 6.

<sup>4531</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2499-2500; Shukri Gerxhaliu, Exhibit P512, para 6.

<sup>4532</sup> Shukri Gerxhaliu, Exhibit P512, para 6.

from VJ tanks and heavy weapons.<sup>4534</sup> During this operation, houses in the village were set on fire.<sup>4535</sup> A witness in the hills observed that Serbian forces stayed in Donja Sudimlja/Studime-c-Poshtme for a few days.<sup>4536</sup>

1173. Between 7 April 1999 and 10 April 1999, Shukri Gerxhaliu was in his house in Donja Sudimlja/Studime-c-Poshtme.<sup>4537</sup> Around 10 April 1999, he heard that Serbian forces were coming to take him away. Fearing for his safety, he hid in bushes at the back of his house. While hiding, he heard men asking his wife in Serbian and in Albanian about his whereabouts. He was told later by his wife that the men were police officers.<sup>4538</sup> Later, he observed that the house of Izet Bunjaku, in Donja Sudimlja/Studime-c-Poshtme, was burning.<sup>4539</sup> Because of this incident, the witness left the village with his family to go to a KLA controlled area in the surrounding hills.<sup>4540</sup> On the way, as they walked by the stream running alongside the road towards Donja Sudimlja/Studime-c-Poshtme, the family came under small arms fire but were not hit. When they came within sight of Rašica/Rashica, they were also shelled by VJ tanks.<sup>4541</sup> As the family reached a strip of land between 200 and 300 metres in length, located between KLA and Serbian controlled territory between Donja Sudimlja/Studime-c-Poshtme and Gornja Sudimlja/Studime-c-Epërme, they were picked up by people in a horse and cart and taken to Slakovce/Sllakoc, where KLA forces were located.<sup>4542</sup>

1174. Up until the end of April 1999, the KLA resisted Serbian forces in Vuçitrn/Vushtrri municipality. However, around 28 April 1999, Serbian forces successfully advancing against KLA positions in the mountains in the direction of Kosovska Mitrovica/Mitrovicë, took control of Bajgora/Bajgorë, and established a camp at Bare. A simultaneous offensive by Serbian forces was launched from the direction of Podujevo/Podujevë and Serbia. On 1 May 1999, Serbian forces advanced to Vesekovce/Vesekoc.<sup>4543</sup>

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<sup>4533</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2501-2503.

<sup>4534</sup> Shukri Gerxhaliu, Exhibit P512, para 6; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2500.

<sup>4535</sup> Shukri Gerxhaliu, Exhibit P512, para 6.

<sup>4536</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2503.

<sup>4537</sup> Shukri Gerxhaliu, Exhibit P512, para 7.

<sup>4538</sup> Shukri Gerxhaliu, Exhibit P512, para 7; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2504.

<sup>4539</sup> Shukri Gerxhaliu, Exhibit P512, para 8; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2502-2503.

<sup>4540</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2504-2505.

<sup>4541</sup> Shukri Gerxhaliu, Exhibit P512, para 8; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2504-2505.

<sup>4542</sup> Shukri Gerxhaliu, Exhibit P512, para 9; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2456.

<sup>4543</sup> Sabit Kadriu, Exhibit P515, p 14.

1175. Around 28 April 1999, an advance by Serbian forces in the area caused displaced Kosovo Albanians sheltering in the mountainous region Shala to move towards Samodreža/Samodrezhë, Slakovce/Sllakoc and Cecelija/Ceceli.<sup>4544</sup>

1176. An order dated 15 April 1999 from the Joint Command indicates that the VJ Priština/Prishtinë Corps was deployed at this time to support MUP forces in “breaking up and destroying KLA forces in the Shala Zone, including in Samodreža/Samodrezhë and Cecelija/Ceceli.”<sup>4545</sup>

1177. On 1 May 1999, Serbian forces advanced to Vesekovce/Vesekoc, a village situated in the north-east part of Vučitrn/Vushtrri municipality.<sup>4546</sup> In the evening of the same day, Serbian forces started shelling Vesekovce/Vesekoc.<sup>4547</sup>

1178. On or around that day, in the village of Slakovce/Sllakoc, located south of Vesekovce/Vesekoc, the KLA was resisting the advance of Serbian forces coming from the village of Meljenica/Meleniocë and from the Llap Zone. The KLA told the people in Slakovce/Sllakoc that they were running out of ammunition to defend Slakovce/Sllakoc and told them to go to Vučitrn/Vushtrri town.<sup>4548</sup> Meanwhile, the KLA moved from Slakovce/Sllakoc to the east and Serbian forces started shelling Slakovce/Sllakoc.<sup>4549</sup>

1179. On 2 May 1999, by 1100 hours, Slakovce/Sllakoc was being shelled heavily. Houses were seen burning and the sound of automatic gunfire was heard. Shortly thereafter, Serbian infantry forces entered Slakovce/Sllakoc.<sup>4550</sup> At around 1300 hours, over 30,000 Kosovo Albanian people left Slakovce/Sllakoc on foot, by horses and by vehicle.<sup>4551</sup>

1180. The convoy first travelled to Cecelija/Ceceli before heading towards Gornja Sudimlja/Studime-e-Epërme, Donja Sudimlja/Studime-e-Poshtme and Vučitrn/Vushtrri town.<sup>4552</sup>

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<sup>4544</sup> Sabit Kadriu, Exhibit P515, p 14.

<sup>4545</sup> Exhibit P969.

<sup>4546</sup> Sabit Kadriu, Exhibit P515, p 14.

<sup>4547</sup> Sabit Kadriu, Exhibit P515, p 14.

<sup>4548</sup> Fedrije Xhafa, Exhibit P510, para 4; Shukri Gerxhaliu, Exhibit P512, para 11; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2506-2509, 2562-2563, 2598; Shukri Gerxhaliu, T 3147-3150.

<sup>4549</sup> Fedrije Xhafa, Exhibit P510, para 4; Shukri Gerxhaliu, Exhibit P512, para 11; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2506-2509, 2562-2563, 2598; Shukri Gerxhaliu, T 3147-3150, 3167.

<sup>4550</sup> Sabit Kadriu, Exhibit P515, pp 14-15; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5126-5127.

<sup>4551</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2560-2562; Shukri Gerxhaliu, Exhibit P512, para 11; Sabit Kadriu, Exhibit P515, pp 14-15; Fedrije Xhafa, T 3046-3047, 3080-3083; Fedrije Xhafa, Exhibit P510, para 4; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2431-2433, 2459-2460.

<sup>4552</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2560-2563; Shukri Gerxhaliu, Exhibit P512, para 11; Sabit Kadriu, Exhibit P515, p 14; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5096; Fedrije Xhafa, T 3046-3047, 3080-3083; Fedrije Xhafa, Exhibit P510, para 4; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2431-2432, 2448-2449, 2459-2460. There is a variation in the number of people

The road between Slakovce/Sllakoc and Gornja Sudimlja/Studime-e-Epërme was approximately seven kilometres long.<sup>4553</sup> Between Cecelija/Ceceli and Gornja Sudimlja/Studime-e-Epërme, the convoy came under VJ shelling and gun fire coming from Slakovce/Sllakoc, the Rašica/Rashica neighbourhood in Donja Sudimlja/Studime-e-Poshtme, Gornji Svračak/Sfaraçak-i-Epërm and from the north.<sup>4554</sup> At around 1500 hours, the shelling and gunfire forced the convoy to stop in Gornja Sudimlja/Studime-e-Epërme. At least two people in the convoy were wounded by gunfire.<sup>4555</sup>

1181. Between 1600 hours and 1700 hours that same day, the convoy was able to start moving again. However, as the convoy progressed short bursts of machine gun fire were heard. At around 1800 hours, the convoy stopped in a position that was sheltered from the line of fire by a curve in the road. This was at a location some three kilometres past Gornja Sudimlja/Studime-e-Epërme and about one kilometre from Donja Sudimlja/Studime-e-Poshtme.<sup>4556</sup> Serbian forces had imposed a 1600 hours curfew in that area.<sup>4557</sup> At night fall, houses in Gornja Sudimlja/Studime-e-Epërme were seen to be burning and automatic gunfire was heard coming from that village.<sup>4558</sup>

1182. At around 1700 hours, Serbian forces approached the convoy from the north in APC vehicles and Pinzgauers.<sup>4559</sup> They wore green camouflage uniforms, blue camouflage uniforms and plain black uniforms.<sup>4560</sup> Some wore bandannas.<sup>4561</sup> There were men with painted faces, others wore plastic masks which covered the area from their face to their chest with holes for the eyes and the mouth and were painted with eyebrows and moustaches.<sup>4562</sup> Serbian forces were described as paramilitary. There is other evidence that paramilitary forces wore plain black uniforms, bandannas, and had painted faces or wore masks. While the description of the Serbian forces in

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observed in the convoy. Some witnesses report observing up to 50,000 people. These numbers are estimates. The Chamber prefers the more conservative estimate.

<sup>4553</sup> Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2431.

<sup>4554</sup> Shukri Gerxhaliu, T 3112-3113, 3168; Shukri Gerxhaliu, Exhibit P512, para 12; Shukri Gerxhaliu, Exhibit, P514; Sabit Kadriu, Exhibit P515, pp 14-15.

<sup>4555</sup> Shukri Gerxhaliu, Exhibit P512, para 13; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2566, 2593; Shukri Gerxhaliu, T 3144-3146; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2459; Sabit Kadriu, Exhibit P515, p 15. The Defence argues that the convoy was a “mixed KLA/civilian convoy”. The evidence confirms that Shukri Gerxhaliu, who was taking part in the convoy, was a member of the KLA and that in April and May 1999, the villages of Gornja Sudimlja/Studimja-e-Epërme and Cecelija/Ceceli were KLA strongholds. The Defence argues that because of the KLA activity in this area, frequent fighting occurred between the KLA forces and the forces of the FRY. This part of the evidence will be dealt with in further detail later in this Judgement, *see infra*, paras 1742-1743.

<sup>4556</sup> Shukri Gerxhaliu, Exhibit P512, paras 14-15; Shukri Gerxhaliu, P513 (*Milutinović* transcript), T 2578; Shukri Gerxhaliu, T 3111-3112, 3167; Exhibit P514; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2432-2433; Sabit Kadriu, Exhibit P515, p 14.

<sup>4557</sup> Shukri Gerxhaliu, Exhibit P512, para 14; Fedrije Xhafa, T 3048; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2437; Sabit Kadriu, Exhibit P515, p 15.

<sup>4558</sup> Sabit Kadriu, Exhibit P515, p 15.

<sup>4559</sup> Shukri Gerxhaliu, Exhibit P512, para 15; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2585; Shukri Gerxhaliu, T 3113-3114.

<sup>4560</sup> Shukri Gerxhaliu, Exhibit P512, para 16; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2512, 2602.

<sup>4561</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2578.

black uniforms is consistent with them being paramilitary forces, the presence of green camouflage and blue camouflage uniforms confirms, in the Chamber's finding, that there were also MUP and VJ forces in the mixed Serbian forces which came to the convoy.<sup>4563</sup>

1183. The Serbian forces demanded money from people in the convoy and they threatened to rape the wife of a witness if she did not pay.<sup>4564</sup> The witness's wife then paid some money.<sup>4565</sup> The brother-in-law of this witness, Halil Basholli, was asked for his name and where he was from. He was then beaten by members of the Serbian forces with a rifle, wooden sticks and police batons. Halil Basholli was heavily injured as a result of the beating.<sup>4566</sup>

1184. Another group of Serbian armed men, identified as policemen, driving Jeeps and APCs, approached the main body of the convoy that had remained on the road to Donja Sudimlja/Studime-e-Poshtme. The police came from the direction of the neighbourhood of Rašica/Rashica in Gornja Sudimlja/Studime-e-Epërme. They pushed a vehicle which was in their way into a stream nearby.<sup>4567</sup> They disembarked from their vehicles and demanded money from the people in the convoy, shooting men who did not pay.<sup>4568</sup> One witness saw Serbian forces approach one tractor and repeatedly ask the tractor-driver for money. He then saw police pull the driver off that tractor. The tractor-driver's father, Sherif Bunjaku, begged the police not to kill his son. However, automatic gunfire followed and the tractor-driver was killed.<sup>4569</sup> The tractor driver was not armed. The Chamber accepts that the tractor driver was Hysni Bunjaku, a Kosovo Albanian who is listed in Schedule I of the Indictment and was 21 years old at the time of the events. Members of the Serbian forces were heard to say that they had killed about 50 people and that they would not stop until they reached 100.<sup>4570</sup>

1185. At about the same time, Shukri Gerxhaliu, who was travelling in the convoy, heard men speaking Serbian approach the tractor of Haki Gerxhaliu and his family, which was immediately behind Shukri Gerxhaliu's trailer.<sup>4571</sup> Haki Gerxhaliu got off his tractor and he was shot.<sup>4572</sup>

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<sup>4562</sup> Shukri Gerxhaliu, Exhibit P512, para 16; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2512, 2565, 2600-2601.

<sup>4563</sup> *See supra*, paras 53-54, 162.

<sup>4564</sup> Shukri Gerxhaliu, Exhibit P512, para 15; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2578.

<sup>4565</sup> Shukri Gerxhaliu, Exhibit P512, para 15.

<sup>4566</sup> Shukri Gerxhaliu, Exhibit P512, para 17; Shukri Gerxhaliu, T 3114.

<sup>4567</sup> Shukri Gerxhaliu, Exhibit P512, paras 18-20; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2512-2513, 2600-2601.

<sup>4568</sup> Shukri Gerxhaliu, Exhibit P512, paras 18-21.

<sup>4569</sup> Shukri Gerxhaliu, Exhibit, P512, paras 18-20; Shukri Gerxhaliu, T 3115, 3169.

<sup>4570</sup> Shukri Gerxhaliu, Exhibit P512, para 21.

<sup>4571</sup> Shukri Gerxhaliu, Exhibit P512, para 21; Shukri Gerxhaliu, T 3114-3115, 3163-3164. Considering the presence of Serbian forces in that section of the convoy at the time, the Chamber is satisfied that the men speaking Serbian were Serbian forces.

<sup>4572</sup> The Defence argues that Shukri Gerxhaliu could not have seen the killings, including that of Haki Gerxhaliu, as he was lying on a trailer underneath a plastic sheet at the time the events took place. Having carefully considered the

Shortly after, fearing for his life, Shukri Gerxhaliu jumped off his trailer to run away. As he did, he landed on top of the body of Haki Gerxhaliu, who was lying on the ground next to his tractor, apparently dead.<sup>4573</sup> Several other members of the Gerxhaliu's family who were in the convoy were shot that night, although the evidence does not enable them to be separately identified.<sup>4574</sup> Tractors belonging to people in the convoy were pushed into the stream or burnt by members of the Serbian forces.<sup>4575</sup>

1186. Later that evening, at around 2100 hours, three men from the Serbian forces wearing uniforms and masks and carrying automatic weapons, arrived from the direction of Gornja Sudimlja/Studime-e-Epërme and went to another part of the same convoy. They ordered the people in that part of the convoy to move towards Donja Sudimlja/Studime-e-Poshtme.<sup>4576</sup> As the convoy continued its route, members of the Serbian forces pointed a search-light on a man in the convoy. Automatic gunfire was then heard from this location and the body of a man from the convoy was seen to be lying on the ground. Members of the Serbian forces who had fired at this man were standing next to his dead body. The dead man was not armed.<sup>4577</sup>

1187. After 2100 hours, the convoy arrived at a fork in the road. One of the roads led to Vuçitrn/Vushtrri and the other led to Donja Sudimlja/Studime-e-Poshtme. Serbian forces directed the convoy to the Vuçitrn/Vushtrri road. Meanwhile, shells fell approximately 50 metres from the convoy and divided it in two.<sup>4578</sup> While the main part of the convoy stayed in the area of Donja Sudimlja/Studime-e-Poshtme, a smaller part of approximately 1,000 people was directed by Serbian forces to continue to Vuçitrn/Vushtrri. This segment of the convoy arrived at the Agricultural Cooperative in Vuçitrn/Vushtrri at about 2200 hours.<sup>4579</sup>

1188. Later that evening, the sound of gunfire was heard in the convoy. Combined Serbian forces, coming from the north in green APCs and Pinzgauers covered with branches, surrounded the

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testimony of this witness, the Chamber considers his account as reliable, in particular, that he was able to see what was happening by putting his head out from under the plastic sheet to observe the scene. Shukri Gerxhaliu, T 3163-3164.

<sup>4573</sup> Shukri Gerxhaliu, Exhibit P512, para 21; Shukri Gerxhaliu, T 3114-3115, 3163-3164.

<sup>4574</sup> Shukri Gerxhaliu, Exhibit P512, para 22.

<sup>4575</sup> Shukri Gerxhaliu, Exhibit P512, para 24.

<sup>4576</sup> Sabit Kadriu, Exhibit P515, p 16.

<sup>4577</sup> Sabit Kadriu, Exhibit P515, p 16. Even if the victim had been a KLA member, Serbian forces were not justified in killing him.

<sup>4578</sup> Sabit Kadriu, Exhibit P515, p 16. The Chamber notes that often mortar shells are described or interpreted as grenades.

<sup>4579</sup> Sabit Kadriu, Exhibit P515, p 16.

convoy.<sup>4580</sup> Some members of the Serbian forces wore blue camouflage uniform, others wore plain black uniforms and the remainder wore green camouflage uniforms.<sup>4581</sup>

1189. The people in the convoy were ordered to clear the road to let the police and VJ vehicles pass through.<sup>4582</sup> Shortly after, a large group of Serbian police officers fired their machine guns in the air. They cursed and shouted insults in Serbian at people in the convoy. They examined the identification documents of a man called Ismet and accused him of being a KLA fighter. Some evidence does indicate that Ismet had been a member of the KLA in the past, but not at the time he was in the convoy. He was not armed.<sup>4583</sup> Ismet was beaten with bare hands and threatened that he would be killed unless he paid money. The policemen were given money after which Ismet was released.<sup>4584</sup>

1190. One member of the Serbian forces wearing a green sleeveless vest over a dark blue camouflage uniform, in the Chamber's finding, a policeman, pulled Fedrije Xhafa's brother, Jetish, from his tractor and beat him with a thick wooden stick. The policeman then threatened to kill Jetish Xhafa unless he paid money. A woman gave the policeman her jewellery and Jetish was released.<sup>4585</sup>

1191. Shortly after this, at about 2330 hours, another group of men approached Jetish Xhafa's tractor. The men wore blue police uniforms and two of them had black gloves, black balaclava masks with holes for the eyes and mouth with their blue camouflage uniforms.<sup>4586</sup> The uniforms satisfy the Chamber that these were police. One of the policemen pointed a machine gun at Fedrije Xhafa's mother. Meanwhile, Jetish was dragged to a nearby road facing towards Donja Sudimlja/Studime-e-Poshtme. A policeman pointed his rifle at Jetish's head. A single shot was fired and Jetish fell to the ground.<sup>4587</sup> The policemen then dragged Fedrije Xhafa's father to the spot where Jetish lay. Fedrije Xhafa heard shots. After the second shot she heard her father, Miran Xhafa (71 years old) cry out. She heard a third shot and she saw that her father had fallen to the

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<sup>4580</sup> Fedrije Xhafa, T 3048-3049; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2438, 2483; Fedrije Xhafa, Exhibit P510, para 5; Sabit Kadriu, T 3201; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5141.

<sup>4581</sup> Fedrije Xhafa, Exhibit P510, para 5; Fedrije Xhafa, T 3041.

<sup>4582</sup> Fedrije Xhafa, T 3048, 3093; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2438.

<sup>4583</sup> Fedrije Xhafa, T 3085.

<sup>4584</sup> Fedrije Xhafa, T 3048-3049, 3075; Fedrije Xhafa, Exhibit P510, para 5; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2439; Exhibit D68.

<sup>4585</sup> Fedrije Xhafa, T 3050, 3093; Fedrije Xhafa, Exhibit P510, para 6; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2441.

<sup>4586</sup> Fedrije Xhafa, T 3093-3094; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2467-2468, 2478; Fedrije Xhafa, Exhibit P510, para 7.

<sup>4587</sup> Fedrije Xhafa, T 3051; Fedrije Xhafa, Exhibit P510, para 7; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2445-2446, 2469.

ground.<sup>4588</sup> Not long after she heard another shot.<sup>4589</sup> It was not until after the war that Fedrije Xhafa learned that Jetish had survived but that her father had died in this incident. Neither of the men shot had been armed.<sup>4590</sup>

1192. At about the same time as these events, Fedrije Xhafa's family, still in the convoy, was ordered by Serbian forces to start moving. The convoy was again under way. There was nobody left in the family to drive the tractor. Lavdim, who was 13 years old and who did not know how to drive, attempted to move the vehicle but was beaten by a policeman with the butt of his rifle when he failed to make it move.<sup>4591</sup> After a few attempts, Lavdim was able to move the tractor for approximately 100 metres but then stopped on the side of the road. The family then hid behind the tractor. The family sent one of its members, Ismet, to Samodreža/Samodrezhë to tell KLA forces what had happened to the convoy.<sup>4592</sup> Other Serbian police wearing blue camouflage uniforms returned to the tractor and ordered the family to keep moving with the rest of the convoy. The family left the tractor and their belongings behind as there was no driver and continued in the convoy on foot.<sup>4593</sup> As the convoy progressed, Serbian forces ordered the people in the convoy to shout: "KLA", "Slobo" and "Draza".<sup>4594</sup> On the way, a witness observed seven or eight corpses. Amongst them, she recognized her cousin, Veli Xhafa, who lay dead on his tractor. The witness also observed injured people, including women and children, on the road. One of them, a young boy, was shot by a policeman.<sup>4595</sup>

1193. Shukri Gerxhaliu, who was in another part of the convoy, observed that 10 vehicles carrying soldiers and police, coming from the direction of Vuçitrn/Vushtrri town, were heading along the road from Donja Sudimlja/Studime-e-Poshtme to Gornja Sudimlja/Studime-e-Epërm.<sup>4596</sup> These were APC vehicles and three regular police cars. One of the occupants, a VJ soldier, was heard to say that the area had been "mopped up".<sup>4597</sup> The vehicles carrying the soldiers and police moved on, and the convoy was able to keep going. Bodies could be seen on both sides of the road as they

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<sup>4588</sup> Fedrije Xhafa, T 3051; Fedrije Xhafa, Exhibit P510, paras 7-8; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2446, 2469.

<sup>4589</sup> Fedrije Xhafa, T 3051; Fedrije Xhafa, Exhibit P510, paras 1, 7-8; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2446, 2469.

<sup>4590</sup> Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2422-2423; Fedrije Xhafa, T 3051.

<sup>4591</sup> Fedrije Xhafa, Exhibit P510, para 9; Fedrije Xhafa, T 3052.

<sup>4592</sup> Fedrije Xhafa, Exhibit P510, para 9; Fedrije Xhafa, T 3052, 3092; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2447-2448, 2486.

<sup>4593</sup> Fedrije Xhafa, T 3053, 3073; Fedrije Xhafa, Exhibit P510, para 9; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2423.

<sup>4594</sup> Fedrije Xhafa, Exhibit P510, para 9; Fedrije Xhafa, T 3053.

<sup>4595</sup> Fedrije Xhafa, T 3053, 3060, 3094; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2470-2472, 2480-2481.

<sup>4596</sup> Shukri Gerxhaliu, Exhibit P512, para 24.

<sup>4597</sup> Shukri Gerxhaliu, T 3102-3103, 3116; Shukri Gerxhaliu, Exhibit P512, para 24; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2604.



moved along.<sup>4598</sup> One witness left the convoy and return to Gornja Sudimlja/Studime-e-Epërm. There, he found KLA soldiers burying human corpses. Many appeared to have been shot from a close range. The victims were mostly men but there were some women and children.<sup>4599</sup> A KLA member showed the witness a list of 97 people believed to have been killed and asked if he knew any of them. The witness's name mistakenly appeared on the list and was crossed out.<sup>4600</sup>

1194. The Defence challenged the credibility of Shukri Gerxhaliu, arguing that in his previous testimony before the Tribunal, he did not mention the presence of policemen in the vehicles that came from Vuçitrn/Vushtrri.<sup>4601</sup> The Chamber notes that Gerxhaliu had amended his previous statement to include that, in addition to the soldiers, policemen were in the APC vehicles and the police cars that came from Vuçitrn/Vushtrri town.<sup>4602</sup> The Chamber does not consider that this amendment undermines Gerxhaliu's credibility. Although Gerxhaliu was a member of the KLA at the time of the event alleged in the Indictment, and for this reason his evidence has been considered with much care, the Chamber was generally impressed by the witness and considered that he gave credible and reliable evidence about events in the municipality.

1195. Later that day, it was seen from the convoy that the village of Gornja Sudimlja/Studime-e-Epërm was burning.<sup>4603</sup> At about 0200 hours on 3 May 1999, the main part of the convoy, still escorted by Serbian forces, rejoined the smaller segment of the convoy that had reached the Agricultural Cooperative in Vuçitrn/Vushtrri.<sup>4604</sup>

1196. It is alleged in the Indictment that during the night of 2/3 May 1999, Serbian forces killed approximately 105 people travelling in a convoy on the "Studime Gorge" road, in the direction of Vuçitrn/Vushtrri.<sup>4605</sup> Schedule I of the Indictment lists 104 alleged victims by name.

1197. As discussed above, eye-witness evidence establishes that four of the victims listed in the Indictment, Hysni Bunjaku, Haki Gerxhaliu, Miran Xhafa and Veli Xhafa, were killed by Serbian forces in the night of 2/3 May 1999 on their way to Vuçitrn/Vushtrri town. The evidence about the killings of Haki Gerxhaliu, Miran Xhafa and Veli Xhafa is supported by the findings of the French forensic experts who later exhumed and examined the bodies. The forensic reports reveal that they

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<sup>4598</sup> Sabit Kadriu, Exhibit P515, p 16; Shukri Gerxhaliu, P513 (*Milutinović* transcript), T 2604.

<sup>4599</sup> Shukri Gerxhaliu, Exhibit P512, para 25. The Defence argues that the fact that Shukri Gerxhaliu was able to leave the convoy and to return to Gornja Sudimlja/Studime-e-Epërm shows that his movements were voluntary and that the people in the convoy were not being forced to leave their home. The Chamber is satisfied that the actions of the Serbian forces, in particular the killings, were manifestly intended at terrorizing the people in the convoy into continuing to walk towards the borders and that the movements of the people in the convoy were not voluntary.

<sup>4600</sup> Shukri Gerxhaliu, Exhibit P512, para 25; Shukri Gerxhaliu, T 3117.

<sup>4601</sup> Defence Final Trial Brief, para 900.

<sup>4602</sup> Shukri Gerxhaliu, T 3101-3103.

<sup>4603</sup> Shukri Gerxhaliu, T 3116.

<sup>4604</sup> Fedrije Xhafa, Exhibit P510, para 10; Sabit Kadriu, Exhibit P515, p 16; Fedrije Xhafa, T 3054.

had suffered a violent death caused by gunshot wounds to the head.<sup>4606</sup> The body of Hysni Bunjaku was never found by the forensic team. However, based on eye-witness evidence, the Chamber is satisfied that he was shot and killed in the convoy by Serbian forces in the night of 2/3 May 1999. Based on the eyewitness account discussed above, the Chamber is satisfied that at the time of their killing, these victims were travelling in a convoy of displaced people, were in the custody of Serbian forces and were not taking active part in hostilities. The Chamber is satisfied that these victims were Kosovo Albanians.

1198. With respect to the remaining men listed in Schedule I of the Indictment, no evidence about the circumstances of their death has been presented. The Prosecution seeks to rely on the evidence of Sabit Kadriu, the President of the local War Crime Commission of Vuçitrn/Vushtrri, who investigated the killings of the people in the night of 2/3 May 1999. It is his evidence that on the basis of interviews he conducted with the families of the victims and eye-witnesses, he compiled a list of 104 victims thought to have been killed on 2/3 May 1999, in various locations in Vuçitrn/Vushtrri municipality.<sup>4607</sup> Kadriu's list is identical to the list in Schedule I of the Indictment. It is also Sabit Kadriu's evidence that the bodies of these 104 persons were found on 3 May 1999, and were then buried in a cemetery in the village of Gornja Sudimlja/Studime-e-Epërm.<sup>4608</sup>

1199. Considering its finding that, at the time, there was on-going fighting between the KLA and Serbian forces in Vuçitrn/Vushtrri municipality, the Chamber cannot exclude the possibility that some of the men buried in the cemetery in Gornja Sudimlja/Studime-e-Epërm may have been killed while taking part in hostilities or that their death may not have been caused by Serbian forces. The Chamber is not satisfied that the remaining persons listed on Sabit Kadriu's list were killed by Serbian forces in the manner described above.

##### 5. Agricultural Cooperative in Vuçitrn/Vushtrri town

1200. The policeman who had beaten Jetish Xhafa during the progress of the convoy to Vuçitrn/Vushtrri town was at the Agricultural Cooperative in the town.<sup>4609</sup> Policemen in blue uniforms ordered people from the convoy to go to various buildings of the Agricultural

<sup>4605</sup> Paragraph 75(i) of the Indictment.

<sup>4606</sup> *See supra*, paras 1427, 1742.

<sup>4607</sup> Sabit Kadriu, T 3177-3179, 3218; Exhibit P515, pp 21-24. Hysni Bunjaku, Haki Gerxhaliu, Miran Xhafa and Veli Xhafa are listed on Sabit Kadriu's list.

<sup>4608</sup> Sabit Kadriu, Exhibit P515, p 21.

<sup>4609</sup> Fedrije Xhafa, T 3060-3061; Fedrije Xhafa, Exhibit P510, para 10, Sabit Kadriu, Exhibit P 515, p 16.

Cooperative, which was a government owned facility with large storage hangars, located on the outskirts of Vučitrn/Vushtrri town.<sup>4610</sup>

1201. The people from the convoy spent the night of 3 May 1999 inside the buildings of the Agricultural Cooperative.<sup>4611</sup> The buildings were dark and crowded.<sup>4612</sup> Police guarded the compound and stopped people from going out to get water.<sup>4613</sup>

1202. On 4 May 1999 in the morning, the people were ordered out of the buildings. Police had surrounded the buildings area.<sup>4614</sup> Sabit Kadriu heard people discussing the killings on 2 May 1999. He observed that some people in the convoy had carried in their tractors the bodies of their relatives who had died on way to Vučitrn/Vushtrri. The witness recognized the bodies of a mother and her two sons from the village of Pasoma/Pasomë.<sup>4615</sup> The evidence indicates that between 17 and 29 bodies were seen on the road to the Agricultural Cooperative in Vučitrn/Vushtrri.<sup>4616</sup>

1203. At around 1300 hours, a man understood to be Simić, the deputy police commander of Vučitrn/Vushtrri, arrived on the site of the Agricultural Cooperative buildings. He too wore a blue police camouflage uniform.<sup>4617</sup> Shortly after, police proceeded to separate men aged approximately 15 to 73 years old from their families and took them to a nearby field which was surrounded by police.<sup>4618</sup> In the field, Serbian forces checked the men's identification documents. A man understood to be Dragan Petrović was supervising this operation.<sup>4619</sup>

1204. Meanwhile, two policemen instructed one of the Kosovo Albanian men from the convoy, Ali Mernica, to come with them out of the Agricultural Cooperative buildings.<sup>4620</sup> The two policemen took Ali Mernica to the gate of a factory across a main road. One of these policemen waited at the gate, while the other took Ali Mernica inside the premises. Immediately after, two gunshots were heard inside the premises. Ali Mernica was unarmed and in custody of armed police when taken inside the premises as described above. After the war, a witness heard that the body of Ali Mernica was buried in the village of Pestovo/Pestovë.<sup>4621</sup> However, his body was never found by the forensic teams who conducted crime scene investigations and forensic examinations. In

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<sup>4610</sup> Fedrije Xhafa, T 3054-3055; Fedrije Xhafa, Exhibit P510, para 10; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2423.

<sup>4611</sup> Sabit Kadriu, Exhibit P515, p 16.

<sup>4612</sup> Sabit Kadriu, Exhibit P515, p 16.

<sup>4613</sup> Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2484.

<sup>4614</sup> Sabit Kadriu, Exhibit P515, p 17.

<sup>4615</sup> Sabit Kadriu, Exhibit P515, p 17.

<sup>4616</sup> Sabit Kadriu, Exhibit P515, p 17.

<sup>4617</sup> Fedrije Xhafa, T 3056; Fedrije Xhafa, Exhibit P510, para 10; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2484.

<sup>4618</sup> Sabit Kadriu, Exhibit P515, p 17; Fedrije Xhafa, T 3055; Fedrije Xhafa, Exhibit P510, para 11.

<sup>4619</sup> Sabit Kadriu, Exhibit P515, p 17.

<sup>4620</sup> Sabit Kadriu, Exhibit P515, p 17.

these circumstances, the Chamber cannot be satisfied by the evidence that his death has been established.

1205. At about 1330 hours, civilian trucks with long trailers and an excavator were brought to the field. Approximately 30 men who had driving licences were singled out from the group and sent back to the Agricultural Cooperative buildings. Other men who paid money to Serbian guards were also allowed to go back.<sup>4622</sup> The remaining men in the field were ordered to get in the trucks. Police formed a line and beat the men with wooden sticks as they ran towards the trucks.<sup>4623</sup> The trucks drove the men to Smrekovnica/Smrekonicë prison, situated approximately halfway between Vuçitrn/Vushtrri and Kosovska Mitrovica/Mitrovicë.<sup>4624</sup>

1206. Meanwhile, police ordered the remaining persons from the convoy, mainly women and children, to get a registration certificate at one of three offices that had been set up in the Agricultural Cooperative buildings.<sup>4625</sup>

1207. Afterwards, Simić ordered the people from the convoy to leave Vuçitrn/Vushtrri town. He ordered those who had tractors to drive to Albania and those who were on foot to walk back to Smrekovnica/Smrekonicë or Dobra Luka/Dobërllukë.<sup>4626</sup> Fedrije Xhafa's family did as they were ordered. Xhafa's mother, who was sick, was put on another tractor and driven to Albania while the rest of the family walked to the village of Kicik/Kiciq where they found shelter in an empty house. On 7 March 1999, the family went to Dobra Luka/Dobërllukë, where they stayed until approximately 30 June 1999.<sup>4627</sup>

1208. The Defence argues that the movements of population were voluntary and that they were not the result of forced expulsions by Serbian forces.<sup>4628</sup> In support of its contention, the Defence puts forward that Xhafa's family first went to Kicik/Kiciq and then to Dobra Luka/Dobërllukë where they remained until NATO troops arrived.<sup>4629</sup> Shukri Gerxhaliu and his family, returned from the Agricultural Cooperative to their homes in the village of Donja Sudimlja/Studime-e-Poshtme.<sup>4630</sup>

1209. The evidence satisfies the Chamber that the people left Vuçitrn/Vushtrri town by virtue of the actions of the Serbian police, not of their free will. Under the direction of the Serbian police,

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<sup>4621</sup> Sabit Kadriu, Exhibit P515, p 17; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5072.

<sup>4622</sup> Sabit Kadriu, Exhibit, P515, p 17.

<sup>4623</sup> Sabit Kadriu, Exhibit P515, p 18; Fedrije Xhafa, T 3055.

<sup>4624</sup> Sabit Kadriu, Exhibit P515, p 18; Fedrije Xhafa, T 3055; Fedrije Xhafa, Exhibit P509 (*Milutinović* transcript), T 2423.

<sup>4625</sup> Fedrije Xhafa, T 3059.

<sup>4626</sup> Fedrije Xhafa, T 3055-3056; Fedrije Xhafa, Exhibit P510, para 11.

<sup>4627</sup> Fedrije Xhafa, T 3056, 3062.

<sup>4628</sup> Defence Final Trial Brief, para 908.

<sup>4629</sup> Fedrije Xhafa, T 3054-3056, 3096; Fedrije Xhafa, Exhibit P510, para 11.

they were deported to Albania or displaced to Smrekovnica/Smrekonicë and Dobra Luka/Dobërllukë. This will be discussed in further detail later in this Judgement.

#### 6. Smrekovnica/Smrekonicë prison

1210. The men sent in trucks from the Agricultural Cooperative to the Smrekovnica/Smrekonicë prison had their identification documents checked on their arrival at the prison. This was done by persons wearing civilian clothes, who were thought to be secret police. A witness recognised Duško Janić, chief of the secret police in Vučitrn/Vushtrri, and the deputy police commander, Simić, who were supervising the registration.<sup>4631</sup>

1211. As they walked inside the prison, the detainees were ordered to hold their hands behind their necks and they were beaten with sticks and guns by police.<sup>4632</sup> Sabit Kadriu was locked up in a cell, along with approximately 63 other men, for approximately 20 days. The cell was very crowded. There was no space to sit or lie down.<sup>4633</sup> Some of the men were kept in the prison's corridors.<sup>4634</sup> During their first two days of detention, the men were not given any food. On the third day, they were given water and bread. The water was dirty and most men became sick. A man who asked for medication was taken outside and he was heard screaming. After the third day of detention, every evening, the men were taken to a dining hall to eat. On their way there and back, they were beaten with sticks by policemen.<sup>4635</sup>

1212. Around 17 May 1999, after 12 or 14 days of detention, the detainees were taken to the office of the prison's supervisor. On their way they were beaten with sticks.<sup>4636</sup> They were taken inside the supervisor's office in groups of two or three. Two Serbian men wearing civilian clothes questioned them. One witness described his experience of this questioning. He was asked whether he was a member of the KLA and was then forced to sign a confession that he belonged to group of terrorists acting against the Serbian government.<sup>4637</sup>

1213. The following day, around 18 May 1999, men from the convoy were taken in groups of seven or eight to the basement of a small building located in the prison's yard by policemen wearing blue camouflage uniforms. The Chamber is satisfied that these policemen were members of the regular MUP. Other groups of detainees were taken by prison guards. Soon after the

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<sup>4630</sup> Shukri Gerxhalii, Exhibit P513 (*Milutinović* transcript), T 2564, 2580, 2581.

<sup>4631</sup> Sabit Kadriu, Exhibit P515, p 18.

<sup>4632</sup> Sabit Kadriu, Exhibit P515, p 18.

<sup>4633</sup> Sabit Kadriu, Exhibit P516 (*Milutinović* transcript), T 5075; Sabit Kadriu, Exhibit P515, p 18.

<sup>4634</sup> Sabit Kadriu, Exhibit P515, p 18.

<sup>4635</sup> Sabit Kadriu, Exhibit P515, p 18; Exhibit P518.

<sup>4636</sup> Sabit Kadriu, Exhibit P515, p 18.

<sup>4637</sup> Sabit Kadriu, Exhibit P515, p 19.

detainees had entered the basement, screams were heard.<sup>4638</sup> This became a usual occurrence. Detainees were taken to the basement on a daily basis and then screams were heard from the basement. On one occasion, a detainee was heard to be screaming from the basement and then, police came back up the stairs, without the detainee. One of the policemen present was identified as Saša Manojlović. He wore a green camouflage uniform.<sup>4639</sup> Based on the evidence dealing with uniforms discussed earlier, the Chamber is satisfied that this man was a member of the SAJ of the MUP, who acted in coordination with local police in this operation. The following morning, a policeman brought three or four men, also thought to be police, and one man in civilian clothes to the prison yard. Shortly after, four policemen came out of the basement, carrying a body concealed under a blanket.<sup>4640</sup>

1214. A few days later, half of the detainees from the convoy were taken to a technical school by policemen.<sup>4641</sup> There, the men were made to kneel down with their hands up and three or four policemen beat them with sticks. Other policemen then took over and the beatings continued. Later, some civilians were brought in and they beat the prisoners with iron bars. The men were questioned individually about their ties to the KLA and to the OSCE.<sup>4642</sup> The other half of the men were taken to the medical school in Kosovska Mitrovica/Mitrovicë town. When they were brought back to the prison, at approximately 1500 hours that day, both groups of men (those from the technical school and those from the medical school) were covered in blood.<sup>4643</sup>

## 7. Dobra Luka/Dobërlukë

1215. On 15 May or 16 May 1999, at around 0800 hours, Serbian forces, some wearing blue camouflage uniforms and other forces wearing green camouflage uniforms, entered the village of Dobra Luka/Dobërlukë. They fired their guns in the air.<sup>4644</sup> They were accompanied by VJ tanks. There were also Serbian forces on foot who ordered residents to get out of their houses.<sup>4645</sup> In the Chamber's finding, based on other evidence which is discussed in the earlier section of this Judgement dealing with uniforms, the tanks and their crews were VJ, and the men in green camouflage uniforms were VJ or SAJ of the MUP and the men in blue camouflage uniforms were MUP.<sup>4646</sup> A witness recognized one of the policemen, as one of those policemen who had beaten

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<sup>4638</sup> Sabit Kadriu, Exhibit P515, p 19.

<sup>4639</sup> The SAJ of the MUP wore such uniforms.

<sup>4640</sup> Sabit Kadriu, Exhibit P515, p 19.

<sup>4641</sup> Sabit Kadriu, Exhibit P515, pp 19-20. The Serbian forces are described as policemen wearing blue camouflage uniforms. Regular MUP wore such uniforms, *See supra*, paras 53-54.

<sup>4642</sup> Sabit Kadriu, Exhibit P515, pp 19-20.

<sup>4643</sup> Sabit Kadriu, Exhibit P515, p 20.

<sup>4644</sup> Fedrije Xhafa, Exhibit P510, para 15.

<sup>4645</sup> Fedrije Xhafa, T 3057; Fedrije Xhafa, Exhibit P510, para 12.

<sup>4646</sup> *See supra*, paras 53-54, 162.

people in the convoy on 2 May 1999.<sup>4647</sup> The men of the village were separated from the women and the children.<sup>4648</sup> The men were then made to hand over their money and were taken to Smrekovnica/Smrekonicë prison, where they were detained for several days and tortured before being sent to Albania.<sup>4649</sup>

1216. Meanwhile, the women and children from the village were ordered to go to a hospital in Smrekovnica/Smrekonicë in order to register.<sup>4650</sup> At the hospital, the women were given blue identity cards bearing a “Republic of Serbia” stamp and listing the personal details of the card holder. The cards were signed by Snjezana Bogunović, the wife of a reserve policeman named Boza. The hospital area was guarded by police wearing blue uniforms. After the women were given cards, a man identified as Simić, the deputy police commander of Vučitrn/Vushtrri, ordered the women to return to their houses. Simić announced that anybody assisting the KLA would be killed.<sup>4651</sup>

#### 8. From Smrekovnica/Smrekonicë prison en route to the Albanian border

1217. On 23 May 1999, at around 0900 hours, a few dozen of the men detained in Smrekovnica/Smrekonicë were called to the prison yard and moved into four buses. At the buses, policemen demanded money from the detainees.<sup>4652</sup> The buses with the detainees then drove off. As the buses drove through Vučitrn/Vushtrri, many houses could be seen burning.<sup>4653</sup> When the buses reached the municipality of Štimlje/Shtime, three trucks carrying men with long hair, beards and wearing different kinds of bandannas escorted the buses. The buses stopped at the village of Žur/Zhur, in Prizren municipality, situated near the Albanian border-crossing of Vrbnica/Vërmicë. Police ordered the detainees to get off the buses, made them stand in line and beat them. The detainees were then ordered to run on the main road to the Albanian border, with their hands behind their neck. There were Serbian forces in bunkers on both sides of that main road. As they ran, they could see NATO planes flying over head and bombing the area. At the border crossing, six or seven police and men in green uniforms took the detainees’ identification documents before they forced them to cross the border to Albania.<sup>4654</sup>

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<sup>4647</sup> Fedrije Xhafa, Exhibit P510, para 12.

<sup>4648</sup> Fedrije Xhafa, T 3057; Fedrije Xhafa, Exhibit P510, para 12.

<sup>4649</sup> Fedrije Xhafa, T 3057, 3061; Fedrije Xhafa, Exhibit P510, paras 12, 14.

<sup>4650</sup> Fedrije Xhafa, Exhibit P510, para 13.

<sup>4651</sup> Fedrije Xhafa, Exhibit P510, para 13; Fedrije Xhafa, T 3056. The Defence argues that this card was a “remedial measure” that did not show the identity of the holder and was intended at keeping track of population movements.

<sup>4652</sup> Sabit Kadriu, Exhibit P515, p 20. A witness paid some money.

<sup>4653</sup> Sabit Kadriu, Exhibit P515, p 20.

<sup>4654</sup> Sabit Kadriu, Exhibit P515, p 20.

9. Incidents in Vučitrn/Vushtrri's cemetery, Gornja Sudimlja/Studimja-e-Epërme and Donja Sudimlja/Studime-e-Poshtme

1218. There is some evidence that early in the morning on 2 May 1999, police and VJ entered Vučitrn/Vushtrri town.<sup>4655</sup> VJ entered the eastern part of town, while police and paramilitary entered the western part.<sup>4656</sup> The police and paramilitaries expelled approximately 20,000 people from their homes and sent them towards the town cemetery which they had surrounded.<sup>4657</sup> On the way to the cemetery, some people were separated from their families and lined up against a wall. Some were then shot.<sup>4658</sup> The bodies of 74 people were later loaded onto trucks. There is evidence that the bodies were recovered from mass graves at Batajnica SAJ Centre, near Belgrade in Serbia over two years later and that they were later transferred to Kosovo and reburied.<sup>4659</sup> The three men in charge of the Serbian forces were Vucina Janicević, Dragan Petrović and Ljubiša Simić, who was the deputy police commander of Vučitrn/Vushtrri.<sup>4660</sup> At the cemetery, the men expelled from their homes were separated from the women and children. They were sent to the sports hall in Vučitrn/Vushtrri and the next day, to Smrekovnica/Smrekonicë prison.<sup>4661</sup> The rest were allowed to return to their homes.<sup>4662</sup>

1219. There is hearsay evidence that in a separate incident, on 24 May 1999, in the village of Gornja Sudimlja/Studimja-e-Epërme, eight women and girls were killed by Serbian forces and that their bodies were mutilated but the evidence does not enable a positive finding of these matters.<sup>4663</sup>

1220. On 31 May 1999, in the morning, Shukri Gerxhaliu heard shouting in Serbian followed by two or three shots coming from a house in Donja Sudimlja/Studime-e-Poshtme.<sup>4664</sup> The bodies of the owner of this house and of two other men were found shortly after, on the road by the house.<sup>4665</sup> There is evidence that shortly after this incident, seven policemen were seen walking nearby.<sup>4666</sup> Sometime later, the bodies of nine of Shukri Gerxhaliu's relatives, including children, were found

<sup>4655</sup> Sabit Kadriu, Exhibit P515, p 24; Sabit Kadriu, T 3219. Serbian forces are described as policemen wearing blue camouflage uniforms and VJ wearing green camouflage uniforms with vests and helmets.

<sup>4656</sup> Sabit Kadriu, Exhibit P515, p 24; Sabit Kadriu, T 3181, 3218-3220.

<sup>4657</sup> Sabit Kadriu, Exhibit P515, p 24; Sabit Kadriu, T 3219.

<sup>4658</sup> Sabit Kadriu, Exhibit P515, p 24, Sabit Kadriu, T 3219-3220.

<sup>4659</sup> Sabit Kadriu, T 3182-3219; Sabit Kadriu, Exhibit P516 (*Milutinović* transcript) T 5087; Sabit Kadriu, Exhibit P515, pp 25-30. None of the 74 names provided by Sabit Kadriu are listed in the Indictment and there is no forensic evidence concerning them.

<sup>4660</sup> Sabit Kadriu, T 3219; Fedrije Xhafa, Exhibit P510, para 10.

<sup>4661</sup> Sabit Kadriu, T 3219; Sabit Kadriu, Exhibit P515, p 25.

<sup>4662</sup> Sabit Kadriu, Exhibit P515, p 25.

<sup>4663</sup> Sabit Kadriu, Exhibit P515, pp 31-32.

<sup>4664</sup> Shukri Gerxhaliu, Exhibit P512, paras 28-29.

<sup>4665</sup> Shukri Gerxhaliu, Exhibit P512, paras 30-31; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2520-2522, 2610-2612; The bodies were dressed in civilian clothes and they were unarmed. One of the bodies had bullet wounds in the hands and stomach. The second body's arms were severed and it had bullet wounds in the neck. The third body had bullet wounds in the right eye and forehead.

<sup>4666</sup> Shukri Gerxhaliu, Exhibit P512, para 30.



in the house of Seladin Gerxhaliu in Donja Sudimlja/Studime-e-Poshtme.<sup>4667</sup> While the killings were investigated, there is no evidence as to the outcome of this investigation.<sup>4668</sup> Two or three days following this event, the remaining members of the Gerxhaliu family, including Shukri Gerxhaliu, fearing for their lives, left Donja Sudimlja/Studime-e-Poshtme for Montenegro. At police checkpoints along the way, they were asked for money and in Kosovska Mitrovica/Mitrovicë, the police collected all their identification documents and destroyed them.<sup>4669</sup>

1221. The evidence concerning these killings is not direct, and there are no specific charges in the Indictment arising from them. In these circumstances, the Chamber will not make any specific finding or deal any further with these matters.

## **N. Podujevo/Podujevë municipality**

### **1. Background**

1222. The municipality and the town bear the same name - Podujevo/Podujevë. The municipalities of Podujevo/Podujevë is within the area of the SUP of Priština/Prishtinë. It lies in the most northeastern corner of Kosovo, close to the internal border. At the time dealt with in the Indictment it separated the province of Kosovo from Serbia proper. Podujevo/Podujevë was the largest town within a geographical area referred to as “Malo Kosovo”, a known stronghold of KLA forces in 1998 and early 1999.<sup>4670</sup> The area, and especially the road passing through Podujevo/Podujevë, was an important transport route connecting Niš in Serbia proper with Kosovo’s capital, Priština/Prishtinë;<sup>4671</sup> British General Karol John Drewienkiewicz described this road as the “lifeline” to the rest of Serbia.<sup>4672</sup> In early 1999, the KLA launched attacks on this road from their positions in the Bajgora area to the west of Podujevo/Podujevë, another known KLA stronghold.<sup>4673</sup> In early 1999, this area became increasingly important from a strategic point of view for the Serbian forces and government; it served as a route for military reinforcement from Niš

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<sup>4667</sup> Shukri Gerxhaliu, Exhibit P512, para 32; Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2520-2522. The victims had gunshot wounds and were piled up in a single room of the house. They were Fexhrije Gerxhaliu, born in 1954, Muharrem Gerxhaliu, born in 1985, Mexhit Gerxhaliu, born in 1987, Abdurrahman Gerxhaliu, born in 1989, Mybera Gerxhaliu, born in 1988, Sabahudin Gerxhaliu, born in 1992, Salihe Gerxhaliu, born in 1918, Sofije Gerxhaliu, born in 1963 and Safer Gerxhaliu, born in 1988. None of these victims are listed in Schedule I of the Indictment.

<sup>4668</sup> Shukri Gerxhaliu, Exhibit P513 (*Milutinović* transcript), T 2516, 2520, 2523, 2615; Shukri Gerxhaliu, Exhibit P512, para 31.

<sup>4669</sup> Shukri Gerxhaliu, Exhibit P512, para 35; Shukri Gerxhaliu, T 3117.

<sup>4670</sup> Bislim Zyrapi, T 2490-2491; Shaun Byrnes, T 8234-8236; Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12192-12196; Karol John Drewienkiewicz, Exhibit P996, paras 76, 77; Karol John Drewienkiewicz, T 6506; see also Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6911; *See infra*, para 1554.

<sup>4671</sup> Shaun Byrnes, T 8193-8195, 8246-8248; Exhibit P1247; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6823.

<sup>4672</sup> Karol John Drewienkiewicz, T 6351-6352; Karol John Drewienkiewicz, Exhibit P996, para 76; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7878.

<sup>4673</sup> John Crosland, Exhibit P1400, paras 68, 71.

into Kosovo,<sup>4674</sup> and the military control of it was most critical in the defensive preparation for an anticipated invasion by NATO land forces.<sup>4675</sup>

1223. As a result of the strong KLA presence in “Malo Kosovo”, there were severe clashes between Serbian forces and the KLA in this area. These intensified towards the end of 1998 and into early 1999. These activities are described in more detail elsewhere in this Judgement.<sup>4676</sup> The “Malo Kosovo” area was included in the planning for a large scale, joint VJ and MUP offensive executed in several areas throughout Kosovo in the spring of 1999.<sup>4677</sup> Dispatches issued by the Accused in February and in March of 1999 ordered the deployment of PJP detachments, including, *inter alia*, members of the 36<sup>th</sup> and 86<sup>th</sup> detachments, to the Podujevo/Podujevë OUP.<sup>4678</sup> By the end of February and early March 1999, a large contingent of Serbian forces had built up in Podujevo/Podujevë municipality, and in other parts of Kosovo.<sup>4679</sup>

1224. Clashes between Serbian forces and the KLA continued into March of 1999.<sup>4680</sup> The KVM reported heavy fighting in the villages west of Podujevo/Podujevë town on 20 March 1999 as well as VJ shelling of the general vicinity of Podujevo/Podujevë on 21 March 1999.<sup>4681</sup> On or about 24 March 1999, joint VJ and MUP forces launched attacks against several villages surrounding

<sup>4674</sup> Shaun Byrnes, T 8246-8248; *see also* Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12164.

<sup>4675</sup> Milan Đaković, T 7940, 8063-8064. The Chamber notes that at a VJ Collegium meeting on 4 March 1999, the build up of terrorists, *inter alia*, in Podujevo/Podujevë was discussed with an assessment that “...they might be doing this in order to prevent us from bringing our forces from Serbia proper in the event that NATO forces intervene and also to secure communication with NATO forces in Macedonia” (Exhibit P1335, p 8); Vlastimir Đorđević, T 9678-9679, with respect to the “mopping up” operations planned at the MUP Staff meeting on 17 February 1999 (Exhibit P85).

<sup>4676</sup> *See supra*, para 389.

<sup>4677</sup> Exhibit P85, a record of a MUP Staff meeting held on 17 February 1999 where the head of the MUP Staff, Sreten Lukić, reported to those present, including the Accused, on a plan to carry out three “mopping up” operations, one of which was to be carried out in the Podujevo/Podujevë area. *See also* Exhibit P889, a Priština Corps Command order dated 16 February 1999 details a plan for anti-terrorist actions by the VJ, and the SAJ and PJP of the MUP in several villages in Podujevo/Podujevë municipality, including in villages just to the north, west, and south of Podujevo/Podujevë town such as Krpimej/Kërpimeh, Dobrotin/Dobratin, Obrandža/Obrancë, Gornja Dubnica/Dumnicë-e-Epërme, Donja Lapaštica/Llapashticë-e-Epërme, and Penduha/Penuhë village. The operations envisioned in this plan originally were to last for “three to five days” (Exhibit P889, pp 5-6). This plan was implemented through a Joint Command Order dated 22 March 1999 (Exhibit D105). *See also* Milan Đaković, who was aware of army carrying out activities in this area (*see* T 7938-7939); *see also* Exhibit P924, a letter by VJ Priština Corps Command to 3<sup>rd</sup> Army Command dated 18 March 1999 which relays the idea of an operation to target additional villages to the south of Podujevo/Podujevë town “in accordance with your general idea and particular plans.”

<sup>4678</sup> *See* Exhibit P139. These PJP members were sent to replace already present PJP members in the Podujevo/Podujevë OUP whose term of duty was to end on 23 February 1999. The dispatch details that the members of the 36<sup>th</sup> and 86<sup>th</sup> Detachments would remain on mission for a period of 40 days (Exhibit P139, pp 1-2). *See also* Exhibit P1491, a report confirming implementation of Exhibit P139. *See also* Exhibit P712. On 21 March 1999, a further dispatch signed by Vlastimir Đorđević called for the further deployment of one company of the 22<sup>nd</sup> PJP detachment to the Podujevo/Podujevë OUP (*see* Exhibit P346; *see also* Exhibit P714, report on the implementation of Exhibit P346).

<sup>4679</sup> Exhibit P85; Exhibit P924.

<sup>4680</sup> *See supra*, para 437.

<sup>4681</sup> Exhibit P1029, pp 115 and 123 in e-court.

Podujevo/Podujevë town; the operation was anticipated to take two to three days.<sup>4682</sup> In this operation, the VJ was to support MUP forces “in the blockage of Podujevo on the north side” with the aim of securing the main road leading out of Podujevo/Podujevë municipality into Serbia proper, and securing combat control of the territory.<sup>4683</sup> The evidence demonstrates that both the Belgrade and Priština/Prishtinë units of the SAJ of the MUP arrived in the Podujevo/Podujevë area on 23 March 1999, to participate in the operations planned for several villages of the “Malo Kosovo” area, which took place on or about 24-27 March 1999.<sup>4684</sup> Radislav Stalević, Commander of the SAJ in Priština/Prishtinë, confirmed that the SAJ were in Podujevo/Podujevë town on 27 March 1999, having returned there from an operation in Bradaš/Bradash village in the north of the municipality. He testified that “Podujevo was part of our plan that we received with the extract from the topographic map, which contained this particular axis, and this is where I was supposed to go”.<sup>4685</sup> The SAJ moved on to Kosovo Polje/Fushë Kosovë on the afternoon of 28 March 1999 to continue operations.<sup>4686</sup>

1225. By 27 March 1999, the 211<sup>th</sup> armoured brigade of the VJ Priština/Prishtinë Corps was stationed in Podujevo/Podujevë town, where it had been sent to “protect the Serbian population”, and to “guard the Prepolac pass and the Merdare pass”, in coordination with the MUP.<sup>4687</sup>

## 2. Preliminary observations

1226. The Chamber has heard the evidence of two witnesses, Fatos Bogujevci and his cousin Saranda Bogujevci, aged 12 and 13 respectively at the time of the alleged offences, in relation to events in Podujevo/Podujevë towards the end of March 1999 as charged in the Indictment.<sup>4688</sup> Despite their young age at the time of the events, as well as the passage of time, the Chamber is satisfied that the evidence of these two witnesses was reliable and provided with their best effort to

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<sup>4682</sup> Exhibit D105, a Joint Command Order dated 22 March 1999 calling for VJ support of MUP forces in “breaking up and destroying the ŠTS forces in the area of Malo Kosovo”; see also Exhibit D104 and Milan Đaković, T 8066-8068.

<sup>4683</sup> Exhibit D105, p 4, “Task: Support the MUP forces in the blockade of Podujevo on the north side, secure the following communications: Prepolac – Podujevo and the village of Merdare – Podujevo, and assume the combat control of the territory”.

<sup>4684</sup> Živko Trajković, T 9085, 9088-9099; Radislav Stalević, T 13832-13833; Zoran Simović, T 13780; see also Exhibit P889. The Chamber notes that a request “[t]hat parts of the special forces for anti-terrorist activities be stationed in Podujevo in order to disperse the terrorist gangs” was contained in a letter written by the President of the Podujevo/Podujevë Municipal Assembly dated 11 December 1998, addressed to, *inter alia*, President of the FRY Slobodan Milošević, President of the Republic of Serbia Milan Milutinović, Minister of the Interior Vlatko Stojiljković, and General Sreten Lukić. This letter specified the increased security situation in Podujevo/Podujevë municipality and detailed the actions of Kosovo Albanian terrorists in the area, including in Podujevo/Podujevë town, Exhibit D351.

<sup>4685</sup> Radislav Stalević, T 13917-13918, 13780. Stalević testified that when his unit was tasked with an assignment, he only received extracts from topographic maps, and never saw a written order, Radislav Stalević, T 13830-13831. See also Exhibit P889, p 6.

<sup>4686</sup> Radislav Stalević, T 13917-13918.

<sup>4687</sup> Momir Stojanović, T 11777; Exhibit P896, pp 2-3.

convey their stories truthfully. There are minor factual discrepancies in their evidence, but the Chamber does not consider that any of these discrepancies go to matters material to the allegations, nor do they affect the overall reliability or honesty of the accounts of these witnesses.

1227. Both victims, in describing the Serbian forces they observed on the critical day of 28 March 1999, for the most part refer loosely to “soldiers”. Upon a close review of their evidence, however, it is clear that the term “soldiers” is not restricted to members of the VJ.<sup>4689</sup> It is for this reason that save for more specific descriptions of forces observed during particular events throughout the morning of 28 March 1999, the Chamber has kept these references to “soldiers” in quotation marks. Where possible, it has made specific findings as to the forces involved, based principally on the uniforms they were wearing.

1228. Besides these two victim witnesses, the Chamber has also heard the evidence of several members of the Serbian forces who were directly involved in the operation in Podujevo/Podujevë town on 28 March 1999: prosecution witness Goran Stoparić, a former member of the Scorpions paramilitary unit, who at the relevant time was the commander of a reconnaissance platoon within that unit,<sup>4690</sup> and Defence witnesses Zoran Simović and Radislav Stalević, the commanders of the Belgrade and Priština/Prištinë SAJ, respectively. The Chamber has approached the evidence of each of these witnesses with caution. With respect to Goran Stoparić, the Chamber concluded that his testimony was coloured by an effort on his part to minimise his own role in the events, to limit the responsibility for the shooting to specific individuals and not to implicate others. It notes, however, that despite these issues, other aspects of his evidence are reliable. In particular, it serves to confirm and better develop the account of events involving the killings that occurred in the courtyard on 28 March 1999 as described by the victims, Saranda and Fatos Bogujevci, including the identification of forces involved in these killings.

1229. With respect to Defence witnesses Simović and Stalević, it was also clear to the Chamber that much of their evidence about the events on this day could not be accepted as truthful, as, in the Chamber’s view, it was contrived to distance themselves from the crimes and from any

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<sup>4688</sup> Saranda Bogujevci, Exhibit P373, para 9; Fatos Bogujevci, Exhibit P383, para 9.

<sup>4689</sup> See Saranda Bogujevci, Exhibit P373, para 40, where the witness explains that the individuals she describes as “soldiers” wore green camouflage uniforms, but that these uniforms were different from the uniforms worn by the soldiers she had observed before the conflict, at the military barracks. Fatos Bogujevci testified that when he refers to soldiers, he is “not referring to just regular army soldiers, nor am I referring to just regular police officers”. He explains that for the most part (with the exception of uniforms worn by some “regular army” and the “light green camouflage uniforms” which were, “in the main, worn by the forces in the courtyard “at a later stage” that day (Fatos Bogujevci, Exhibit P383, paras 29, 37), the uniforms he observed on 28 March 1999 were green and brown camouflage (Fatos Bogujevci, Exhibit P373, paras 29, 32).

<sup>4690</sup> Goran Stoparić, Exhibit P493, paras 8, 14, 17. Goran Stoparić initially joined the Scorpions in 1991, when he met Slobodan Medić for the first time. In 1993, he provided security to the oil industry in the Krajina in a unit led by Medić (Goran Stoparić, Exhibit P493, paras 7-8; Goran Stoparić, T 2880).

responsibility for them. The Chamber therefore has only relied on their evidence concerning the events in Podujevo/Podujevë town on 28 March 1999 to the extent that this was confirmed in some material way by other evidence accepted by the Chamber, or which is uncontroversial.

1230. The Chamber notes here that much evidence is devoted to the issue whether the men sent to Podujevo/Podujevë town on 28 March 1999, as described in the Chamber's findings below, were reservists recruited by the MUP in accordance with established procedures, or were a self-contained paramilitary unit which was to be deployed under its own leaders to fulfil assigned duties. There is also an issue whether these men were to be assigned to serve with the SAJ, and if so, whether that had already occurred at the time of the material events that day in Podujevo/Podujevë. The Chamber will deal with these matters in detail in Chapter XII, relating to the Accused's responsibility, and in particular, the role played by him in deploying these forces to Podujevo/Podujevë in March of 1999. For the purposes of the findings in this Chapter, the Chamber considers it sufficient to state its finding, made elsewhere in this Judgement,<sup>4691</sup> that the men sent to Podujevo/Podujevë town on 28 March 1999, at the intervention of the Accused, comprised a paramilitary unit known as the Scorpions, and had been attached to the SAJ of the MUP, although not in accordance with normal procedure, for the purpose of assisting the SAJ with carrying out anti-terrorist operations in the Podujevo/Podujevë area at the time of the events alleged in the Indictment.

### 3. Findings

#### (a) Events on 28 March 1999

1231. In the context of the above, the Chamber now turns to the specific allegations in the Indictment with respect to the murder of 14 women and children of the Bogujevci, Llugaliu and Duriqi families in Podujevo/Podujevë town on 28 March 1999.<sup>4692</sup>

1232. In the period of about a month leading up to the start of the NATO air campaign,<sup>4693</sup> as a result of fighting between the KLA and Serbian forces comprising mainly VJ and police<sup>4694</sup> in the hills and the surrounding villages as described above, many Kosovo Albanian families came to

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<sup>4691</sup> See *infra*, paras 1930-1966.

<sup>4692</sup> Indictment, para 77(b).

<sup>4693</sup> 24 March 1999.

<sup>4694</sup> The Chamber notes that in his statement, Fatos Bogujevci refers to the "police or military" in this context (see Exhibit P373, para 22). In cross-examination, he confirms that Kosovo Albanians from rural areas moved to Podujevo/Podujevë town because of fighting between the KLA "and the police and army" in the villages and hills (Fatos Bogujevci, T 1950).

Podujevo/Podujevë town where they felt safer.<sup>4695</sup> Hence, Kosovo Albanian households in the town accommodating these people became very crowded.<sup>4696</sup>

1233. The Bogujevci family compound was situated in the centre of Podujevo/Podujevë town, in the vicinity of the police station, and in a predominantly Albanian neighbourhood.<sup>4697</sup> The police station, which was three to four storeys high, overlooked parts of the family's compound,<sup>4698</sup> which had high walls on all four sides with a large gate providing access to the main street.<sup>4699</sup> At the time of the events alleged in the Indictment, Fatos Bogujevci and Saranda Bogujevci lived in one of the three houses in this compound, together with Fatos Bogujevci's father Selatin, his mother Shefkate, his brother Genc (born in 1993), his sisters Nora, Jehona and Lirije (born in 1984, 1988 and 1990, respectively), as well as his uncle on his father's side –Saranda Bogujevci's father– Safet, Saranda's mother Sala, her two younger brothers Shpend and Shpetim (born in 1986 and 1989 respectively) and their paternal grandmother Shehide Bogujevci.<sup>4700</sup> In addition, Selatin's and Safet's aunt Nefise Llugaliu and her daughter-in-law Fezrije Llugaliu from a nearby village had come to stay with the family because at the time they felt it was too dangerous for them to remain in their village.<sup>4701</sup> The second house on the compound was inhabited by one of their father's cousins.<sup>4702</sup>

1234. In the weeks prior to the commencement of the NATO air campaign, Serbian military and police vehicles, including tanks, passed regularly through the town centre and on the street in front of the Bogujevci family home, on their way into Kosovo.<sup>4703</sup> On or about 22 March 1999, the family heard that a neighbour who lived two or three compounds away was shot and killed by

<sup>4695</sup> Fatos Bogujevci, Exhibit P383, para 22; Fatos Bogujevci, T 1950-1951. Saranda Bogujevci testified that Kosovo Albanians started to move to Podujevo/Podujevë town fearing for their safety; she adds that it was her understanding that they were coming to town because Serbian forces were burning houses and killing people in these village (Saranda Bogujevci, Exhibit P373, para 18). Given the evidence of the presence of both the KLA and the Serbian forces in the area (*See supra*, paras 1224-1225), and as is the testimony of Fatos Bogujevci, the Chamber considers that the fighting between the KLA and Serbian forces in the area is the apparent reason for many Kosovo Albanian families to move to Podujevo/Podujevë town around this time.

<sup>4696</sup> Fatos Bogujevci, Exhibit P383, para 22; Saranda Bogujevci, Exhibit P373, para 18.

<sup>4697</sup> Saranda Bogujevci, Exhibit P373, paras 11, 15; Fatos Bogujevci, Exhibit P383, paras 11, 15.

<sup>4698</sup> Saranda Bogujevci, Exhibit P373, paras 10, 11; Exhibit P377 (aerial photograph with a red circle around the police station); Fatos Bogujevci, Exhibit P383, paras 10, 11, 13; Exhibit P384 (circled number 6 marking the location of the police station).

<sup>4699</sup> Saranda Bogujevci, Exhibit P373, para 11; Fatos Bogujevci, Exhibit P383, para 11.

<sup>4700</sup> Saranda Bogujevci, Exhibit P373, paras 3-5, 10; Fatos Bogujevci, Exhibit P383, paras 3-5, 10; Fatos Bogujevci, T 1924-1925, 1941; Exhibit P384 (sketch marked by Fatos Bogujevci, number "1" indicating the family home located within the compound).

<sup>4701</sup> Fatos Bogujevci, Exhibit P383, para 25; Fatos Bogujevci, T 1925-1927; Saranda Bogujevci, Exhibit P373, para 22; Saranda Bogujevci, T 1881.

<sup>4702</sup> Saranda Bogujevci, Exhibit P373, para 10; Fatos Bogujevci, Exhibit P383, para 10; Exhibit P384 (number "2" marking the house of their fathers' cousin).

<sup>4703</sup> Fatos Bogujevci, T 1956-1957; Fatos Bogujevci, Exhibit P383, para 21; Fatos Bogujevci, T 1953-1954; *see also* Saranda Bogujevci, T 1879, 1910. The Chamber notes the testimony of Fatos Bogujevci that while Podujevo/Podujevë is outside of the area of the main road that leads from Niš and Merdare in Serbia proper to

Serbian forces and had been buried in his own compound.<sup>4704</sup> It was rumoured that men of fighting age were being removed from their homes as suspected KLA members. So as not to give the Serbian forces<sup>4705</sup> a reason to search their property, and believing that they would not be targeted if only the women and children stayed behind, Fatos's and Saranda's fathers left the family home and went to stay elsewhere in Podujevo/Podujevë town, returning to visit their families from time to time.<sup>4706</sup>

1235. Shortly after the start of the NATO campaign, the electricity and water supply in Podujevo/Podujevë town was cut off,<sup>4707</sup> and shooting could be heard in town throughout the night.<sup>4708</sup> The number of Serbian forces on the streets of Podujevo/Podujevë town increased.<sup>4709</sup> Fatos Bogujevci heard that people in town were being shot on the streets.<sup>4710</sup> Saranda Bogujevci observed "soldiers" entering the house of their neighbour and leaving a short time later.<sup>4711</sup> Fearing for their lives, the family confined themselves to their home during these days.<sup>4712</sup>

1236. At this time, the Duriqi family, like many other Kosovo Albanian families who fled surrounding villages to seek refuge in town as described above, sought refuge with the Bogujevci family and came to stay in the third house on the family compound.<sup>4713</sup> The family members staying in this household consisted of Enver Duriqi's wife Fitnete, their four young children Dafina, Arber, Mimoza, and Albijon (at the time of the Indictment, nine, seven, five and two years old respectively), Enver Duriqi's mother Esmā and Enver's father, 70 year old Hamdi Duriqi, the only man staying with the family.<sup>4714</sup> Bordering the Bogujevci family compound on one side was the compound of Selmon Gashi, approximately 60 years old at the material time, who lived there

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Priština/Prishtinë in Kosovo, a local road leading from Serbia to Priština/Prishtinë passes through Podujevo/Podujevë town (Fatos Bogujevci, T 1954).

<sup>4704</sup> Fatos Bogujevci, Exhibit P383, para 17.

<sup>4705</sup> The Chamber notes that Fatos Bogujevci refers to "police and military" in this context without providing a more specific description, Fatos Bogujevci, Exhibit P383, para 18. Saranda Bogujevci simply refers to "Serb forces" targeting and killing men, leading to the decision of their fathers to leave the family home, Sandra Bogujevci, Exhibit P373, para 19; Saranda Bogujevci, T 1879-1880.

<sup>4706</sup> Fatos Bogujevci, Exhibit P383, para 18; Saranda Bogujevci, Exhibit P373, para 19; Saranda Bogujevci, T 1879-1880; Saranda Bogujevci, Exhibit P375, pp 1-2.

<sup>4707</sup> Saranda Bogujevci, Exhibit P373, para 20; Saranda Bogujevci, T 1912; Fatos Bogujevci, Exhibit P383, para 20.

<sup>4708</sup> Saranda Bogujevci, Exhibit P373, para 20. Fatos Bogujevci testified that there was a "vehicle" parked further up the street passing by their home which fired constantly during the night, Fatos Bogujevci, T 1956-1957.

<sup>4709</sup> Saranda Bogujevci, Exhibit P373, para 17; Saranda Bogujevci, T 1879.

<sup>4710</sup> Fatos Bogujevci, Exhibit P383, para 22.

<sup>4711</sup> Saranda Bogujevci, Exhibit P373, para 21.

<sup>4712</sup> Saranda Bogujevci, Exhibit P373, para 20; Fatos Bogujevci, Exhibit P383, para 17.

<sup>4713</sup> Saranda Bogujevci, Exhibit P373, paras 10, 16, 18; Fatos Bogujevci, Exhibit P383, paras 10, 16; Fatos Bogujevci, T 1922, 1925, 1928-1929, 1950; Exhibit P384, number "3" marking the house inhabited by the members of the Duriqi family. The Chamber notes that Saranda Bogujevci gave evidence in her statement that the fighting between the KLA and the Serbia forces had caused the Duriqi family to come to Podujevo/Podujevë (Saranda Bogujevci, Exhibit P373, para 16). During her *viva voce* testimony, she states that she does not remember having ever said this, and explained that she could not have known anything about this; she clarifies what she had said was that they came to town because they feared for their life in their villages, Sandra Bogujevci, T 1908.

<sup>4714</sup> Saranda Bogujevci, Exhibit P373, para 26; Fatos Bogujevci, Exhibit P383, para 27.

together with his family.<sup>4715</sup> To the rear of the Bogujevci and Gashi family compounds was a third compound from which it was possible to gain access to the street in which the police station was located.<sup>4716</sup> To the other side of the Bogujevci family compound was a compound that belonged to Fatos's and Saranda's aunt Fahrije, who at the time was staying in Priština/Prishtinë.<sup>4717</sup>

1237. On the night of 26 March 1999, two nights after the commencement of the NATO air campaign, due to the increase of Serbian forces in town, the women and children staying in the home decided it would be safer to move to the unoccupied house belonging to their aunt in a compound bordering that of the Bogujevci family which was not as exposed to the main road.<sup>4718</sup> They collected their bags and walked through their backyard to a gap in the wall that divided the two properties. Having reached the gap, Fatos Bogujevci heard and saw gun-shots coming from the roof of the police station, although the shots were not hitting them or the buildings close to them.<sup>4719</sup> He did not see who was firing because it was dark.<sup>4720</sup> That evening, Saranda's and Fatos's fathers visited them at their aunt's house.<sup>4721</sup> The women and children remained in this house throughout the next day, 27 March 1999; in the evening, the doorbell rang but there was nobody at the door.<sup>4722</sup> A little later, the telephone rang but nobody spoke when it was answered.<sup>4723</sup> Because of these events, out of fear, the family returned to their own home that same evening.<sup>4724</sup>

1238. Several witnesses gave evidence of the arrival in Podujevo/Podujevë town, early in the morning of 28 March 1999, by bus, of a group of armed men known in this trial as the Scorpions.<sup>4725</sup> As discussed elsewhere in this Judgement, the Chamber is satisfied that this group of

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<sup>4715</sup> Saranda Bogujevci, Exhibit P373, para 13; Fatos Bogujevci, Exhibit P383, para 13; Fatos Bogujevci, T 1956; Exhibit P384 (sketch with a circled number 5 indicating location of the house of neighbor Selmon Gashi).

<sup>4716</sup> Saranda Bogujevci, Exhibit P373, para 13; Fatos Bogujevci, Exhibit P383, para 13.

<sup>4717</sup> Saranda Bogujevci, Exhibit P373, para 14; Fatos Bogujevci, Exhibit P383, para 14; Exhibit P384 (sketch with a circled number 4 indicating the unoccupied house of their aunt Fahrije).

<sup>4718</sup> Saranda Bogujevci, Exhibit P373, para 22; Fatos Bogujevci, Exhibit P383, para 23; Fatos Bogujevci, T 1925-1926, 1928; Exhibit P384 (circled "4" marking the house belonging to their aunt Fahrije). Saranda Bogujevci specifically remembers their father's visiting them at their aunt's house on the evening of 26 March 1999 (Saranda Bogujevci, Exhibit P373, para 23). The Chamber notes that the evidence of Fatos Bogujevci differs from that of his cousin Saranda in that he testified that the moving from their family home to their aunt Fahrije's unoccupied home (and later returning to their own home) all took place in the early hours of 28 March 1999. The Chamber is of the view, however, that the sequence and description of events described by Fatos in this respect, save for the dates concerned, correspond to those provided by his cousin Saranda, and that, moreover, the timing of these events is not crucial to the charges alleged in the Indictment.

<sup>4719</sup> Fatos Bogujevci, Exhibit P373, para 23; Fatos Bogujevci, T 1926; Exhibit P384 (number "6" marking the police station).

<sup>4720</sup> Fatos Bogujevci, T 1926.

<sup>4721</sup> Saranda Bogujevci, Exhibit P373, para 23.

<sup>4722</sup> Saranda Bogujevci, Exhibit P373, paras 23, 24; Fatos Bogujevci, Exhibit P383, para 24.

<sup>4723</sup> Fatos Bogujevci, Exhibit P383, para 24.

<sup>4724</sup> Saranda Bogujevci, Exhibit P373, para 24; Fatos Bogujevci, Exhibit P383, para 24.

<sup>4725</sup> While it is not entirely clear from Goran Stoparić's evidence whether the men arrived in Podujevo/Podujevë on 27 or 28 March 1999, according to his testimony, the volunteers stayed in Prolom Banja, where they arrived on 26 March 1999, for two days before heading to Podujevo/Podujevë. This suggests they arrived in Podujevo/Podujevë on 28 March 1999. This is consistent with a report compiled by Živko Trajković dated



men identified as the Scorpions included both former members of a previously constituted paramilitary unit, the Scorpions, which was disbanded in 1996, as well as others who had more recently joined this re-formed unit.<sup>4726</sup> En route from Prolom Banja where the group had been quartered for two days, they were instructed that their task was to “clear up” the half of Podujevo/Podujevë town which was not yet under Serbian control.<sup>4727</sup>

1239. In addition to the presence in Podujevo/Podujevë town on 28 March 1999 of local police officers, and the SAJ with the men of the Scorpions unit, the evidence of Stoparić, Simović and Stalević confirms that there were also PJP units<sup>4728</sup> in the town at this time.<sup>4729</sup> It is the evidence of Stalević, further, that the VJ had also take part in the action in Podujevo/Podujevë town together with the SAJ, PJP and the local police officers.<sup>4730</sup> Documentary evidence confirms this.<sup>4731</sup>

1240. At around 0700 hours on the morning of 28 March 1999, Fatos Bogujevci heard activity in the street outside their compound. Looking out at the street from behind the curtains of a window of his house, he observed what he described as “soldiers or police”<sup>4732</sup> and a dark blue armored personnel police vehicle with grey material covering it.<sup>4733</sup> These forces were entering houses and shops.<sup>4734</sup> Believing once again that it would be safer to move further away from the street-side of the family compound, the women and children who were staying in the house at this time<sup>4735</sup> packed some food and clothes and moved to the house belonging to Saranda’s and Fatos’s uncle situated in the back of the compound with the Duriqi family.<sup>4736</sup> That morning they were visited by the son of their neighbour Selmon Gashi, who told them that “the soldiers” were taking people out of their houses.<sup>4737</sup>

1241. After about an hour inside their uncle’s house, at approximately 0900 hours, Saranda Bogujevci saw four or five armed men she refers to as “soldiers” entering their compound from the neighbouring compound belonging to Selmon Gashi, and in doing so, demolishing a fence dividing

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13 May 1999 in which he records the arrival of the members of the reserve force in Podujevo as 28 March 1999 (see Živko Trajković, T 9106-9107; Exhibit D442; Zoran Simović, T 13587; Radislav Stalević, T 13783).

<sup>4726</sup> See *infra*, para 1934.

<sup>4727</sup> Goran Stoparić, Exhibit P493, paras 7, 45-46.

<sup>4728</sup> The deployment of the PJP to the Podujevo/Podujevë OUP is confirmed by several dispatches signed by the Accused as discussed above, see *supra*, para 1223.

<sup>4729</sup> Goran Stoparić, Exhibit P493, para 49; Zoran Simović, T 13584; Radislav Stalević, T 13917.

<sup>4730</sup> Radislav Stalević, T 13917.

<sup>4731</sup> See *supra*, para 1225; see also Exhibit P896, pp 2-3.

<sup>4732</sup> See *supra*, para 1227.

<sup>4733</sup> Fatos Bogujevci, Exhibit P383, para 26; Fatos Bogujevci, T 1927.

<sup>4734</sup> Fatos Bogujevci, Exhibit P383, para 26.

<sup>4735</sup> Fatos Bogujevci, Exhibit P383, para 25.

<sup>4736</sup> Saranda Bogujevci, Exhibit P373, paras 26; Saranda Bogujevci, T 1880-1881; Exhibit P374, p 46; Exhibit P375, pp 2, 3; Fatos Bogujevci, Exhibit P383, para 27; Fatos Bogujevci, T 1928; Exhibit P384, circled “3” marking the house of their uncle; Exhibit P382, p 37.

<sup>4737</sup> Saranda Bogujevci, Exhibit P373, para 27; Saranda Bogujevci, T 1882.

the two properties.<sup>4738</sup> At around the same time, Fatos Bogujevci heard the sound of shooting and glass breaking.<sup>4739</sup> These “soldiers” wore camouflage uniforms with different shades of green. These uniforms were different from the ones Saranda Bogujevci had seen regular soldiers wearing. These men entered and searched their home.<sup>4740</sup> Fatos Bogujevci saw “regular army soldiers” in Selmon Gashi’s compound. They were wearing what he described as a brownish uniform with small caps. Other “soldiers” closer to their home, wore what he described as green and brown camouflage uniforms.<sup>4741</sup> He thought they were neither regular army nor regular police.<sup>4742</sup> The descriptions of these uniforms are consistent with other evidence in this case, as to the uniforms worn at that time by the SAJ, the PJP and the VJ.<sup>4743</sup> The Chamber notes that the evidence of Stoparić, Stalević and Simović is that each of these elements of the Serbian forces was present in the town that day.<sup>4744</sup>

1242. Observing what was going on in their immediate neighbourhood and fearing that the forces they observed were going from house to house, the women and children of the Bogujevci and Duriqi families, including the elderly Hamdi Duriqi and the two women from the Llugaliu family, gathered their bags with the intention of leaving the house to join other people of the neighbourhood who, at this time, had started to gather in the street.<sup>4745</sup>

1243. Immediately upon the Kosovo Albanians leaving the house, the forces described by Fatos and Saranda Bogujevci, entered the courtyard and ordered the members of the Bogujevci and the Duriqi families to stop and go back.<sup>4746</sup> The group was instructed to put their hands in the air and set down their belongings. The forces proceeded to search their house.<sup>4747</sup> The group of women, children and Hamdi Duriqi were then directed through the garden of their neighbour Selmon Gashi to another compound at the rear of the Bogujevci family compound.<sup>4748</sup> Fatos Bogujevci recalls the

<sup>4738</sup> Saranda Bogujevci, Exhibit P373, para 28; Saranda Bogujevci, T 1882.

<sup>4739</sup> Fatos Bogujevci, Exhibit P383, para 28; Saranda Bogujevci, T 1882.

<sup>4740</sup> Saranda Bogujevci, Exhibit 373, para 40; Saranda Bogujevci, T 1883; *see also* Exhibit P375, p 2.

<sup>4741</sup> Fatos Bogujevci, Exhibit P383, paras 29, 30; *see also* Exhibit P381, p 4.

<sup>4742</sup> Fatos Bogujevci, Exhibit P383, para 29.

<sup>4743</sup> *See supra*, paras 64, 65, 66, 76, 77, 162. In 1999, the SAJ wore green and brown tiger stripe camouflage uniforms. The PJP wore green camouflage uniforms, as did the VJ; The Chamber further notes the evidence of Radislav Stalević that the Priština/Prishtinë SAJ unit wore a “NATO camouflage uniform with a green-brown patch” (Radislav Stalević, T 13864). The witness further testified that the uniforms worn by the members of his SAJ unit had a patch on one of the sleeves with the letters “SAJ”. On the other sleeve, there was a patch with a double-headed eagle, with a red shield, as well as a sword and a snake on a metallic grey background (*see* Radislav Stalević, T 13864).

<sup>4744</sup> Goran Stoparić, Exhibit P493, para 49; Zoran Simović, T 13584; Radislav Stalević, T 13917.

<sup>4745</sup> Fatos Bogujevci, Exhibit P383, para 28; Fatos Bogujevci, T 1929; Saranda Bogujevci, Exhibit P373, para 29; Saranda Bogujevci, T 1882; *see also* Exhibit P375, p 2.

<sup>4746</sup> Saranda Bogujevci, Exhibit P373, para 29; Saranda Bogujevci, T 1882-1883; Fatos Bogujevci, Exhibit P383, para 30; Fatos Bogujevci, T 1929; *see also* Exhibit P382, p 38.

<sup>4747</sup> Saranda Bogujevci, Exhibit P373, para 29; Saranda Bogujevci, T 1882-1883; *see also* Exhibit P374, p 46 as stamped on the page; Fatos Bogujevci, Exhibit P383, para 30; Fatos Bogujevci, T 1929.

<sup>4748</sup> Saranda Bogujevci, Exhibit P373, para 29; Saranda Bogujevci, T 1883-1884; *see also* Exhibit P374, p 46 as stamped on the page; *see also* Exhibit P375, p 3; Fatos Bogujevci, Exhibit P383, para 31.

first floor windows of their neighbour's house smashing and "soldiers"<sup>4749</sup> jumping down from them onto the ground.<sup>4750</sup> Saranda Bogujevci had put her hands in her pockets because she was cold, upon which her pockets and the area around her legs was searched by Serbian forces.<sup>4751</sup> Hamdi Duriqi was then singled out; his belongings were removed from his pockets, as well as his traditional white Albanian cap, a *plis*. Members of the Serbian forces shouted at him when he tried to pick his belongings up.<sup>4752</sup> Some women and children were also searched, their money taken from them and their personal belongings thrown on the ground.<sup>4753</sup> Women wearing headscarves were told to take them off.<sup>4754</sup> Fatos Bogujevci testified that one of the men, who took part in searching family members, and who was wearing a green and brown camouflage uniform and a camouflage cap, was at one point told by someone to stop.<sup>4755</sup> Also present was a man who was unshaven and wearing a helmet. Another man present in the compound, wearing no helmet or cap, but carrying several weapons including a belt with a number of knives, appeared to Fatos Bogujevci to be the leader, as he was giving orders.<sup>4756</sup> Fatos Bogujevci saw this man separate his mother Shefkate from the group.<sup>4757</sup> Shefkate Bogujevci was then taken by several soldiers to a shed behind where the group was standing.<sup>4758</sup> The men were laughing, and from the little Serbian that Saranda Bogujevci understood, she could make out that they were saying "We took your mother away".<sup>4759</sup>

1244. Stoparić confirms much of these events. He testified that upon entering Podujevo/Podujevë town, Stoparić and Milovan Tomić, who each headed one of two squads of the Scorpions' reconnaissance platoon,<sup>4760</sup> had found accommodation for themselves in one of the unoccupied

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<sup>4749</sup> The Chamber reiterates Fatos Bogujevci's evidence that when he refers to "soldiers", he is not referring to regular army or regular police officers, explaining that while there were some regular army forces present in Selmon Gashi's compound, wearing a brownish uniform with small caps, the forces closer to their home wore green and brown camouflage uniforms (Exhibit P383, para 29).

<sup>4750</sup> Fatos Bogujevci, Exhibit P383, paras 31, 34; *see also* Exhibit P382, p 38.

<sup>4751</sup> Saranda Bogujevci, Exhibit P373, para 30; *see also* Exhibit P374, p 46.

<sup>4752</sup> Saranda Bogujevci, Exhibit P373, paras 32-33; *see also* Exhibit P374, p 46; *see also* Exhibit P375, p 3. The Chamber notes that it is the evidence of Fatos Bogujevci that Hamdi Duriqi as well as some of the other individuals in the group were physically searched before the group was directed to the compound at the rear of the Bogujevci family compound and the compound of Selmon Gashi (Exhibit P383, paras 30-31). The Chamber takes note of this discrepancy but does not attribute a great deal of significance to it. The events on the morning of 28 March 1999 no doubt were chaotic. The description and sequence of events as described by Fatos Bogujevci corresponds generally to the description and sequence of events as testified to by Saranda Bogujevci and as such are sufficiently corroborative accounts.

<sup>4753</sup> Saranda Bogujevci, Exhibit P373, paras 34, 36; *see also* Exhibit P374, p 47; *see also* Exhibit P375, p 3.

<sup>4754</sup> Saranda Bogujevci, Exhibit P373, para 35; *see also* Exhibit P374, p 47; *see also* Exhibit P375, p 8.

<sup>4755</sup> Fatos Bogujevci, Exhibit P383, paras 31-32. *See also* Exhibit P382, p 38.

<sup>4756</sup> Fatos Bogujevci, Exhibit P383, para 33.

<sup>4757</sup> Fatos Bogujevci, Exhibit P383, paras 33, 35; Fatos Bogujevci, T 1929-1930; Saranda Bogujevci, T 1892; Exhibit P376 (aerial photograph, courtyard to the right of the red arrow Saranda Bogujevci has marked indicating the location where Shefkate Bogujevci was separated from the group).

<sup>4758</sup> Saranda Bogujevci, Exhibit P373, para 37; Exhibit P374, p 47; Exhibit P375, pp 3, 5.

<sup>4759</sup> Saranda Bogujevci, Exhibit P373, para 38.

<sup>4760</sup> Goran Stoparić, Exhibit P493, paras 8, 14, 17. The reconnaissance platoon of the Scorpions numbered up to 30 men and was divided into two squads. One was headed by Goran Stoparić and the other by Milovan Tomić (T 2856).

houses in town.<sup>4761</sup> It is his testimony that shortly after, from the back room of this house, he saw a number of Scorpions, as well as “other men”, direct a group of Kosovo Albanian civilians to the courtyard of “the” house. These civilians were being pushed at gunpoint and shouted at by a Scorpions member, Saša Cvetan.<sup>4762</sup> Stoparić went outside to see what was happening and saw approximately 19 Albanian civilians, including women, children and one elderly man wearing a traditional white Albanian cap, looking terrified. The youngest member of the Scorpions searched the elderly man. Stoparić testified that he stopped the young man from searching the women, confirming the evidence of Fatos Bogujevci that someone told one of the men to stop searching.<sup>4763</sup>

1245. Shefkate Bogujevci was still being held in the shed. From the courtyard of the compound in which they were searched, the other women, children and elderly Hamdi Duriqi were then sent by Stoparić and Milovan Tomić out to the street near the police station where the Scorpions leader, Slobodan Medić aka “Boca”, was at the time. There they were told to line up.<sup>4764</sup> Stoparić testified that he sent the civilians out to the street because he was concerned with what Scorpions member Saša Cvetan and the others intended to do with them.<sup>4765</sup> The street was full of mixed Serbian forces,<sup>4766</sup> in camouflage.<sup>4767</sup> Among these were police in blue camouflage uniforms, as well as individuals described by Fatos Bogujevci as wearing “regular shirts and police trousers as well as the other way around”<sup>4768</sup> and by Saranda Bogujevci as wearing “police trousers and military shirts”.<sup>4769</sup> Stoparić testified that at this point, he and Tomić were standing approximately 50-60 metres away from the Albanian civilians who had come from the compound.<sup>4770</sup> Stoparić confirms that present on the street were policemen<sup>4771</sup> as well as individuals wearing “NATO-patterned uniforms”<sup>4772</sup> which he said could have been the Scorpions, the SAJ, “and perhaps members of the

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<sup>4761</sup> Goran Stoparić, Exhibit P493, paras 47, 50; Exhibit 496 (number “1” marking this house); *see also* Zoran Simović, T 13741-13745, 13757.

<sup>4762</sup> Goran Stoparić, Exhibit P493, para 50; Goran Stoparić, T 2825.

<sup>4763</sup> Goran Stoparić, Exhibit P493, para 52; Goran Stoparić, T 2826.

<sup>4764</sup> Saranda Bogujevci, Exhibit P373, para 39; Saranda Bogujevci, T 1884, 1892-1893; Exhibit P367 (courtyard to the right of where the witness has drawn a red arrow indicates the location from where the group was then taken out to the street); Exhibit P375, pp 3, 7; Fatos Bogujevci, Exhibit P383, para 35; Fatos Bogujevci, T 1929-1930; Exhibit P384 (uncircled “2” marking location where the group was standing on the street; Goran Stoparić, Exhibit P493, para 52).

<sup>4765</sup> Goran Stoparić, Exhibit P493, para 52.

<sup>4766</sup> Saranda Bogujevci, T 1884; Exhibit P374, pp 47-48; Fatos Bogujevci, Exhibit P383, para 35.

<sup>4767</sup> Saranda Bogujevci, Exhibit P373, para 40; Saranda Bogujevci, T 1883-1884; Fatos Bogujevci, Exhibit P383, paras 29, 36.

<sup>4768</sup> Fatos Bogujevci, Exhibit P383, para 35.

<sup>4769</sup> Saranda Bogujevci T 1884; Saranda Bogujevci, Exhibit P373, paras 41, 62.

<sup>4770</sup> Goran Stoparić, Exhibit P493, para 54; Goran Stoparić, T 2828.

<sup>4771</sup> Goran Stoparić, Exhibit P493, para 52; Goran Stoparić, T 2827; Exhibit P496 (policemen marked with blue dots on the street).

<sup>4772</sup> Goran Stoparić, T 2827. Radislav Stalević describes that the SAJ wore a “NATO camouflage uniforms which has a green-brown patch”, Radislav Stalević, T 13864.

PJP, if any”.<sup>4773</sup> These forces were laughing, cursing and shouting at the Albanian civilians, and breaking shop windows.<sup>4774</sup>

1246. One of the “soldiers”, wearing a brown civilian shirt and blue police trousers, shouted something at Hamdi Duriqi, who was one of the Albanian civilians lined up on the street, and slapped him.<sup>4775</sup> At this time, elderly Selmon Gashi, who was not part of the Albanian civilians who had been lined up on the street, was standing near a coffee shop not far away from the other Albanian civilians.<sup>4776</sup> A “soldier” took off Selmon Gashi’s traditional white Albanian cap and, along with other “soldiers”, was teasing and playing around with him.<sup>4777</sup> Fatos and Saranda testified that Selmon Gashi and Hamdi Duriqi were then taken into the coffee shop.<sup>4778</sup> Shortly after both Saranda and Fatos Bogujevci heard two shots; the two men were never seen alive again.<sup>4779</sup> The shooting of at least one of the two elderly men is also confirmed in some respects by Goran Stoparić, who testified that some of the policemen took an elderly man from the group of civilians and took him to a catering facility, which he later found was a tea-house.<sup>4780</sup> Soon after, Stoparić heard gunfire of a machine-gun coming from the tea-house.<sup>4781</sup> The Chamber accepts that the elderly man described by Goran Stoparić was Hamdi Duriqi, and that the location Hamdi Duriqi was taken to by the men on the street is that described by Saranda and Fatos Bogujevci as the “coffee-shop”. As discussed in more detail elsewhere in this Judgement, the remains of these two elderly men, Hamdi Duriqi and Selmon Gashi, who were also killed that day in a coffee-shop were identified amongst the 19 bodies exhumed by the OSCE from the Podujevo/Podujevë cemetery on

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<sup>4773</sup> Goran Stoparić, T 2827; Exhibit P496, green dots indicating those individuals wearing “NATO-style uniforms” which the witness states could have been Scorpions, SAJ and perhaps PJP members “if any”. He explains that at the time, he only distinguished between the two types of uniforms of those worn on the street being police uniforms and NATO-style uniforms (Goran Stoparić, T 2827). The Chamber notes the testimony of Aleksandar Vasiljević, who was present at a meeting between Ojdanić and Pavković held on 16 May 1999, at which Pavković discussed the crimes committed in Podujevo/Podujevë, and told those present that he had personally seen “Boca” at Prolom Banja wearing “a NATO-style Uniform” with SAJ insignia (Aleksandar Vasiljević, T 5673-5674).

<sup>4774</sup> Saranda Bogujevci, Exhibit P373, para 42; Saranda Bogujevci, T 1884; *see also* Exhibit P374, p 48; *see also* Exhibit P375, p 3; Fatos Bogujevci, Exhibit P383, para 36.

<sup>4775</sup> Fatos Bogujevci, Exhibit P383, para 36; Fatos Bogujevci, T 1931; *see also* Exhibit P382, page 40; *see also* Saranda Bogujevci, Exhibit P373, para 42; Saranda Bogujevci, T 1885; Exhibit P375, p 3.

<sup>4776</sup> Saranda Bogujevci, Exhibit P373, para 43; Saranda Bogujevci, T 1885; Fatos Bogujevci, Exhibit P383, para 35; Fatos Bogujevci, T 1930; Exhibit P384, circled number “7” marking location of the coffee shop.

<sup>4777</sup> Saranda Bogujevci, Exhibit P373, para 43; Saranda Bogujevci, T 1885.

<sup>4778</sup> Saranda Bogujevci, Exhibit P373, para 43; Saranda Bogujevci, T 1885; Fatos Bogujevci, Exhibit P383, para 36; Fatos Bogujevci, T 1931.

<sup>4779</sup> Saranda Bogujevci, Exhibit P373, para 43; Saranda Bogujevci, T 1885; *see also* Exhibit P374, p 48; Exhibit P375, p 3; Fatos Bogujevci, Exhibit P383, para 36; Fatos Bogujevci, T 1931; Exhibit P381, p 2; Exhibit P382, p 42.

<sup>4780</sup> Goran Stoparić, Exhibit P493, para 54; Goran Stoparić, T 2811, 2827-2829; Exhibit P496, “x” marking the location where the man was taken after being separated from the group of civilians. The Chamber notes that in his statement, the witness had said that he heard later that the man was killed in a nearby tea-house – it is unclear whether “heard” refers to hearing the sound of gun-fire, or hearing from others that this man was killed, Goran Stoparić, Exhibit P493, para 54; Goran Stoparić, T 2828-2829.

<sup>4781</sup> Goran Stoparić, Exhibit P493, para 54; Goran Stoparić, T 2811, 2827-2829.

19 July 1999.<sup>4782</sup> Although these two men were not listed in the Schedule to the Indictment amongst those known by name, on the basis of eyewitness accounts and forensics evidence, the Chamber is satisfied that these two individuals were killed in a coffee-shop in the street in front of the courtyard, by Serbian forces. They were elderly civilians and the Chamber accepts that they were targeted because they were Kosovo Albanians. They are listed in the Victim Chart, related to Podujevo/Podujevë, annexed to this Judgement.

1247. Saranda and Fatos Bogujevci testified that the Albanian civilians, being women and children, were then directed back into the courtyard while the “soldiers” continued to shout at them.<sup>4783</sup> The man who directed them into the courtyard was the same individual earlier identified as the leader of the group.<sup>4784</sup> It is the evidence of Goran Stoparić that the remainder of the Albanian civilians, now comprising of only women and children, walked back into the courtyard of the compound which Goran Stoparić had just left and in which were Scorpion members Saša Cvetan and his group.<sup>4785</sup> It is the testimony of Stoparić that the group of women and children walked into the courtyard on their own, and were not escorted or followed.<sup>4786</sup> In view of the evidence of Saranda and Fatos as well as the context of the situation, the Chamber does not accept the evidence of Stoparić in this respect.

1248. Back in the courtyard, there were about 10 or more “soldiers”. Others were going in and out.<sup>4787</sup> Fatos Bogujevci describes the individuals in the courtyard wearing mainly “light green camouflage uniforms”, and stated that they were “standing all over the place, including on the walls”.<sup>4788</sup> His description of uniforms worn by the armed men in the courtyard differs from his description of the forces he observed elsewhere throughout the morning. The forces he observed elsewhere, with the exception of a group of individuals wearing “brownish” uniforms near Selmon Gashi’s house, he described as wearing uniforms of a green and brown camouflage pattern.<sup>4789</sup> Saranda Bogujevci described all of the “soldiers” she saw that day, including the men in the courtyard, as wearing camouflage uniforms containing different shades of green.<sup>4790</sup> Earlier, she

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<sup>4782</sup> See *infra*, para 1454. Forensic evidence related to these victims is discussed later in this Judgement, see *infra*, paras 1454-1458.

<sup>4783</sup> Saranda Bogujevci, Exhibit P373, para 44; Saranda Bogujevci, T 1885-1887, 1891-1892; Exhibit P376, aerial photograph of the courtyard with an arrow indicating the passage-way through which they entered the courtyard from the street; Fatos Bogujevci, Exhibit P383, para 37; Fatos Bogujevci, T 1932-1933; Exhibit P384, uncircled number “3” marking the courtyard to which the group was directed from the street.

<sup>4784</sup> Fatos Bogujevci, T 1932-1933. He describes this uniform as the same uniform as that worn by “the others” who had been in their courtyard when they left their house. See *supra*, para 1243.

<sup>4785</sup> Goran Stoparić, Exhibit P493, para 54; Goran Stoparić, T 2828-2830; Exhibit P496, number “3” marking the location where the witness was standing at that point.

<sup>4786</sup> Goran Stoparić, T 2830.

<sup>4787</sup> Saranda Bogujevci, Exhibit P373, para 47; Saranda Bogujevci, T 1888; Fatos Bogujevci, Exhibit P383, para 37.

<sup>4788</sup> Fatos Bogujevci, Exhibit P383, para 37; see also Exhibit P382, pp 39-40.

<sup>4789</sup> Fatos Bogujevci, Exhibit P383, paras 29, 32.

<sup>4790</sup> Saranda Bogujevci, Exhibit P383, para 40; see also Exhibit P375, p 2.

described a number of the men in the courtyard at the time of the shooting as wearing an insignia on their shoulder with a two-headed eagle, containing many colours.<sup>4791</sup> The Chamber notes that at the time, both the VJ and the SAJ wore insignia with a double-headed eagle on their shoulder.<sup>4792</sup> On the basis alone of the description provided by both Fatos and Saranda Bogujevci the Chamber is not able to determine conclusively which forces were present and involved in the shooting.<sup>4793</sup> When taken together with the evidence of Stoparić, Simović and Stalević, however, the Chamber is satisfied that the forces present in the courtyard at the time of the killing included members of the Scorpions unit, wearing SAJ uniforms which had been provided to them prior to their arrival in town,<sup>4794</sup> at least one member of the local police, as well as possibly other members of the SAJ.

1249. One of the soldiers addressed the group in Serbian, and when Fezrije Llugaliu told him that they did not understand the language, he threatened her with a knife and hit her on the back of her head.<sup>4795</sup> Fatos and Saranda then saw Shefkate Bogujevci, Fatos's mother, across the courtyard at a distance of about 10 metres being taken out of the shed; she was crying.<sup>4796</sup> One of the soldiers grabbed Shefkate by her shirt. Fatos and Saranda Bogujevci heard her say "they are only children".<sup>4797</sup> The soldier then directed her further away but still within the courtyard, and shot her twice in the back.<sup>4798</sup> Upon seeing this, Fatos screamed.<sup>4799</sup> He describes the man who shot his mother as tall, about 30 years old, and unshaven, but does not provide a specific description of his uniform.<sup>4800</sup>

1250. After the shooting of Shefkate Bogujevci, the remainder of the group was directed to line up against one of the walls of the courtyard.<sup>4801</sup> The same soldier who shot Shefkate Bogujevci then armed himself with a new weapon and started shooting at the group lined up against the wall.<sup>4802</sup>

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<sup>4791</sup> Exhibit P375, pp 6-7.

<sup>4792</sup> See *supra*, paras 76, 162.

<sup>4793</sup> While the PJP wore green camouflage uniforms, including lighter shades of green, this uniform also included shades of brown. The VJ uniform was of a darker green shade, while the uniforms worn by the SAJ included both green and brown, see *supra*, paras 64, 65, 162.

<sup>4794</sup> See *infra*, para 1937.

<sup>4795</sup> Saranda Bogujevci, Exhibit P373, para 44; Fatos Bogujevci, Exhibit P383, para 38.

<sup>4796</sup> Fatos Bogujevci, Exhibit P383, para 39; Fatos Bogujevci, T 1933; Exhibit P384, number "4" marking the location of the shed; Saranda Bogujevci, Exhibit P373, para 46; Saranda Bogujevci, T 1885-1886.

<sup>4797</sup> Fatos Bogujevci, Exhibit P383, para 39; Exhibit P382, p 39; Saranda Bogujevci, Exhibit P373, para 46; Saranda Bogujevci, T 1885-1886; Exhibit P375, p 4.

<sup>4798</sup> Fatos Bogujevci, Exhibit P383, para 40; Fatos Bogujevci, T 1933; Exhibit P381, p 2. Saranda Bogujevci testified that the soldier pushed Shefkate Bogujevci as she walked to the back of the house and shot her in the back. After she fell on the ground, the soldier shot her again in her upper body, Sandra Bogujevci, Exhibit P373, para 46; Saranda Bogujevci, T 1885; Exhibit P374, p 48; Exhibit P375, p 4.

<sup>4799</sup> Fatos Bogujevci, Exhibit P383, para 40; Fatos Bogujevci, T 1933; Saranda Bogujevci, Exhibit P373, para 46.

<sup>4800</sup> Fatos Bogujevci, Exhibit P383, para 41; Exhibit P382, p 43.

<sup>4801</sup> Fatos Bogujevci, Exhibit P383, para 42; Fatos Bogujevci, T 1933-1934; Exhibit P384; Saranda Bogujevci, Exhibit P373, para 48.

<sup>4802</sup> Saranda Bogujevci, Exhibit P373, paras 47, 48; Saranda Bogujevci, T 1885-1887, 1890-1891, 1894; Exhibit P376; Exhibit P378; Exhibit P374, pp 49-51; Exhibit P375, p 7.

The group of women and children fell over each other, onto the ground.<sup>4803</sup> Saranda Bogujevci was leaning against the wall in the middle of the group, and as she slid down into a sitting position, bullets hit her twice in the leg. After a short pause a second round of fire hit her in the arm and in her back.<sup>4804</sup> Five or six shots hit Fatos Bogujevci, wounding him in both legs.<sup>4805</sup> The injuries he sustained caused Fatos Bogujevci to believe that shots were coming from at least two directions within the courtyard.<sup>4806</sup> While Saranda Bogujevci only saw one man actually shooting *i.e.*, the one who shot Shefkate Bogujevci and then at the group, Saranda Bogujevci believed that there was more than one man shooting because, after being hit in the arm and legs, she was then also hit in her back, which caused her to conclude that at least one bullet had come from a different direction.<sup>4807</sup> The Chamber accepts that there was more than one person firing at the group of women and children in the courtyard. Moreover, this is supported by forensic evidence obtained when victims of these shootings were exhumed. There were two types of bullets retrieved from the victims of this shooting.<sup>4808</sup> The Chamber is, however, unable to determine the exact number of Serbian “soldiers” shooting in the courtyard that day. It is satisfied that members of the Scorpions unit attached to the SAJ were involved in the killing of these 14 women and children. Members of other Serbian forces were present in the courtyard at the time of the killings and the preceding events, but the evidence does not establish that they actually joined in the shooting.

1251. When he was shot, Fatos Bogujevci closed his eyes and pretended to be dead.<sup>4809</sup> He heard a male voice coming from the personal radio (a walkie-talkie) of one of the soldiers giving a message to stop shooting, upon which the shooting ceased.<sup>4810</sup> The soldiers started to shout at each other and soon after left the courtyard. Their departure was followed by silence for about five minutes.<sup>4811</sup> No longer hearing the “soldiers” present in the courtyard, Saranda Bogujevci lifted her head and looked around. She saw the body of her younger brother Shpetim, who had been shot in the head and was dead, lying face down on the ground near her legs. Arber Duriqi had also been shot in the face. She saw the bodies of their grandmother Shehide, who had her eyes wide open, and of Fezrije Llugaliu, which had a dark-blue colour.<sup>4812</sup> Saranda realized that Fatos, lying in front

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<sup>4803</sup> Fatos Bogujevci, Exhibit P383, paras 42, 43; Fatos Bogujevci, T 1934; *see also* Exhibit P382, p 41.

<sup>4804</sup> Saranda Bogujevci, Exhibit P373, paras 48, 60; Saranda Bogujevci, T 1887-1889; Exhibit P374, pp 48-51; Exhibit P375, pp 4, 7.

<sup>4805</sup> Fatos Bogujevci, Exhibit P383, para 44; Fatos Bogujevci, T 1934-1935. The witness believes that there were shots coming from two directions as his back was against the wall, Exhibit P382, p 41.

<sup>4806</sup> Fatos Bogujevci, Exhibit P383, para 44; Fatos Bogujevci, T 1934-1935. The witness explains that his back was against the wall, so that unless one shooter had moved from one side of the courtyard to the other, there must have been more shooters, Exhibit P382, p 41.

<sup>4807</sup> Saranda Bogujevci, Exhibit P373, paras 59, 60; Saranda Bogujevci, T 1888-1889.

<sup>4808</sup> *See* Exhibit P1142; *See infra*, para 1457.

<sup>4809</sup> Fatos Bogujevci, Exhibit P383, para 44; Fatos Bogujevci, T 1934; Exhibit P381, p 2.

<sup>4810</sup> Fatos Bogujevci, Exhibit P383, para 45; Exhibit P381, p 2; Exhibit P382, p 39.

<sup>4811</sup> Fatos Bogujevci, Exhibit P383, para 45.

<sup>4812</sup> Saranda Bogujevci, Exhibit P373, paras 49-50; Saranda Bogujevci, T 1887-1888; Exhibit P374, p 49.



of her, was still alive, having been shot in the leg. Her cousin Genc, lying close to Fezrije Llugaliu's body, lifted his head and said "Saranda, look what they did to Shpetim".<sup>4813</sup>

1252. While, as expressed earlier, the Chamber does not accept the passive role Stoparić has ascribed to himself in the events, his evidence does confirm the shooting of the women and children in the courtyard. He stated that after he saw the group of women and children returning to the courtyard having left the street, he and Milovan Tomić had moved away into an alley leading to an adjacent street. Soon after, he heard the sound of one, and then more, automatic rifles shooting continuously for about one to one and a half minutes.<sup>4814</sup> It is Stoparić's evidence that upon having heard the shots, he and Tomić ran back through the alley towards the house where he had seen the women and children.<sup>4815</sup> At the end of the alley, he says, Tomić tried to stop him and told him "[s]tand there, you fool. Don't get blood on your hands".<sup>4816</sup> However, he says he ran in the direction of an open area surrounded by houses from which he had heard the gunfire.<sup>4817</sup> The shooting had stopped. Goran Stoparić saw Scorpion members Saša Cvetan, Dragan Borogjević, Dragan Medić (Slobodan Medić's brother) and Dejan Demirović standing three to four metres away from the wall of a house.<sup>4818</sup> Standing behind these men were Scorpions member Miodrag Solaja, also known as "Zicko,"<sup>4819</sup> and a local policeman.<sup>4820</sup> On the balcony overlooking the scene stood Zdravko Smiljić and Saša Dabić, two other members of the Scorpions.<sup>4821</sup> At the base of the wall, Stoparić saw the bodies of the Albanian women and children he had seen earlier; they appeared to be dead.<sup>4822</sup> It was his testimony that soon after, Dr Marković, attached to the SAJ, and an SAJ officer arrived at the scene and assisted the wounded.<sup>4823</sup>

1253. Stoparić's evidence of the arrival of a "medical team" is in line with that of Fatos Bogujevci, who testified that after the departure of the "soldiers" and the silence that followed, three to four individuals wearing blue police uniforms with white overcoats, "together with soldiers" came into the courtyard.<sup>4824</sup> These men administered first aid to those who were still alive. Fatos was given a

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<sup>4813</sup> Saranda Bogujevci, Exhibit P373, paras 49, 51; Saranda Bogujevci, T 1887-1888; Exhibit P375, p 4.

<sup>4814</sup> Goran Stoparić, Exhibit P493, para 55; Goran Stoparić, T 2831.

<sup>4815</sup> Goran Stoparić, Exhibit P493, para 55.

<sup>4816</sup> Goran Stoparić, T 2832; Exhibit P497 (number "1" marking location where they stopped).

<sup>4817</sup> Goran Stoparić, Exhibit P493, para 55; Goran Stoparić, T 2832; Exhibit 497 (number "2" marking location where they stood when they arrived at the scene).

<sup>4818</sup> Goran Stoparić, Exhibit P493, para 56; Goran Stoparić, T 2832-2834, 2838; Exhibit P497 (small numbers "1", "2", "3", "4" marking position of the members of the Scorpions at the scene); Exhibit P498.

<sup>4819</sup> Exhibit P1594, pp 3-4; Zoran Simović, T 13698, 13713-13715.

<sup>4820</sup> Goran Stoparić, T 2868; Exhibit P497 (numbers "5" and "6" marking the location of these two individuals); *see also* Exhibit P498.

<sup>4821</sup> Goran Stoparić, Exhibit P493, para 47; Goran Stoparić, T 2838.

<sup>4822</sup> Goran Stoparić, Exhibit P493, para 56; *see also* Zoran Simović, T 13588.

<sup>4823</sup> Goran Stoparić, Exhibit P493, para 59; Goran Stoparić, T 2840. Stalević and Simović give similar evidence (*see also* Radislav Stalević, T 13784; Zoran Simović, T 13588).

<sup>4824</sup> Fatos Bogujevci, Exhibit P383, para 46; Fatos Bogujevci, T 1937, 1944; *see also* Exhibit P381, p 2; *see also* Exhibit P382, p 39 as stamped on the page.

glass of water, wrapped in a blanket, and was taken to the police station where he was sat on the edge of a military vehicle he described as a “Pinzgauer”.<sup>4825</sup> From this position, he observed “soldiers, police, people in civilian clothing, people in mixed uniforms” standing on the street talking to each other.<sup>4826</sup> People in civilian clothes armed with automatic rifles were removing property from shops. He recognized two of these people - one of whom he had seen prior to the incident in a police uniform in Podujevo/Podujevë town- as local Serbs.<sup>4827</sup>

1254. Saranda Bogujevci described two men who came and pulled her out of the group of dead and wounded in the courtyard, laid her on the ground, and checked her for wounds; these men spoke Serbian and wore the regular army uniform that she recognized from the army military barracks, different from the men who had shot at the group.<sup>4828</sup> In her video interview with the OTP in 2000, she stated that some of these men who came to the courtyard after the killings were policemen.<sup>4829</sup> Saranda was then placed in what she believed to be a military ambulance because it contained a lot of medicine and blankets.<sup>4830</sup>

1255. The Chamber is satisfied, on the basis of the above evidence, that men came into courtyard after the killings, administered first aid, and transported the wounded children out of the courtyard. These were members of the VJ and the regular police, and may have included some members of the SAJ who had not been present during the killings in the courtyard.

1256. In the Chamber’s finding 19 Kosovo Albanian women and children were shot in the courtyard on 28 March 1999 by Serbian forces. Of these, 14 women and children were killed. It is accepted by the Chamber that these 14 women and children were killed because they were Kosovo Albanians. All of the following 14 victims were listed by name in the Schedule to the Indictment: Saranda Bogujevci’s mother Sala Bogujevci (38 years old),<sup>4831</sup> Saranda’s grandmother Shehide

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<sup>4825</sup> Fatos Bogujevci, Exhibit P383, para 46; Fatos Bogujevci, T 1935, 1944.

<sup>4826</sup> Fatos Bogujevci, T 1935; *see also* Fatos Bogujevci, Exhibit P383, para 47. In his statement to the OTP, Fatos Bogujevci does not describe the “mixed uniforms” he saw on this occasion, referring simply to “the people wearing the mixed uniforms—both police and military” (*see* Fatos Bogujevci, Exhibit P373, para 47). Earlier in his statement, when describing the forces in the street when the group of women, children and elderly Hamdi Duriqi were lined up, he describes “mixed uniforms” as “regular shirts and blue police trousers as well as the other way around” (*see* Fatos Bogujevci, Exhibit P373, para 35).

<sup>4827</sup> Fatos Bogujevci, Exhibit P383, para 47; Fatos Bogujevci, T 1935-1936; *see also* Exhibit P381, p 6. The Chamber recalls, here, that the use of armed Serb civilians during anti-terrorist operations, *inter alia*, in the “Malo Kosovo” area was foreseen in a Priština Corps Command Order dated 16 February 1999, which was then implemented by a Joint Command Order on 23 March 1999 (*see* Exhibits P889 and D105).

<sup>4828</sup> Saranda Bogujevci, Exhibit P373, para 52; Saranda Bogujevci, T 1888, 1913-1914; *see also* Exhibit P374, p 49 as stamped on the page; *see also* Exhibit P375, pp 4, 6. In the transcript of her video interview on 22 May 2000, Saranda Bogujevci states that the pattern of the uniforms worn by those who collected her from the yard was mainly brown with some green (*see* Exhibit P375, p 6)

<sup>4829</sup> Exhibit P375, p 4.

<sup>4830</sup> Saranda Bogujevci, Exhibit, P373, para 53; Saranda Bogujevci, T 1914.

<sup>4831</sup> Saranda Bogujevci, T 1895; *see also* Exhibit P379, p 6.

Bogujevci (60 years old)<sup>4832</sup> and her two younger brothers Shpend and Shpetim,<sup>4833</sup> Fatos Bogujevci's mother Shefkate Bogujevci, his sister Nora, his father's aunt Nefise Llugaliu and Nefise's daughter-in-law Fezrije, as well as six members of the Duriqi family, namely, Fitnete, Esmā, Dafina, Arber, Mimoza and Albijon Duriqi.<sup>4834</sup> Five of the children, Saranda, Fatos, Jehona, Lirije and Genc Bogujevci, some of whom were severely injured, survived the incident.<sup>4835</sup> Following the incident, these five surviving children were taken to the hospital in Priština/Prishtinë where they received some treatment.<sup>4836</sup> Fatos and Saranda remained at this hospital until June 1999 and were subsequently treated at a military hospital in Kosovo.<sup>4837</sup> In September 1999, together with their fathers Selatin and Safet and cousins Jehona and Genc, they moved to the United Kingdom.<sup>4838</sup> Lirije Bogujevci received further treatment in Belgrade and joined them later, in November of 1999.<sup>4839</sup>

1257. Fatos Bogujevci sustained three bullets in his left leg and two in his right leg.<sup>4840</sup> Saranda Bogujevci was shot in her arm 13 times, as well as twice in her leg and once in her back. She has limited movement in her arm and is unable to straighten her fingers and elbow or make a grip. She has trouble concentrating for long periods and is easily anxious.<sup>4841</sup> In addition, she suffered psychological injury from having witnessed the murder of so many members of her family.<sup>4842</sup> At the time of her testimony in this trial, 10 years after sustaining these injuries, she was also continuing to receive physiotherapy for her physical injuries.<sup>4843</sup>

1258. Directly following the killings, Simović informed both the Accused and the MUP Staff in Priština/Prishtinë that members of the Scorpions unit had fired on civilians.<sup>4844</sup> The bodies of those shot and killed in the courtyard remained there for a number of days until an on-site investigation

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<sup>4832</sup> Saranda Bogujevci, T 1895; *see* also Exhibit P379, p 7.

<sup>4833</sup> Saranda Bogujevci, T 1895; *see* also Exhibit P379, p 8.

<sup>4834</sup> Saranda Bogujevci, T 1899. These are Fitnete, Esmā, Dafina, Arber, Mimoza, and Albijon Duriqi (*see* Exhibit 373, para 26). The witness testified that seven members of the Duriqi family were shot in the courtyard. It is clear from her evidence, however, that Hamdi Duriqi should be excluded from this number, as he and fellow villager Selmon Gashi were shot earlier in the coffee shop.

<sup>4835</sup> Saranda Bogujevci, T 1899; Fatos Bogujevci, Exhibit P383, para 51.

<sup>4836</sup> Fatos Bogujevci, Exhibit P383, paras 51; Fatos Bogujevci, T 1937; Saranda Bogujevci, Exhibit P373, para 57.

<sup>4837</sup> Saranda Bogujevci, Exhibit P373, paras 57, 64; Saranda Bogujevci, T 1900; Fatos Bogujevci, Exhibit P383, para 54.

<sup>4838</sup> Saranda Bogujevci, Exhibit P373, para 64; Saranda Bogujevci, T 1900; Fatos Bogujevci, Exhibit P383, para 54; Fatos Bogujevci, T 1937.

<sup>4839</sup> Saranda Bogujevci, Exhibit P373, para 64; Fatos Bogujevci, Exhibit P383, paras 54, 57.

<sup>4840</sup> Fatos Bogujevci, Exhibit P383, para 50; Fatos Bogujevci, T 1946.

<sup>4841</sup> Saranda Bogujevci, Exhibit P373, para 58; Saranda Bogujevci, T 1899-1900, 1916; *see* also Exhibit P374, p 50 as stamped on the page.

<sup>4842</sup> Saranda Bogujevci, Exhibit P373, para 58; *see* also Exhibit P374, p 50 as stamped on the page.

<sup>4843</sup> Saranda Bogujevci, Exhibit P373, para 58; Saranda Bogujevci, T 1900.

<sup>4844</sup> Zoran Simović, T 13588-13589, 13602, 13617-13618, 13654-13656; Živko Trajković, T 9094-9095; *see* also Vlastimir Đorđević, T 9703-9704.

was carried out on 30 March 1999.<sup>4845</sup> They were subsequently buried in a cemetery on the outskirts of Podujevo/Podujevë town.<sup>4846</sup> The adequacy and results of this on-site investigation and the measures taken to identify the perpetrators of these killings will be discussed later in this Judgement.<sup>4847</sup>

1259. As discussed in more detail elsewhere in this Judgement, on 19 July 1999, an OSCE team documented the exhumation from this same cemetery of 19 bodies alleged to have been killed on 28 March 1999. All of the bodies were identified on the basis of clothing and information provided by individuals who had assisted in the initial burial of the bodies. Following the identification of the bodies, they were then reburied in the cemetery. The remains of the 14 women and children killed in the courtyard were amongst these 19 bodies.<sup>4848</sup> In August 2000, a British Forensic Team exhumed and performed autopsies on eight of the women and children who were killed in the courtyard.<sup>4849</sup> It was established that these eight individuals died as a result of gunshot wounds. Two types of bullet wounds were identified in eight bodies. There were wounds to the chest, neck and head.<sup>4850</sup> The Chamber has not received any additional forensic evidence with respect to the remaining six bodies of the women and children the Chamber earlier found were killed in the courtyard. On the basis of eyewitness accounts and the above forensic evidence, the Chamber is satisfied that the earlier listed 14 women and children were all killed by Serbian forces in the courtyard on 28 March 1999.

(b) Živko Trajković

1260. In addition to the evidence of Stoparić, Stalević and Simović, there is also a hearsay account of the events in Podujevo/Podujevë on 28 March 1999 given by another witness, Živko Trajković, who was the overall commander of the SAJ during the time relevant to the Indictment. Živko Trajković was informed of these events by an officer who visited him in Priština/Prishtinë hospital, where he was being treated for injuries sustained when his vehicle drove over an anti-tank mine on the morning of 27 March 1999.<sup>4851</sup> He received similar information from several members of the

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<sup>4845</sup> Vlastimir Đorđević, T 9706. Aleksandar Vasiljević learned later that the bodies remained in the courtyard for three days, because it was not possible for an investigative judge to get to the scene because of road conditions (see T 5736, 5916). Momir Stojanović testified that the investigative judge was afraid to carry out the investigation, but that he eventually did so, after two days (see T 11778); see also Exhibit D441.

<sup>4846</sup> Fatos Bogujevci, Exhibit P383, para 55.

<sup>4847</sup> See *infra*, paras 1956-1966.

<sup>4848</sup> The Chamber notes that in addition, there were the bodies of Idriz Tahir, Selim Tahir and Feriz Fazliu were identified. See *infra*, para 1454.

<sup>4849</sup> See *infra*, para 1455.

<sup>4850</sup> See *infra*, para 1457.

<sup>4851</sup> Živko Trajković, T 9091-9094; see also Zoran Simović, T 13853-13854, 13611. The explosion caused by the anti-tank mine wounded two others and killed Živko Trajković's driver, Radovan Aleksić (see Zoran Simović, T 13853-13854, 13611).

Scorpions when he later went to disarm them in Prolom Banja.<sup>4852</sup> He was told that upon arrival of the unit in Podujevo/Podujevë town, the members of the group were told to find accommodation. On the streets, some of the members of the group came across civilians, and were provoked by the police to “do away with these people” because their commander – ie Živko Trajković– had been injured.<sup>4853</sup> Something similar was said by Zoran Simović in a statement to the MUP in 2002.<sup>4854</sup> Živko Trajković was told that a shooting incident then ensued, and many people, all of them civilians, were killed.<sup>4855</sup> Trajković was also told that when word of the incident spread, the “commanding officers”<sup>4856</sup> ran out to see what had happened, and called an ambulance team. The doctor attached to Živko Trajković’s SAJ unit, Dr Dragan Marković, was called to the scene where he offered first aid.<sup>4857</sup> He was also told that some victims were sent to Priština/Prishtinë hospital while, for many, it was too late.<sup>4858</sup> A report drafted by Živko Trajković on 13 May 1999, at the request of the Accused Vlastimir Đorđević, is consistent with this oral testimony about what he was told of the events that ensued on 28 March 1999.<sup>4859</sup> The Chamber notes that the hearsay account serves to confirm the killings of the women and children in the courtyard, and the fact that the few who survived the incident received medical care. It is, however, not prepared to rely on this account to establish the events leading up to these killings, as it has received more direct evidence on this matter, set out in its findings above.

(c) Results of VJ inquiry into the events

1261. Momir Stojanović, head of the Security Section of the Priština Corps Command, testified that he was told by the Chief of Security of the 211<sup>th</sup> Armored Brigade of the Priština Corps, who the Chamber has already found was stationed in Podujevo/Podujevë town on this day, that corpses had been observed in town on 28 March 1999.<sup>4860</sup> Upon hearing of this, he ordered an investigation into the incident.<sup>4861</sup> The Chamber notes that this investigation was a VJ inquiry into the events. It appears there was also an on-site investigation, which took place on 30 March 1999 and was carried

<sup>4852</sup> Živko Trajković, T 9093-9094, 9106-9107; *See infra*, para 1952.

<sup>4853</sup> Živko Trajković, T 9093-9094.

<sup>4854</sup> Zoran Simović, T 13669-13670; Exhibit P1590. Simović testified that while he signed this statement to the MUP in 2002, he does not remember having read it before he signed it, Zoran Simović, T 13661-13662.

<sup>4855</sup> Živko Trajković, T 9094.

<sup>4856</sup> Živko Trajković, T 9094. The witness does not specify who these “commanding officers” were. The Chamber accepts, on the basis of other evidence, that the commanding officers of the SAJ on the ground at the time included Zoran Simović and Radislav Stalević.

<sup>4857</sup> Živko Trajković, T 9094; Zoran Simović, T 13588, 13623, 13628-13630; Radislav Stalević, T 13784; *see also* Exhibit P1598.

<sup>4858</sup> Živko Trajković, T 9094.

<sup>4859</sup> Živko Trajković, T 9106-9107 and Exhibit P86, a report the witness wrote at Vlastimir Đorđević’s request at the end of the war, addressed to the Accused, including an account of the killings in Podujevo/Podujevë; *see also* Vlastimir Đorđević, T 9712-9715 and Exhibit D442, which, according to the Defence, is a more complete version of the same report in evidence as Exhibit P86.

<sup>4860</sup> Momir Stojanović, T 11777.

<sup>4861</sup> Momir Stojanović, T 11777.

out by an investigative magistrate of the Prokuplje OUP, as detailed elsewhere in this Judgement.<sup>4862</sup> The information subsequently gathered by the security organs of the Priština Corps confirms the findings of the Chamber made above; it indicated that a reserve force of the MUP of Serbia arrived in Podujevo/Podujevë town by bus, and that when they came out of the bus, opened fire on a group of civilians, killings about 12 of them, including children.<sup>4863</sup> It was ascertained by the security organs of the Corps that the same unit was driven out of Kosovo the same day. Stojanović testified that from what he could have gathered from the media at a later stage, the entire group of MUP members involved were subsequently prosecuted.<sup>4864</sup> The Chamber shall deal with the investigations and prosecutions of the perpetrators in more detail elsewhere in this Judgement.<sup>4865</sup>

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<sup>4862</sup> See *infra*, paras 1956-1966.

<sup>4863</sup> Momir Stojanović, T 11777-11778. Exhibit D210, a report of the Security Administration of the Supreme Command Staff, compiled on 13 May 1999 (a month and a half after the inquiry by the VJ into what occurred in Podujevo on 28 March 1999) states that according to operative date, a paramilitary group of some 100 volunteers under the command of Slobodan Medić aka “Boca”, were sent to Podujevo/Podujevë town as reinforcements to MUP forces, after being welcomed in Prolom Banja and assigned with uniforms. The report records that upon arrival in Podujevo/Podujevë, although there were no combat actions in town that day, members of this group began searching houses of local Albanians and stealing various items. It is recorded that “on 31 March”, they killed two elderly people and about 10 children of Albanian ethnicity. Because of their actions, this group was then expelled from the zone of combat operations by the commander of the 354<sup>th</sup> Brigade of the VJ, after which the group returned to Prolom Banja, and ultimately, returned to their “places of living” after some quarrels and interpersonal conflict. The report further states that according to “initial, as yet unconfirmed reports”, Medić and a group of some 100 members returned to Kosovo subsequently, until 10 May 1999 (Exhibit D210). Aleksandar Vasiljević contests the reliability of this report, stating that he has not seen it before and that it contains inaccurate information (Aleksandar Vasiljević, T 5909-5913).

<sup>4864</sup> Momir Stojanović, T 11777-11778.

<sup>4865</sup> See *infra*, paras 1956-1966.

## VII. CONCEALMENT OF BODIES

1262. The Prosecution alleges that one of the ways in which Vlastimir Đorđević participated in the alleged JCE is that he, together with the Minister of the Interior Vljako Stojiljković and others, engaged in extensive operations to conceal bodies of victims killed in Kosovo.<sup>4866</sup> It is alleged that, in furtherance of the JCE, during the Indictment period, the MUP systematically concealed the bodies of Kosovo Albanian civilians killed in Kosovo by Serbian forces.<sup>4867</sup> Bodies were frequently transported from where they were killed, temporarily hidden in local graves, subsequently disinterred and transported to large mass grave sites in Serbia proper.<sup>4868</sup> Hundreds of remains of Kosovo Albanian civilians were later discovered in mass graves at the SAJ Centre in Batajnica near Belgrade, also known as the 13 *Maj* Centre, and at the Petrovo Selo PJP Centre.<sup>4869</sup> There is some uncertainty in the evidence as to whether the Centre in Petrovo Selo is correctly a training ground for the SAJ or the PJP.<sup>4870</sup> The Chamber will refer to it as the Petrovo Selo PJP Centre. Both the SAJ and the PJP are special units of the MUP.

1263. The Defence submits that the Accused had no knowledge of the crimes, their concealment or the organization of transport of bodies from Kosovo and their reburial in Serbia, and that he did not take part in such activities. It is submitted that his first knowledge about the discovery of bodies was received from heads of the SUPs of the respective territories where the discoveries of bodies were made; he learned about their subsequent burial from the Minister.<sup>4871</sup>

1264. The evidence establishes that Kosovo Albanian civilians and other persons taking no active part in the hostilities were the victims of killings committed by Serbian forces in at least 14 municipalities throughout Kosovo<sup>4872</sup> during the Indictment period. As found in Chapter VI, following operations by Serbian forces, various means of concealing the bodies of civilians and

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<sup>4866</sup> Prosecution Final Brief, para 1185. The Indictment alleges that Vlastimir Đorđević took a lead role in the “planning, instigating, ordering and implementation of the program of concealment by members of the RJB and subordinated units of the crime of murder, in coordination with persons in the RDB and in the VJ” (para 61(d)).

<sup>4867</sup> Prosecution Final Brief, para 525.

<sup>4868</sup> Prosecution Final Brief, para 525.

<sup>4869</sup> Prosecution Final Brief, para 525.

<sup>4870</sup> Prosecution Final Brief, para 1230; Defence Closing Arguments, T 14519-14520. It is the testimony of K84 that while he initially thought that the site in Petrovo Selo was an SAJ base, he now knows that it was the training area of “some other groups, perhaps PJPs”, K84, T 2068. Živko Trajković also refers to it as a training centre of the PJP, Živko Trajković, T 9120. Boško Radojković testified that the Petrovo Selo “facility” where the refrigerated truck recovered from the Danube was later blown up, was run “by the MUP”, without specifying which organizational unit used it, Boško Radojković, T 1783. K93, who delivered bodies to this location, refers to it variably as a “Training Centre”, but also as the “SAJ training grounds”, K93, Exhibit P1063, p 3; K93, Exhibit P1064, p 4; K93, Exhibit P1065, p 3; K93, Exhibit P1066, p 7). Finally, the Chamber notes the testimony of the Accused before the Belgrade War Crimes Chamber on 26 June 2009 to the effect that this was a training centre for PJP members, as well as of special units of the RDB, Exhibit P1508, p 14.

<sup>4871</sup> Defence Final Brief, para 427.

others who had not taken an active part in the hostilities were undertaken; for example, bodies were removed from the location of the killings, transported to other locations, buried clandestinely, reburied, or burnt.<sup>4873</sup>

1265. A number of the witnesses who provided testimony with respect to the events described in this Chapter received protective measures. Some of the protective measures granted to a smaller selection of this group of witnesses limits the ability of the Chamber to state their evidence fully, and in some cases, to provide detailed or extensive references to their evidence. In such cases, the Chamber has included references to their evidence in the Confidential Annex to this Judgement.

### **A. Disinterment of bodies from their original site of burial**

#### **1. Removal of bodies in Prizren municipality**

1266. Ali Gjogaj, a garbage collector working for a cleaning company called “Hygiena” on the outskirts of Prizren, had been assigned to the civilian defence at the start of the NATO bombing campaign. At the time of events charged in the Indictment, the MUP occupied some of the offices at the “Hygiena” headquarters.<sup>4874</sup> The director of the cleaning company, Jova Vujčić, aka “Jova”, was a MUP reservist at the time, and wore a MUP blue camouflage uniform.<sup>4875</sup> Ali Gjogaj’s direct supervisor was Budimir Spasić, aka “Buda”; he wore a camouflage army uniform.<sup>4876</sup>

1267. Sometime in early April 1999 at approximately 2000 hours, Budimir Spasić, accompanied by several of the witness’s colleagues wearing civilian defence uniforms, arrived at his home in a white Volkswagen.<sup>4877</sup> Together, they drove to the headquarters of “Hygiena”, where Ali Gjogaj and some of his colleagues were provided with clothes and gloves. From there, Budimir Spasić and Jova Vujčić drove them by van to the VJ firing range located in an area between the villages of Koriša/Korishë and Ljubižda/Lubizhdë in Prizren municipality.<sup>4878</sup> Access to this location from Ljubižda/Lubizhdë is down a dirt track to an open meadow which is the VJ firing range.<sup>4879</sup> At about 2100 hours they arrived at the range. There were four or five dark blue MUP “Pinzgauers”

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<sup>4872</sup> Specific murder charges are alleged in only 7 municipalities throughout Kosovo. However, murder as persecutions, in Count 5, includes also those murders not specifically charged. For the purposes of the Indictment, therefore, the total number of municipalities in which killings are alleged to have occurred is therefore 14.

<sup>4873</sup> See *supra*, paras 532, 553, 631, 682, 683, 708, 985-986.

<sup>4874</sup> Ali Gjogaj, T 542-543, 573-574.

<sup>4875</sup> Ali Gjogaj, T 542, 546, 548, 552, 568.

<sup>4876</sup> Ali Gjogaj, T 548, 568, 572.

<sup>4877</sup> Ali Gjogaj, T 585-586.

<sup>4878</sup> Ali Gjogaj, T 544-547, 586-587, 589-590, 597; Exhibit P277, marking “1” depicting the approximate location of the VJ firing range.

<sup>4879</sup> Ali Gjogaj, T 543-544, 586; 597; Exhibit P277, marking “1” depicting the approximate location of the VJ firing range.



there.<sup>4880</sup> There were also two excavators, as well as two refrigerated trucks without licence plates.<sup>4881</sup> Budimir Spasić directed Ali Gjogaj and his colleagues to a place where bodies appeared to have been buried, and ordered them to remove these bodies. Guarded by a number of policemen, the witness and his colleagues from the cleaning company started loading bodies that had been dug up by excavators onto a truck.<sup>4882</sup> At the same time, only some 15-20 metres away, seven or eight other policemen were removing bodies from another grave site using an excavator.<sup>4883</sup> These persons seen at the firing range by Ali Gjogaj wore regular police uniforms, however, he was not able to see the uniforms of those who were actually guarding him and his colleagues at the time they were disinterring the bodies.<sup>4884</sup> The Chamber accepts that amongst the individuals present at the firing range were members of the regular police.

1268. Ali Gjogaj and his colleagues from “Hygiena” dug up approximately 80-90 bodies from the one mass grave site. These bodies were loaded onto a red Mercedes truck which was one of two trucks already at the scene.<sup>4885</sup> The bodies were dressed in civilian clothes. There were no weapons in the grave. The bodies were in a decomposed state, and the stench made it difficult for the witness to work.<sup>4886</sup> The bodies removed from the other grave site by policemen were loaded onto the second truck.<sup>4887</sup> The bodies having been loaded, Ali Gjogaj left the scene of the exhumation and was escorted by police to another location. The two trucks loaded with bodies remained at the firing range when he left. He does not know what was done with these two trucks loaded with bodies.<sup>4888</sup>

1269. As discussed later in the Judgement,<sup>4889</sup> in September 1999, a British Forensic Team exhumed a large quantity of clothing, shoes, wallets and other items in the vicinity of some human remains at the VJ firing range described above.<sup>4890</sup> Hysni and Halit Berisha, relatives of the Berisha

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<sup>4880</sup> Ali Gjogaj, T 546-547.

<sup>4881</sup> Ali Gjogaj, T 546, 553.

<sup>4882</sup> Ali Gjogaj, T 547, 554-555.

<sup>4883</sup> Ali Gjogaj, T 547, 552-553.

<sup>4884</sup> Ali Gjogaj, T 593-594. The Defence put to the witness that, in the *Milutinović* case, he had testified that the uniforms worn by those present at the firing range were green camouflage; he clarified this in his present testimony.

<sup>4885</sup> Ali Gjogaj, T 553, 555, 557, 587.

<sup>4886</sup> Ali Gjogaj, T 555.

<sup>4887</sup> Ali Gjogaj, T 553, 587-588.

<sup>4888</sup> Ali Gjogaj, T 555-556.

<sup>4889</sup> *See supra*, para 1406.

<sup>4890</sup> Hysni Berisha, T 3345-3346; Hysni Berisha, Exhibit P584, pp 8-9; *see also* Halit Berisha, T 3383-3386; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3611-3612; Exhibit P591, p 6. The Chamber is satisfied that the VJ firing range where the British Forensic team conducted its exhumations in September of 1999 is the same firing range where Ali Gjogaj exhumed human remains in April of 1999. As noted above, Ali Gjogaj identified the location of the VJ firing range as being between the villages of Koriša/Korishë and Ljubižda/Lubizhdë; he described it as an area by an open meadow. He described that to get there, travelling from Prizren village, they took a right turn at the police station in Ljubižda/Lubizhdë and continued down a dirt road, Ali Gjogaj, T 586. The location marked by Ali Gjogaj appears closer to Koriša/Korishë than Ljubižda/Lubizhdë village, Exhibit P277, marking “1”.

family members killed in Suva Reka/Suharekë town on 26 March 1999, attended these exhumations; many of the items recovered belonged to various killed members of the Berisha family.<sup>4891</sup> The human remains of the majority of Berisha family members who were killed that day were later found buried in a mass grave site at the Batajnica SAJ Centre near Belgrade.<sup>4892</sup>

1270. In the early morning of the following day, after the disinterment of bodies at the VJ firing range between Koriša/Korishë and Ljubižda/Lubizhdë in Prizren municipality, Ali Gjogaj was also directed to participate in a second disinterment. At approximately 0200 hours, he and his colleagues from “Hygiëna”, this time driving in a smaller, white, “Zastava” refrigerated truck with a yellow cabin, without licence plates, again escorted by the police,<sup>4893</sup> were taken to the garbage dump of Prizren which is located near the village of Špinadija/Shpenadi.<sup>4894</sup> One of the excavators which had been used earlier at the firing range near Koriša/Korishë preceded them.<sup>4895</sup> Upon arrival at the garbage dump, Budimir Spasić once again ordered the witness and his colleagues to exhume the bodies at this site. The director of “Hygiëna”, Jova Vujicić, was also present at the site.<sup>4896</sup> A total of about 30-40 bodies were disinterred from this grave site and loaded onto the white refrigerated “Zastava” truck.<sup>4897</sup> The bodies were in civilian clothes and were unarmed. They were in a state of decomposition and gave off a strong stench.<sup>4898</sup> The removal of these bodies took until about 0400 hours that morning, following which Budimir Spasić drove Ali Gjogaj back to “Hygiëna” in his Volkswagen, and he returned to his home.<sup>4899</sup> The white truck was still at the grave site when Ali Gjogaj left.

## 2. Removal of bodies in Orahovac/Rahovec municipality

1271. Towards the end of April 1999, his superior Budimir Spasić and police took Ali Gjogaj and his colleagues from the “Hygiëna” company, to a meadow in the village of Pusto Selo/Pastasellë in the northwestern part of Orahovac/Rahovec municipality.<sup>4900</sup> When he arrived, employees from a different department of “Hygiëna” which is located in Orahovac/Rahovec town were already

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<sup>4891</sup> Hysni Berisha, T 3345-3347; Hysni Berisha, Exhibit P584, pp 8-9; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4011-4012; Halit Berisha, T 3383-3386, 3613; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3611-3612; *see also* Exhibits P590; P591; P592; P593.

<sup>4892</sup> Halit Berisha, T 3386-3387; *see infra*, para 1488.

<sup>4893</sup> Ali Gjogaj, T 556-557, 588.

<sup>4894</sup> Ali Gjogaj, T 555-559, 597; Exhibit P279, marking “2” indicating the approximate location of the garbage dump. The transcript reads “Shpinadinadi” (Ali Gjogaj, T 597); this appears to be Špinadija/Shpenadi village in Prizren municipality.

<sup>4895</sup> Ali Gjogaj, T 556-557.

<sup>4896</sup> Ali Gjogaj, T 558, 588-590.

<sup>4897</sup> Ali Gjogaj, T 557-559.

<sup>4898</sup> Ali Gjogaj, T 558-559, 588.

<sup>4899</sup> Ali Gjogaj, T 588. At T 559, the witness differs in some details suggesting he was escorted by Jova Vujicić and Budimir Spasić in a truck.

<sup>4900</sup> Ali Gjogaj, T 559, 563, 576, 585; Exhibit P280, marking “1” indicating the village of Pusto Selo/Pastasellë.

present at the scene.<sup>4901</sup> Together with these men, Ali Gjogaj and his colleagues were once again tasked by Budimir Spasić to disinter buried bodies and to load them onto a truck.<sup>4902</sup> Unlike the previous two disinterment in which the witness was involved, described above, on this third occasion the disinterment took place during the day.<sup>4903</sup> The bodies at this grave site were buried in individual graves and were covered by sheets or blankets which prevented Ali Gjogaj from seeing them.<sup>4904</sup> The son of the director of “Hygiena” Jova Vujicić,<sup>4905</sup> Mirko Vujicić, who was identified by Ali Gjogaj as one of the policemen at the scene, took photographs of the bodies.<sup>4906</sup> He wore a police blue uniform, but not camouflaged.<sup>4907</sup> Jova Vujicić himself was not at the scene.<sup>4908</sup>

1272. On this third occasion a total of what Ali Gjogaj estimated to be around 90 bodies were removed from these individual grave sites. They were decomposed leading Ali Gjogaj to believe they had been buried there for quite some time, and they gave off a strong stench.<sup>4909</sup> The bodies were marked and then placed in individual numbered body bags.<sup>4910</sup> Ali Gjogaj then assisted in the transport of these bodies to the morgue in Prizren, where they were unloaded in the garage of the morgue.<sup>4911</sup> Some five to six days later, Ali Gjogaj and his colleagues from “Hygiena” were again ordered to transport these bodies,<sup>4912</sup> this time from the Prizren morgue to Priština/Prishtinë for autopsy, after which they were to return the bodies to Prizren.<sup>4913</sup> Ali Gjogaj had heard from a guard in the morgue that the police in Prizren had received a court order for the examination of these bodies, hence the reason they had to be transported to Priština/Prishtinë.<sup>4914</sup> The witness personally assisted in the transport of the bodies to Priština/Prishtinë and back to Prizren.<sup>4915</sup>

1273. When the bodies were transported back to Prizren, Ali Gjogaj’s bosses<sup>4916</sup> ordered him and his colleagues to rebury the bodies in four different cemeteries; about 30 bodies were buried in

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<sup>4901</sup> Ali Gjogaj, T 563-564, 576.

<sup>4902</sup> Ali Gjogaj, T 564.

<sup>4903</sup> Ali Gjogaj, T 559, 576.

<sup>4904</sup> Ali Gjogaj T 580-582.

<sup>4905</sup> Ali Gjogaj did not mention that Mirko Vujicić was the son of “Jova” when he gave his statement to the OTP in 2000. The Chamber accepts his testimony that at that time, he did not know Mirko’s or Jova’s last name, and that he only learned after 2000 through his colleagues that Mirko was Jova’s son, and that Jova’s last name was Vujicić (Ali Gjogaj, T 577-579).

<sup>4906</sup> Ali Gjogaj, T 564, 580.

<sup>4907</sup> Ali Gjogaj, T 593.

<sup>4908</sup> Ali Gjogaj, T 590.

<sup>4909</sup> Ali Gjogaj, T 564.

<sup>4910</sup> Ali Gjogaj, T 581.

<sup>4911</sup> Ali Gjogaj, T 564, 581.

<sup>4912</sup> Ali Gjogaj, T 564-565.

<sup>4913</sup> Ali Gjogaj, T 564-565.

<sup>4914</sup> Ali Gjogaj, T 582.

<sup>4915</sup> Ali Gjogaj, T 565.

<sup>4916</sup> Ali Gjogaj testified that they had been ordered to rebury the bodies in these four separate locations by “our bosses”, “the directors”, “the bosses”. The Chamber accepts that this is a reference to Jova Vujicić, aka “Jova”, director of “Hygiena” and a MUP reservist, and possibly Ali Gjogaj’s direct supervisor, Budimir Spasić, aka “Buda”, who wore a camouflage army uniform.

Orahovac/Rahovec cemetery, 15 to 16 bodies were buried in the cemetery in Zrze/Xërxë, nine or ten bodies were buried in Dušanovo/Dushanovë cemetery, and three bodies were buried in Prizren cemetery.<sup>4917</sup> Ali Gjogaj only took part in the reburial of the bodies at Zrze/Xërxë cemetery, not at any of the other locations.<sup>4918</sup>

1274. The description of the exhumation process in Pusto Selo/Pastasellë, in particular the fact that it took place during daytime, that photographs were taken of the bodies, that the bodies were placed in individual marked body bags, the apparent processing of these bodies through the morgue in Priština/Prishtinë, and the apparent autopsies of the bodies, appears to distinguish this third exhumation from the others in which the witness was involved. Further, a report of this third exhumation, recorded to have taken place on 24 April 1999, was compiled by the Prizren SUP and forwarded to an investigative judge in early May 1999.<sup>4919</sup>

### 3. Removal of bodies in Đakovica/Gjakovë municipality

1275. K72, an excavator operator working for a private construction company in Đakovica/Gjakovë,<sup>4920</sup> was involved in three separate exhumations in Đakovica/Gjakovë municipality in April and May of 1999. These took place at locations near the Bistražin/Bishtazhin Bridge, in Brekovac/Brekoc, and in Guska/Guskë. During the NATO bombing, K72 was permanently engaged by both the army and the police, mainly to assist them in digging trenches; in return, he would receive a small daily allowance in cash from both the VJ and the MUP, respectively.<sup>4921</sup> He always worked in civilian clothes.<sup>4922</sup> In addition to this work he performed for the VJ and the MUP, K72 was part of the “local civilian protection”, tasked with the burial of livestock carcasses.<sup>4923</sup>

1276. During the evening on an unspecified day in late April or early May 1999, at around 2000 or 2100 hours, a man introducing himself as an officer and wearing a blue camouflage police uniform came to K72’s house and told him he had a “delicate” job for him.<sup>4924</sup> K72 was taken to the police station in Đakovica/Gjakovë where he picked up his excavator. From there, he followed the police

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<sup>4917</sup> Ali Gjogaj, T 565-567; Exhibit P280, marking “2” indicating the location of the cemetery in Orahovac/Rahovec, marking “3” indicating the location of Zrze/Xërxë cemetery, number “4” indicating the location of Dušanovo/Dushanovë cemetery, and number “5” indicating the location of Prizren cemetery.

<sup>4918</sup> Ali Gjogaj, T 581-584. The Chamber notes that on the witness’s estimates, not all of the bodies exhumed from the meadow in Pusto Selo/Pastasellë were reburied in the four cemeteries. There is no explanation for this in the evidence.

<sup>4919</sup> Exhibit D811.

<sup>4920</sup> K72, T 8919-8920, 8957-8960.

<sup>4921</sup> K72, T 8921-8924, 8959-8960, 8965-8968, 8971.

<sup>4922</sup> K72, T 8958-8959.

<sup>4923</sup> K72, T 8924.

<sup>4924</sup> K72, T 8925.

officer,<sup>4925</sup> heading towards Prizren; they stopped just before the Bistražin/Bishtazhin Bridge.<sup>4926</sup> As directed, K72 drove his excavator to a clearing about 100 metres from the road.<sup>4927</sup> Some digging appeared already to have been done at the location; there was a strong stench and K72 could see corpses.<sup>4928</sup> Also present were people which K72 identified as “gypsies”, *i.e.* of Roma ethnicity, and a police security officer; between two and four police vehicles were also parked some 20-30 metres away. The occupants of the police vehicles wore blue camouflage uniforms and appeared to the witness to be waiting.<sup>4929</sup> There were policemen moving around the area with torches, and the area was secured by them.<sup>4930</sup> The road leading up to where they were digging was blocked and no access was allowed to anyone during the process of removing the bodies.<sup>4931</sup>

1277. At the police officer’s direction, K72 disinterred the corpses that had been buried there.<sup>4932</sup> Four or five “gypsies” separated the bodies so that K72 was able to reach them with the shovel of his machine. As they did this they searched the bodies for valuables.<sup>4933</sup> K72 placed the unearched bodies about five to six metres from his excavator. The “gypsies” loaded these bodies onto two small trucks present at the scene.<sup>4934</sup> The light of his excavator enabled K72 to see that the bodies were not particularly mutilated and were not in a state of decomposition; they were all men and were all in civilian clothes.<sup>4935</sup> Some of the bodies were damaged during the excavation process.<sup>4936</sup> Policemen present during the excavation told K72 there were about 100 bodies.<sup>4937</sup> The disinterment of all of the bodies took some two to three hours.<sup>4938</sup> Following the disinterment of these bodies, K72 drove his excavator back to the police station in Đakovica/Gjakovë, and police then drove him home in a police car.<sup>4939</sup> K72 did not know what happened to the truck or the disinterred bodies.<sup>4940</sup>

1278. Approximately 20 days after the disinterment at Bistražin/Bishtazhin Bridge a policeman unknown to K72, wearing a blue camouflage uniform and driving a police car, came to his house and told him to come along for a job.<sup>4941</sup> The policeman drove K72 to the location where his

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<sup>4925</sup> K72 did not remember whether the car was a marked police car or not, K72 T 8926.

<sup>4926</sup> K72, T 8926, 8951; Exhibit P1323.

<sup>4927</sup> K72, T 8926-8927.

<sup>4928</sup> K72, T 8925-8927.

<sup>4929</sup> K72, T 8929-8930.

<sup>4930</sup> K72, T 8950.

<sup>4931</sup> K72, T 8950, 8979.

<sup>4932</sup> K72, T 8925-8927.

<sup>4933</sup> K72, T 8927.

<sup>4934</sup> K72, T 8927, 8929.

<sup>4935</sup> K72, T 8927-8928, 8981.

<sup>4936</sup> K72, T 8927.

<sup>4937</sup> K72, T 8928.

<sup>4938</sup> K72, T 8929.

<sup>4939</sup> K72, T 8930.

<sup>4940</sup> K72, T 8980.

<sup>4941</sup> K72, T 8931-8932.

excavator was parked, but then waited there until nightfall. After dark, K72 followed the police car to the public cemetery of Brekovac/Brekoc, located three to four kilometres from Đakovica/Gjakovë town, near VJ barracks.<sup>4942</sup> Having entered the cemetery, K72 was ordered by the policeman to dig bodies out of individual graves marked with wooden poles, on some of which names were written. The names indicated to K72 that these graves contained the bodies of muslims.<sup>4943</sup> The graves appeared to be recent as the soil was fresh and the bodies were only in a limited state of decomposition.<sup>4944</sup> All the bodies K72 dug up were male and all were in civilian clothes.<sup>4945</sup> Some of the bodies were naked to the waist and K72 observed shot wounds.<sup>4946</sup> One of the bodies had the letters “UÇK” shaved on the head.<sup>4947</sup>

1279. Five or six “gypsies” who were present, two of whom K72 recognized as having been present at the Bistražin/Bishtazhin Bridge disinterment, loaded the bodies excavated by K72 on a trailer and transported them out of the cemetery to a larger truck.<sup>4948</sup> Once loaded onto the truck, the bodies were covered by a tarpaulin.<sup>4949</sup> The truck then left the scene in an unknown direction, while K72 stayed behind and flattened the earth with his excavator.<sup>4950</sup> The disinterment of these bodies took over 12 hours, from approximately 2100 hours to 1000 hours the next morning.<sup>4951</sup> During this time, 10-15 policemen wearing blue camouflage uniforms, all unknown to the witness, were stationed in the area to secure it.<sup>4952</sup> K72 could not provide an estimation of the number of bodies disinterred on this occasion.<sup>4953</sup>

1280. In July of 1999, Frederick Abrahams visited the cemetery in Đakovica/Gjakovë town and observed dug-up earth as well as clear track marks from what looked like heavy machinery. He had been told by members of the “Gjakovë city public works” that about 70 bodies had been removed from this location by Serbian forces in May of 1999.<sup>4954</sup> This is not the cemetery from which K72 disinterred bodies at the end of April 1999, which was in the nearby village of Brekovac/Brekoc. Nevertheless, Abrahams’ evidence indicates that the practice of removal of bodies from their initial place of burial in Đakovica/Gjakovë occurred throughout the municipality, before the withdrawal of Serbian forces from Kosovo in June of 1999.

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<sup>4942</sup> K72, T 8932-8933, 8951; Exhibit P1323, marking “2” indicating the approximate location of the cemetery near Brekovac/Brekoc.

<sup>4943</sup> K72, T 8933-8934.

<sup>4944</sup> K72, T 8933-8935.

<sup>4945</sup> K72, T 8935-8936, 8981.

<sup>4946</sup> K72, T 8935.

<sup>4947</sup> K72, T 8935-8936.

<sup>4948</sup> K72, T 8934-8935, 8937. This truck was too big to enter the cemetery, K72, T 8934.

<sup>4949</sup> K72, T 8937.

<sup>4950</sup> K72, T 8937.

<sup>4951</sup> K72, T 8935.

<sup>4952</sup> K72, T 8936.

1281. In the evening of the same day of the disinterment of bodies from Brekovac/Brekoc or a day or two after, K72 was picked up from his home by a policeman in a blue camouflage uniform, once again to collect his excavator.<sup>4955</sup> K72 followed the policeman in his excavator to a settlement called Guska/Guskë, a number of kilometres to the west of Đakovica/Gjakovë town.<sup>4956</sup> Just outside the settlement, near a low building which looked to K72 like a place of worship, the policeman directed K72 to dig; there were three rows each of three or four individual unmarked graves at this site.<sup>4957</sup> All these bodies were excavated by K72. They were male and dressed in civilian clothes.<sup>4958</sup> The condition of the bodies indicated they had not been buried for long.<sup>4959</sup>

1282. K72 was then directed with his excavator to a wooded area close by, where a uniformed policeman shone a flashlight on more graves. About 10 other policemen stood a distance away.<sup>4960</sup> The graves at this site were dispersed; they were unmarked and each grave contained one or two bodies.<sup>4961</sup> K72 excavated these graves. The bodies dug up were of adult males dressed in civilian clothes; one of them was wearing Turkish pantaloons-type trousers.<sup>4962</sup> There was no need for this area to be secured as it was shielded by the woods.<sup>4963</sup>

1283. A number of “gypsies” present at the site, loaded the disinterred bodies onto a small truck with a trailer.<sup>4964</sup> The evidence does not reveal how many bodies there were or what happened to the bodies loaded on to the truck and trailer.

1284. After he had completed the exhumations of the bodies at the site by Guska/Guskë, K72 was threatened by one of the policemen in blue uniform present at the site, that he would be killed if he “talked too much”. This policeman was unknown to the witness.<sup>4965</sup>

1285. The Chamber notes that the three locations from which K72 exhumed bodies in Đakovica/Gjakovë municipality in April of 1999 are in close proximity to the village of Meja/Mejë, which is just to the east of Đakovica/Gjakovë town. As found by the Chamber elsewhere in the

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<sup>4953</sup> K72, T 8935.

<sup>4954</sup> Frederick Abrahams, T 3971, 3973, 3975.

<sup>4955</sup> K72, T 8939-8942. The Chamber notes that while K72 does not explicitly state that this took place in the evening, given his evidence that a policeman shone a flashlight on the graves in the wooded area, a location close by to the “place of worship” where he dug up the first group of bodies, the Chamber infers that the removal of the bodies at these sites likewise took place in the evening.

<sup>4956</sup> K72, T 8939, 8951; Exhibit P1323, marking “3” indicating the location of Guska/Guskë.

<sup>4957</sup> K72, T 8939-8941.

<sup>4958</sup> K72, T 8941, 8981.

<sup>4959</sup> K72, T 8941.

<sup>4960</sup> K72, T 8940, 8942.

<sup>4961</sup> K72, T 8941-8942.

<sup>4962</sup> K72, T 8943, 8981.

<sup>4963</sup> K72, T 8950.

<sup>4964</sup> K72, T 8937, 8940-8941.

<sup>4965</sup> K72, T 8944-8945.

Judgement, throughout April and in particular the end of April 1999, a large number of Kosovo Albanian civilians were killed there during an operation by Serbian forces.<sup>4966</sup> The bodies of several hundreds of these persons killed at Meja/Mejë were exhumed from three mass graves at the Batajnica SAJ Centre near Belgrade in 2001.<sup>4967</sup> The Chamber, however, is unable, on the basis of the evidence, to conclusively establish that amongst the bodies discovered in 2001 were the bodies disinterred by K72.

#### 4. Removal of bodies in Izbica/Izbicë in Srbica/Skenderaj municipality

1286. Liri Loshi, whose evidence is discussed in more detail elsewhere in this Judgement,<sup>4968</sup> visited Izbica/Izbicë on 30 March 1999 having been told of killings that had taken place there some days earlier. He observed over 100 bodies of Kosovo Albanian villagers. The scene was recorded on video tape. The following day, these bodies were buried in the village by villagers. Liri Loshi returned to Izbica/Izbicë sometime in June of 1999; he had been told that Serbian forces had entered the village and removed the buried bodies. He recorded on video the razed land where the graves had been. Wooden planks with the names of some of those buried, as well as gloves that had been used to remove the bodies from the graves, were found at the site.<sup>4969</sup>

### **B. Discovery, transport and reburial of bodies**

#### 1. Bodies discovered in a refrigerated truck in the Danube

##### (a) Preliminary notes

1287. The evidence of Prosecution witnesses Boško Radojković, Časlav Golubović, K87, K88, and K93 dealt with an episode in which a large number of bodies of Kosovo Albanians were found in early April 1999 in a refrigerated truck in the Danube River in Serbia, near the village of Tekija in Kladovo municipality, the subsequent transport of these bodies to the Batajnica SAJ Centre near Belgrade, and their burial in mass graves at this Centre. The Chamber has also heard the evidence of the Accused on this matter.

1288. Some aspects of the evidence given by several of these witnesses appeared to the Chamber to be unreliable or dishonest and to be consciously aimed at minimizing the witness's own role and culpability in the events described. There were also times when the Chamber was left with the impression that a witness's departure, in the present trial, from evidence given in prior proceedings

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<sup>4966</sup> See *supra*, para 992.

<sup>4967</sup> See *supra*, paras 1493, 1500, 1506.

<sup>4968</sup> See *supra*, paras 625-628.

<sup>4969</sup> Liri Loshi, T 721-723; Exhibit P293.



was motivated by desire to minimize the role of the Accused. This was apparent from the demeanour of the witnesses concerned, variations in their accounts of material matters for which the explanations offered were not satisfactory, as well as other available evidence about the matter. Because of this, the Chamber has rejected aspects of the evidence of some of these witnesses and is left in doubt about some other aspects. The Chamber's findings recorded below are made after a consideration of the totality of the available evidence about these matters.

1289. The Chamber also notes here that over two years later, in May of 2001, a Working Group comprising, *inter alia*, Dragan Karleuša, Dragan Furdulović and Bora Banjac, had been set up by Sreten Lukić, then chief of the RJB, at the oral order of then Minister of Interior Dušan Mihajlović, to enquire into allegations that had been made in an article in a local Zaječar newspaper the "Timok Crime Review" published on 1 May 2001 concerning the refrigerated truck in the Danube. This Working Group compiled "Official Notes" of interviews held with individuals who were involved in the events at the time.<sup>4970</sup> Several of the witnesses who gave evidence in this trial were interviewed. It is the Defence position that the Prosecution unjustifiably seeks to place considerable value on some of these Official Notes for the truth of their content.<sup>4971</sup> The establishment of the Working Group and the results of their investigation will be discussed further in this Chapter. One of the witnesses, K87, challenged the content of almost the entirety of the Official Note compiled of his interview, claiming that it was full of untruths and inaccuracies.<sup>4972</sup> Another witness, K93, claimed that when interviewing him, the Working Group applied pressure by suggesting to him that it must have been Đorđević who was involved.<sup>4973</sup> While conscious of the positions these two and other witnesses have taken with respect to the contents of the Official Notes of their respective interviews, the Chamber also observes that, as set out earlier, it has difficulty accepting in particular the evidence of K87 and K93 in this trial with respect to critical aspects concerning the role of the Accused in the events. Where a witness has given specific evidence about the content and accuracy of the Official Note of the witness's interview, the Chamber has weighed this evidence in the context of the entirety of the evidence of that witness, as well as other relevant evidence before the Chamber. Given that the Official Notes have not been signed by the persons interviewed, and taking into consideration other aspects of the procedures followed by the Working Group, the

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<sup>4970</sup> Boško Radojković, Exhibit P358, p 2; Časlav Golubović, Exhibit P352, p 5; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7422-7423; *see also* K84, T 1991-1993, 2075-2076, 2097-2098, 2103. K84 explained that it was not unusual for orders to be issued only orally; sometimes, they were followed up by written decisions, K84, T 2087-2088; *see also* Exhibit P365. *See also supra*, paras 1367-1374.

<sup>4971</sup> Defence Final Brief, para 531.

<sup>4972</sup> K87, T 14166-14171; Exhibit D392.

<sup>4973</sup> K93, T 6886-6887, 6920-6923, 6926.

Chamber has been cautious indeed about the reliability of their contents.<sup>4974</sup> In some cases, they have, nevertheless, been of assistance to the Chamber in making its findings, set out below.

(b) Findings

1290. On 4 April 1999,<sup>4975</sup> a local fisherman reported seeing a large crate resembling the back of a truck in the Danube River near the village of Tekija in eastern Serbia.<sup>4976</sup> Thereafter, on that same day, Boško Radojković, a senior crime technician of the Kladovo OUP, together with diver Živadin Đorđević, aka “Zika”, went to the scene.<sup>4977</sup> The “crate” turned out to be a truck that was partially submerged in the water. The diver entered the water and observed that it was a Mercedes refrigerated truck, the driver and passenger seats were vacant, the windshield was missing, and a large stone had been placed on the accelerator pedal.<sup>4978</sup> Boško Radojković and the diver, Živadin Đorđević, then arranged for a large crane to pull the truck from the water;<sup>4979</sup> they were only partly successful in pulling the truck from the Danube that day.<sup>4980</sup>

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<sup>4974</sup> The Chamber has also considered evidence and Defence submissions that the form of the Official Notes, and the procedure followed by the Working Group in preparing and filing them, precludes their use as evidence under Serbian domestic law on criminal procedure (Defence Final Brief, para 523; see also K84, T 2124-2127, 2128, 2132-2133). The Chamber is not persuaded on these bases alone that it should refuse to receive the Official Notes or that it should not give any weight to their content. Nevertheless, as they have not been signed by the persons interviewed, the Chamber has carefully weighed the differing observations by the persons interviewed about the procedures followed during the interview of each witness and has regarded the content of each Official Note with much care and caution before, in some cases, being prepared to accept what is contained therein.

<sup>4975</sup> The Chamber notes that the evidence of Boško Radojković about the exact date of the initial discovery of the bodies is unclear, being either 4 or 5 April 1999, Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7433, 7446; Boško Radojković, T 1811-1812; see also Exhibit D39. When viewed in the light of the chronological order of events as set out by this witness, however, and taking into account the evidence of Časlav Golubović with respect to the date he became involved in the events (6 April 1999), the Chamber is satisfied that the most likely date for the initial discovery of bodies in the Danube was 4 April 1999. The exact date of the initial discovery is not a material issue in this case, and the Chamber, therefore, allows for the possibility that it may in fact have been 5 April 1999 (Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7433, 7446; Boško Radojković, T 1811-1812; see also Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7399, with respect to the date he became involved in the events).

<sup>4976</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7432-7433; see also Časlav Golubović, Exhibit P352, p 2; Časlav Golubović, T 1734.

<sup>4977</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7433; Boško Radojković, T 1768, 1805.

<sup>4978</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7433; Boško Radojković, T 1815-1817; see also Boško Radojković, Exhibit D39. The Chamber notes that Boško Radojković did not mention the stone on the accelerator pedal in his testimony in the *Milošević* trial. The Defence in this case points out that this detail is not recorded in the informal note of the interview held with the witness, compiled by the Working Group. While the Chamber considers it odd that Boško Radojković, as an experienced crime technician, would have omitted to reveal this detail in his testimony in the *Milošević* trial, it accepts his testimony that no one asked him about it then, but that he is certain the diver, Živadin Đorđević, told him about the stone at the time, Boško Radojković, T 1816-1817. With respect to the lack of this information in the witness’s Official Note compiled in 2001, the Chamber notes the witness’s evidence that he is adamant he did in fact give the Working Group this information, Boško Radojković, T 1813-1815. It also notes the evidence of Časlav Golubović to the effect that the focus of the Working Group’s questions did not appear to be to find out how the truck ended up in the Danube, Časlav Golubović, T 1713. Further, the Chamber notes that the detail with respect to the stone on the accelerator pedal is included in the Official Note reflecting the contents of an interview the Working Group held with the diver, Živadin Đorđević, himself.

<sup>4979</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7434.

<sup>4980</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7434-7435; Boško Radojković, T 1818, 1822.

1291. Upon his return to the Kladovo OUP, Boško Radojković informed his superior, Milan Stevanović,<sup>4981</sup> chief of the crime prevention squad at the Kladovo OUP, about their discovery.<sup>4982</sup> That night, one of Boško Radojković's colleagues at the Kladovo OUP sent a dispatch to the duty officer at the SUP in Bor, reporting that a citizen had reported an incident, and that a team had been dispatched to the site, but that nothing had yet been established.<sup>4983</sup>

1292. Early the following morning, Boško Radojković and Živadin Đorđević, together with some 15 people they had recruited from the nearby hydro-electric power plant, returned to the truck. At around noon, a further attempt was made to pull the truck from the river.<sup>4984</sup> During this process, Boško Radojković took about 10 photographs, which he handed to the Working Group.<sup>4985</sup> Eight of these photographs are in evidence in this trial.<sup>4986</sup> As the truck was being pulled from the river, Boško Radojković observed two legs, an arm, and pieces of clothing protruding through a crack on the back door of the refrigerated freight container of the truck;<sup>4987</sup> that door was secured with a chain and lock.<sup>4988</sup> Markings on the door and on the front of the truck indicated that it belonged to the "PIK PROGRES Export Slaughter House" in Prizren, Kosovo, which is about 400 kilometres from Tekija.<sup>4989</sup> The truck bore no licence plates.<sup>4990</sup>

1293. On the truck being pulled from the river, Boško Radojković and Živadin Đorđević closed the crack in the door in order to avoid a recurrence of the protrusion of the legs and arms.<sup>4991</sup> Boško Radojković conceded that in so doing, he had altered the crime scene, but considered the cause of action he had taken necessary in order that those body parts would not have been seen by members

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<sup>4981</sup> The transcript records Boško Radojković as referring to Milan "Stojanović". However, it is clear from the context that this should be "Milan Stevanović", head of the crime section of Kladovo OUP.

<sup>4982</sup> Boško Radojković, T 1818-1819.

<sup>4983</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7435; *see also* Časlav Golubović, T 1736.

<sup>4984</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7435-7436; Boško Radojković, T 1822-1823.

<sup>4985</sup> Boško Radojković, Exhibit P358, p 2; Exhibit P359 (*Milutinović* transcript), T 7435-7436; *see also* Časlav Golubović, T 1738-1739, speaking of photographs taken of the truck on the day prior to his arrival at the Kladovo OUP.

<sup>4986</sup> Exhibits D40-D44, Exhibits P361-P363.

<sup>4987</sup> Boško Radojković Exhibit P358, p 3; Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7437-7438; Boško Radojković, T 1765-1766; *see also* Exhibit P361, a photograph taken by Boško Radojković on the second day, 5 April 1999, depicting the back of the freight truck with a leg protruding from a crack on the door; *see also* Exhibits P367, p 2; P398.

<sup>4988</sup> Boško Radojković, Exhibit P358, p 3; Exhibit P361; Exhibit D41.

<sup>4989</sup> Boško Radojković, Exhibit P358, p 3; Exhibit P362; Exhibit D43; Boško Radojković, T 1764.

<sup>4990</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7437; Boško Radojković, T 1765.

<sup>4991</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7443; Boško Radojković, T 1767-1769, 1825-1826; *see also* Exhibit P361, depicting a crack. The photograph of the truck taken when it was still half submerged in the water does not reveal the crack (Exhibit D40). Moreover, the marking made by Boško Radojković on Exhibit P363 to indicate where he placed the piece of tin to repair the crack, does not match the location of the crack as indicated on Exhibit P361 (Boško Radojković, T 1767-1768). While it is not entirely clear to the Chamber when the crack appeared and when indeed it was repaired, this issue is not material in the determination of the events. Exhibit P364, an article published in a local newspaper on 15 September 1999, also refers to the damage to the truck – the author of the article interviewed an employee of the hydro-electric plant who stated that the door of the truck was "slightly deformed" and to prevent people from seeing the bodies that were sticking out of it, "the bodies were put back into the refrigerated truck" (Exhibit P364, p 2).

of the public, and also because it would have been unpleasant for the workers from the hydro-electric power plant who would have had to attach the ropes to the container, to carry out that task, with body parts visible.<sup>4992</sup> At around 1300 to 1400 that day, they managed to get the truck to the bank of the river.<sup>4993</sup> By this time, at the request of Milan Stevanović, a municipal investigative judge, a deputy municipal prosecutor, and a coroner from the medical centre in Kladovo, had arrived at the scene.<sup>4994</sup>

1294. In the presence of Milan Stevanović, the municipal investigative judge, the deputy municipal prosecutor, the coroner, as well as Momčilo Sujiranović, another crime technician of the Kladovo OUP who had arrived at the scene and several workers of the hydro-electrical plant, Boško Radojković then proceeded to open the rear doors of the truck. They were confronted with the sight of corpses piled up in the freight container.<sup>4995</sup> On seeing this, the municipal investigative judge informed Radojković that the matter was not within his competency and that the police should inform the district prosecutor in Negotin. This was subsequently done.<sup>4996</sup> The scene was then closed on the departure of the investigative judge and his party.<sup>4997</sup> By that time, the truck had been pulled out of the river but not sufficiently far onto land for any work to be carried out.<sup>4998</sup> Radojković then returned to the Kladovo OUP, leaving police officers to secure the scene.<sup>4999</sup>

1295. At the police station, on the evening of 5 April 1999, the head of Kladovo OUP, Vukašin Sprlić, was informed of the discovery. Boško Radojković and Milan Stevanović then sent another dispatch to the duty officer of the SUP in Bor, indicating that about 30 bodies, Boško Radojković's estimate at the time, had been found in the refrigerated truck.<sup>5000</sup> That evening, Sprlić, Stevanović, Sujiranović, Nenad Popović, Boško Radojković and some local policemen had a meeting at the Kladovo OUP. It is the evidence that the meeting was to discuss how they should conceal the discovery of the bodies.<sup>5001</sup> Boško Radojković testified that the concealment of the incident was only discussed because the district public investigator and prosecutor, whom they had contacted after the municipal judge and municipal prosecutor had declared that the situation was not within their competence, had lacked interest in the case.<sup>5002</sup> It was agreed that they would spread a rumour

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<sup>4992</sup> Boško Radojković, T 1825-1826.

<sup>4993</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7435.

<sup>4994</sup> Boško Radojković, T 1830; *see also* Exhibit P398.

<sup>4995</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7438-7439.

<sup>4996</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7439; Boško Radojković, T 1831-1832; *see also* Časlav Golubović, T 1739-1740; *see also* Exhibit P398.

<sup>4997</sup> Boško Radojković, T 1834-1835.

<sup>4998</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7440.

<sup>4999</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7439; Boško Radojković, T 1834-1835.

<sup>5000</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7440; Boško Radojković, T 1837; *see also* Exhibit P398.

<sup>5001</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7440-7441; Boško Radojković, T 1773-1774, 1837.

<sup>5002</sup> Boško Radojković, T 1837; *see also* Exhibit P367.

that the bodies in the truck were of Kurds who were trying to cross the border without documents.<sup>5003</sup> Boško Radojković explained that Kladovo was a small town and that they knew to whom they could pass this information in order for it to circulate.<sup>5004</sup> The Chamber notes that an article published on 15 September 1999 in a local Zaječar newspaper, the “Timok Crime Review” documents this rumour; it refers to the discovery of a refrigerated truck in Tekija containing bodies and it is stated that, having spoken to an employee of the nearby hydro-electric plant, the author of the article was told that the bodies were probably of “Kurds or Talibans (*sic*) who had mysteriously arrived on our territory”.<sup>5005</sup> This article is discussed in more detail in another section of this Chapter.<sup>5006</sup>

1296. At the meeting, it was also decided that on the next day, 6 April 1999, a larger crane should be found to pull the truck completely out of the Danube, because the ropes of the smaller crane had snapped that day and there was a chance the water level would rise and pull the truck back into the river.<sup>5007</sup> Finally, it is the evidence that, in order to prevent any leaks of information, it was also decided that because the truck was now more or less visible to the public and the markings on the truck indicated its origin, the name of the company should be painted over.<sup>5008</sup> They agreed that licence plates were to be placed on the truck but that they should be damaged and covered in mud, because the workers from the hydro-electric plant who were present when the truck was first recovered would have noticed that there were no licence plates on the truck; damaging them and covering the licence plates with mud would perhaps lead the workers of the hydro-electric plant to believe that the plates in fact had been there upon recovery.<sup>5009</sup> Later that evening, Boško Radojković and Živadin Đorđević returned to the scene and did as agreed; the markings on the truck were painted over in green and damaged licence plates were attached.<sup>5010</sup> Boško Radojković testified that the SUP in Bor was not informed about the efforts to conceal the origin of the truck.<sup>5011</sup>

1297. On the morning of 6 April 1999, Boško Radojković was already at the scene when, at around 1000 or 1100 hours, a truck sent by the Kladovo OUP appeared with a number of coffins from a private funeral company.<sup>5012</sup> Boško Radojković, realizing that there were far more bodies

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<sup>5003</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7441; Boško Radojković, T 1774, 1837.

<sup>5004</sup> Boško Radojković, T 1774.

<sup>5005</sup> Exhibit P364, p 2.

<sup>5006</sup> *See supra*, paras 1367-1368.

<sup>5007</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7440-7441; Boško Radojković, T 1837-1838.

<sup>5008</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7441; Boško Radojković, T 1838.

<sup>5009</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7441, 7443; Boško Radojković, T 1838.

<sup>5010</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7441-7443; Boško Radojković, T 1838, 1853; *see also* Exhibits P367; P398; P399.

<sup>5011</sup> Boško Radojković, T 1838.

<sup>5012</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7443-7446; Boško Radojković, T 1838-1839.

than coffins, and that they could not deal with the bodies locally, went to the nearby border crossing station in Tekija from where he called Toma Miladinović, chief of criminal investigations of the SUP in Bor, to ask if the Bor SUP were aware of the events in Kladovo, and whether they had received the dispatch concerning the finding of bodies.<sup>5013</sup> This phone call took place in the early afternoon, around 1400 or 1500 hours on 6 April 1999.<sup>5014</sup> Boško Radojković then returned to the scene.<sup>5015</sup>

1298. After some time, a policeman arrived at the scene and told Boško Radojković that “the chief” was sending a message to suspend all activities related to the refrigerated truck, to leave police on the scene to secure the area, and to report back to the Kladovo OUP.<sup>5016</sup> Back at Kladovo OUP, Boško Radojković learned that they had to wait there for the chief of the SUP of Bor, Časlav Golubović, to arrive at Kladovo OUP with his associates, so that a meeting could be held to discuss together what was going to be done about the bodies.<sup>5017</sup>

1299. Around 1800 or 1830 hours on 6 April 1999,<sup>5018</sup> at his lake house in Bor, Časlav Golubović received a phone call from Toma Miladinović, chief of criminal investigations of the SUP in Bor, informing him about a dispatch they had received from Kladovo OUP regarding the discovery of a truck containing around 30 bodies in the Danube near Tekija.<sup>5019</sup> Časlav Golubović called Vukašin Sprlić at the Kladovo OUP to inform him that he would be coming to Kladovo, and that Sprlić should wait at the OUP together with those who had been working on the case.<sup>5020</sup> Časlav Golubović arrived at the Kladovo OUP, a distance of about 110-120 kilometres from Bor, together with Toma Miladinović at around 2000 or 2030 hours that evening. A meeting was held with Sprlić and other MUP employees working on the case.<sup>5021</sup> Časlav Golubović testified that the SUP in Bor had been informed of the incident so that further action could be taken. It is his evidence that this was done because the district prosecutor did not respond after being contacted by the Kladovo OUP.<sup>5022</sup>

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<sup>5013</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7444-7445; *see also* Exhibit P367.

<sup>5014</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7444.

<sup>5015</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7446.

<sup>5016</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7446.

<sup>5017</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7446-7447.

<sup>5018</sup> The Chamber notes that Boško Radojković’s evidence about the date that he called Toma Miladinović is unclear; he testifies that this was either 6 or 7 April 1999. Contextually, taking into account the sequence of events as well as the evidence of Časlav Golubović about his arrival in Kladovo, the Chamber finds that this must have been 6 April 1999.

<sup>5019</sup> Časlav Golubović, Exhibit P352, p 2; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7399-7400

<sup>5020</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7401.

<sup>5021</sup> Časlav Golubović, Exhibit P352, p 2; Exhibit P353 (*Milutinović* transcript), T 7400-7401; *see also* Exhibit P367.

<sup>5022</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7405.

1300. Others present at this meeting on the evening of 6 April 1999 besides Časlav Golubović, were Toma Miladinović and Vukašin Sprlić, the head of the RDB in Zajecar, Slobodan Aleksić, and the head of the crime section of the Kladovo OUP, Milan Stevanović, as well as the commander of the border police station in Kladovo, Branislav Mitrović.<sup>5023</sup> Boško Radojković joined them about an hour into the meeting and contributed to the briefing.<sup>5024</sup> Časlav Golubović and the others at the meeting were informed of the events of the preceding days.<sup>5025</sup> They were told that the inscription on the door of the truck suggested that it originated from Prizren and that the bodies in the truck, both female and male including one or more children, were dressed in civilian clothes, and that some of the females wore “dimijas”, pantaloons which were worn by several ethnic groups, including by Albanians. These factors indicated to the police that the bodies were Albanian.<sup>5026</sup>

1301. Sometime between 2100 and 2200 hours that evening,<sup>5027</sup> during the meeting in Vukašin Sprlić’s office, having been fully briefed of the situation, Časlav Golubović phoned the Accused Vlastimir Đorđević in Belgrade from Vukašin Sprlić’s office at the Kladovo OUP. Golubović informed Vlastimir Đorđević what he had been told of the truck and the bodies, including the fact that it was the understanding of the local police that the bodies were of Kosovo Albanians and included women and children, and sought instructions on how to proceed.<sup>5028</sup> It is the evidence of

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<sup>5023</sup> Časlav Golubović, Exhibit P352, p 2; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7401; *see also* Exhibit P409. According to Časlav Golubović, the municipal investigative Judge as well as the municipal public prosecutor were also present at this meeting (Exhibit P352, p 2; T 1741). It is difficult to reconcile this, however, with his testimony that the Kladovo OUP turned to him to ask for guidance on further action to take with respect to the discovery of the bodies because “the municipal prosecutor and the municipal investigative judge did not want to proceed with the further investigation” (Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7404-7405). If it is the case, as Boško Radojković testified, that the municipal investigator and prosecutor had left the scene on 5 April 1999 after declaring the matter beyond their competence, it is not apparent why they would be present at the meeting with Časlav Golubović on the evening of 6 April 1999. Boško Radojković, when testifying about the same meeting, made no mention of the presence of the municipal investigative judge and prosecutor, Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7446-7448; *see also* Boško Radojković, T 1845. Although he was not present at the commencement of the meeting, he did, however, take part in the briefing of Časlav Golubović (Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7447-7448; *see also* Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7427) and he had no reason to conceal the presence of the municipal investigative judge and prosecutor at this meeting. The Chamber moreover notes that the Official Note compiled by the Working Group of their interview with Časlav Golubović on 12 May 2001 does not contain a reference to the presence of the municipal investigative judge and public prosecutor at the meeting (Exhibit P396). Neither do other Official Notes compiled by the Working Group of interviews with people present at this meeting (*see* Exhibits P367, P398, P409). The Chamber concludes, therefore, that neither the municipal judge nor the municipal prosecutor was present at the meeting on the evening of 6 April 1999 at the Kladovo OUP.

<sup>5024</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7446-7448; Boško Radojković, T 1845; *see also* Exhibit P367.

<sup>5025</sup> Časlav Golubović, Exhibit P352, p 2; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7402-7403, 7405; Časlav Golubović, T 1734, 1737.

<sup>5026</sup> Časlav Golubović, Exhibit P352, p 3; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7411-7412; Časlav Golubović, T 1735-1736.

<sup>5027</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7405-7406; Časlav Golubović, T 1741.

<sup>5028</sup> Časlav Golubović, Exhibit P352, p 3; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7405-7406, 7408; Časlav Golubović, T 1741. During cross-examination, the witness confirmed the Defence suggestion that when the witness called the Ministry to inform them of what he had been told he just so happened to come across the Accused who was present there (Časlav Golubović, T 1705). The witness then testified, however, that if he would not have been able to reach the Accused, he would have called one of the other senior officers at the Ministry

Golubović that the tone of Đorđević's voice indicated to Golubović that Đorđević was surprised hearing of this information.<sup>5029</sup> Golubović testified that the Accused told him he would call him back shortly, which he did after some 10-15 minutes. It is the evidence of Golubović in this trial that Đorđević instructed Golubović that, at the order of the Minister, they should bury the bodies in Kladovo.<sup>5030</sup> Golubović's evidence, during cross-examination and questions from the bench in the current trial, as well as in the *Milutinović* trial and in his previous statement, reveals, however, that he in fact did not know whether or not the Accused spoke to the Minister in between the witness's first and second telephone conversation with the Accused.<sup>5031</sup> The Chamber observes that this witness gave the clear impression of trying to adapt his account of the events to assist the Accused, but was not at all convincing in his manner as he did so, nor in the explanations he attempted for the changes in his story. In the view of the Chamber, Časlav Golubović had no basis for this asserted belief that the Accused was following the Minister's instructions when ordering him to bury the bodies in Kladovo, and it therefore rejects this evidence.

1302. In one of his first conversations with the Accused on the evening of 6 April 1999, Golubović was further instructed by the Accused not to make the case public so that the media could not report on it.<sup>5032</sup> Golubović conveyed to those present in Vukašin Sprlić's office, the order he had received from Đorđević to bury the bodies in Kladovo and to maintain confidentiality.<sup>5033</sup> Golubović also ordered Sprlić and others at the Kladovo OUP to organize the removal and burial of the bodies by

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(Časlav Golubović, T 1705-1706). In his statement, Golubović stated that according to SUP internal regulations, he was required to inform the Ministry in Belgrade of the events in Tekija, and that in line with this obligation, he decided to telephone the Accused as head of the RJB (Exhibit P352, p 3; Časlav Golubović, T 1705). The Chamber considers that contrary to the Defence position that Golubović's evidence provided in cross-examination indicated that there was no previous plan or agreement that Golubović report to the Accused on the matter, it is clear that he in fact considered the Accused, as head of the RJB, the primary point of contact (Closing Arguments, T 14498; Defence Final Brief, para 545).

<sup>5029</sup> Časlav Golubović, T 1706, 1748-1749.

<sup>5030</sup> Časlav Golubović, T 1707, 1724, 1741, 1752-1755.

<sup>5031</sup> In his statement to the OTP in 2002, Golubović stated that Đorđević instructed him to wait until Đorđević called him back and that he did so within 10-15 minutes, instructing Golubović that the bodies should be removed from the refrigerated truck, and buried in the Kladovo area in the course of the night, Časlav Golubović, Exhibit P352, p 3. Further on in the same statement, he states; "I did not know if General Đorđević consulted the Minister of the Interior,[...] or if he consulted or informed anyone else of the event concerning the refrigerated lorry, before issuing his instructions to me", Časlav Golubović, Exhibit P352, pp 4-5. In the *Milutinović* trial in 2006, Golubović testified that Đorđević told him that he would be calling him back after he had consulted the Minister "or someone else", Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7406-7407. In this trial, when attempting to explain the contradiction this amounts to, with what he said in his statement to the OTP in 2002, Golubović added that he did not know for sure whether Đorđević had consulted the Minister, but that he assumed that he did this on the basis of Đorđević's request to him to wait for him to call Golubović back, Časlav Golubović, T 1749-1751. The Chamber notes further that his testimony in the current trial, when questioned by the bench, is that it was only in his second conversation with Đorđević, when the latter called Golubović back after some 10-15 minutes, that Đorđević made any mention of the Minister, Časlav Golubović, T 1740-1741, 1753-1754.

<sup>5032</sup> Časlav Golubović, T 1709-1710.

<sup>5033</sup> Časlav Golubović, T 1741-1742. The Chamber notes that Toma Miladinović, Chief of the Bor SUP Crime Investigations Department, in the Official Note of the Working Group of their interview with him, is recorded as stating that "Časlav Golubović and someone from the DB said that everything was to be closed to the public, and nothing was even to be photographed", (Exhibit P397); *see* also Exhibit P400.



arranging for workers, blankets and a truck.<sup>5034</sup> The Official Note of the Working Group's interview with Milan Stevanović records that Stevanović ordered Radojković and others not to conduct an on-site investigation into the incident.<sup>5035</sup>

1303. It is the evidence of Golubović that given that the location of the truck with the bodies was in an open area in a clear line of sight from both sides of the Danube, it was decided to start the operation immediately in the cover of night so as to be less visible to NATO planes flying overhead as well as from Romanian warships positioned close by.<sup>5036</sup> However, according to the evidence of Boško Radojković, the bodies were unloaded at night so as to prevent traffic build up during the day as the road passing by the scene of the truck was an important transport route.<sup>5037</sup> As discussed further on in this section, the Chamber does not accept as true the reasons provided by these witnesses why the bodies had to be removed from the refrigerated truck during the night.

1304. Following the meeting at the Kladovo OUP and the phone call to the Accused, Časlav Golubović took a service vehicle to the border police station at Tekija around 2200 hours;<sup>5038</sup> no action on the scene was taken until he arrived there.<sup>5039</sup> The border police station was about 500 metres from the scene, and was in direct communication with the people at the site.<sup>5040</sup>

1305. Boško Radojković and others from Kladovo OUP returned to the scene at around 2200 hours after the meeting.<sup>5041</sup> Radojković and a colleague entered the freight compartment of the truck and removed about 30 bodies. Five to six workers from the *Komunalac* public utility enterprise and other people<sup>5042</sup> loaded these bodies onto an FAP dump truck (brought to the scene by Ljubinko Ursuljanović, Časlav Golubović's driver, from the *Komunalac* public utility enterprise) on the instructions of Golubović.<sup>5043</sup> In his capacity as senior crime technician, it appeared to Boško Radojković that the injuries he observed on some of the bodies were the result of the impact of blunt objects and large blades. Radojković observed that one of the male bodies had a bare chest

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<sup>5034</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7448; Časlav Golubović, Exhibit P352, p 2.

<sup>5035</sup> Exhibit P398, p 2.

<sup>5036</sup> Časlav Golubović, Exhibit P352, p 3; Časlav Golubović, T 1742.

<sup>5037</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7451.

<sup>5038</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7408; Časlav Golubović, T 1743.

<sup>5039</sup> Časlav Golubović, T 1743.

<sup>5040</sup> Časlav Golubović, Exhibit P352, p 3; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7409.

<sup>5041</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7448-7450; Boško Radojković, T 1777-1778.

<sup>5042</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7448-7450; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7409. The Chamber notes that there is evidence suggesting that persons involved in the loading of the bodies removed from the refrigerated truck included, besides workers from the *Komunalac* public utility enterprise, employees of the RDB (Exhibit P367; Exhibit P398; Exhibit P400), as well as policemen from the nearby Border Police Station (Exhibit P402). See also Exhibits P406, P407 and Exhibit P408.

<sup>5043</sup> Exhibit P403; see also Exhibit P397; see also Exhibit P367; see also Exhibit P408. The Chamber notes that the Official Note of the Working Group's interview with Novica Konstandinović, one of the reserve police officers of the Kladovo OUP who was called to the scene to escort truck from the *Komunalac* enterprise to Belgrade, described it as "yellow" (Exhibit P405).

and there was a visible exit and entry wound; the hands of this individual were tied with wire.<sup>5044</sup> Many of the bodies were naked and dismembered.<sup>5045</sup>

1306. At around 2300 or 2330 hours, while in the office of the border police station, Časlav Golubović was informed by people at the scene that the number of bodies was higher than originally estimated, and that it would be difficult to remove all the corpses that night; Golubović again called the Accused Vlastimir Đorđević to provide him with this information.<sup>5046</sup> It is Golubović's evidence that he also told Đorđević that there was no place to bury the bodies and that there were not enough experts to carry out autopsies or identification.<sup>5047</sup> Đorđević continued to insist that the bodies should be buried in Kladovo, but finally agreed with Golubović's suggestion to transfer the bodies to either Belgrade or Niš where there would be necessary facilities, and told him to call him again once all the bodies had been removed from the truck.<sup>5048</sup>

1307. By 0200 or 0230 hours on 7 April 1999, only 30 bodies had been removed from the refrigerated truck and loaded on to the FAP dump truck.<sup>5049</sup> Časlav Golubović called Vlastimir Đorđević a third time, informing him that there were no more suitable trucks available to transport the remaining bodies, and asked whether the Ministry could send another truck so that they could load the remainder of the bodies the following night.<sup>5050</sup> Vlastimir Đorđević agreed to do so, and told Golubović that the truck then at the scene with the bodies already on board should proceed to Belgrade that night.<sup>5051</sup> Đorđević told Golubović that someone would contact him, and that Golubović was to provide this person with the licence plate number of the truck carrying bodies and the mobile phone number of the driver.<sup>5052</sup>

1308. Golubović directed Ljubinko Ursuljanović to transport this first truck to Belgrade.<sup>5053</sup> Ursuljanović drove the truck loaded with bodies from the scene escorted by a traffic police patrol arranged by Golubović.<sup>5054</sup> Golubović later received a phone call from a person unknown to him from the Ministry who asked for the driver's mobile number and the truck's licence plate number in order for Ursuljanović to be met en route and escorted to Belgrade.<sup>5055</sup> Upon his return to Kladovo

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<sup>5044</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7450.

<sup>5045</sup> See Exhibits P398, P399, P400, P402.

<sup>5046</sup> Časlav Golubović, Exhibit P352, p 3; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7409-7410; see also Exhibit P367; see also Vlastimir Đorđević, T 9724-9725.

<sup>5047</sup> Časlav Golubović, Exhibit P352, p 3; Časlav Golubović, T 1711-1712.

<sup>5048</sup> Časlav Golubović, Exhibit P352, p 3; Časlav Golubović, T 1711-1712.

<sup>5049</sup> Časlav Golubović, Exhibit P352, pp 3-4.

<sup>5050</sup> Časlav Golubović, Exhibit P352, p 4.

<sup>5051</sup> Časlav Golubović, Exhibit P352, p 4.

<sup>5052</sup> Časlav Golubović, Exhibit P352, p 4.

<sup>5053</sup> Časlav Golubović, Exhibit P352, p 4; see also Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7449.

<sup>5054</sup> Časlav Golubović, Exhibit P352, p 4; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7413-7414; Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7449; see also Exhibits P403, P404, P405.

<sup>5055</sup> Časlav Golubović, Exhibit P352, p 4.

the next day, Ursuljanović told Golubović that at dawn, having arrived at the entrance to Belgrade, he was met by a Volkswagen Golf vehicle which escorted the truck through Belgrade. Somewhere on the way from Belgrade in the direction of Novi Sad persons unknown to Ursuljanović took over the truck, after which he returned to Kladovo.<sup>5056</sup> Six or seven days later, on about 15 April 1999, Ursuljanović returned to Belgrade to retrieve the truck from a parking lot of a MUP facility which is not defined by the evidence.<sup>5057</sup>

1309. After the departure of the first truck in the early hours of 7 April 1999, it was agreed that a larger crane be acquired to pull the truck completely out of the river and on to the river bank.<sup>5058</sup> Časlav Golubović testified that he returned to the SUP in Bor at around 0600 or 0700 that morning together with Toma Miladinović because, by that time, he had issued all the tasks that were to be carried out that day by the Kladovo OUP.<sup>5059</sup>

1310. Later on 7 April 1999, the refrigerated truck was successfully pulled out onto the road using a higher capacity crane from the nearby hydro-electric plant.<sup>5060</sup> Boško Radojković and others returned to the scene to prepare for the removal and transportation of the remaining bodies which were still in the refrigerated truck. When it got dark, at around 2000 or 2100 hours, they continued the process of unloading the bodies.<sup>5061</sup> Some additional 53 bodies as well as three heads separated from their bodies were unloaded from the refrigerated truck that evening.<sup>5062</sup> It is noteworthy that, once again, the task of unloading bodies from the refrigerated truck was delayed until after nightfall.

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<sup>5056</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7413-7414. The Batajnica SAJ Centre is located on the road from Belgrade towards Novi Sad, *see* Exhibit P2. The Official Note compiled by the Working Group of the interview conducted with Ursuljanović records that Ursuljanović was contacted by a “Colonel from the State Security” who had asked him when he was going to arrive at the tollgate at Bubanj Potok, from where he then followed the Golf vehicle (Exhibit P403) It also records that the persons to whom Ursuljanović handed over the truck on the way from Belgrade to Novi Sad had told him they were of the RDB (Exhibit P403).

<sup>5057</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7414-7415.

<sup>5058</sup> Časlav Golubović, Exhibit P352, p 4; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7415; *see also* Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7443-7444.

<sup>5059</sup> Časlav Golubović, Exhibit P352, p 4.

<sup>5060</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7416; *see also* Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7443-7444. The Chamber notes Radojković’s evidence would suggest that the larger crane was brought to the scene on the morning of 6 April 1999 as according to Radojković, the coffins sent by Kladovo OUP arrived only a few hours after the larger crane was used at the scene. Golubović, who arrived at the scene on 6 April 1999, was informed about the coffins being sent, but as opposed to Radojković, it is *his* evidence that the larger crane was only used in the early morning hours of 7 April. The more likely date of the larger crane being brought to the scene, in the context of all the evidence read together, is, in the Chamber’s view, 7 April 1999).

<sup>5061</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7450-7452.

<sup>5062</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7450-7452; *see also* K93, Exhibit P1062 (*Milutinović* transcript), T 11320; K93, T 6900; *see also* Exhibit P1063, p 2; Exhibit P1064, p 6; Exhibit P1066, p 5).

1311. Of all the bodies removed from the truck on 7 April 1999, there were men, about 10 women, and two children, a boy and a girl aged six or seven. None of the bodies were wearing uniforms and some of them were naked or partially dressed.<sup>5063</sup> Radojković did not take any photographs of the bodies as they were being removed from the truck. It is his evidence that this was because of the instructions of Časlav Golubović not to make the case public so that the media could not report on it.<sup>5064</sup>

1312. In the meantime, as requested by Golubović, another truck, a Mercedes<sup>5065</sup> with a tarpaulin cover, metal sides and Belgrade licence plates, had arrived at the scene. The driver, a MUP employee, was accompanied by a police major who, on their way to Kladovo, had told the driver that they were doing a job of “state interest”.<sup>5066</sup> A police patrol car from the Kladovo OUP escorted the truck first to the Kladovo OUP, and then on to the location of the refrigerated truck.<sup>5067</sup> By 0100 to 0200 hours on 8 April 1999, the remaining bodies had been loaded onto this second truck.<sup>5068</sup> As with the first truck, it then left in the direction of Belgrade.<sup>5069</sup> At dawn, the truck entered the Batajnica SAJ Centre and parked alongside the Danube, where it was left with the keys in the ignition.<sup>5070</sup> The driver was told by a person working at the Centre that he should collect it in two or three days.<sup>5071</sup> He also saw another truck at the Centre and was told that it was meant to “complete the transportation” of bodies from the Danube, but that it had broken down and that for this reason, another truck had been engaged to pick up the remainder of the bodies in Tekija.<sup>5072</sup>

1313. During one of his conversations with Vlastimir Đorđević on either 6 or 7 April 1999, Golubović was instructed by Đorđević to have the refrigerated truck destroyed after the removal of the bodies.<sup>5073</sup> On either 8 or 9 April 1999, the refrigerated truck was put on a trailer, and transported to the firing range of the Petrovo Selo PJP Centre, which at that time was under the

<sup>5063</sup> Boško Radojković, Exhibit P358, p 3; Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7449-7450, 7455; Boško Radojković, T 1776-1778; *see also* Exhibit P398; Exhibit P399; Exhibit P400; Exhibit P402. The Chamber notes that there is some evidence suggesting that five or six of these bodies were wearing camouflage uniforms (K93, T 6923; *see* Confidential Annex; Exhibit P1063, p 2; Exhibit P1064, p 6). The Chamber is satisfied, on the evidence of Radojković, who it considered to be a generally reliable witness and who was in a better position to view the bodies removed from the refrigerated truck than K93, that all of the bodies removed from the truck were wearing civilian clothes.

<sup>5064</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7452; *see also* Časlav Golubović, T 1707, 1741, 1752-1755; *see also* Exhibit P397 (Official Note compiled by the Working Group of interview with Toma Miladinović).

<sup>5065</sup> *See* Confidential Annex.

<sup>5066</sup> Boško Radojković, T 1846; K93, Exhibit P1062 (*Milutinović* transcript), T 11320; *see also* K93, Exhibit P1063, p 1; Exhibit P1064, pp 1,2; Exhibit P1065, p 4). *See also* Confidential Annex.

<sup>5067</sup> K93, Exhibit P1063, p 1; K93, Exhibit P1064, p 2.

<sup>5068</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7453-7454; Boško Radojković, T 1846; *see also* K93, Exhibit P1062 (*Milutinović* transcript), T 11320; P1063, pp 1-2; Exhibit P1064, pp 2-3.

<sup>5069</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7452-7453; Boško Radojković, T 1846; K93, Exhibit P1062 (*Milutinović* transcript), T 11320; *see also* K93, Exhibit P1063, p 2; Exhibit P1064, p 3.

<sup>5070</sup> *See* Confidential Annex.

<sup>5071</sup> *See* Confidential Annex.

<sup>5072</sup> *See* Confidential Annex.

<sup>5073</sup> Časlav Golubović, Exhibit P352, p 4; Časlav Golubović, T 1756-1757.

control of the MUP, but not in active use.<sup>5074</sup> Boško Radojković testified that Toma Miladinović ordered him to participate in the destruction of the truck; after a first attempt to destroy it by setting it on fire failed, explosives were used to blow it up.<sup>5075</sup> The Chamber is satisfied that Golubović, acting upon the instructions of the Accused, delegated the destruction of the truck to Toma Miladinović, who in turn, tasked Radojković with this.

1314. Golubović requested Vlastimir Đorđević for a sum of money for the remuneration of five persons from the municipal utility company in Kladovo who had assisted in the removal of the bodies from the refrigerated truck<sup>5076</sup> and four or five days later, Vladimir Aleksić, a subordinate of Dragan Ilić of the crime police administration of the MUP, delivered 10,000 dinars to Golubović.<sup>5077</sup> Documentary evidence reveals that the Accused personally approved the payment of the 10,000 dinars when Dragan Ilić submitted a request to Vlastimir Đorđević on 19 April 1999. In the request the 10,000 dinars were described as “operational expenses” incurred during the implementation of what is referred to as “Operation Dubina II”.<sup>5078</sup> 2,000 dinars were subsequently paid to each of the five individuals who participated in the event, including the diver, Živadin Đorđević.<sup>5079</sup>

1315. The Accused’s account, while confirming many aspects of the evidence of Časlav Golubović and Boško Radojković, paints a different picture of the events. The general position taken by the Accused is that he did not issue any orders to Golubović concerning any actions with respect to the bodies discovered in the refrigerated truck at the Danube, before informing the Minister of what Golubović had told him. He merely passed the Minister’s instructions to Golubović.<sup>5080</sup> This assertion is in contradiction with the Accused’s own account in a letter to the “Nedeljini Telegraph” in 2004, in which he stated that immediately upon learning of the bodies, he gave instructions to Golubović on how to proceed, and only informed the Minister of it

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<sup>5074</sup> See Confidential Annex. Boško Radojković, T 1782-1783; see also Časlav Golubović, Exhibit P352, p 4. The Chamber notes that while in *Milutinović*, Boško Radojković testified that this occurred on either 8 or 9 April 1999, in *Đorđević*, he testified that this took place on 7 April 1999, Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7452-7454; see also Boško Radojković, T 1782-1783).

<sup>5075</sup> Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7453-7454; see also Confidential Annex.

<sup>5076</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7419.

<sup>5077</sup> Časlav Golubović, T 1667; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7419; see also Vlastimir Đorđević, T 9985-9986.

<sup>5078</sup> Vlastimir Đorđević, T 9983-9984; Exhibit P391; see also Exhibits P392 and P393; see also K84, T 2029-2030.

<sup>5079</sup> Exhibit P393; see also Exhibits P406, P407 (Official Notes of Working Group’s interview with workers of the *Komunalac* utility enterprise); see also Exhibit P408 (Official Note of Working Group’s interview with director of the *Komunalac* utility enterprise); see also K84, T 2006. In his evidence, the Accused testified that when Golubović contacted him with a request for this money, he told Golubović to direct the request to the crime police administration, which was the only way of transferring the money in keeping with the law (Vlastimir Đorđević, T 9984); see also Exhibit P397 (Official Note of Working Group’s interview with Toma Miladinović).

<sup>5080</sup> Vlastimir Đorđević, T 9824.

afterwards.<sup>5081</sup> With respect to the final destination of the bodies at the Batajnica SAJ Centre near Belgrade, it is the evidence of the Accused that he did not know this and that the Minister merely told him that the precise location of their burial was the Minister's concern.<sup>5082</sup> With respect to the payment of the workers from the municipal utility company, the Accused testified that while he had knowledge of the purpose for which the money was intended when he authorized the payment, he did not pay much attention to who initiated the operation codenamed "Dubina II" or who named it.<sup>5083</sup>

1316. The Chamber is not convinced by the contention of the Accused that he was merely transmitting the orders of the Minister in respect of the action that was taken on the discovery of the bodies in the truck. The Chamber accepts the evidence of Golubović that the Accused had insisted that the bodies be buried in Kladovo, in the face of Golubović's suggestion that they should have been transferred to a larger city or town with adequate forensic facilities. The evidence does not persuade the Chamber that the Accused spoke to the Minister before issuing instructions to Golubović as to how to proceed. Indeed, the subsequent acts of the Accused and his state of mind at the time of events, both of which are discussed in detail elsewhere in this Judgement, clearly indicate to the Chamber that he was much more actively involved and was not a mere passive agent of the Minister.

1317. The Chamber notes here, finally, that it is the Accused's testimony that immediately after conveying the Minister's initial instructions to Golubović, being surprised about hearing of the discovery of the bodies, he went to the Minister to "clarify the situation", and proposed that a commission be set up to establish exactly what happened.<sup>5084</sup> Because the Minister did not respond to this proposal, Đorđević proposed that he himself establish such a commission or a group to investigate the matter.<sup>5085</sup> No such investigative body was ever established by the Accused. It is his explanation that the Minister told him that something needed to be done to conceal the bodies

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<sup>5081</sup> In the letter, the Accused stated that he himself proposed that the complete criminal processing be conducted there, and that he only informed the Minister of this afterwards (Exhibit P1474, p 7; *see also* Vlastimir Đorđević, T 9967-9968). The Chamber notes that when asked whether the information contained in the letter to the "Nedeljini Telegraf" was correct or not, he stated "[w]hat I wrote for the papers is presented basically the way it was. There are some details which I did not mention then, but I'm giving evidence now about all these facts". He added that what is written in this article is "not the most important thing" and that he is now giving evidence in court, Vlastimir Đorđević, T 9967-9968.

<sup>5082</sup> Vlastimir Đorđević, T 9726. The Accused also testified that when he went to see the Minister the last time concerning Golubović's request for a second truck, he gave the Minister Golubović's phone number telling him that somebody should contact Golubović to inform him where the bodies should be transported, Vlastimir Đorđević, T 9727.

<sup>5083</sup> Vlastimir Đorđević, T 9984-9985.

<sup>5084</sup> Vlastimir Đorđević, T 9723.

<sup>5085</sup> Vlastimir Đorđević, T 9723, 10002.

because they would otherwise be used by NATO for propaganda purposes, and that no further measures should be undertaken to establish the origin of the bodies and how they were killed.<sup>5086</sup>

1318. It is the testimony of the Accused that after his last communications with Golubović concerning the transport of the bodies, he went to see the Minister to tell him that he did not want to have “anything to do with it anymore”, and that he had other duties and responsibilities vis-à-vis “some other territory, not Kosovo”.<sup>5087</sup> Despite the Minister’s obvious suggestions that measures should be taken to prevent the revelation of the findings of bodies, because of “the whole NATO campaign and bombing”, Đorđević maintained throughout his evidence that he himself was not aware of crimes taking place in Kosovo.<sup>5088</sup> The Accused’s knowledge in this respect, as well as his responsibilities under the law to investigate the matter, is dealt with further, elsewhere in this Judgement.

1319. Notwithstanding the fact that the local police had failed to locate the driver of the refrigerated truck, and were satisfied that both a rock had been placed on the accelerator pedal and the windshield was missing, they made no attempt to investigate the entire incident commencing with the discovery of the truck in the river. The actions of the local police infallibly indicated an intention to conceal from the public the presence of corpses in the truck and crucially, that those bodies were of Kosovo Albanians. In a relentless pursuit of this cover up, they circulated the rumour - that the corpses were those of illegal immigrants who had tried to cross the border - deliberately designed to mislead and misinform the public. And they did achieve some measure of success, in that the rumour surfaced in a local newspaper article and thereafter there was no media reaction.

1320. The Chamber is of the view that the evidence set out in the previous paragraphs clearly demonstrates that at the local level, as well at the highest levels in Belgrade, the MUP sought to conceal the discovery and origin of the bodies of over 80 ethnic Kosovo Albanians removed from the refrigerated truck that was found in the Danube river on 4 April 1999.

1321. Two dispatches were sent to the SUP in Bor on 4 and 5 April 1999 respectively, informing the SUP in Bor of the discovery of the bodies. The SUP remained quiescent. They were only roused when Boško Radojković had personally called Toma Miladinović on 6 April 1999 and informed him of the inability to locally deal with the corpses. On 5 April 1999 the municipal judge and municipal prosecutor who were initially called to the scene declared themselves incompetent when a large number of corpses were found in the trunk. They had no further involvement. While

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<sup>5086</sup> Vlastimir Đorđević, T 9723-9724, 9828; *see also* Defence Final Brief, para 557.

<sup>5087</sup> Vlastimir Đorđević, T 9727.

the district investigative judge and the district prosecutor were also called they never attended the scene;<sup>5089</sup> Radojković, whose evidence the Chamber found to be generally reliable, stated that when the authorities were informed, they conveyed to the local police that they were “not interested”.<sup>5090</sup> An official investigation into the matter was never conducted and no attempts were made to preserve the crime site. Indeed, the actions taken were directed to frustrating any investigation.

1322. By the time Golubović and Miladinović arrived in Kladovo, the local police had already taken measures to conceal the origin of the truck by painting it over in another colour and mounting damaged Bor licence plates where there had been none before. Radojković testified that because of the instruction of Golubović he did not take photographs of the bodies as they were being removed from the truck on 6 April 1999; the only photographs in evidence, therefore, are photographs of the truck while still submerged in water and while it was being pulled out, including a photograph of a leg protruding from a crack in the rear door of the truck. All of these efforts on the local police level and the fact that according to the local police, the finding of the bodies of 20-30 dead Kurds in a truck with Bor licence plates was considered a “safer” story than the finding of the bodies of Kosovo Albanians found in a truck originating from Kosovo, is telling of the general knowledge and attitude of the police concerning events in Kosovo at the time. In the view of the Chamber, they indicate awareness at the local police level, of official involvement in clandestine activities concerning the movement of bodies of persons killed in Kosovo, activities which should be kept from the public. In particular, the Chamber does not accept the reasons proffered by Radojković as to why the local police felt it was necessary to conceal the origin of the truck, and the evidence of Golubović as to why it was considered necessary to remove the bodies from the truck during the night.<sup>5091</sup> The testimony of Golubović before this Chamber to the effect that that they acted without the instructions of the judicial authorities because these authorities had refused to act<sup>5092</sup>, contradicts his evidence in the *Milutinović* trial that it was not possible to wait for the proper procedure to be initiated with respect to the bodies because there was a state of war at the time.<sup>5093</sup> The Chamber rejects this evidence.

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<sup>5088</sup> Vlastimir Đorđević, T 9724, 9827-9828, 10004.

<sup>5089</sup> Časlav Golubović, T 1740, 1745.

<sup>5090</sup> Bosko Radojković, T 1832, 1836, 1837.

<sup>5091</sup> *See supra*, para 1303.

<sup>5092</sup> In the *Milutinović* trial, referring to the order given by Vlastimir Đorđević on the night of 6 April 1999 to bury the bodies in Kladovo, clearly against all envisioned procedures, it was Golubović’s testimony that “[g]iven the circumstances, the state of war, and the fact that it was in the border area, we needed no further instructions. It was enough to be said to retrieve the bodies and to inter them, and that’s it”, Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7407.

<sup>5093</sup> Časlav Golubović, T 1722-1723.



1323. The Chamber notes the Defence position that Article 6 of the “Decree on Implementing the Law on Criminal Procedure During the State of War”, in force as of 4 April 1999, allowed for the organ of the interior “in urgent cases” to “carry out investigative activities even without a decision of the public or state prosecutor”.<sup>5094</sup> However, there was no investigation at all.

1324. The Chamber is satisfied that without any direction from an investigative Judge, and in the absence of an onsite investigation, the decision of the local MUP at Kladovo OUP, as well as the decisions of Golubović on the directions of the Accused, to remove and transport the bodies discovered in the refrigerated truck in Tekija were made in an endeavour to conceal the discovery of those bodies and their ethnicity and geographic origin, and to provide an obstacle to any further investigation into the cause and circumstances of the death of those people.

## 2. Arrival and burial of bodies at the Batajnica SAJ Centre and the Petrovo Selo PJP Centre

### (a) Batajnica SAJ Centre

1325. During the course of April and early May 1999 several trucks loaded with corpses arrived at the Batajnica SAJ Centre, located in the vicinity of Belgrade. The SAJ was an organizational unit within the RJB and the Accused was chief of the RJB. The Centre consisted of a number of buildings and a firing range, and served as a training ground of the SAJ.<sup>5095</sup> The SAJ Centre stood independently of any other MUP or VJ facility and it was not necessary to go through any of the premises of the MUP or VJ to gain access to the Centre.<sup>5096</sup> A few days after the start of the war, those who remained on duty at the Batajnica SAJ Centre relocated three to four kilometres in the direction of Belgrade due to NATO targeting of buildings in the surrounding area.<sup>5097</sup> After this relocation, the Batajnica SAJ Centre was not used for training; all equipment, vehicles and archives were removed from it.<sup>5098</sup> A few SAJ members remained at the Centre as guards.<sup>5099</sup> The SAJ returned to the Centre sometime in June or July 1999.<sup>5100</sup>

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<sup>5094</sup> Exhibit P200, Article 6. The Chamber notes the evidence of Đorđe Kerić, when Article 6 of the Decree is put to him during cross-examination, that he was not familiar with the Decree at the time, but that if he had been, and “[i]f we had known that this was a result of an air-strike or – and another action, then we would have undertaken specific measures applicable to such conditions as provided for by this article,” T 7820-7821.

<sup>5095</sup> K87, Exhibit P1415, paras 7, 11; *see also* Zoran Simović, T 13575, 13598; *see also* K88, T 1870-1871; Exhibit P372, number “1” and arrow indicating approximate location of the Batajnica SAJ Centre in Batajnica.

<sup>5096</sup> K87, Exhibit P1415, para 11. The Chamber does not accept possible contrary views, in the evidence of K84 (K84, T 2015-2016), and Goran Stoparić (Goran Stoparić, Exhibit P493, para 82).

<sup>5097</sup> K87, Exhibit P1415, paras 8, 9; K87, Exhibit P1416.1 (*Milutinović* transcript), T 11817; K88, Exhibit P370A, para 11; *see also* K88, T 1977-1978.

<sup>5098</sup> K87, Exhibit P1415, para 9; K88, T 1978.

<sup>5099</sup> Zoran Simović, T 13599. the evidence of K87 and K88 was slightly different (K87, Exhibit P1415, para 9; K88, Exhibit P370A, para 11; K88, Exhibit P371-A (*Milutinović* transcript), T 10464)), but this difference is not material. The Chamber accepts the evidence of Simović in this respect.

<sup>5100</sup> K87, Exhibit P1415, paras 9, 27.

1326. The bodies found in the refrigerated truck in the Danube by the village of Tekija had been transferred to two other trucks and transported to Belgrade. The first truck, upon its arrival in Belgrade, was taken over by two persons unknown to the original driver, Ursuljanović. About a week later, at the instructions of Golubović, Ursuljanović retrieved the truck from an undefined MUP facility.<sup>5101</sup> The second of these two trucks left Tekija for Belgrade on the night of 7 to 8 April 1999 and drove to the Batajnica SAJ Centre, where it was left parked alongside the bank of the Danube, with the keys in the ignition.<sup>5102</sup> There is evidence that the driver was told to return in two or three days to pick up the truck, and, that another truck already parked at the Centre had made a delivery of the same type of cargo.<sup>5103</sup>

1327. The driver of the second truck returned to the Batajnica SAJ Centre two days later to retrieve the truck and he observed a stain of about four metres in diameter behind the truck; he also observed traces of burning. There is some variation in the evidence whether an attempt had been made to burn the bodies<sup>5104</sup> or get rid of the stench of blood caused by fluids leaking out of several trucks by pouring petrol on the affected areas and setting them on fire.<sup>5105</sup> The Chamber accepts there had been burning in the vicinity of the trucks. Having retrieved the truck from the Batajnica SAJ Centre, the driver drove it to a MUP garage in Belgrade where an attempt was made to scrub it clean of the traces of human hair and skin that remained after the bodies had been removed from it.<sup>5106</sup>

1328. Witnesses K87 and K88 gave evidence about the arrival of bodies at the Batajnica SAJ Centre and their subsequent burial in mass graves onsite. K87, however, departed in material aspects from his account in his earlier statement to OTP, in particular with respect to the role of the Accused in the events. Having seen and heard the witness, however, and having carefully scrutinized the changes he made from his earlier statement, the Chamber is satisfied that the earlier account of the witness to the OTP was reliable. Not so, the account he gave to the Chamber. For this reason, in making the findings below, the Chamber has relied largely on the account given by this witness in his original statement to the OTP, and has limited its reliance on his testimony in this and other previous trials to situations in which this evidence is consistent with other reliable evidence given in this trial, in particular, the evidence of K88 whom the Chamber accepts as a credible witness.

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<sup>5101</sup> See *supra*, para 1308.

<sup>5102</sup> See *supra*, para 1312.

<sup>5103</sup> See Confidential Annex.

<sup>5104</sup> See Confidential Annex.

<sup>5105</sup> K88, Exhibit P371-A (*Milutinović* transcript), T 10467-10468.

<sup>5106</sup> See Confidential Annex.

1329. Sometime around 6, and before 9, April 1999, Vlastimir Đorđević called K87, who at Đorđević's request came the next morning to the office of Đorđević, then temporarily relocated to the Belgrade Bank.<sup>5107</sup> There, the Accused told K87 that there were two trucks at the Batajnica SAJ Centre containing the bodies of victims of NATO bombing, that these bodies should be buried temporarily at the Centre, and that after the war, they would be exhumed, identified and given a proper burial.<sup>5108</sup> K87 told Đorđević that there were only three or four men at the Centre and that they did not know how to carry out this job; Đorđević told him that he would arrange for an excavator to assist and that the bodies should be buried together.<sup>5109</sup> Đorđević instructed K87 as to the location at the Centre where the bodies should be buried, indicating that there was a training field made of truck tyres and that this would be the most convenient place since it already contained disturbed earth.<sup>5110</sup> He further instructed K87 that the matter should not be discussed with anyone.<sup>5111</sup> Evidence demonstrates that while leaving the Accused's office following the meeting, the Accused introduced K87 to the Minister, telling him that "[t]his is the man who will do the job".<sup>5112</sup>

1330. After the meeting with Vlastimir Đorđević, K87 went to the Batajnica SAJ Centre where he saw two trucks parked in an empty space alongside the Danube.<sup>5113</sup> They were ordinary haulage trucks with a cabin and a trailer attached. One of them had a canvas covering.<sup>5114</sup> K87 said he was not interested in the details of the trucks such as their registration plates and did not consider it his duty to observe such details.<sup>5115</sup> He did not check whether the cabins of the trucks were locked or not.<sup>5116</sup> There was no one present at the Centre and K87 left after a few minutes.<sup>5117</sup>

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<sup>5107</sup> K87, Exhibit P1414, paras 12-13, 24; K87, T 14158-14159. K87 was uncertain about when this phone call took place, suggesting it was sometime in the mid or end of April 1999. K88 who was able to provide the Chamber with more specific dates about the events at the Centre in April of 1999, testified that K87 had called him with respect to the burial of bodies on "[t]he Thursday before Good Friday" (K88, Exhibit P370-A, para 17). This suggests that the phone call from the Accused to K87, asking him to come to his office, must have taken place sometime before Good Friday, which in 1999, was on 9 April 1999. The Chamber has already found that Đorđević was informed of the initial discovery of the bodies in the refrigerated truck at the latest on 6 April 1999, by Časlav Golubović. The Accused's phone call to K87 and their meeting on the following day in the Accused's office must therefore have taken place sometime on or after 6 April 1999 and before 9 April 1999.

<sup>5108</sup> K87, Exhibit P1414, paras 13, 24; K87, T 14159-14161, 14164.

<sup>5109</sup> K87, Exhibit P1414, paras 13, 14. It is the evidence of the Accused that when K87 came to his office, a discussion ensued over the use of an excavator, and that K87 then told the Accused that there was an excavator near the Batajnica facility. Đorđević testified that he instructed K87 to obtain this excavator and use it "to do the job" (Vlastimir Đorđević, T 9998-9999).

<sup>5110</sup> K87, Exhibit P1415, para 17; *see also* K87, Exhibit P1416.1 (*Milutinović* transcript), T 11816-11817.

<sup>5111</sup> K87, Exhibit P1415, para 15.

<sup>5112</sup> Živko Trajković, T 9115-9116, 9137-9138. The Accused confirms this evidence, Vlastimir Đorđević, T 9731. K87 does not provide evidence about meeting the Minister in his statement to the OTP.

<sup>5113</sup> K87, Exhibit P1414, para 16; Exhibit P1416.1 (*Milutinović* transcript), T 11817.

<sup>5114</sup> K87, Exhibit P1415, para 16.

<sup>5115</sup> K87 Exhibit P1415, para 16; Exhibit P1416.1 (*Milutinović* transcript), T 11817.

<sup>5116</sup> K87, Exhibit P1415, para 16.

<sup>5117</sup> K87, Exhibit P1415, paras 16, 17.

1331. K88 corroborates the existence of trucks at the Batajnica SAJ Centre at this time; it is his evidence that sometime in early April 1999<sup>5118</sup> he visited the Centre. He had not been there for about three or four days, and he wanted to check up on a Praga vehicle that had been handed over from the Novi Sad SAJ.<sup>5119</sup> As he approached the vehicle, which was parked about 300 metres from the range, K88 noticed a yellow Daimler-Benz “FAP 1213” civilian truck parked nearby.<sup>5120</sup> Along the side of the firing range, K88 also noticed a rusty blue “TATRA” truck, open bodied with high side panels and an open top.<sup>5121</sup> In that same area, he observed a “Zastava” truck.<sup>5122</sup> He did not see any of these vehicles arriving at the Centre.<sup>5123</sup> Later that day, he informed K87 about what he had seen at the Centre; K87 remarked that these may have been relocated MUP vehicles.<sup>5124</sup>

1332. K88 testified that on 8 April 1999,<sup>5125</sup> K87 called him and told him that the trucks<sup>5126</sup> that had arrived at the Centre contained dead bodies, and that there had been an order from somebody above their commanders to bury them at the Centre.<sup>5127</sup> The following day, which in the finding of the Chamber was on or around 9 April 1999,<sup>5128</sup> K88 and K87 both went to the Centre.<sup>5129</sup> K88 picked up an excavator from a construction company on the Batajnica road, and proceeded to dig a hole at the Centre.<sup>5130</sup> Present at the site at this time were also two MUP drivers Brašanović and

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<sup>5118</sup> K88 explains that this was sometime after the funeral of Živko Trajković’s driver Radovan Aleksić, which took place either in late March 1999 or the early days of April 1999 (K88, Exhibit P370, para 14).

<sup>5119</sup> K88, Exhibit P370-A, para 14.

<sup>5120</sup> K88, Exhibit P370-A, para 14; Exhibit P370 attachment, marking “4” with “Yellow truck FAP” indicating the location where this vehicle was parked; *see also* Exhibit P371 (*Milutinović* transcript), T 10446 -10447.

<sup>5121</sup> K88, Exhibit P370-A, para 14; Exhibit P370 attachment, marking “2V” indicating the location of the “TATRA” truck.

<sup>5122</sup> K88, Exhibit P370-A, para 14; exhibit P370 attachment, marking “3V” indicating the location of the “Zastava” truck.

<sup>5123</sup> K88, T 1980.

<sup>5124</sup> K88, Exhibit P370, para 16.

<sup>5125</sup> The Chamber notes that this would be the “Thursday before Good Friday” in 1999 (*see supra*, footnote 5107), referred to in K88’s statement (Exhibit P370, para 17).

<sup>5126</sup> According to K88, (though not K87), at this time, only the yellow Daimler-Benz “FAP” truck that he had seen in “early April” when he visited the Centre by himself was still at the base; the other two trucks were no longer there. It is his evidence that when he and K87 were next at the Centre, a guard there said that based on the smell, the two trucks that had left probably contained corpses, and that the yellow “FAP” truck also smelled (K88, Exhibit P370-A, para 16; K88, Exhibit P371-A (*Milutinović* transcript), T 10448). K88 also said the Yellow FAP truck had already been at the Centre for 15 days when K87 and K88 went to the Centre to bury the bodies (K87, Exhibit P370-A, para 17). In the view of the Chamber, K88 appears to have been mistaken about these 15 days. The Chamber considers it likely, as testified by K87, that there were two trucks at the Centre on the day K87 and K88 took part in the burial of the first group of bodies. It is also the evidence of the Accused that he had informed K87 about the presence of two trucks at the Centre (Vlastimir Đorđević, T 9729-9730, 9978).

<sup>5127</sup> K88, Exhibit P370, para 17; K88, Exhibit P371 (*Milutinović* transcript), T 10452.

<sup>5128</sup> K88, Exhibit P370, para 17.

<sup>5129</sup> K87, Exhibit P1415, para 18; *see also* K88, Exhibit P370, para 18.

<sup>5130</sup> K88, Exhibit P370, paras 18-19; K88, Exhibit P371 (*Milutinović* transcript), T 10447; K87, Exhibit P1414, para 18. It is the evidence of K87 that he told K88 to go to Vlastimir Đorđević’s office to pick up a permit so that he could collect an excavator from the construction company in Batajnica (K87, Exhibit P1414, para 18). K88 however does not mention picking up a permit and is not asked about it (K88, Exhibit P370, para 18). The Accused refutes that K88 had come to ask Đorđević for a permit or consent for the use of the excavator (Vlastimir Đorđević, T 9999). The Chamber is unable to establish whether K88 did receive a permit from the Accused, although it is clear that the Accused told K87 that he would arrange for an excavator for their use at the Batajnica SAJ Centre (*see supra*, para 1329).

Lipovac, who appeared while the hole was being dug.<sup>5131</sup> At the relevant time, Dragan Brašanović was the personal driver of Petar Zeković, another of the assistant ministers of the MUP, while Bogdan Lipovac was the driver for the Accused.<sup>5132</sup>

1333. As instructed by Vlastimir Đorđević, a hole was dug at the training field; this was in the most remote part of the Batajnica SAJ Centre, beyond the 300 metre firing range.<sup>5133</sup> Once the hole had been dug, one of the two MUP drivers reversed a truck containing the bodies down the decline created by K87 as he dug the hole. The rear door of the trailer was open and the driver braked heavily, so that bodies slid from the trailer into the hole without anyone handling them.<sup>5134</sup> The smell of the decomposing corpses was so strong that those present had to wear gas masks.<sup>5135</sup> The two trucks at the Centre were emptied immediately into the mass grave one after the other.<sup>5136</sup>

1334. The Chamber is satisfied, on the basis of the above evidence, that the bodies emptied from these two trucks into the hole at the Batajnica SAJ Centre were the bodies that had been discovered in the refrigerated truck in the Danube at Tekija.

1335. It was the evidence of K88 that just after he started to cover the hole in which the bodies had been dumped, they could hear air raid warning sirens; K87 told him to stop the burial process for a while because K88 was operating a very high-temperature machine and this could be detected by NATO heat sensors.<sup>5137</sup> During cross-examination in both the *Milutinović* and the current trial, K88 testified that for fear of being targeted by NATO planes, tyres were burnt in order to prevent NATO from having visual contact.<sup>5138</sup> While the Chamber accepts that NATO may have been bombing the airport in Batajnica around that time,<sup>5139</sup> in its view, it is more likely that the smoke resulting from the burning tyres was to shield the body burial operation from NATO rather than preventing NATO

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<sup>5131</sup> The Chamber notes that it is K88's evidence that Brašanović, Lipovac and K87 were not continuously present in the two hours that it took him to dig the grave, but that they were coming and going. It is clear from the evidence, however, that all four men were present when the bodies were deposited in the hole (K88, Exhibit P370, paras 18, 19; K88, Exhibit P371 (*Milutinović* transcript), T 10451-10453, 10466; K87, Exhibit P1414, paras 18-19); see also K93, identifying Dragan Brašanović and Bogdan Lipovac as two of the drivers who drove trucks of bodies from Kosovo to the Batajnica SAJ Centre (K93, Exhibit P1062 (*Milutinović* transcript), T 11333. It is unclear from the evidence whether Dragan Brašanović and Bogdan Lipovac had the keys to both of the trucks or just one of the trucks (K87, Exhibit P1415, para 18).

<sup>5132</sup> K93, Exhibit P1062 (*Milutinović* transcript), T 11333-11334; K87, T 14176; see also Vlastimir Đorđević, T 9988.

<sup>5133</sup> K87, Exhibit P1415, para 18. The Chamber notes that K88 testified that those present at the site discussed where best to bury the bodies, and decided to do so at a location beyond the 300 metre-long shooting range, the most remote location of the Centre (K88, Exhibit P370, para 18; K88, Exhibit P371 (*Milutinović* transcript), T 10447). This does not necessarily contradict the evidence of K87 that Vlastimir Đorđević instructed him as to the specific location where to bury the bodies; K88's testimony reflects he was unsure about who suggested the location (K88, T 1979). The Chamber is satisfied that it was in fact K87 who made this suggestion, at the instructions of the Accused.

<sup>5134</sup> K88, Exhibit P370-A, para 19; K87, Exhibit P1415, para 19.

<sup>5135</sup> K87, Exhibit P1415, para 19.

<sup>5136</sup> K87, Exhibit P1415, para 19.

<sup>5137</sup> K88, Exhibit P370, para 20.

<sup>5138</sup> K88, T 1982; see also K88, Exhibit P371A (*Milutinović* transcript), T 10464.

from targeting the Batajnica SAJ Centre. Moreover, forensic evidence reveals that many of the human remains found in several of the mass graves later exhumed at the Centre were in fact commingled with a large number of partially burnt tyres suggesting an attempt to destroy these human remains.<sup>5140</sup>

1336. Though K88 and K87 were present as the bodies were deposited into the hole, they maintained that they did not look closely at the bodies and therefore they did not see how the bodies were clothed, of what gender they were, or whether there were children amongst those bodies.<sup>5141</sup> Following the burial of the bodies, the trucks left the Batajnica SAJ Centre.<sup>5142</sup>

1337. In addition to the two trucks which carried the bodies from Tekija, several other trucks driven by MUP employees,<sup>5143</sup> also arrived at the Batajnica SAJ Centre intermittently in the course of April and likely into early May of 1999, carrying bodies.<sup>5144</sup> K87 was contacted by Vlastimir Đorđević on his mobile phone, and was told by the Accused in advance about the arrival of each of these trucks. Đorđević instructed K87 that the same procedure was to be followed as before.<sup>5145</sup> According to K87, there were no more than four holes dug at the Centre; the trucks that arrived would be parked in the same location upon their arrival. K87 did not know the drivers, who were different each time, as were the trucks.<sup>5146</sup>

1338. The fact that there were several burial sessions of bodies is confirmed by K88, who states that three to five days after the first burial at the Centre, K87 called K88 to tell him that another truck had arrived and that he should come to the Centre; this same procedure was followed when the subsequent trucks arrived.<sup>5147</sup> When K88 arrived at the Centre, he observed an old yellow coloured trailer truck without licence plates parked opposite the main entrance of the Centre facing the Danube.<sup>5148</sup> There were two drivers present who spoke with Montenegrin accents and wore blue camouflage uniforms.<sup>5149</sup> According to K88, the two drivers stayed in the police hotel for two

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<sup>5139</sup> K88, T 1981-1982.

<sup>5140</sup> Exhibit P815, p 17.

<sup>5141</sup> K87, Exhibit P1415, para 19; K88, Exhibit P370, para 20.

<sup>5142</sup> K87, Exhibit P1415, para 20.

<sup>5143</sup> See Confidential Annex.

<sup>5144</sup> K87, Exhibit P1415, para 21; K88, Exhibit P370A, para 31. K88 stated that trucks of bodies arrived at the Batajnica SAJ Centre for a period of *approximately* three weeks, and at intermittent periods of two to three days (K88, Exhibit P370A, para 31 (*emphasis added*)). Based on other evidence before it, the Chamber considers it likely that bodies were arriving in Batajnica in April as well as into early May of 1999.

<sup>5145</sup> K87, Exhibit P1415, para 21; K87, T 14174-14175.

<sup>5146</sup> K87, Exhibit P1415, para 22.

<sup>5147</sup> K88, Exhibit P370, paras 22, 29.

<sup>5148</sup> K88, Exhibit P370-A, para 22; Exhibit P370, number “4V” indicating the location of this truck.

<sup>5149</sup> K88, Exhibit P370-A, para 22; K88, T 1871-1872; Exhibit P325, uniform on photograph “4” identified by K88 to have been worn by the drivers; *see also* T 1984-1988. Based on K88’s identification of the uniforms, the Chamber is satisfied that these were members of the regular police (*see supra*, para 53).

to three days while their truck was being repaired, as it had a fuel problem.<sup>5150</sup> As was done with several of the trucks that arrived at the Centre, gasoline was poured on the ground to get rid of the smell of blood.<sup>5151</sup>

1339. Once more, K88 dug a hole near the firing range using the excavator that he had parked at the Centre after its first use.<sup>5152</sup> The truck was then lined up alongside the grave and K88 nudged the trailer with the excavator to prompt the bodies to fall into hole. As a result of this, however, the trailer section of the truck fell into the hole together with the bodies.<sup>5153</sup> K88 testified that the trailer was eventually pulled out of the hole and left close to the grave site until the bodies in this grave were exhumed years later.<sup>5154</sup> K88 says that he did not see the bodies as they fell into the hole; he wore a gas mask and was paying attention to operating the excavator.<sup>5155</sup> K87, likewise, testified that he saw the bodies only for a short time and did not pay attention to their clothing.<sup>5156</sup>

1340. It is the evidence of K87, during cross-examination in this case, that at his initial meeting with the Accused, he had instructed K87 to leave “some kind of marking” at the location of the grave-site so that the area could be easily identified and the bodies could be buried individually after the war; K87 testified that this was done and that the marking left was the trailer that had fallen into the grave.<sup>5157</sup> The Chamber does not accept this evidence. K87 does not refer to this in his statement to the OTP, stating that nothing was planted in the location where the bodies were buried but that a trailer was left there so that they would know the location of where they were buried.<sup>5158</sup> Firstly, it would appear from K87’s own evidence that this alleged instruction related to burial of the bodies that had arrived in the first two trucks, as the initial meeting with the Accused was limited to this. Secondly, K88, when testifying about the trailer, made no mention of leaving it expressly for the purpose of marking the location of the grave. In view of the Chamber, K87’s evidence in this respect is not credible and was fabricated to suggest that there was in fact an intention of reburial of these bodies after the war. The evidence suggests that immediately after the burial of the bodies, the drivers of the truck returned to Kosovo in the detached cab. Hence, the more likely scenario is that they had already left by the time the trailer was pulled out of the hole;<sup>5159</sup> after this, it was simply left at the side of the hole. The fact that there was no intention of

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<sup>5150</sup> K88, T 1984-1985; *see also* K88, Exhibit P371-A (*Milutinović* transcript), T 10468.

<sup>5151</sup> K88, Exhibit P370-A, para 22; K88, Exhibit P371-A (*Milutinović* transcript), T 10467-10468.

<sup>5152</sup> K88, Exhibit P370-A, para 23; Exhibit P370-A, marking “2” indicating the location where the second group of bodies were buried; *see also* K87, Exhibit P1415, para 22.

<sup>5153</sup> K88, Exhibit P370-A, para 23.

<sup>5154</sup> K88, Exhibit P370-A, para 23; *see infra*, para 1493.

<sup>5155</sup> K88, Exhibit P370, para 25.

<sup>5156</sup> K87, Exhibit P1415, para 22.

<sup>5157</sup> K87, T 14160-14161; *see also* K87, Exhibit P1415, para 24.

<sup>5158</sup> K87, Exhibit P1415, para 24.

<sup>5159</sup> K88, Exhibit P370-A, para 23.

reburial of these bodies after the war is further confirmed by the fact that partially burnt tyres were found to have been commingled with the remains in the graves, suggesting, in the Chamber's finding, an intention to destroy these remains. Exhumations conducted in 2001 and 2002 revealed that many of the remains were damaged by fire, and some completely destroyed.<sup>5160</sup> In addition, the ICMP observed attempts to disguise the entire site by the depositing of truckloads of imported soil across the area of the graves, so as to form a "false horizon".<sup>5161</sup>

1341. More trucks arrived at the Centre in the days following. K88 testified that three to five days after the burial of the second group of bodies,<sup>5162</sup> he observed a new Mercedes "Furgon" truck at the Centre. The driver, an old man in civilian clothes, informed K88 that the truck contained about 35 bodies. As these bodies were deposited into a hole, the ramp-door of this truck fell in; it was found years later during the exhumations carried out at the Centre.<sup>5163</sup> A 30-ton refrigerated truck had also arrived at the Centre at this time.<sup>5164</sup> The two drivers of this truck wore standard police blue camouflage uniforms. They spoke Serbian but the witness does not know where they came from.<sup>5165</sup> K88 did not see any bodies as he scooped out the soil from the truck, although there was a strong smell of corpses from the soil and he observed part of a coffin.<sup>5166</sup> The soil from this truck was dumped into a hole dug near the firing range.<sup>5167</sup> The Chamber notes that a partial coffin was recovered from one of the mass graves during exhumations conducted in 2002, confirming that some of the remains brought to the Batajnica SAJ Centre had been earlier removed from a cemetery.<sup>5168</sup>

1342. A further truck arrived at the Batajnica SAJ Centre in this period of time delivering several hundred bodies<sup>5169</sup> which had been collected by a MUP driver from Priština/Prishtinë town, at the

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<sup>5160</sup> See *supra*, para 1484, 1493, 1499, 1504; see also Exhibit P815, p 23.

<sup>5161</sup> Exhibit P815, para 66.

<sup>5162</sup> The Chamber accepts that the second group of bodies were the second load from Tekija (K93, Exhibit P1065, pp 3-4).

<sup>5163</sup> K88, Exhibit P370-A, para 27; see also Exhibit P370, attachment, marking "3" indicating the location of the burial of the approximately 35 bodies delivered by the old man driving the Mercedes truck. See also, *infra*, para 1493; see Exhibit P815, para 38.

<sup>5164</sup> K88, Exhibit P370-A, para 28.

<sup>5165</sup> K88, Exhibit P370-A, para 29; K88, Exhibit P371 (*Milutinović* transcript), T 10450; K88, T 1988; Exhibit P325, marking "4" indicating the uniforms worn by the drivers of the 30-ton refrigerated truck.

<sup>5166</sup> K88 stated that while he did not see any bodies, it smelled of corpses and he concluded as a result that the soil may have contained remains, K88, Exhibit P370A, para 28; K88, Exhibit P371 (*Milutinović* transcript), T 10466; K88, T 1986-1987.

<sup>5167</sup> K88, Exhibit P370-A, para 28; see also Exhibit P370A, markings "4" and "5" indicating the two holes into which the witness believes the soil was dumped; he was unable to specify which one.

<sup>5168</sup> Exhibit P815, p 23.

<sup>5169</sup> In his signed statement to the Working Group in 2002, K93 stated that he was told by an unidentified man that the truck contained around 300 bodies (K93, Exhibit P1063, p 4), but in court, K93 maintained that there was no way for him to know how many bodies were in the truck (K93, T 6899-6900, 6905). The Chamber notes, however, that in two of his other statements, not taken for the purpose of proceedings before the Tribunal, as well as in the *Milutinović* trial, he estimated that there must have been around 500 bodies in the truck (K93, Exhibit P1062



order of Petar Zeković,<sup>5170</sup> an Assistant Minister of the MUP, head of the Administration of Joint Affairs,<sup>5171</sup> and member of the MUP Collegium.<sup>5172</sup> Zeković provided the driver with a number to call upon his arrival in Kosovo; this was a Belgrade number. It was the same number that the driver was told to call on each of the future occasions he was ordered by Zeković to collect bodies in Kosovo.<sup>5173</sup> Having dialled the number, he was told by the person at the other end on the phone<sup>5174</sup> to proceed to a location where policemen awaited his arrival. At this location, he picked up a very large white “Scania” refrigerated truck, which, in pursuance of the order, he then drove to the Batajnica SAJ Centre.<sup>5175</sup>

1343. It is K87’s evidence that at some point during the process of the repeated burials of bodies at the Batajnica SAJ Centre, he again went to see Vlastimir Đorđević.<sup>5176</sup> K87 asked Đorđević whether there it was possible to stop bringing bodies to the Centre, because K87 found this disturbing.<sup>5177</sup> In his statement to the OTP in 2004, K87 stated that he did not remember the Accused’s reaction or what he responded to this request, but he does not believe that any more bodies arrived at the Centre after this request.<sup>5178</sup> During cross-examination in the current trial, however, K87 testified that Vlastimir Đorđević showed his understanding of K87’s request and told him he would have to “look into the matter with someone”.<sup>5179</sup> K87 continued, that it was his impression that “everything that was being done, was being done against [Vlastimir Đorđević’s] will”.<sup>5180</sup> The Chamber considers, as K87 accepts, that he was in no position to form an impression about the will of the Accused concerning this issue. The Chamber was left with the clear impression that this evidence of K87 was contrived to portray the Accused in a passive, and indeed favourable, light with respect to the events discussed. The Chamber does not accept this evidence in cross-examination.

1344. K87 testified that about two or three days after all bodies that had arrived at the Centre were buried, he received a phone call from someone who introduced himself by rank and not by name; the person inquired whether the bodies had been buried. K87 claims not to know whether this was the Accused or somebody else, but confirmed to this person that everything had been done as

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(*Milutinović* transcript), T 11323; K93, Exhibit P1064, p 5; K93, Exhibit P1065, p 4). The Chamber accepts, on the basis of the evidence reviewed, that there were several hundred bodies transported in this truck.

<sup>5170</sup> K93, Exhibit P1062 (*Milutinović* transcript), T 11323-11325; K93, Exhibit P1065, p 2.

<sup>5171</sup> The Chamber notes that the Administration of Joint Affairs was responsible, *inter alia*, for the use and maintenance of vehicles (Exhibit P357, Articles 23 and 35).

<sup>5172</sup> Exhibit D208.

<sup>5173</sup> See Confidential Annex.

<sup>5174</sup> See Confidential Annex.

<sup>5175</sup> See Confidential Annex.

<sup>5176</sup> K87, Exhibit P1414, para 25; see also K87, T 14163.

<sup>5177</sup> K87, Exhibit P1415, para 25; see also K87, T 14163; see also Vlastimir Đorđević, T 10000.

<sup>5178</sup> K87, Exhibit P1415, para 25.

<sup>5179</sup> K87, T 14163-14164.

instructed.<sup>5181</sup> In the Chamber's finding this may confirm in part the Accused's evidence that K87 had informed him once the burial process had been completed,<sup>5182</sup> although it is not clear that K87 and the Accused relate this call to the same stage of the burials.

1345. K88 testified that sometime towards the end of the period during which bodies were arriving at the Batajnica SAJ Centre, a man unknown to K88 arrived at the Centre in a Mercedes car without registration plates.<sup>5183</sup> According to K88, this man was likely to be from the RDB because "[n]o one else would dare go there at the time".<sup>5184</sup> The man approached K88 at the Centre and told him that if K88 said anything about the burials at the Centre he would be killed.<sup>5185</sup>

1346. With respect to the arrival of the bodies recovered from the refrigerated truck in the Danube at the Batajnica SAJ Centre, the Chamber recalls the position of the Accused that he was unaware to which specific location these bodies were transported. It is his evidence that he was informed of the arrival of trucks containing these bodies by the Minister, over the phone.<sup>5186</sup> The Accused testified that the Minister told him to instruct members of the SAJ present in Batajnica that these bodies should be buried there, and that Đorđević should tell the people at the Centre that the bodies were those of victims of the NATO bombing or of dead terrorists who needed to be buried, and that an exhumation process would be undertaken later for the correct procedure to be followed.<sup>5187</sup>

1347. The Chamber recalls that the Accused was contacted directly by SUP chief Časlav Golubović on 6 April 1999 and informed of the bodies discovered in the refrigerated truck at the Danube. The evidence discussed above reveals that the Accused knew that the destination of these trucks was Belgrade. While none of the evidence demonstrates directly that he had knowledge that the specific location to where these bodies were to be brought was the Batajnica SAJ Centre, the Chamber considers that in the context of events, the only inference to make is that he had such knowledge. For this reason, it rejects the Accused's claim that he only found out about the arrival of the bodies from Tekija at the Batajnica SAJ Centre from the Minister.

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<sup>5180</sup> K87, T 14164.

<sup>5181</sup> K87 Exhibit P1415, para 23.

<sup>5182</sup> Vlastimir Đorđević, T 9731.

<sup>5183</sup> K88, Exhibit P371, (*Milutinović* transcript), T 10453-10454; *see also* K88, Exhibit P370, para 35.

<sup>5184</sup> K88, Exhibit P371, (*Milutinović* transcript), T 10453-10454; *see also* K88, Exhibit P370, para 35. During cross-examination in this case, K88 said that he does not know what the reference "Kosovo DB" in his statement refers to, and that he does not believe such an organizational unit even existed (K88, T 1980-1981). However the same paragraph of his statement had been put to K88 in the *Milutinović* trial, and he then confirmed that this man was from the RDB (K88, Exhibit P371, (*Milutinović* transcript), T 10453-10454). The Chamber finds that K88 was consciously seeking to vary his account of this event to avoid involvement of the RDB of the MUP.

<sup>5185</sup> K88, T 1981; *see also* K88, Exhibit P371 (*Milutinović* transcript), T 10453-10454; *see also* K88, Exhibit P370-A, para 35.

<sup>5186</sup> Defence Final Brief, para 427.

<sup>5187</sup> Vlastimir Đorđević, T 9729-9731, 9978.

1348. The Chamber is also not convinced that it was the Minister who instructed the Accused as to what course of action he should take about the burial of the bodies from Tekija and as to what he should tell the people at the SAJ Centre about the origin of the bodies. In considering the evidence of K87, the Chamber observes that when he testified before the Chamber he stated that the Accused had given him the instructions to bury the bodies acting on the order of the Minister. This was in direct contradiction to the statement he gave to the OTP in which he stated, *inter alia*, that he did not know whether the Accused had contacted anybody else about the disposal of the bodies at the Centre, as he was not in a position to know something like that.<sup>5188</sup> The Chamber is convinced that the evidence that K87 gave before the Chamber was concocted with a view to misleading the Chamber. It is accordingly rejected.

1349. It was the Accused's testimony, moreover, that he did not know about the involvement of the two MUP drivers, Basanović or Lipovac, in the transportation of bodies to the Batajnica SAJ Centre. He claimed that he never issued any tasks to either of them, and that he did not know on whose orders they would have been taking part in the body transport operations.<sup>5189</sup> In 1999, Bogdan Lipovac was the Accused's driver. The Chamber finds it highly unlikely that the personal driver of the Accused would have been involved in an extensive duty such as the transporting of bodies without the Accused being aware of that fact. The Chamber accordingly rejects this evidence of the Accused.

1350. With respect to the arrival of further bodies at the Batajnica SAJ Centre after the first two truckloads of bodies from Tekija, the Accused conceded that he also instructed K87 to bury these bodies, adding, yet again, that he was informed of the arrival of additional trucks of bodies by the Minister, who then ordered him to involve K87 once again.<sup>5190</sup>

1351. The Chamber is not persuaded that the Accused was merely a conduit pipe for the orders of the Minister with respect to the burial of the bodies at Batajnica SAJ Centre. A consideration of the details of the instructions given by the Accused unmistakably reveals a level of knowledge and information that only the Accused could have possessed. It was the Accused who instructed K87 to bury the bodies in a location on the premises of the Batajnica SAJ Centre where there was a training field made of truck tyres, and that this would have been the most convenient place because it

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<sup>5188</sup> In his statement to the OTP in 2004, K87 unequivocally stated that he did not know whether Vlastimir Đorđević contacted anybody else about the disposal of the bodies at the Centre, as he was not in a position to know something like this (K87, Exhibit P1414, para 25). In his testimony before the Chamber, K87 attempted to change this evidence to suggest that the Accused had made reference to receiving the instruction to bury the bodies that he had passed on to K87 from "the Boss", who, in K87's view, could only have been the Minister (K87, T 14162, 14173-14174, 14177).

<sup>5189</sup> Vlastimir Đorđević, T 9989, 10144.

<sup>5190</sup> Vlastimir Đorđević, T 9732-9734, 9978.

already contained disturbed earth. It is unlikely in the extreme that the Minister would have this knowledge, whereas the SAJ is an organisational unit of the RJB of which the Accused was the Chief. Additionally, the Accused contacted K87 in advance on every occasion that a new truckload of bodies was due to arrive at the Centre.<sup>5191</sup> When K87 said that he was disturbed by the truckloads of bodies arriving at the Centre and requested the Accused to stop the bringing of bodies to the Centre, the Accused was in a position to make this happen.<sup>5192</sup> The level of coordination of the transport of the bodies to the Centre and their burial, which would have included the harmonizing of the use of trucks and personnel and the use of an excavator on the site, are further indicia, in the finding of the Chamber, that it was the Accused, with his more detailed knowledge and scope of responsibility, rather than the Minister, who had a direct role which was much more than a mere conveyer of orders received from the Minister. K87 described the Accused as the “number two man” within the Ministry.<sup>5193</sup> The Chamber would add, that even if at some stage the Accused had received some instructions from the Minister, which is not the Chamber’s finding, then the circumstances indicate that he must have adopted and endorsed those instructions as to make them his own, and amplified them and acted on his own initiative to ensure their effective implementation.

1352. The commander of the SAJ, Živko Trajković, was told about the burial of bodies at the Batajnica SAJ Centre by K87 sometime in mid-April 1999, when he was in Kosovo. He did not feel it appropriate to raise the issue with the Accused through normal communication channels. The first time he spoke to the Accused about this matter was after Trajković’s return from Kosovo, sometime in early June 1999.<sup>5194</sup> When Trajković asked why burials were taking place in the perimeter of the Batajnica SAJ Centre, the Accused told him that the decision to do this was made by people more important than Trajković and the Accused, “at a much higher level”, and that Trajković should not be too concerned and not ask too many questions about it.<sup>5195</sup> Trajković recalls that he spoke to the Accused on a second occasion,<sup>5196</sup> and asked him “Chief, what was it that happened?” to which the Accused replied “[w]hat can I tell you? All of my brave generals buried their heads into the sand and they left it to me to finish this part of the work”.<sup>5197</sup> Evidence of the Accused provides some measure of confirmation of this. The Accused testified that he spoke to Živko Trajković once, after the war, and that on this occasion, he expressed his dissatisfaction at

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<sup>5191</sup> See *supra*, paras 1329, 1337.

<sup>5192</sup> See *supra*, para 1343.

<sup>5193</sup> K87, T 14162, 14172-14173; Stojan Mišić also testified that the chiefs of the RJB and RDB are the highest ranking officers of the Ministry, Stojan Mišić, T 14073.

<sup>5194</sup> Živko Trajković, T 9124-9125, 9128.

<sup>5195</sup> Živko Trajković, T 9124-9125, 9139.

<sup>5196</sup> Živko Trajković, T 9125-9126.

<sup>5197</sup> Živko Trajković, T 9125-9127.

having been drawn into the burial of bodies.<sup>5198</sup> The Accused denies having stated what Trajković claims he stated, testifying that this was a “liberal interpretation” of what was actually said and explaining that what he in fact told Trajković was that he “had been drawn into doing things contrary to [his] will and wishes”.<sup>5199</sup> The Chamber has no reason to doubt the evidence of Trajković on this matter, and finds that the Accused’s words are an admission that he had responsibility for dealing with the bodies that arrived at the Batajnica SAJ Centre, as discussed in more detail in the Chapter relating to the Accused’s responsibility.

(b) Petrovo Selo PJP Centre

1353. A few days after the delivery of the first group of bodies to the Batajnica SAJ Centre in early April 1999, at the instruction of head of the Administration of Joint Affairs of the MUP, Assistant Minister Petar Zeković, a MUP driver previously involved in the transport of bodies to the Batajnica SAJ Centre was engaged once more. He was ordered to go to a village not far from Priština/Prishtinë in Kosovo to pick up more bodies.<sup>5200</sup> He was directed to this location by a person he reached when he rang a number provided to him by Petar Zeković.<sup>5201</sup> At the location, he was met by local policemen,<sup>5202</sup> and there he saw a tractor with a trailer loaded with bodies. Around 20 bodies, all in civilian clothes, as well as a lot of soil were loaded onto the truck. As directed in the telephone call, the driver transported these bodies to the Petrovo Selo PJP Centre in Serbia. On his way, he stopped at the Kladovo police station where he spoke to the Chief of the station Vukašin Sprlić to confirm the destination. Upon arrival at the Petrovo Selo PJP Centre, he saw that two pits had been prepared in a clearing behind the Centre. The bodies were deposited therein.<sup>5203</sup> The driver complained to Goran Radosavljević aka “Guri”,<sup>5204</sup> present at the Centre at the time the bodies were deposited into the pits, that the truck was soiled with mud, dirt and blood; Vukašin Sprlić arranged for firemen to come and clean the truck’s container.<sup>5205</sup> The Chamber recalls that Goran Radosavljević was the commander of the MUP’s Operational Sweep Group (“OPG”)<sup>5206</sup> and had been in charge of the operation in Račak/Raçak in early 1999. He was also a

<sup>5198</sup> Vlastimir Đorđević, T 10000-10001.

<sup>5199</sup> Vlastimir Đorđević, T 10000-10001.

<sup>5200</sup> See Confidential Annex.

<sup>5201</sup> See *supra*, footnote 5174.

<sup>5202</sup> See Confidential Annex.

<sup>5203</sup> See Confidential Annex.

<sup>5204</sup> It was the evidence of the Accused, before the War Crimes Chamber of the Belgrade District Court on 26 June 2009, that “during wartime” Goran Radosavljević engaged in the training of members of the PJP and special units of the RDB. After the withdrawal of Serbian forces from Kosovo in June of 1999, Goran Radosavljević operated as the head of the Petrovo Selo PJP Centre (Exhibit P1508, pp 3, 15).

<sup>5205</sup> See Confidential Annex.

<sup>5206</sup> Radomir Mitić, T 12677, 12744-12745; Ljubinko Cvetić, T 6605-6606.

member of the MUP Staff in Priština/Prishtinë.<sup>5207</sup> In his testimony before the Belgrade War Crimes Chamber on 26 June 2009, the Accused stated that Radosavljević was engaged in the training of members of the PJP and special units of the RDB at the Petrovo Selo training centre during the war, and that when Serbian forces withdrew from Kosovo in June of 1999, he was the head of the Petrovo Selo PJP Centre.<sup>5208</sup>

1354. Following the deposit of the bodies from this village at the Petrovo Selo PJP Centre, the driver of the truck brought the empty truck to the Batajnica SAJ Centre for further use<sup>5209</sup> because “they needed the truck to bring earth” and “spread sand”.<sup>5210</sup> The Chamber recalls the observations made by the ICMP at the Batajnica SAJ Centre in 2001 concerning the attempt to disguise the existence of mass graves by depositing truckloads of imported soil on the area.<sup>5211</sup>

1355. Shortly after his first transport of bodies to the Petrovo Selo PJP Centre, again at the instructions of Petar Zeković, the same driver was ordered to collect bodies in the southern part of Kosovska Mitrovica/Mitrovicë. The driver was accompanied by members of the MUP. Once in Kosovo, the driver telephoned the same number previously provided by Petar Zeković. The person on the phone told him to go to a cargo railway station. There, he was met by “people”. They drove to a timber factory where there were bodies. These were loaded onto his truck. Two of the bodies were in KLA uniforms, with KLA insignia. There were about 15 men present at the timber factory. Although they were dressed in civilian clothes, one of them was the chief of the SUP of Kosovska Mitrovica/Mitrovicë and others were inspectors of violent crime or crime scene investigators of the MUP.<sup>5212</sup> The evidence of the driver of this truck has varied with respect to whether he delivered these particular bodies to the Petrovo Selo PJP Centre or the Batajnica SAJ Centre.<sup>5213</sup> The Chamber is however satisfied, having reviewed his evidence in its entirety that the Petrovo Selo PJP Centre was in fact the final destination for this group of what the driver assessed to be about 55 bodies,<sup>5214</sup> which were exhumed in 2001.

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<sup>5207</sup> Ljubinko Cvetić, T 6605-6606, 6625-6626, 6779, 6787; Žarko Braković, T 4186, 4190, 4269; *see also* Exhibit P760.

<sup>5208</sup> Vlastimir Đorđević, T 9973-9975; *see also* Exhibit P1508 (Testimony of the Accused before the War Crimes Chamber of the Belgrade District Court on 26 June 2009), pp 3-7, 15.

<sup>5209</sup> *See Confidential Annex.*

<sup>5210</sup> *See Confidential Annex.*

<sup>5211</sup> Exhibit P815; *See infra*, para 1493.

<sup>5212</sup> *See Confidential Annex.*

<sup>5213</sup> *See Confidential Annex.* The Chamber notes that during exhumations in 2001, the remains of 16 bodies were discovered in a mass grave site referred to as “Petrovo Selo I”, and 59 bodies were discovered in a mass grave site referred to as “Petrovo Selo II”, amounting to a total of 75 bodies. 31 individuals recovered at the Petrovo Selo PJP Centre were identified as the victims of the Izbica/Izbicë massacre, in Skenderaj/Srbica municipality, which is immediately south of the area from which K93 collected bodies. *See infra*, paras 1512.

<sup>5214</sup> *See Confidential Annex.*

(c) Conclusion

1356. The Chamber is satisfied, on the basis of its above findings, that from the second week of April 1999, on at least six occasions over a period of several weeks carrying over into May of 1999,<sup>5215</sup> trucks containing bodies of Kosovo Albanians killed by Serbian forces in Kosovo arrived at the Batajnica SAJ Centre.<sup>5216</sup> At least two further deliveries of bodies were made to the Petrovo Selo PJP Centre. The drivers of the trucks transporting the bodies were MUP employees. The instructions to deliver the bodies to the Batajnica SAJ Centre and the Petrovo Selo PJP Centre were, on each occasion, given by high-ranking MUP officials including Petar Zeković, head of the Administration of Joint Affairs and Assistant Minister, as well as, in the case of the first two trucks delivered to the Batajnica SAJ Centre, directly by the Accused, Vlastimir Đorđević. Prior to the arrival of each truckload of bodies to the Batajnica SAJ Centre, the personnel at the Centre were informed of the arrival by the Accused, and were instructed by him as to the procedure they were to follow.

3. Discovery of bodies in Lake Perucac

1357. The Chamber heard the evidence of Đorđe Kerić, head of Užice SUP in Serbia,<sup>5217</sup> concerning the discovery of bodies in Lake Perucac, about 10 kilometres from the OUP of Bajina Bašta, an area then within the witness's responsibility, sometime in mid-April of 1999.<sup>5218</sup> The testimony of Kerić in the current trial differed in some material respects from the evidence he provided in 2005 to the War Crimes Chamber of the Belgrade District Court when interviewed by Investigative Judge Dilparić. The witness also gave a written statement to the Working Group of the MUP in July of 2001, which appeared, on its face, to contain more similarities with his testimony in the current trial.

1358. It appears to the Chamber that more than one factor may have influenced the accounts given by Kerić. If so, these factors may well have pulled him in different directions, and with differing degrees of force, at different times. These factors include: the effect of passing years on his recollection,<sup>5219</sup> the fact that he was still a serving MUP officer when he gave his first account to

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<sup>5215</sup> While the evidence of K88 suggests that bodies arrived at the Centre over a period of three weeks, the Chamber accepts, based on other evidence before it, that the arrival of trucks occurred throughout April and into May of 1999.

<sup>5216</sup> K88, Exhibit P370A, para 31. These are the two trucks that already had left the Centre when K88 arrived; the yellow FAP truck; another yellow truck; a new Mercedes Furgon truck; a 30-ton refrigerated truck.

<sup>5217</sup> Đorđe Kerić, T 7753-7754, 7812.

<sup>5218</sup> Đorđe Kerić, T 7755. The witness testified that he was informed of the discovery by Slavko Petrović, chief of the OUP of Bajina Bašta, about 15 days before he was transferred to Belgrade, which was on 1 May 1999, Đorđe Kerić, T 7753-7755.

<sup>5219</sup> Đorđe Kerić, T 7849.

the MUP Working Group in 2001,<sup>5220</sup> but had retired before his 2005 evidence and of course, before he gave evidence in this trial. Therefore concerns that his evidence could reveal wrongdoing in his duties as a MUP officer, or implicate more senior MUP officers, could diminish in their force. Kerić knew Đorđević as his superior, and also personally over a number of years.<sup>5221</sup> A significant factor may well be a concern not to implicate him in criminal conduct or to place ultimate responsibility for it on someone else. Having regard to these matters, the Chamber has approached the evidence of Đorđe Kerić with caution. For all these reasons, and for reasons dealt with in greater detail in what follows, the Chamber has decided it can only rely with full confidence on certain parts of Kerić's evidence. In doing so the Chamber has been conscious that in some material respects Kerić provides the only or the primary evidence, and that the Accused in his evidence has disagreed with aspects of Kerić's account in this trial.

1359. Despite discrepancies, the Chamber has found many aspects of the evidence of Đorđe Kerić to be entirely persuasive, and is prepared to rely on these aspects of his evidence. On this basis, the Chamber finds that sometime in mid April 1999, Kerić received a telephone call from the chief of the OUP in Bajina Bašta, Slavko Petrović, who informed him that objects that appeared to be human bodies had been seen floating on the surface of Lake Perucac. Kerić ordered Petrović to go to the site to verify this and to report back to him. Petrović did so, and after about an hour, informed Kerić that there were five to six human bodies floating in the lake.<sup>5222</sup> Kerić subsequently telephoned the Accused in Belgrade on a direct line and informed him about the discovery of the bodies and sought further instructions.<sup>5223</sup> It is the consistent evidence of Đorđe Kerić that in conversations with Đorđević, including the first conversation, Kerić suggested to the Accused that an investigative judge be informed about the incident.<sup>5224</sup> Đorđević told Kerić that until the facts had been checked and further information was gathered, no one should be informed.<sup>5225</sup> To this end, Đorđević told Kerić that the chief of the crime police department of the Užice SUP, who was Zoran Mitricević,<sup>5226</sup> should go the lake together with a group of inspectors and conduct an on-site investigation.<sup>5227</sup> Kerić was to keep Đorđević informed of the results of this investigation.<sup>5228</sup>

1360. Upon his initial investigation of the site, Mitricević informed Kerić that there were in fact several tens of bodies at the lake, mostly in civilian clothes, both male and female, and that they were in an advanced state of decomposition. He also told Kerić that a container that had originally

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<sup>5220</sup> Đorđe Kerić, T 7753-7754.

<sup>5221</sup> Vlastimir Đorđević, T 9990-9991.

<sup>5222</sup> Đorđe Kerić, T 7755-7756, 7860-7861; *see also* Exhibit P1212, p 3; Exhibit D316, p 2.

<sup>5223</sup> Đorđe Kerić, T 7756.

<sup>5224</sup> Đorđe Kerić, T 7756-7757, 7817-7819; *see also* Exhibit P1212, p 2; Exhibit D316, p 3.

<sup>5225</sup> Đorđe Kerić, T 7757, 7820, 7861-7862; *see also* Exhibit P1212, p 2; Exhibit D316, p 3.

<sup>5226</sup> Đorđe Kerić, T 7820; Vlastimir Đorđević, T 9991.

<sup>5227</sup> Đorđe Kerić, T 7757, 7820, 7861-7862; *see also* Exhibit P1212, p 2; Exhibit D316, p 3.



been attached to a truck had surfaced and contained more bodies; the container had no markings and Kerić did not recall Mitricević mentioning that there were registration plates on it.<sup>5229</sup> At that time, there were no indicators that could lead to a conclusion as to how the bodies got there and where they were from.<sup>5230</sup>

1361. Upon receiving this information from Mitricević about the discovery of a freight box containing bodies, Kerić called Đorđević a second time to pass on this information and sought further instructions from the Accused.<sup>5231</sup> Đorđević told Kerić that they would speak a little later on. After about an hour, Kerić called Đorđević again; the Accused told him that a number of officers and civilians should be engaged to remove the bodies from the lake and that the bodies should be buried in a mass grave near the dam of the lake.<sup>5232</sup> As he had done in his first conversation with the Accused, Kerić again suggested to Đorđević that an investigative judge and prosecutor should be informed; Đorđević told him that this should not be done.<sup>5233</sup> Kerić then passed on Đorđević's instructions to Zoran Mitricević. For the next two days, Mitricević and his colleagues recovered bodies from Lake Perucac and buried them in the vicinity of the lake's dam.<sup>5234</sup> Kerić gave similar information to the MUP in 2001, stating that in relation to the bodies discovered in Lake Perucac, the Accused had ordered that measures should be taken for the "clearing up of the terrain", informing Kerić that representatives of the MUP would be sent to the spot for coordination purposes.<sup>5235</sup> Kerić suggested in his evidence that he understood the order for the "clearing up of the terrain" to relate to the retrieval of the bodies from Lake Perucac and their preparation for burial.<sup>5236</sup> The Chamber finds Kerić's evidence with respect to the matters dealt with above to be convincing.

1362. The Accused does not contest that Đorđe Kerić called him to inform him about a number of bodies floating in Lake Perucac.<sup>5237</sup> He also does not contest that Kerić called him a second time to inform him that the team he had sent to the ground had found a freight box in the lake, containing

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<sup>5228</sup> Đorđe Kerić, T 7757, 7820; *see* also Exhibit P1212, p 2; Exhibit D316, p 3.

<sup>5229</sup> Đorđe Kerić, T 7757-7759, 7763; *see* also Exhibit P1212, p 2.

<sup>5230</sup> Đorđe Kerić, T 7757-7759, 7763, 7822.

<sup>5231</sup> Đorđe Kerić, T 7759, 7822; *see* also Exhibit P1212, p 2; Exhibit D316, p 3.

<sup>5232</sup> Đorđe Kerić, T 7759. The Chamber notes that in his 2001 statement, Đorđe Kerić states that when he called Đorđević the second time to inform him of the additional information concerning the bodies of which he himself had been informed by Zoran Mitricević, Đorđević "ordered that measures be taken for the clearing up of the terrain" (*see* Exhibit P1212, p 2). Kerić explained in the current trial his understanding of measures for the "clearing up of the terrain" as referring to the retrieval of bodies and the preparation for their burial, Đorđe Kerić, T 7862-7863.

<sup>5233</sup> Đorđe Kerić, T 7761-7762.

<sup>5234</sup> Đorđe Kerić, T 7759.

<sup>5235</sup> *See* Exhibit P1212, dated 27 July 2001.

<sup>5236</sup> Đorđe Kerić, T 7863; *see supra*, para 1361.

<sup>5237</sup> Vlastimir Đorđević, T 9728.

more bodies.<sup>5238</sup> It is the Accused's evidence that upon receiving this second call from Kerić, the Accused went to the Minister's office and informed him of what he had been told by Kerić; the Minister did not comment on this or give the Accused any instructions.<sup>5239</sup> Đorđević then testified that it was his belief that the Minister was going to deal with the matter with somebody else and would exclude the Accused from this, so he left the Minister's office.<sup>5240</sup> Đorđević gave no satisfactory explanation why he formed this belief.<sup>5241</sup> The Accused testified that the next and last time he heard from Kerić was about two days later, when Kerić informed him that all the bodies had been buried in the area; Đorđević passed this information on to the Minister, who again made no comment, nor gave him any feedback.<sup>5242</sup> Hence he did not give any instructions to Kerić about burial of the bodies and denied telling Kerić not to inform the judicial organs or the prosecutor.<sup>5243</sup> The Chamber has not been able to accept the material elements of this evidence of the Accused. The Accused's assertion that having more than once reported Kerić's news of bodies to the Minister, he remained inactive when the Minister did not respond was particularly unconvincing.

1363. About two days after the completion of this task, Kerić had a private conversation with an investigative judge, whom he informed about the discovery of the bodies, their state of decomposition, and that the police had been ordered "by the Ministry" not to inform either him or the prosecutor about this.<sup>5244</sup> Kerić did so because there were already public remarks about the bodies.<sup>5245</sup> The Judge had nothing to say to this.<sup>5246</sup> The Chamber also accepts Kerić's evidence in this respect. Kerić went on to explain that there was public speculation that the bodies might have been the victims of NATO air-strikes, or that these were bodies that had been exhumed from a mass grave in Bosnia and Herzegovina and carried to Lake Perucac through the Drina River,<sup>5247</sup> but testified that at the time, nobody thought that the bodies were from Kosovo.<sup>5248</sup> Kerić also stated, but not convincingly, that he "did not dwell" on the origin of the bodies because at the time, "entire areas and facilities were under air-strikes," and they had other priorities. Kerić was also busy preparing to move to a new position with the Federal Ministry of Internal Affairs in Belgrade.<sup>5249</sup>

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<sup>5238</sup> Vlastimir Đorđević, T 9728.

<sup>5239</sup> Vlastimir Đorđević, T 9728-9729.

<sup>5240</sup> Vlastimir Đorđević, T 9728-9729.

<sup>5241</sup> The Accused testified that he believed the Minister would "settle this matter" with somebody else and that the Minister wanted to exclude the Accused from this, so he left the Minister's office (Vlastimir Đorđević, T 9728-9729).

<sup>5242</sup> Vlastimir Đorđević, T 9729.

<sup>5243</sup> Vlastimir Đorđević, T 9993-9995.

<sup>5244</sup> Đorđe Kerić, T 7763.

<sup>5245</sup> Đorđe Kerić, T 7763, 7822.

<sup>5246</sup> Đorđe Kerić, T 7763.

<sup>5247</sup> Đorđe Kerić, T 7763, 7822.

<sup>5248</sup> Đorđe Kerić, T 7763, 7822.

<sup>5249</sup> Đorđe Kerić, T 7753-7754, 7760, 7823.

For this same reason, he testified, he did not personally visit the site.<sup>5250</sup> Asked why he complied with the Accused's order to send people to Lake Perucac to recover and bury the bodies at the dam, Kerić stated that, while it would have been standard procedure to notify the investigative judge and prosecutor of the discovery and let them proceed from there, he was obliged to comply with orders of his senior officials and would have been subject to disciplinary proceedings had he done otherwise.<sup>5251</sup> The Chamber found this a less than convincing explanation. Undoubtedly, Kerić was placed in a difficult position, but he chose to comply with Đorđević's order, and not with the law.

1364. The account of Kerić to Investigative Judge Dilparić of the War Crimes Chamber of the Belgrade District Court in 2005, provided under oath, is different in material respects from his evidence in this trial. What Kerić said then is strikingly void of references to the Accused being involved at all in the decisions concerning the recovery of bodies and their burial at the dam. Kerić then suggested that the decision to remove the bodies from Lake Perucac and bury them in the vicinity of the lake's dam was made by himself and Zoran Mitricević,<sup>5252</sup> and that Kerić contacted the Accused a total of three times; once to inform him of the situation, a second time to request a position on the matter from the Accused, and a third time only after the bodies were recovered and buried, to inform the Accused of this.<sup>5253</sup> While this coincides with some of the testimony of the Accused in this trial, the Chamber is convinced by the actual testimony of Kerić in the current trial rather than his account to Judge Dilparić, or his account of 2001. Hence, in the Chamber's finding the Accused did instruct Kerić about the burial of the bodies found in the Lake, and in the two days when Zoran Mitricević and others were recovering and burying bodies, Kerić spoke to the Accused by phone on several occasions to get further instructions.<sup>5254</sup> The Chamber further finds that when

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<sup>5250</sup> Đorđe Kerić, 7760, 7823.

<sup>5251</sup> Đorđe Kerić, T 7810-7811.

<sup>5252</sup> Exhibit D316. Đorđe Kerić stated in his 2005 interview with investigative Judge Dilparić that he spoke to Vlastimir Đorđević twice; once to inform him of the situation and the second time to request a position on the situation (*see* p 4). When asked whether Vlastimir Đorđević gave him any instructions, the witness replied “[h]e didn't give us any instructions. We had no option but to act”. The witness is then asked who decided to recover the bodies and bury them, Đorđe Kerić replies “[w]e did”, explaining that Zoran Mitricević suggested the bodies be removed and buried and that the witness agreed to this (*see* p 5). He then confirmed, when questioned as to whether they had a “solution” ordered from Belgrade, that there was no solution offered from Belgrade, adding that when he called the Accused to inform him of the bodies, besides a statement to the effect that this was “bad news”, the Accused offered no suggestions as to how to proceed (*see* pp 6, 10). He added that after the bodies were recovered and buried, he once more called the Accused to inform him about this (*see* p 7). Several portions of Zoran Mitricević's interview with Judge Dilparić were put to the witness in which it is suggested that the Accused in fact played a bigger role than Kerić is suggesting in his interview and that Kerić in fact only transmitted orders of Đorđević to Mitricević; Kerić denied these passages and repeated that “[n]o instructions were received”, and that he told Mitricević that because the Chief of the Department “had no clear stand”, Kerić suggested that the bodies should be recovered and buried on land until further investigations had taken place (*see* pp 8-10).

<sup>5253</sup> *See* Exhibit D316, pp 4, 7.

<sup>5254</sup> Đorđe Kerić, T 7761-7762, 7818.

the bodies had been recovered and buried, Kerić reported to Đorđević about the completion of his instructions.

1365. The Chamber has paid careful attention to the differences in the three accounts of the witness Kerić about these events at Lake Perucac, and the unsatisfactory attempts by Kerić to explain some of them.<sup>5255</sup> Despite this, however, the Chamber remains convinced of the essential truth of the account that Kerić gave in his evidence in this trial and is not persuaded by either the inconsistencies of Kerić or the evidence of the Accused that it should not rely on Kerić's evidence in this case.<sup>5256</sup>

1366. Bodies were recovered from Lake Perucac and buried in a mass grave site by the lake<sup>5257</sup> yet no investigations of these events, or of the identity of the deceased, or the origin of the bodies or the trailer in which many bodies were found, was undertaken by Kerić at the time. It appears to the Chamber that such a grave disregard of his duty by Kerić would only have occurred if Kerić was acting under orders. No reason for him to fail so gravely in his duty in this respect is apparent, other than superior orders, and no motive of self-interest or otherwise would lead Kerić to act in this way, other than superior orders.<sup>5258</sup> In this respect it notes that the Accused, who conceded that he was aware that the burial of the bodies discovered in Lake Perucac was unlawful,<sup>5259</sup> as it will be discussed further, likewise undertook no investigative actions with respect to these bodies. In the view of the Chamber, it can be reasonably inferred, therefore, that Vlastimir Đorđević knew that these were, yet again,<sup>5260</sup> bodies of ethnic Kosovo Albanians killed in Kosovo during the Indictment period, and the instinctive reaction was to ensure that the bodies would not be discovered or further investigated.

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<sup>5255</sup> In his 2005 evidence, Kerić stated that the Accused took no position on the discovery of the bodies in the lake and that in the absence of any instructions, Kerić and Mitricević decided to recover and bury the bodies themselves (See Exhibit D316, pp 5, 6, 8-10). Asked to explain this discrepancy with his evidence in the current trial and what was suggested in his 2001 statement, Kerić gave a number of unsatisfactory explanations, such as that his evidence in 2005 must have been the result of a mistake in interpretation and that conversations he had with Mitricević about the removal and burial of the bodies were only "preliminary" while they were waiting for the position of the Accused on the matter, and that ultimately, they only acted after the Accused gave the order to do so, Đorđe Kerić, T 7843-7852.

<sup>5256</sup> The Chamber notes in this regard, the testimony of Đorđe Kerić, reiterated several times, that he stands by his testimony provided in this trial during evidence in chief (Đorđe Kerić, T 7846, 7847, 7849).

<sup>5257</sup> See *infra*, paras 1515, 1519.

<sup>5258</sup> Đorđe Kerić, T 7850.

<sup>5259</sup> Vlastimir Đorđević, T 10002.

<sup>5260</sup> The Chamber is reminded that only a short time prior to the discovery of bodies in Lake Perucac, the Accused was notified of the discovery of what appeared to be the bodies of Kosovo Albanians in a refrigerated truck found floating in the Danube by the village of Tekija (see *supra*, para 1324) and that no investigation was undertaken, whether by the Accused or by his officers in the locality who were instructed by him that there should not be an investigation.

## C. Investigation

### 1. Working Group set up in 2001

1367. Some two years after the refrigerated truck and bodies were found in the Danube, on 1 May 2001, an article was published in a local Zaječar newspaper, the “Timok Crime Review”, by a former member of the RDB.<sup>5261</sup> It contained an interview with Živadin Đorđević, the diver who had gone to the scene at Tekija on the Danube together with Boško Radojković upon the discovery of the bodies in early April 1999.<sup>5262</sup> It reported that the bodies were of unidentified men, women and children, and that some of the female bodies were dressed in traditional Muslim pants. It was suggested that officials at the Kladovo OUP had been informed at the time, as well as the investigative judge and the deputy municipal prosecutor. It further detailed that the truck originated from Kosovo, that the keys were found in the ignition, that there was a big rock placed on the accelerator pedal, and that there were no traces of a driver or co-driver.<sup>5263</sup> While the distribution of the newspaper was limited to the districts of Bor and Zaječar,<sup>5264</sup> the article attracted the attention of the Belgrade media.<sup>5265</sup> Shortly after its publication, Časlav Golubović informed the Accused of the article.<sup>5266</sup>

1368. The same author had also published another article much earlier on 15 September 1999 in the same newspaper. It also concerned the discovery of bodies in a refrigerated truck in the Danube River near the village of Tekija.<sup>5267</sup> The earlier article, however, suggested that the bodies may have been of Kurds or members of the Taliban.<sup>5268</sup> The article did not trigger any reaction at the time.<sup>5269</sup> The contents of this article reflected the rumour spread in early April 1999 by the MUP at Kladovo police station that the bodies belonged to Kurds who were trying to cross the border illegally. It is not surprising, then, that Boško Radojković, who was aware of this article of 1 May 2001 and testified that the author of it delivered several copies to the Kladovo OUP,<sup>5270</sup> did not inform his superiors of the article. Časlav Golubović knew about the article and soon after its

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<sup>5261</sup> Exhibit P365; *see also* Časlav Golubović, Exhibit P352, p 5.

<sup>5262</sup> Boško Radojković, Exhibit P358, p 2; Časlav Golubović, Exhibit P352, p 5.

<sup>5263</sup> Exhibit P365.

<sup>5264</sup> Boško Radojković, T 1858-1860; Exhibit P368.

<sup>5265</sup> Boško Radojković, Exhibit P358, p 1.

<sup>5266</sup> Časlav Golubović, Exhibit P352, p 5; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7421; *see also* Exhibit P396, p 3.

<sup>5267</sup> *See supra*, para 1295; *see also* Exhibit P364.

<sup>5268</sup> Exhibit P364, p 2.

<sup>5269</sup> Boško Radojković, Exhibit P358, p 2; Boško Radojković, T 1769-1770.

<sup>5270</sup> Boško Radojković, T 1771.

publication, he contacted the Accused to inform him of it.<sup>5271</sup> No action was taken at that stage by the MUP to investigate the matter. The case had been declared a secret.<sup>5272</sup>

1369. Prompted by the May 2001 article, at the oral order of the then Minister of Interior Dušan Mihajlović, Sreten Lukić, who by that time was the chief of the RJB, set up a MUP Working Group to investigate the allegations in the article and to prepare a report on this for the Minister.<sup>5273</sup> The Working Group included, *inter alia*, Dragan Karleuša, Dragan Furdulović, a Mr Mirčić, Bora Banjac, and for a while, Milorad Veljković.<sup>5274</sup> Policemen as well as the police leadership who were active at the time of the events alleged in the article were interviewed;<sup>5275</sup> these included several witnesses in this case: Boško Radojković, Časlav Golubović, K87, K88, and K93.<sup>5276</sup> The Working Group compiled “Official Notes” of these interviews; they were not signed by the interviewed persons.<sup>5277</sup> The Working Group appears to have given priority to searching for the graves, the origin of the victims, and the killers, rather than the originators of the orders.<sup>5278</sup>

1370. The Working Group also sought to interview Minister Stojiljković and the Accused. Stojiljković, at the time, a member of Parliament for the Socialist Party of Serbia, was not willing to be interviewed.<sup>5279</sup> In an informal conversation with Vlastimir Đorđević, it is suggested he told the Working Group “[w]ell, what can I say to you? What happened happened”. However, no Official Note was made of this conversation.<sup>5280</sup> When the Working Group sought to contact him again, they could not locate him; he was subsequently declared a wanted person for internal police purposes.<sup>5281</sup> The Accused denies that anyone from the Working Group tried to talk to him.<sup>5282</sup>

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<sup>5271</sup> Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7421; *see also* Exhibit P396, p 3.

<sup>5272</sup> The Working Group found out that no investigation had been carried out in 1999 because the case had been declared a secret (K84, T 1996).

<sup>5273</sup> Boško Radojković, Exhibit P358, p 2; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7422-7423; *see also* Exhibit D45; *see also* K84, T 1991-1993, 2075-2076, 2097-2098, 2103. K84 explained that it was not unusual for orders to be issued only orally; sometimes, they were followed up by written decisions (K84, T 2087-2088).

<sup>5274</sup> Boško Radojković, Exhibit P358, p 2; K84, T 1993.

<sup>5275</sup> K84, T 1994.

<sup>5276</sup> Boško Radojković, Exhibit P358, p 2; Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7454; Časlav Golubović, Exhibit P353 (*Milutinović* transcript), T 7422-7423; K87, T 14165-14168; K88, Exhibit P371A, T 10458; K93, T 6886, 6912, 6918-6920; K93, Exhibit P1062 (*Milutinović* transcript), T 11340; *see also* Exhibits P367, P396, D392.

<sup>5277</sup> *See supra*, para 1289; K84, T 1994, 2124-2128.

<sup>5278</sup> K84, T 2166.

<sup>5279</sup> Exhibit P388; *see also* K84, T 2018-2020, 2161.

<sup>5280</sup> K84, T 2021-2022, 2174.

<sup>5281</sup> K84, T 2021.

<sup>5282</sup> He states that at the time he had indications he was going to be arrested pursuant to a criminal report filed against him and others for abuse of office in relation to the improper use of funds for an overseas athletic club and that for this reason, he decided to “lie low” for a while, adding that at this time, he was also “receiving threats” (Vlastimir Đorđević, T 10016-10017). The Chamber does accept this evidence, which is further discussed elsewhere in this Judgement, *see infra*, para 1982.

Vlastimir Đorđević left Serbia on 12 May 2001<sup>5283</sup> and remained a fugitive until his arrest in 2007. Obrad Stevanović, Dragan Ilić and Petar Zeković denied having participated in the events.<sup>5284</sup> The Working Group did not interview President Slobodan Milošević,<sup>5285</sup> who was no longer in power.<sup>5286</sup> In 2002, then also the subject of an indictment of this Tribunal, Stojiljković committed suicide.<sup>5287</sup> While the Working Group kept Sreten Lukić apprised of the progress of the investigation, no interview was conducted with him<sup>5288</sup> despite his role at the time as head of the MUP Staff in Kosovo from which the bodies apparently came.

1371. On 25 May 2001 and again on 26 June 2001, the Working Group made public the findings of their investigation.<sup>5289</sup> It is the position of the Defence that these findings were unfounded and the result of a hasty and “potentially contrived” investigation.<sup>5290</sup> The Chamber, however, found no proper support for these allegations. Given the public attention the newspaper article had received, it is not surprising that the Working Group made its findings public as soon as possible.<sup>5291</sup> Further, an indictment by this Tribunal charging, *inter alia*, Slobodan Milošević with crimes committed in Kosovo was issued just days before the Working Group held its press conference on 25 May 2001.<sup>5292</sup>

1372. In its 25 May 2001 report, the Working Group found, *inter alia*, that the then Minister Stojiljković and the chief of the RJB Vlastimir Đorđević sought to keep the refrigerated truck case closed, and that for this purpose, operation “Dubina II” had been launched to deal with the situation. The report states that because of this, the district public prosecutor in Negotin halted the investigations into the case. It discloses that the workers involved in removing the bodies from the refrigerated truck were paid by the MUP.<sup>5293</sup> In these respects the report of the Working Group reflects matters dealt with by witnesses in this case.

1373. In its report, the Working Group dealt with a meeting in March of 1999 in Slobodan Milošević’s office, attended by, *inter alia*, the President himself, Minister Vljako Stojiljković, Chief of the RJB Vlastimir Đorđević, and Chief of the RDB Radomir Marković. The report records that

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<sup>5283</sup> Vlastimir Đorđević, T 9989-9990, 10016-10017; *see also* Exhibit P1508 (testimony of the Accused before the War Crimes Chamber of the Belgrade District Court), p 12; *see also* Defence Final Brief, para 276.

<sup>5284</sup> K84, T 2049-2050.

<sup>5285</sup> K84, T 2019, 2161-2163, 2165; *see also* Časlav Golubović, T 1733.

<sup>5286</sup> K84, T 1993-1994.

<sup>5287</sup> Časlav Golubović, T 1732-1732; K84, T 2019.

<sup>5288</sup> K84, T 2186-2187.

<sup>5289</sup> Exhibits P366 (“Information II”) and P387 (“Information”); *see also* K84, T 19976.

<sup>5290</sup> Defence Final Brief, para 524.

<sup>5291</sup> K84, T 2103.

<sup>5292</sup> The Indictment against, *inter alia*, S. Milošević, Milutinović, Sainović, Ojdanić and Stojiljković, became public on 27 May 1999. The Chamber notes, however, that it was published confidentially on 22 May 1999 (*see also* Vlastimir Đorđević, T 10076).

at this meeting, the Accused raised the issue of the “clearing up of the terrain” and that, in this regard, Slobodan Milošević ordered Stojiljković to take measures to remove all traces which would indicate evidence of crimes in Kosovo.<sup>5294</sup> The report further records that, at a MUP Collegium meeting in the same month, Stojiljković gave the responsibility for carrying out the task of “clearing up the terrain” to the Accused and General Ilić, with the aim of “removing civilian victims who could potentially become the subject of investigations by The Hague Tribunal”.<sup>5295</sup> The Accused refutes attending any such meeting where this topic was discussed.<sup>5296</sup> These findings by the Working Group will be discussed more fully later in this Judgement in connection with the involvement of the Accused in the material events.<sup>5297</sup>

1374. The second report of the Working Group made public on 26 June 2001 concluded that 86 bodies were recovered from the refrigerated truck in Tekija, including three human heads severed from their bodies.<sup>5298</sup> It further recorded that these bodies were then transported to the Batajnica SAJ Centre in two trucks, and were subsequently buried at the Centre in two large graves;<sup>5299</sup> it further referred to the exhumations that took place following the discovery of the graves. The circumstances and place of death of the bodies discovered at the Batajnica SAJ Centre was reported as being the subject of further investigations.<sup>5300</sup>

## 2. Discovery of mass grave sites

1375. The information provided to the Working Group had led them to mass grave sites at the Batajnica SAJ Centre. The Investigative Judge of the district court in Belgrade as well as the district prosecutor were duly informed,<sup>5301</sup> and the “Official Notes” that had been compiled during the investigation by the Working Group were also handed to the district court in Belgrade. Some Notes with respect to events that occurred in specific areas, such as the discovery of the refrigerated truck in Tekija, were handed over to the district prosecutor’s office in Negotin.<sup>5302</sup>

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<sup>5293</sup> Exhibit P387.

<sup>5294</sup> Exhibit P387.

<sup>5295</sup> Exhibit P387.

<sup>5296</sup> Vlastimir Đorđević, T 10013.

<sup>5297</sup> See *infra*, para 2112.

<sup>5298</sup> See Confidential Annex.

<sup>5299</sup> See Confidential Annex. The Chamber notes that the report also referred to the fact that amongst the bodies, there were several male bodies wearing KLA uniforms. This information was however subsequently corrected, on the basis of information provided to the Working Group by Boško Radojković (Boško Radojković, Exhibit P358, p 3; Boško Radojković, Exhibit P359 (*Milutinović* transcript), T 7454-7455; Boško Radojković, T 1778; see also K84, T 2011). As already noted in the previous section, the Chamber has found that none of the bodies recovered from the refrigerated truck were wearing KLA uniforms, and that some were naked or partially clothed (*see supra*, para 1311).

<sup>5300</sup> See Confidential Annex.

<sup>5301</sup> See Confidential Annex. See also K84, T 2014; see also Exhibit P395, marked by K84, number “2” indicating the location of the graves found at the Batajnica SAJ Centre, K84, T 2048-2049.

<sup>5302</sup> K84, T 1998.



1376. Exhumations of the bodies and autopsies followed.<sup>5303</sup> This eventually led to human remains being recovered from mass grave sites at the Batajnica SAJ Centre in Serbia.<sup>5304</sup> As dealt with in more detail elsewhere in this Judgement, among the bodies and remains recovered from mass graves at the Batajnica SAJ Centre near Belgrade, were individuals last seen alive in Suva Reka/Suharekë on 26 March 1999 and Đjakovica/Gjakovë municipality in March and April of 1999.<sup>5305</sup> Both of these locations are in Kosovo, each approximately some 450 kilometres from Batajnica.

1377. The Chamber recalls that personal belongings of members of the Berisha family killed in Suva Reka/Suharekë on 26 March 1999, had already been found at a grave site at the VJ firing range near Prizren, known as Kroj-I-Popit, in September of 1999 as a result of exhumations of this site conducted by a British Forensic team. The remains of Jashar Berisha were exhumed at the Batajnica SAJ Centre, but one of the limbs had been found at the VJ firing range near Prizren, known as Kroj-I-Popit, in September of 1999.<sup>5306</sup> In the Chamber's finding, this and other evidence set out elsewhere in this Judgement, demonstrates that immediately after Berisha family members were killed on 26 March 1999, their bodies, with others, were transported under MUP direction to the VJ firing range near Prizren where they were buried. These bodies were then disinterred by the witness Ali Gjogaj and others, under MUP direction, in early April of 1999 at this same VJ firing range near Prizren.<sup>5307</sup> They were then transported and buried in a mass grave at the Batajnica SAJ Centre from where they were exhumed in 2001.<sup>5308</sup>

1378. The Working Group's investigation also revealed the existence of further mass graves at the Petrovo Selo PJP Centre,<sup>5309</sup> and at Lake Perucac near Bajina Bašta on the territory of the Užice SUP.<sup>5310</sup> Amongst the remains exhumed from Petrovo Selo, included 31 victims of the massacre that occurred on 28 March 1999 in Izbica/Izbicë, Srbica/Skenderaj municipality.<sup>5311</sup> As detailed elsewhere in this Judgement, the victims at Izbica/Izbicë had initially been buried locally by villagers at the time of the killings. Other evidence has established that Serbian forces disinterred

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<sup>5303</sup> See D49; K84, T 2014-2015, 2180-2181.

<sup>5304</sup> K84, T 2015.

<sup>5305</sup> See *infra*, paras 1484-1491, 1492-1495, 1499-1502, 1506.

<sup>5306</sup> See *infra*, paras 1406, 1484-1491.

<sup>5307</sup> See *supra*, paras 1267-1269.

<sup>5308</sup> See *infra*, para 1485.

<sup>5309</sup> K84, T 2037-2040; see also Exhibit P395 marked by K84, number "3" indicating the location of the graves discovered at the Petrovo Selo PJP Centre (K84, T 2048-2049).

<sup>5310</sup> K84, T 2043-2046; see also Exhibit P394. The Chamber notes that Đorđe Kerić gave a written statement to the Working Group on 27 July 2001, most likely as the result of the Official Note compiled by the Working Group of the interview with Slavko Petrović on 11 July 2001 (Exhibits P394 and P1212); see also Exhibit P395 marked by K84, number "1" indicating the location of the mass grave discovered at Lake Perucac (K84, T 2048-2049).

<sup>5311</sup> See *infra*, paras 1508-1514; see *infra*, Schedule: Victim Charts.

these graves towards the end of May 1999. The Chamber accepts that at least some of these remains were then transported and re-buried at the Petrovo Selo PJP Centre.

1379. Between 9 and 14 September 1999, as a result of an order of the Užice District Court for investigations and exhumations at a mass grave site at Lake Perucac near Bajina Bašta, human remains were exhumed, together with parts of a burnt refrigerated truck.<sup>5312</sup> None of the remains exhumed from Lake Perucac, which were identified, are among those named in the Schedules of the Indictment.

1380. The remains of those persons exhumed at the Batajnica SAJ Centre, Petrovo Selo PJP Centre and Lake Perucac who were identified as having originated from the region of Kosovo were repatriated by Serbian authorities to Kosovo.

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<sup>5312</sup> See *infra*, paras 1515-1519.

## VIII. FORENSIC EVIDENCE

### A. Exhumation sites in Kosovo

1381. In 1999, after the end of the NATO campaign, various national expert forensic teams arrived in different areas of Kosovo to conduct crime scene investigations and forensic examinations of the bodies of persons thought to have been killed during the war in Kosovo. At the end of 2000, Eric Baccard, who at the time of testifying in this Trial was a forensic pathologist at the ICC, was retained by the OTP to conduct a review of the methodology, materials used and the results of the investigations and forensic examinations conducted by the various national forensic teams at certain burial sites in or near villages in Kosovo in 1999. Eric Baccard reviewed reports relating to 11 burial sites in Kosovo, one of which had four sub-sites.<sup>5313</sup> He prepared a report entitled “Medico-Legal Analysis and Synthesis Report about the Forensic Expertises Missions conducted in Kosovo during the year 1999”.<sup>5314</sup> The purpose of the review by Eric Baccard was to confirm whether the methods used by the different forensic teams in 1999 conformed with internationally accepted standards and whether the conclusions reached by the forensic teams were scientifically valid.<sup>5315</sup> He was called as a witness in this Trial.<sup>5316</sup>

1382. Eric Baccard concluded that the methodology used by the different national forensic teams was in substance identical from the viewpoint of the medico-legal study of each site.<sup>5317</sup> However, Zoran Stanković, a forensic expert called by the Defence, commented upon the Prosecution’s forensic report and provided his own views on the forensic material from some of the grave sites identified in the Indictment. He did not agree with Eric Baccard that the methodology was

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<sup>5313</sup> Eric Baccard, P1140 (*Milutinović* transcript), T 10110-10111; Eric Baccard, T 7657, 7659-7660, 7690; Exhibit P1151 (British Forensic Team Report (Bela Ckva/Bellacërkë)); Exhibits P1152-P1160 (British Forensic Team Report); Exhibit P1161 (U.S Armed Forces Pathology Report (Milos Gilić Street, Djakovica/Gjakovë)); Exhibit P1162 (French Forensic Team Report (Izbica/Izbicë “Burial” Site)); Exhibit P1163 (French Forensic Team Report (Izbica/Izbicë Site, Cirez Site, Donji and Gornji Sudimlja)); Exhibit P1164 (French Forensic Team Report (Izbica/Izbicë “Burial” Site)); Exhibit P1165 (French Forensic Team Report (Izbica/Izbicë “Burial” Site)); Exhibit P1166 (French Ballistics Report (Izbica/Izbicë Site)); Exhibit P1167 (Austrian Forensic Report (Kotlina/Kotlinë)); Exhibits P1168; Exhibit P1169 (Lama Forensic Report); Exhibit P1170 (British Forensic Team (photographs site D)(Krusë-e-Vogël/Mala Kruša)); Exhibit P1171 (French Forensic Team (Forensic and Autopsies Reports Cemetery L1)(Gornja Sudimlja/Studime-e-Epërme); Exhibit P1172 (Forensic and Autopsies Reports Cemetery L1)(Gornja Sudimlja/Studime-e-Epërme); Exhibit P1173 (Forensic and Autopsies Reports Cemetery L1)(Gornja Sudimlja/Studime-e-Epërme); Exhibit P1174 (Forensic and Autopsies Reports Cemetery L1)(Gornja Sudimlja/Studime-e-Epërme); Exhibit P1175 (British Forensic Team Anthropological Report (Suva Reka/Suharekë)(4)); Exhibit P1176 (British Forensic Team Anthropological Report (Suva Reka/Suharekë)(3)); Exhibit P1177 (British Forensic Team Anthropological Report (Suva Reka/Suharekë)(2)); Exhibit P1178 (British Forensic Team Anthropological Report (Suva Reka/Suharekë)(1)); Exhibit P1179 (British Forensic Team Autopsy Report Fatime Berisha (Suva Reka/Suharekë)); Exhibit P1180 (British Forensic Team Autopsy Report Faton Berisha (Suva Reka/Suharekë)).

<sup>5314</sup> Eric Baccard, Exhibit P1139 (Expert report); Eric Baccard, T 7657, 7660.

<sup>5315</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10110-10111.

<sup>5316</sup> Eric Baccard, T 7654-7751.

<sup>5317</sup> Eric Baccard, Exhibit P1139 (Expert report), p 9.

identical; he noted that the expert forensic teams came from different countries and employed varied methodologies and that the manner of description and content of autopsy reports were different.<sup>5318</sup> While the observations of Zoran Stanković can be accepted, in the Chamber's assessment he is drawing attention to what are essentially differences of form rather than differences of substance.

1383. The Overview Report of Eric Baccard, which the Chamber found most helpful, was based on an analysis of the forensic reports of the national teams, together with the photographs and videos made during their investigations and exhumations; he was not present at any of the original investigations, nor at the time when the forensic teams prepared their reports.<sup>5319</sup> Eric Baccard first analysed the composition of the expert teams and their qualifications, the methods employed and the details of their operations. Secondly, the profile of each group of victims was addressed including the minimum number of victims, identification, gender ratios, age breakdown and clothing of the victims. Finally, medico-legal aspects were considered especially the status of the corpses, the causes and circumstances of the deaths, the injuries sustained, and the number and nature of entry wounds, including their location.<sup>5320</sup> While acknowledging variations in the methodology followed in the autopsies conducted and in the style of the reports, Eric Baccard expressed the opinion that these variations were not substantive, and did not detract from the scientific validity of the essential aspects of the autopsies that were conducted, an opinion which the Chamber found persuasive and which it has accepted.<sup>5321</sup>

1384. Eric Baccard commented that in their reports the national forensic experts often referred to the minimum number of victims in a grave or at a site. This occurred because the experts were often confronted with commingled, skeletonised body parts. In such cases only the minimum number of victims could be established with certainty.<sup>5322</sup>

1385. Eric Baccard explained that forensic pathologists examine the consequences of certain wounds to the bodies and then consider these wounds in light of major bodily functions in order to establish the most probable cause of death.<sup>5323</sup> In his own expert review he classified the injuries causing death as skull-brain injury, internal bleeding by thoracic and/or abdominal organs injury

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<sup>5318</sup> He referred specifically to the report by Dr Christoph Markwalter at the Kotlina/Kotlině site, which, in his opinion, was drastically different from the report of Professor Dominique Lecomte at the Gornje Sudimlje site (Zoran Stanković, Exhibit D926 (Expert report), p 13; Zoran Stanković, T 13459).

<sup>5319</sup> Eric Baccard, Exhibit P1139 (Expert report), Appendices 2-8; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10110, 10112; Eric Baccard, T 7659, 7690.

<sup>5320</sup> Eric Baccard, Exhibit P1139 (Expert report), p 9.

<sup>5321</sup> Eric Baccard, T 7692-7693.

<sup>5322</sup> Eric Baccard, Exhibit P1139 (Expert report), p 10.

<sup>5323</sup> Eric Baccard, T 7682-7683.

and haemorrhage by limb injury and spinal injury.<sup>5324</sup> The wounds were listed according to the following anatomical regions, the head and neck, trunk, superior limbs and inferior limbs.<sup>5325</sup>

1386. Dr Baccard identified instances where his own opinion differed from that in the report of a national forensic team, observing that the emergency-like conditions in which the national teams functioned may have played a role in these differences. He also identified apparent errors affecting particular matters.<sup>5326</sup> Even so, in the witness's opinion, these did not call into question the general conclusions reached by the various national forensic teams or the scientific validity of the procedures they followed.<sup>5327</sup> Despite such differences the Chamber accepts the general conclusions reached by Dr Baccard that the original reports of the expert national forensic teams were valid from a scientific point of view.<sup>5328</sup> The Chamber has identified matters which have persuaded the Chamber that it should not accept, or that it should differ from, an aspect of a national forensic team report. These will be apparent from what follows and from the findings in the Schedule of this Judgement. This is because of the Chamber's evaluation of the evidence affecting such matter.

1387. In deciding that it should accept the scientific validity of the national forensic teams and in assessing their reports and the evidence of Dr Baccard, the Chamber has considered the different concerns raised by the Defence expert Zoran Stanković. In some cases the Chamber has dealt briefly in what follows with specific issues raised by the Defence expert but, for the most part, it is sufficient to record its general impression of the witness and his views. The Chamber was assisted to some degree by the scrutiny he gave to the reports of the national forensic teams and of Dr Baccard, nevertheless it was left with the impression that he did not deal exclusively with matters of substance. In many cases it became clear that his point of concern targeted a failure to include detail in a report sufficient to satisfy him that every possibility which occurred to him had been fully explored. In a number of cases the detail that he suggested was missing was in fact in a footnote of another part of the report, or it was of relatively minor consequence, or it could have been accepted without specific mention by virtue of the professional experience and competence of

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<sup>5324</sup> In establishing the cause of death, Eric Baccard explained that a hierarchy of potential causes of death was established (Eric Baccard, Exhibit P1139 (Expert report), p 13). Eric Baccard gives some examples, for instance, a multi-fragmented fracture of the skull will lead to brain damage which cannot be treated and in that case the cause of death is obvious (Eric Baccard, T 7682). Similarly, a projectile that shatters the vertebrae will damage the bone marrow which is essential for a number of bodily functions and thus can be the cause of death (Eric Baccard, T 7683). The witness explained that in some case, a more detailed examination is required; if a projectile enters the femur towards the front, it may hit the femoral artery for example, and while this may not cause immediate death, if no care is provided to the person, he can die of hemorrhaging or shock (Eric Baccard, T 7683).

<sup>5325</sup> Eric Baccard, Exhibit P1139 (Expert report), p 14.

<sup>5326</sup> Eric Baccard, Exhibit P1139 (Expert report), Appendices 2-8; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10112; Eric Baccard, T 7659, 7706-7709.

<sup>5327</sup> Eric Baccard, Exhibit P1139 (Expert report), Appendices 2-8; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10111-10112; Eric Baccard, T 7659, 7693, 7706-7709.

those preparing the report. In other cases the foundation of his criticism was reference to details as required by law or formal practice in Serbia, but not by the practice of other countries. It became clear in cross-examination that a significant factor was his view of the correct limits of the role of a forensic pathologist, at least in the Serbian legal system. He seemed to regard the expert as one who described in great detail what could be seen and tested, it being for the Investigative Judge or the Prosecutor to decide which of the possibilities identified should be accepted. Hence, he was critical of failures to identify all of the possibilities, or because a report suggested or proceeded on the basis that one possible view was correct. This was the view of Zoran Stanković only from his position as a forensic pathologist in Serbia; the Chamber notes that he did not take into account the position of other forensic pathologists who were involved in forensic investigations in Kosovo.

1388. Zoran Stanković expressed his opinion in his report about matters which although seemingly founded on a factual basis, in reality had little or no foundation in the observed facts. This was clearly in conflict with the above described criticism. One example was his observation that identified injuries could not have been inflicted by MUP or VJ forces. When explored, his reasoning was that the nature of the injuries indicated that they were inflicted by heavy weapons; but he had testified that the MUP did not have heavy weapons and although the VJ did have such weapons, their orders forbade their use and the VJ would not disobey orders.<sup>5329</sup> Other evidence in this trial indicates his understanding of such issues was not only wrong, but critically, the opinion he expressed was based on his factual understanding of matters that had nothing to do with forensic observations and expertise. There are other examples of the conclusions of the witness which, were based on, or strongly influenced by, erroneous, non-medical, factual matters, such as his viewing of film clips, photographs and statements. These will be discussed in what follows.

1389. While these observations do not deal with all the matters raised by the Defence expert, they provide, along with the following, an indication of matters which have persuaded the Chamber that it should not accept many of his conclusions as valid, or as involving matters of substance.

#### 1. Bela Ckva/Bellacërkë, Orahovac/Rahovec municipality

1390. Earlier in this Judgement, the Chamber found that on 25 March 1999, 13 people, including 10 women and children were killed, at the Belaja Stream by MUP forces.<sup>5330</sup> Following this, the same MUP forces then shot a group of no less than 41 Kosovo Albanian men at the Belaja Bridge.<sup>5331</sup> A further six Kosovo Albanian men were then killed by the same MUP forces as they

<sup>5328</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10111-10112; Eric Baccard, T 7693.

<sup>5329</sup> Zoran Stanković, Exhibit D926 (Expert report), p 14; Zoran Stanković, T 13473, 13552-13554.

<sup>5330</sup> *See supra*, paras 464-465.

<sup>5331</sup> *See supra*, paras 469-472.

headed away from the Belaja Bridge in the direction of Celina/Celinë.<sup>5332</sup> Over the course of the next few days, the bodies of the victims found by survivors and local villagers were buried in Bela Ckva/Bellacërkë.<sup>5333</sup>

1391. On 28 June 1999, a British forensic team went to assist in the recovery of evidence from Bela Ckva/Bellacërkë. Exhumations and examinations started on 28 June 1999 and continued until 3 July 1999.<sup>5334</sup> The area of Bela Ckva/Bellacërkë was divided into seven zones and bodies were found in five zones.<sup>5335</sup>

1392. In total from all zones, the bodies of 54 victims were found and exhumed; 47 were male and seven were female. Seven of these victims were children.<sup>5336</sup> Out of the 54 bodies, 42 were identified at the time either by facial recognition, clothing or personal items such as jewellery.<sup>5337</sup>

1393. The Chamber accepts from the reports of the British forensic team and Eric Baccard that the cause of death of 53 of the 54 exhumed victims in Bela Ckva/Bellacërkë was one or more gunshot wounds.<sup>5338</sup> Of these 53 victims, 4 cases involved gunshot wounds to the head; 2 cases involved gunshot wounds to the neck; 11 cases involved gunshot wounds to the trunk; and 36 cases involved multiple gunshot wounds.<sup>5339</sup> There were between one and 13 gunshot wounds to each victim. In most cases the entry wounds were located on the front of the trunk.<sup>5340</sup> One victim had sustained a gunshot injury to the right elbow but it could not be determined if this was the cause of death.<sup>5341</sup> The gunshot wound corresponds with eyewitness evidence of the shootings and given the large number of Serbian forces in the area and the lack of medical services that were available following the shooting, the only reasonable inference is that he died as a result of the shooting.

1394. The specific forensic evidence which the Chamber accepts as establishing the cause of death in each case is dealt with in the Victims Chart, related to Bela Ckva/Bellacërkë, annexed to this Judgement. All 54 of these victims exhumed are included in the Victims Chart, related to Bela Ckva/Bellacërkë, annexed to this Judgement.<sup>5342</sup> While no forensic evidence has been received for six of these victims, whom it has earlier been found were also killed by MUP forces on 25 March 1999, the Chamber accepts that the following six Kosovo Albanians, who were identified

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<sup>5332</sup> See *supra*, para 473.

<sup>5333</sup> See *supra*, paras 471, 473.

<sup>5334</sup> Eric Baccard, Exhibit P1139 (Expert report), p 28; *see*, Exhibit P1151.

<sup>5335</sup> Exhibit P1151, K0138792; Sabri Popaj, Exhibit P1082, pp 6, 7-8.

<sup>5336</sup> Eric Baccard, Exhibit P1139 (Expert report), p 28; *see*, Exhibit P1151.

<sup>5337</sup> Eric Baccard, Exhibit P1139 (Expert report), p 27-28; Exhibit P1151, K0138793-K0138805.

<sup>5338</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10116; Eric Baccard, Exhibit P1139 (Expert report), p 29; *See*, Exhibit P1151.

<sup>5339</sup> Eric Baccard, Exhibit P1139 (Expert report), p 29.

<sup>5340</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 30-31; Exhibit P1151, p 97.

<sup>5341</sup> Eric Baccard, Exhibit P1139 (Expert report), p 29; Exhibit P1151, pp 59-60.

by eyewitness survivors as being present at the shootings at either the Belaja stream or the Belaja bridge, also died in similar circumstances to those discussed above, as a result of being shot by MUP forces: Musa Morina, Alban Popaj, Hysni Popaj, Lindrit Popaj, Muhammet Zhuniqi and an Unnamed Spahiu family member.

## 2. Mala Kruša/Krushë-e-Vogël, Orahovac/Rahovec municipality

1395. The Chamber earlier found that nine villagers, three of whom are listed in the Indictment, had refused to leave their homes on 25 March 1999 and were then burnt alive inside their houses by members of the MUP forces.<sup>5343</sup> On the following day, it was established that Hysen Ramadani was shot by MUP forces in the village of Mala Kruša/Krushë-e-Vogël.<sup>5344</sup> Following this killing, the same MUP forces forced a group of approximately 114 Kosovo Albanian men and young boys, into the Batusha barn. Members of the MUP forces, which included local reserve police and PJP, opened fire on the men and then the barn was set on fire.<sup>5345</sup> Ten men managed to escape from the barn as it burned; two of those gave evidence and were able to name the men and boys in the barn at the time of the shooting. The Chamber found that no less than 104 Kosovo Albanian men and young boys were killed by MUP forces.<sup>5346</sup> Two of those who managed to escape from the barn, Refki Rashkaj and Adnan Shehu, were later seen to be shot by MUP forces at the stream close by the village.<sup>5347</sup> A further third man, Hysni Hajdari, who also escaped from the Batusha barn was later found shot in the mountains.<sup>5348</sup> As discussed elsewhere in this Judgement, when witnesses returned to the Batusha barn in June 1999, it was apparent that following the mass killing of the men and boys at the Batusha barn, explosives had been used to blow it up.<sup>5349</sup>

1396. The Chamber notes at this point, that in reaching its finding as regarding these deaths at Mala Kruša/Krushë-e-Vogël on 26 March 1999, only the reports and other materials of the original British forensic team which dealt with this village have been considered, as an error had been made as to the materials provided to Eric Baccard concerning these deaths so that the evidence did not enable the Chamber to be satisfied that the bodies referred to by Eric Baccard were killed at the village on 26 March 1999.<sup>5350</sup>

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<sup>5342</sup> See *infra*, Schedule: Victim Charts.

<sup>5343</sup> See *supra*, para 485.

<sup>5344</sup> See *supra*, para 486; Hysen Ramadani was also known by the name of Hysen Kanjusha (Lufti Ramadani, Exhibit P306 (*Milutinović* transcript), T 4291-4292; Lufti Ramadani, T 1082-1084).

<sup>5345</sup> See *supra*, para 490.

<sup>5346</sup> See *supra*, paras 490-495.

<sup>5347</sup> See *supra*, para 491.

<sup>5348</sup> See *supra*, para 493.

<sup>5349</sup> See *supra*, para 496.

<sup>5350</sup> For instance, in his report Eric Baccard stated that the examinations conducted by Dr Sue Black and Peter Vanezis were undertaken in June 1999 (Eric Baccard, Exhibit P1139 (Expert report), p 32). However, the Chamber notes



(a) The British forensic report

1397. The report of the British forensic team which undertook investigations in Mala Kruša/Krushë-e-Vogël from July until September 1999, is in evidence.<sup>5351</sup> The Chamber has also received a further report of a member of the British forensic team, Dr Sue Black, dated 29 October 1999.<sup>5352</sup>

1398. Between 7 and 28 July 1999, the British forensic team undertook an investigation in Mala Kruša/Krushë-e-Vogël at Site KV001, KV002 and KV006.<sup>5353</sup> Numerous body parts were located at these sites around 20 July 1999 and during examinations the remains of 10 bodies from these sites were identified as either burnt, cremated or macerated. None of these bodies were identified, nor could the causes of death be established.<sup>5354</sup>

1399. On 23 July 1999, the British forensic team conducted an exhumation of site KV004 and KV005 in Mala Kruša/Krushë-e-Vogël. The first body at site KV004 was later identified as Rekki Rashkaj, a male aged 17 years.<sup>5355</sup> The following day, at site KV005, another body was exhumed.<sup>5356</sup> This body was later identified as Adnan Shehu, a male aged 20 years.<sup>5357</sup> The causes of death of these young men could not be determined because of the state of the remains. As discussed earlier in this Judgement, these two young men escaped from the Batusha barn to the nearby stream when the barn was burning. Lufti Ramadani saw that the men were told to put their hands above their heads by the Serbian forces and then they were shot.<sup>5358</sup> Lufti Ramadani recovered their bodies from the location at the stream after the war.<sup>5359</sup> The Chamber finds that these two young men were caught, shot and killed by members of the MUP forces on 26 March 1999, as they sought to escape from the burning barn. In the context it is the finding of the Chamber that this occurred at a time when the MUP forces were seeking to kill all captured

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that the exhumation that Dr Sue Black refers to in her report that relates Mala Kruša/Krushë-e-Vogël and the same site KV011, did not begin until September 1999 (Eric Baccard, Exhibit P1139 (Expert report), p 32; Exhibit P1159). Thus, it is unclear if Dr Sue Black referred to the same bodies as those Eric Baccard understood were examined on 23 June 1999 (Eric Baccard, Exhibit P1139 (Expert report), p 32-33; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10197-10203; Eric Baccard, T 7672, 7715).

<sup>5351</sup> Exhibit P1160.

<sup>5352</sup> Exhibit P1158.

<sup>5353</sup> Exhibit P1160, K0199559-K0199560; Exhibit P1153; Exhibit P1154; Exhibit P1155.

<sup>5354</sup> Exhibit P1160, K0199559-K0199560, K0199562, K0212015-K0212029.

<sup>5355</sup> The cousin of Refki Rashkaj identified the body by his clothing (Exhibit P1160, K0199272, K0199309). Photos of the body were taken at the scene where the body was exhumed by the British Forensic Team and also at the Mortuary in Xerxhe, including close up photos of the skull (Exhibit P1160, K0200440-K0200442, K0200446-K0200448). Exhibit P1160, K0199309.

<sup>5356</sup> Exhibit P1160, K0199310-K0199310.

<sup>5357</sup> The sister of Adnan Shehu identified the body by his clothing and watch (Exhibit P1160, K0199273, K0199310). Photos of the body were taken at the scene where the body was exhumed by the British forensic team and also at the Mortuary in Xerxhe, including close up photos of the skull (Exhibit P1160, K0200458-K0200459, K0200463-K0200464).

<sup>5358</sup> *See supra*, para 491.

male villagers (save for very young boys). The Chamber finds, based on the eyewitness accounts and forensic evidence related to Refki Rashkaj and Adnan Shehu, that the only reasonable inference is that these two victims died as a result of being shot by MUP forces.

1400. On 11 September 1999, excavation by the British forensic team began on the riverside of Mala Kruša/Krushë-e-Vogël.<sup>5360</sup> The location was given the reference KV011. Within this site several human bones and one body was located. There were also numerous spent cartridge cases and personal objects including watches, jewellery, keys and a wheel from a wheelchair.<sup>5361</sup> In the anthropological forensic report, Dr Sue Black determined that the bones were human, and the body was of a male, aged between 33 and 42 years old; it was completely skeletonised with no evidence of burning.<sup>5362</sup> It was concluded that the exhumed human remains were from a minimum of three bodies, but most likely six bodies.<sup>5363</sup> The body and other remains could not be identified.<sup>5364</sup> Nor is there forensic evidence of the cause of death of the body or the human remains.

(b) Conclusion on Mala Kruša/Krushë-e-Vogël

1401. In the Chamber's view it is evident that, for the most part, the remains of the villagers killed in Mala Kruša/Krushë-e-Vogël on 26 March 1999 have not been located. The bodies and other human remains that have been located have not been in a condition which enabled a forensic determination of the cause of death. With the two exceptions discussed above, the bodies that have been located have not been able to be identified by forensic means. It is probable that the use of explosives to destroy the Batusha barn is a reason for the inability to discover the remains of the main group of victims. Despite the absence, in most cases, of forensic assistance, the Chamber is satisfied from other evidence discussed earlier in this Judgement, and finds, that no less than 104 male villagers were killed in the Batusha barn by MUP forces, including members of the PJP and local reservists.<sup>5365</sup> The Chamber finds that these 104 male villagers died as a result of being shot by MUP forces or being burnt to death in a fire which was lit by MUP forces.

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<sup>5359</sup> Lutfi Ramadani, T 1097-1098.

<sup>5360</sup> Exhibit P1160 (British Forensic Report on Mala Kruša/Krusë-e-Vogël), K014-2366-K014-2366; Exhibit P1158 (Dr Sue Black's Forensic Anthropology Report dated 29 October 1999), p 1.

<sup>5361</sup> Exhibit P1160 (British Forensic Report on Mala Kruša/Krusë-e-Vogël), K0142366-K0142367, K0212085-K0212134; *see also*, Exhibit P1158 (Dr Sue Black's Forensic Anthropology Report dated 29 October 1999)

<sup>5362</sup> Exhibit P1158, p 1, 2.

<sup>5363</sup> Exhibit P1158, p 1, 5.

<sup>5364</sup> *See*, Exhibit P1158; Exhibit P1160, K0212085-K0212134.

<sup>5365</sup> The Chamber compared the two lists of the survivors and came to the figure of 108 men. Qamil Shehu, one of the men listed by Mehmet Krasniqi as having been in the barn at the time of the shooting, was later found to have escaped from the barn with Lufti Ramadani. For this reason the Chamber did not include Qamil Shehu in the calculation of 108 men. The two young men, Adnan Shehu and Refki Rashkaj, were shot later by the stream and therefore have not been included among those who were murdered by MUP forces in the Batusha barn by shooting, or burning, or both. Lufti Ramadani, Exhibit P312; Mehmet Krasniqi, Exhibit P305.

1402. The Chamber has also found it to be proven that Refki Rashkaj and Adnan Shehu were killed as a result of being shot by MUP forces.<sup>5366</sup> As was discussed earlier in this Judgement, based on eyewitness accounts, a third man, Hysni Hajdari who also escaped from the burning Batusha barn was also found to have been killed by MUP forces.<sup>5367</sup> Moreover, the Chamber has also accepted that nine Kosovo Albanians were burnt to death in their houses on 25 March 1999 in Mala Kruša/Krusë-e-Vogël.<sup>5368</sup>

### 3. Suva Reka/Suharekë municipality

1403. The Chamber earlier found that on 26 March 1999, 45 members of the Berisha family, many being women and children, were killed in Suva Reka/Suharekë town by local policemen, local reserve policemen, and members of the PJP of the MUP on this day.<sup>5369</sup> The remains of some of these 45 individuals were exhumed from the cemetery in Suva Reka/Suharekë. As discussed later in this Chapter, other remains of the Berisha family have also been identified at a mass grave site near Prizren, known as “Kroj-I-Popit”, and others at the Batajnica SAJ Centre.<sup>5370</sup>

1404. In September 1999, the British forensic team conducted autopsies and anthropological examinations in Suva Reka/Suharekë town. The remains or part remains of a minimum of 18 persons were exhumed from the Suva Reka/Suharekë Cemetery II.<sup>5371</sup> The Chamber accepts the evidence of K83 discussed earlier in this Judgement that approximately 15 to 20 bodies were buried in the local cemetery in Suva Reka/Suharekë on or about 27 March 1999.<sup>5372</sup> The British forensic team established that two of the (minimum of) 18 remains were female.<sup>5373</sup> Two of the (minimum of) 18 remains were those of Faton Berisha and Fatime Berisha. A third body was identified as Sedat Berisha on the basis of his shoes being recovered with the body.<sup>5374</sup> No evidence was

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<sup>5366</sup> See *supra*, para 491.

<sup>5367</sup> See *supra*, para 493.

<sup>5368</sup> See *supra*, para 485.

<sup>5369</sup> See *supra*, paras 683, 672, 676, 678.

<sup>5370</sup> Paragraph 75(d) of the Indictment.

<sup>5371</sup> The anthropological report of Dr Sue Black dated 2 November 1999 states that 19 individuals were recovered. This figure included 15 skeletal remains, one of these sets of remains was identified as SCG/33/SR. This actually comprised of the co-mingled remains of 4 people (Exhibit P1177, p 2). Therefore, the Chamber finds that Eric Baccard rightly referred to 18 sets of remains and not 19 at the Suva Reka/Suharekë Cemetery II (Eric Baccard, Exhibit P1139 (Expert report), pp 74-75; Exhibit P1177; Exhibit P1175; Exhibit P1179; Exhibit P1176; Exhibit P1178; Exhibit P1180.

<sup>5372</sup> See *supra*, para 686.

<sup>5373</sup> Exhibit P1177, p 2; Eric Baccard, Exhibit P1139 (Expert report), p 75.

<sup>5374</sup> The identification of Sedat Berisha is affected by discrepancies in the anthropological reports of Dr Sue Black and Dr Julie Roberts. Eric Baccard explained that it was unclear if the two Doctors were referring to the same body (Eric Baccard, Exhibit P1139 (Expert report), p 76). The stature of the bodies described by both was consistent however the composition of the bones was different (Eric Baccard, T 7669-7670; Exhibit P1178, p 1; Exhibit P1180, p 6). Moreover, the two anthropological experts came to different conclusions with respect to the gender of one of the victims (Eric Baccard, Exhibit P1139 (Expert report), p 76; Exhibit P1177, p 2; Exhibit P1180, p 2-6; Eric Baccard, T 7669-7670). As a result, this cast doubt of Eric Baccard's findings and therefore came to the conclusion that only 2 bodies could be identified and the cause of death discussed (Eric Baccard, Exhibit P1139

provided to the Chamber as to the identification of the additional (minimum of) 15 individuals found at Suva Reka/Suharekë.

1405. Autopsies were conducted on the remains of Faton Berisha and Fatime Berisha on 6 September 1999 and of Sedat Berisha on 26 September 1999.<sup>5375</sup> The cause of death of Faton Berisha was found on autopsy to be thoracic (or torso) injuries by gunshot, with a right hemothorax that is consistent with criminal homicide, war, suicide or an accident. The cause of death of Fatime Berisha, as demonstrated by the autopsy, was a skull and brain injury resulting from a gunshot wound to the head. The trajectory of the projectile was not consistent with suicide, but with criminal homicide, war or an accident.<sup>5376</sup> The Chamber finds that Faton Berisha died from a gunshot wound to the thorax and Fatime Berisha died from a gunshot wound to the head when shot by local police on 26 March 1999. No autopsy report was provided in relation to the cause of death of Sedat Berisha. Nevertheless, as found earlier, the Chamber accepts, based on eyewitness evidence, that Sedat Berisha was one of four Berisha men shot by local police on 26 March 1999 and, therefore, finds that he died as a result of being shot by local police.<sup>5377</sup>

1406. Two surviving members of the Berisha family, Hysni and Halit Berisha, accompanied the British forensic team when exhumations were conducted at a mass grave site at “Kroj-i-Popit”, near Prizren, and close to Suva Reka/Suharekë, in September 1999.<sup>5378</sup> At this site, many artefacts including clothing, shoes, wallets and other items, that were found were identified by these witnesses as property belonging to various members of the Berisha family who were shot in Suva Reka/Suharekë town on 26 March 1999.<sup>5379</sup> Specifically, the Chamber recalls that items of clothing belonging to Jashar Berisha, as well as a part of one of his limbs, were likewise found at the site.<sup>5380</sup> Hysni Berisha also describes finding a handkerchief and a jacket of 63 year old Musli Berisha, a sweater/jacket belonging to one of Musli Berisha’s children Violeta or Afrim, the boot of Afrim, a pencil case belonging to the 14 year old Merita Berisha (daughter of Hamdi Berisha), a notebook, photograph and sweater belonging to 10 year old Mirat Berisha (the son of Hamdi Berisha), and

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(Expert report), p 76). Despite this, the Chamber accepts and relies upon the identification of this third body as that of Sedat Berisha by virtue of the British forensic team identification (Exhibit P1177, p 1; Exhibit P1178, p 1).

<sup>5375</sup> Eric Baccard, Exhibit P1139 (Expert report), p 75.

<sup>5376</sup> Eric Baccard, Exhibit P1139 (Expert report), p 77; Exhibit P1176, p 3.

<sup>5377</sup> See *supra*, para 672.

<sup>5378</sup> The report on the exhumations was not received into evidence by the Chamber. The two witnesses were uncertain of the date of the exhumations and given the time that has elapsed since the events and the traumatic nature of the events they had gone through the Chamber finds no cause for concern as to the honesty of the witnesses in regard to their evidence. Hysni Berisha, Exhibit P584, pp 8-9; Exhibit P589; Hysni Berisha, T 3345-3346; see, Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3712-3713.

<sup>5379</sup> Hysni Berisha, Exhibit P584, pp 8-9; Hysni Berisha, Exhibit P587 (*Milutinović* transcript), T 4011-4012; Hysni Berisha, T 3345-3347; see also Exhibit P590; Exhibit P591; Exhibit P592; Exhibit P593.

<sup>5380</sup> Halit Berisha, T 3385-3386, 3613; See, Exhibit P591, p 6; see also Exhibit P599 (*Milutinović* transcript), T 3613.

shoes belonging to both Sofije Berisha and her husband, 55 year old Vesel Berisha.<sup>5381</sup> The human remains of some of these people, as well as of many of Berisha family members killed in the pizzeria, including the unborn child of Lirija Berisha, were later found in a mass grave site at the Batajnica SAJ Centre near Belgrade.<sup>5382</sup> The disinternment and movement of their remains from Kroj-I-Popit and Suva Reka/Suharekë to Batajnica, their identification and cause of death are discussed in other sections of this Judgement.<sup>5383</sup>

#### 4. Izbica/Izbicë, Srbica/Skenderaj municipality

1407. Earlier in this Judgement, the Chamber found that no less than 132 Kosovo Albanians were killed by MUP forces in Izbica/Izbicë on 28 March 1999. The Chamber also found that three women, Zoje Osmani (Osmana), Zada Dragaj and Ajmone Citaku, were also killed in Izbica/Izbicë on 28 March 1999. Two were killed on a tractor and one in a nearby field.<sup>5384</sup>

##### (a) The French forensic team reports

1408. The French forensic team carried out a crime scene examination in Izbica/Izbicë between 28 and 30 June 1999 and prepared several reports on their investigation.<sup>5385</sup> At the burial site they identified 139 grave plots in a field; there were no bodies in the graves.<sup>5386</sup> The earth was partially turned over and the grave plots could be made out.<sup>5387</sup> In the location of the grave sites there were indications that the ground had been disrupted by a mechanical excavator and there was evidence of tyre track marks and teeth marks from an excavator's digging bucket.<sup>5388</sup> These help to confirm the view that the bodies of the villagers which had been buried there were later exhumed and removed by Serbian forces as discussed earlier in this Judgement.<sup>5389</sup> The French forensic team was able to identify a total of three execution sites around Izbica/Izbicë; principally by virtue of the large numbers of spent cartridge cases at the three sites. One of these sites was near a stream in the woods and another on a hillside.<sup>5390</sup>

<sup>5381</sup> Hysni Berisha, Exhibit P584, p 9.

<sup>5382</sup> Halit Berisha, T 3383, 3386-3387.

<sup>5383</sup> See *supra*, para 684; see *infra*, paras 1377, 1484-1491.

<sup>5384</sup> See *supra*, paras 620, 621-634.

<sup>5385</sup> Eric Baccard, Exhibit P1139 (Expert report), p 44; Exhibit P1163; Exhibit P1164; Exhibit P1165, p 2.

<sup>5386</sup> "The Report on War crimes and other serious crimes committed during the War", dated September/October 2001, listed under the category of "Murders committed by persons unknown for which the military prosecutor is gathering intelligence from reports", that 144 fresh grave of unidentified persons were discovered in Izbica/Izbicë (Exhibit D510). The Chamber notes that no explanation has been provided for the difference in number of grave plots identified by the Serbian authorities (144 fresh graves) and the French forensic team (139 empty grave plots, see Exhibit ). It is recalled that no further information was provided to the Chamber detailing the Serbian investigations or what happened to the bodies after their exhumation.

<sup>5387</sup> Exhibit P1163, p 3; Exhibit P1165, p 16; Eric Baccard, T 7666.

<sup>5388</sup> Exhibit P1162, p 5; Exhibit P1163, p 3; Exhibit P1165, pp 3, 16.

<sup>5389</sup> See *supra*, para 631.

<sup>5390</sup> Exhibit P1162, p 5; Exhibit P1164, p 3; Exhibit P1165, p 2.

1409. As indicated, no bodies of persons alleged to have been killed at any of these sites on 28 March 1999, were located in Izbica/Izbičë by the French forensic team.<sup>5391</sup> The absence of bodies is consistent with the evidence of the exhumation and removal of the buried bodies by Serbian forces on or about 28 May 1999.<sup>5392</sup> The evidence discloses, as discussed elsewhere in this Judgement, that at a later date bodies buried in a mass grave on MUP controlled land in Petrovo Selo in Serbia were found to include 31 of the Kosovo Albanians shot in Izbica/Izbičë on 28 March 1999 and who had previously been buried in a field there on 31 March and 1 April 1999.<sup>5393</sup> The Chamber did not receive any further information in regards to where the other 104 individuals whom were killed in Izbica/Izbičë on 28 March 1999 were exhumed from; the overwhelming majority were identified in DNA reports and listed as missing on the OMPF report.<sup>5394</sup>

1410. Nevertheless, at the area of the gravesites in Izbica/Izbičë the French forensic team did find 28 human fragments, including five bone fragments, hair and skin fragments, about 84 cartridge cases, items of clothing, latex gloves and a number of small funerary boards which had engraved or hand written inscriptions of a name and sometimes a date of birth and death.<sup>5395</sup> The limited findings which the French forensic team was able to make of these items does not enable findings to be made as to the cause of death of any of the persons, parts of whose remains were found by the French forensic team at the grave sites in Izbica/Izbičë.<sup>5396</sup> Eight out of 17 items of clothing found in the area of the grave sites contained defects which, in the view of the French forensic team, were consistent with holes made by bullets. The French forensic team noted that the bullet holes were always found in the back or neck.<sup>5397</sup> The Chamber notes that this is consistent with the eyewitness account of victims having their backs to the perpetrators.<sup>5398</sup> Furthermore, some of the edges of the

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<sup>5391</sup> Exhibit P1163, p 3; Eric Baccard, T 7666.

<sup>5392</sup> See *supra*, para 631; Eric Baccard, Exhibit P1139 (Expert report), p 44; Eric Baccard, Exhibit P1165, pp 3, 16; Liri Loshi, Exhibit P293; Liri Loshi, T 721-723; Radomir Gojović, Exhibit D510, p 73.

<sup>5393</sup> See *infra*, paras 1507-1514.

<sup>5394</sup> See, Exhibit P817; see also, Exhibit P477.

<sup>5395</sup> The Chamber recalls its earlier finding that when the 127 bodies were buried in Izbica/Izbičë that a wooden plank bearing the deceased's name and date of birth was put on each grave. (Mustafa Dragaj, T 616-617). The Chamber also recalls earlier evidence that on 10 June 1999, Liri Loshi observed that gloves apparently used in the exhumations and wooden planks bearing names of deceased had been left on a strip of land from where the buried bodies had been exhumed. (Liri Loshi, T 723; Liri Loshi, Exhibit P293; see *supra*, paras 626-631). Eric Baccard, Exhibit P1139 (Expert report), pp 44-45; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10123; Exhibit P1162, p 5; see, Exhibit P1163; see also, Exhibit P1164; Exhibit P1165, p 15.

<sup>5396</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 45-46, 48; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10123.

<sup>5397</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 45, 46; Exhibit P1165, pp 15-16.

<sup>5398</sup> See *supra*, paras 621, 622. As the first group reached the creek, the policeman ordered the men to face towards the creek and kneel down" (Milazim Thaci, T 4964, 4966). The second group was taken approximately 300 metres up the hill, the group was ordered to stop and turn their backs to the soldiers, who stood three to four metres behind them (Sadik Januzi, P282, p 7). Meanwhile the other group of about 70 men was escorted towards a wood to the east by forces believed to be police. Before the men had reached the wood, they were told to turn around and they were shot from behind (Mustafa Dragaj, T 608-609, 612, 664).

bullet holes in the clothes were burnt.<sup>5399</sup> The conclusion was therefore reached by the French forensic team that the shots which caused these defects in the clothing had been fired at short or point blank range.<sup>5400</sup> There was also evidence that suggested that some of the men were shot with an automatic weapon at a greater distance.<sup>5401</sup> The French forensic team also noted that the defects on the clothing were compatible with 12 bore guns and 7.62 calibre projectiles.<sup>5402</sup> The use of 7.62 calibre projectiles as corresponding with the approximately six millimetre in diameter defects in the clothing was also identified. Likewise, the use of the 12 bore gun was identified as consistent with defects in clothing of about 20 millimetres.<sup>5403</sup> No conclusion was drawn by the French forensic team on the basis of ballistic or site investigations as to the cause of death. Dušan Dunkić testified that the calibre of a bullet can only be approximately determined from a forensic examination of bullet wounds sustained to the body.<sup>5404</sup> The Chamber considered the evidence of Dušan Dunkić but in the final analysis no good reason could be found to doubt the conclusion reached by the French forensic team. They were in the best position to analyse clothing and other evidence and form reliable opinions as to the calibre of the projectiles responsible for the defects they saw.

1411. For reasons generally expressed in the introductory paragraphs of this section, the Chamber accepts the general conclusions of the French forensic team set out above and has not been persuaded that the concerns raised by Zoran Stanković detract from the validity of those conclusions.<sup>5405</sup>

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<sup>5399</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10123.

<sup>5400</sup> Eric Baccard, Exhibit P1139 (Expert report), p 47; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10123-10125; Exhibit P1165, pp 15, 16.

<sup>5401</sup> Exhibit P1165, p 15.

<sup>5402</sup> Both calibres were used by Serbian forces including elements of the MUP. Eric Baccard, Exhibit P1139 (Expert report), pp 45-46; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10126-10127, 10189-10190; Exhibit P1166, pp 36-38.

<sup>5403</sup> Exhibit P1165, pp 15, 16.

<sup>5404</sup> Dušan Dunjić, T 3262-3264.

<sup>5405</sup> Zoran Stanković challenged in particular the conclusion that shots which damaged the clothing had been fired at close or point blank range because in some cases the report did not note whether fire traces or gunpowder were apparent on the clothes (Zoran Stanković, Exhibit D926 (Expert report), p 10; Zoran Stanković, T 13450, 13516; Exhibit P1165, p 5; Defence Final Brief, para 945) and because he could not determine from the report whether adequate regard had been given to the possibility that exposure to soil may have altered the apparent size of the gunshot holes in the clothing (Zoran Stanković, Exhibit D926 (Expert report), p 10; Zoran Stanković, T 13451-13452, 13516-13520; Exhibit P1165, p 4; Defence Final Brief, para 945). The Chamber notes that the edges of some of the holes had been burnt (Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10123), that the diameter and location of each hole was detailed, and it accepts that an expert inspecting the clothing was in the best position to identify the cause and type of the damage. It is also recognised that in cases where the clothing could not be relied upon for ballistic purposes this was stated in the report (Zoran Stanković, T13516-13520; Exhibit P1165, p 23). The Defence expert also contested the reliability of the method used by the ballistics experts of the French forensic team to determine the distances at which shots were fired (Zoran Stanković, T 13447, 13562-13563; Exhibit P1166, p 26). In this regard his concern, in particular, was it was not stated in the report whether account was taken of the difference in appearance of a penetration wound to muscle and skin (Zoran Stanković, Exhibit D926 (Expert report), p 9; Zoran Stanković, T 13447-13448; Defence Final Brief, para 943). The Chamber notes that there is no method which allows the range of fire and calibre of weapon to be determined with certainty from its path through muscle or skin and that more than one method may be used in such cases. Again an expert

(b) Video footage of bodies in Izbica/Izbicë

1412. The Chamber has also reviewed the video film tendered through the witness Liri Loshi<sup>5406</sup> and of still photographs from that video film.<sup>5407</sup> The Chamber accepts that the video film and the photographs genuinely depict scenes actually seen at Izbica/Izbicë on 31 March and 1 April 1999.<sup>5408</sup> The Chamber also has received in evidence a commentary of the video which includes an overview of what is filmed and a description of the victims identified in the video film and still photographs from the video film; the commentary includes the names of some of the victims, descriptions of the clothing worn by them and, in some instances, other general comments.<sup>5409</sup> The remaining unnamed victims were later identified by local villagers, including friends and family members, prior to their burial in Izbica/Izbicë; these names were all included in the list provided by Liri Loshi.<sup>5410</sup> The Chamber is satisfied that the video film, photographs, commentary and list of victims buried can be relied upon for the purposes of identifying the bodies found in Izbica/Izbicë on 31 March and 1 April 1999.

1413. Liri Loshi was a doctor and a villager, not a forensic specialist. The video film was not recorded for forensic purposes, but merely to record the scenes he saw and to help identify some victims. The bodies were only visible from one side, the clothes had not been removed and in some instances bodies were covered with blankets which impeded a proper view of them, so that the view of the corpse was not complete.<sup>5411</sup> Further, it was not possible to enlarge still images from the video to a sufficient degree for adequate forensic assessment and in many cases the quality of the images was poor.<sup>5412</sup> The film was viewed by Eric Baccard but it did not enable him to make any finding as to the cause of death of any of the deceased persons, he could have done no more than make diagnostic assumptions in cases where the film images presented matters of “forensic interest”, that is, direct or indirect signs of injuries.<sup>5413</sup>

1414. Notwithstanding these limitations, having reviewed the video film and the photographs, the chamber notes the evidence of Dr Baccard that he was able to identify in the video film and photographs 36 visible injuries (gunshot wounds and others) to the heads of victims, two injuries to

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actually observing a wound is in the best position and the Chamber notes the conclusion reached by Dr Baccard from the explanation provided in the French ballistics report.

<sup>5406</sup> Exhibit P288.

<sup>5407</sup> Exhibit P289; Exhibit P290.

<sup>5408</sup> See *supra*, paras 626-630; Liri Loshi, T 702.

<sup>5409</sup> This commentary explains what it seen in the still photographs taken from the video film and registered as Exhibit P289. The commentary also provided the Chamber with an indication of any bodies that were not killed in the massacre or were members of the KLA (*see supra*, para 629). Liri Loshi, T 702-710, 717-718; Exhibit P291.

<sup>5410</sup> Liri Loshi, T 717-718; Exhibit P292.

<sup>5411</sup> Eric Baccard, Exhibit P1140 (*Milošević* transcript), T 10123-10125; Eric Baccard, T 7664; Defence Final Brief, para 946.

<sup>5412</sup> Eric Baccard, Exhibit P1139 (Expert report), p 93; Eric Baccard, T 7664-7665.



the neck and two injuries to the trunk of victims. He also noted 11 visible injuries to the upper limbs and six to the lower limbs.<sup>5414</sup> It was the opinion of Dr Baccard that these wounds were consistent with projectiles of 7.62 millimeter calibre bullets or 12 bore guns, however without any millimetric scale of reference this could not be said with certainty.<sup>5415</sup> The Chamber also notes the opinion of Eric Baccard that the cause of death was consistent with a gunshot wound to the head and/or neck in 22 of these cases; in two cases consistent with a gunshot wound to the trunk; and consistent with multiple gunshot wounds in four cases.<sup>5416</sup> The victims were all adults, in some cases old men, and only one female victim could be seen in the video film and all the photographs.<sup>5417</sup>

1415. The Defence forensic expert, Zoran Stanković, disputed the authenticity of the video footage of the victims taken in Izbica/Izbicë on 31 March 1999 and 1 April 1999. He contended that bodies in the video film had been moved to where they were filmed from at least three other locations for the following reasons.<sup>5418</sup> First, the number of cartridge cases found at the scene by the French forensic team were far fewer than the number of victims filmed in the video.<sup>5419</sup> This is correct but, in the Chamber's view, the contention fails to take into account other explanations for fewer cartridge cases than victims, in particular, the forensic examination did not occur until some three months after the shootings and in that time there had been much activity at the scene, especially the gathering and removal of the 127 bodies to other locations for their burial by many people. Secondly, there appeared to be mud on the soles of the shoes of victims in the video footage, whereas, the surface of the meadow in which the bodies lay in the video film footage appeared clean.<sup>5420</sup> Again, in the Chamber's assessment this fails to have regard to other obvious explanations for the presence of mud including the nature of the ground over which the victims were marched to the meadow before they were shot. Thirdly, traces of blood from the nose, mouth or other wounds on some bodies suggested a flow direction inconsistent with the position of the body as filmed.<sup>5421</sup> Further, some bodies filmed lying on their back did not display developed signs of rigor mortis in their faces. Eric Baccard also had suggested that some bodies may have been moved *post mortem* because the signs of lividity were inconsistent with the position the bodies.

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<sup>5413</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 48, 93; Eric Baccard, T 7668-7669.

<sup>5414</sup> Eric Baccard, Exhibit P1139 (Expert report), p 46.

<sup>5415</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 46, 48.

<sup>5416</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 45, 106; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T10124; Eric Baacard, T 7667-7668.

<sup>5417</sup> Eric Baccard, Exhibit P1139 (Expert report), p 45.

<sup>5418</sup> Zoran Stanković, Exhibit D926 (Expert report), p 10; Zoran Stanković, T 13452-13453; Exhibit P288; Defence Final Brief, para 946.

<sup>5419</sup> Zoran Stanković, Exhibit D926 (Expert report), p 10; Zoran Stanković, T 13449-13450, 13510-13516; Exhibit P1165, pp 3, 14; Defence Final Brief, para 944.

<sup>5420</sup> Zoran Stanković, T 13521-1525; Exhibit P288, 6.26 minutes; Defence Final Brief, para 946.

<sup>5421</sup> Zoran Stanković, T 13526-13527; Exhibit P288.

However, in these cases he also observed plant residue or small gravel stones embedded in the skin which caused him to conclude that these bodies had merely been turned over so their faces could be seen (for identification purposes).<sup>5422</sup> In the case of one body, however, Eric Baccard did not exclude the possibility that the lividities observed on the face of this individual could have been caused by movement of the body over a distance.<sup>5423</sup> That case aside, in the opinion of Eric Baccard, the forensic details shown, such as the colouring of the body and the accumulation of blood in some areas, indicated that the bodies in the video film were positioned where they were killed.<sup>5424</sup> The Chamber notes that Zoran Stanković is quite correct that different locations, including the burial site of the victims, is seen on the video. As discussed in an earlier section of this Judgement, the video film shows numerous locations, one of which includes footage of the bodies being moved from where they were found to their place of burial.<sup>5425</sup> The concerns raised by Zoran Stanković are without foundation and are not accepted by the Chamber. The Chamber has found the evidence of Liri Loshi reliable for the purpose of identifying the victims of the killings in Izbica/Izbičë on 28 March 1999.<sup>5426</sup> The identification of the victims by survivor witnesses has also been accepted by the Chamber.<sup>5427</sup>

1416. Having assessed the evidence, including that of the expert witnesses Eric Baccard and Zoran Stanković, as well as that of Liri Loshi, the Chamber is entirely satisfied and finds that the scenes filmed in Izbica/Izbičë genuinely depict what the witness saw when he visited the site as detailed in his evidence and that, with the possible exception of one body as detailed earlier in this Judgement, that the bodies were filmed where they had been shot.<sup>5428</sup> Nevertheless, in view of the impediments to conclusive forensic evaluation which have been identified in the evidence of Eric Baccard, and the view of Zoran Stanković that for somewhat the same reasons parts of Eric Baccard's report in effect reflected merely forensic assumptions,<sup>5429</sup> the Chamber will limit its reliance on the video footage, and the still photographs taken from it, to the identification of victims and will not reach any conclusion as to cause of death solely on this aspect of the evidence. The Chamber does note, however, at this stage that the bodies of many of the persons, who were last seen alive in Izbica/Izbičë on or before 28 March 1999, and who appear in the video footage, were later

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<sup>5422</sup> Eric Baccard, Exhibit P1139 (Expert report), p 115; Zoran Stanković, Exhibit P1140 (*Milutinović* transcript), T 10184-10186, 10210.

<sup>5423</sup> The Chamber notes that this may have been one of the bodies that have not been included in the finding of the Chamber because the evidence of Liri Loshi suggested that for one victim he was killed somewhere else and for another victim he was a member of the KLA killed earlier, *see supra*, para 629; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10186; Eric Baccard, Exhibit P1139 (Expert report), p 100.

<sup>5424</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10124; Eric Baccard, T 7665-7666.

<sup>5425</sup> *See supra*, paras 626-627.

<sup>5426</sup> *See supra*, paras 626-630.

<sup>5427</sup> *See supra*, paras 633-634; *see infra*, para 1512.

<sup>5428</sup> *See supra*, paras 629.

<sup>5429</sup> Zoran Stanković, Exhibit D926 (Expert report), p 10; Zoran Stanković, T 13426.

discovered in a mass grave site on MUP controlled land at the Petrovo Selo PJP Centre in Serbia. No less than 31 were identified as being from Izbica/Izbicë were exhumed, examined and identified. The findings in relation to the cause of death of these 31 bodies is discussed later in this Chapter.<sup>5430</sup>

1417. The Chamber accepts that altogether no less than 135 individuals were identified as having been killed by MUP forces in Izbica/Izbicë on 28 March 1999.<sup>5431</sup>

##### 5. Miloš Gilić Street/Millosh Giliq Street, Đakovica/Gjakovë

1418. As found earlier in this Judgement, late on the night of 1 April 1999, MUP forces broke into the compound known as 157 Miloš Gilić/Millosh Giliq Street, in the municipality of Đakovica/Gjakovë where 21 people of Albanian ethnicity, mainly women and children, had been seeking shelter. They were forcibly marched into the adjoining house in the compound where the MUP forces shot at the group and killed 20 people, 12 of whom were children, seven women, and one a mentally impaired man.<sup>5432</sup> The house was then set on fire.<sup>5433</sup> It was the evidence of Frederick Abrahams that some time after these killings, Faton Polloshka, a member of the Đakovica/Gjakovë city public works, entered the house and retrieved the 20 bodies, which had been burnt.<sup>5434</sup> Sometime between 2 April 1999 and 25 May 1999 the burnt remains of these 20 people were moved to the Đakovica/Gjakovë public cemetery.<sup>5435</sup> The Chamber has further found that four members of the Cana family were killed that very night at 80 Miloš Gilić Street by members of MUP forces.<sup>5436</sup>

###### (a) 157 Miloš Gilić Street/Millosh Giliq Street

1419. Eric Baccard based his evidence on the forensic report prepared by Dr. William C. Rodriguez III of the American medical legal investigation team which was responsible for the Anthropological and Pathological Findings at 157 Miloš Gilić Street/Millosh Giliq Street.<sup>5437</sup> The original examination of the crime scene and of bodily remains discovered at 157 Miloš Gilić Street/Millosh Giliq Street (Site 2) and the cemetery north of Đakovica/Gjakovë (Site 4) included remains removed from 157 Miloš Gilić Street/Millosh Giliq Street) took place between 25 and

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<sup>5430</sup> See *infra*, paras 1513-1514.

<sup>5431</sup> See *supra*, paras 620, 621-634.

<sup>5432</sup> See *supra*, paras 883-889.

<sup>5433</sup> See *supra*, paras 896.

<sup>5434</sup> Frederick Abrahams, T 3975; Exhibit P756, K0361054.

<sup>5435</sup> See *supra*, para 898.

<sup>5436</sup> See *supra*, paras 891-892.

<sup>5437</sup> Exhibit P1161.

27 May 1999.<sup>5438</sup> The remains at “Site 2” consisted of “primarily of burnt and calcined skeletal elements” and in a few cases there was evidence of unburnt bone and some clothing remnants.<sup>5439</sup> At “Site 4”, there were some human remains which consisted of “badly decomposed and partially burnt” remains.<sup>5440</sup> Because the bodily remains constituted only “badly burned skeletal elements” the exact number of victims could not be determined and it was difficult to draw any forensic conclusions from them.<sup>5441</sup> Because of this, the forensic cause of death of the victims could not be established.<sup>5442</sup>

1420. Nevertheless, on the basis of the underlying American forensic report, Eric Baccard was able to determine that at the two aforementioned locations remains of a minimum of 20 individuals were exhumed.<sup>5443</sup> This was established by the presence of 20 bones that are found only once in each human body.<sup>5444</sup> Some of the bones exhumed presented significant characteristics which allowed for the determination of gender and age.<sup>5445</sup> The American forensic report and Eric Baccard both concluded that the remains of only one adult male could be identified. The other remains were either determined to be female or were “undetermined”. Eric Baccard explained that the gender of some of the remains were “undetermined” because several bone fragments, for instance the cranium and the pelvis, could have belonged to the same individual.<sup>5446</sup> Even though the burnt and fragmented nature of the bones made the determination of age difficult, skeletal body parts of at least 12 children were identified.<sup>5447</sup> The Chamber recalls its earlier finding that 20 people, 12 of which were children, were shot at the compound known as 157 Miloš Gilić Street/Millosh Giliq Street; this corresponds with the forensic findings.

1421. The Chamber notes that the eyewitness survivor account of the bodies being burnt in the basement of the compound corresponds with the forensic evidence that the bodies were too badly burnt to allow for the cause of death to be established. While the precise cause of death of the bodies at 157 Miloš Gilić Street/Millosh Giliq Street could not be established by the American forensic team because of the state of the remains, the Chamber finds, based on an eyewitness

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<sup>5438</sup> Exhibit P1161 (Forensic Report prepared by U.S Department of Defence, Armed Forces Institute of Pathology), pp 2-10; Eric Baccard, Exhibit P1139 (Expert report), p 37.

<sup>5439</sup> Exhibit P1161, pp 2-8.

<sup>5440</sup> Exhibit P1161, pp 10-12.

<sup>5441</sup> Eric Baccard, T 7660-7661; Eric Baccard, Exhibit P1139 (Expert report), p 37, 38; Eric Baccard, T 7661, 7744-7745. This was further complicated by signs of post mortem animal scavenging (Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10121; Eric Baccard, Exhibit P1139 (Expert report), p 38.

<sup>5442</sup> Eric Baccard, Exhibit P1139 (Expert report), p 39; Eric Baccard, T 7661.

<sup>5443</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 37, 39; Eric Baccard, T 7662-7663.

<sup>5444</sup> Eric Baccard, T 7661-7662.

<sup>5445</sup> The witness explained that the gender of the bodies could be determined to be female by looking at the base of the cranium and the pelvis. Eric Baccard, T 7662-7663.

<sup>5446</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10119-10120; Eric Baccard, Exhibit P1139 (Expert report), pp 38, 39.

<sup>5447</sup> Eric Baccard, Exhibit P1139 (Expert report), p 38; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10120.

survivor account, that 20 individuals, 12 of whom were children, were shot late on the night of 1 April 1999, at 157 Miloš Gilić Street/Millosh Giliq Street, and then the basement in which they were sheltering was set on fire. Therefore, as alleged in the Indictment and established by eyewitness accounts in the Đakovica/Gjakovë municipality findings, the Chamber finds the people identified by a survivor witness died as a result of being shot by MUP forces or as a result of being burnt in the house when it was set on fire by MUP forces.<sup>5448</sup>

(b) 80 Miloš Gilić Street/Millosh Giliq Street

1422. The American forensic team also conducted an examination into bodily remains found at 80 Miloš Gilić Street/Millosh Giliq Street. The Chamber earlier found that this house belonged to the Cana family.<sup>5449</sup> The remains of four individuals were dispersed throughout the house. The remains consisted of an elderly male and female, and a male and female estimated to be in their late 30s to early 40s at death.<sup>5450</sup> The Chamber earlier found that Ganimete and Januz Cana, and their daughter Shypresa (aged 43 years) and Fatmir (aged 41 years) were killed by MUP forces late on the night of 1 April 1999. Following the incident the Chamber found the house was set on fire. The Chamber is satisfied that the forensic evidence corresponds with eyewitness accounts of the killing of the four Cana family members at 80 Miloš Gilić Street/Millosh Giliq Street. While no scientific cause of death could be established, the Chamber recalls its earlier finding that these people were killed by MUP forces.<sup>5451</sup> The Chamber finds they died from injuries inflicted by these MUP forces on the night of 1/2 April 1999.

6. Vučitrn/Vushtrri municipality

1423. The French forensic team investigated and exhumed human remains at sites at Studime-e-Eperme/Gornja Studimlja identified by ICTY investigators who had been in the area.<sup>5452</sup> Two sites were identified within Studime-e-Eperme/Gornja Studimlja in Vuçitrn/Vushtrri, they were described as, Cemetery L1 and L2.<sup>5453</sup> Exhumations and examinations took place at these sites between 5 and 12 July 1999 and on 15 July 1999.<sup>5454</sup> The French forensic team prepared four reports in respect of this work. The evidence of Eric Baccard was based on his expert assessment of these reports.<sup>5455</sup> He identified some discrepancies and errors in the documentation, but, despite

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<sup>5448</sup> See *supra*, para 889.

<sup>5449</sup> See *supra*, para 891.

<sup>5450</sup> Exhibit P1161, pp 13-15.

<sup>5451</sup> See *supra*, paras 892.

<sup>5452</sup> Exhibit P1173, pp 1-2.

<sup>5453</sup> Exhibit P1173, 03024226.

<sup>5454</sup> Exhibit P1171; Exhibit P1172; Exhibit P1173.

<sup>5455</sup> See, Exhibit P1171; see also, Exhibit P1172; see also, Exhibit P1173; see also, Exhibit P1174.

these, confirmed that the overall conclusions reached by the French forensic team remained valid.<sup>5456</sup> These discrepancies and errors have been taken into account by the Chamber.<sup>5457</sup>

1424. Altogether 93 bodies were exhumed at sites L1 and L2.<sup>5458</sup> All but eight of the 93 bodies were identified during the exhumations by the French forensic team.<sup>5459</sup> 87 victims were male and six were female. The bodies were victims ranging in age from 18 to 86 years; over 75% of the victims were under the age of 50 years old.<sup>5460</sup>

1425. The Chamber accepts the conclusions of Eric Baccard that of the 93 bodies from this site, 86 victims died a violent death. The remaining seven died of natural causes.<sup>5461</sup> Of the 86 individuals who died a violent death, 97% were from gun shot wounds, the remaining 3% were from a blunt or sharp force.<sup>5462</sup>

1426. The French forensic team concluded that the range at which the victims were shot was generally consistent with close range. Eric Baccard did not comment on this finding.<sup>5463</sup> The Defence forensic expert, Zoran Stanković, noted that the reports of the French forensic team provided limited information about the determination of the range of fire.<sup>5464</sup> He was of the opinion that it is not possible to determine this with certainty when there is putrefication because decomposition destroys a lot of trace evidence.<sup>5465</sup> He was also concerned that, in some cases, the range of fire determined did not match the conclusions in the expert report.<sup>5466</sup> However, conclusions as to the range of fire were generally given as “consistent with” a range; no finding of certainty was made by the French forensic team.<sup>5467</sup> While Zoran Stanković contended that if this was the case conclusions should have been made with certainty, this is not consistent with his

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<sup>5456</sup> Eric Baccard, Exhibit P1139 (Expert report), p 64; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10136-10137; *See*, Exhibit P1171; *See* also, Exhibit P1172; *See* also, Exhibit P1173; *See* also, Exhibit P1174.

<sup>5457</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10137-10138.

<sup>5458</sup> From site L1, 17 bodies were exhumed and although 102 bodies were buried in L2, only 76 bodies were exhumed. The remaining 26 bodies were not exhumed because their cause of death was not known and the French team reported that they were not part of the killings that took place on 2 May 1999, Eric Baccard, Exhibit P1139 (Expert report), p 64; Exhibit P1162, p 17; *see* also, Exhibit P1173.

<sup>5459</sup> The French forensic team reported that at site L1, five of the 17 bodies could not be identified by local villagers and at site L2, three bodies could not be identified (Exhibit P1173, 0302-4226). The Chamber notes that Eric Baccard recorded that nine bodies could not be identified, and it appears this is because he counted C38 and C38bis as two separate bodies. (Eric Baccard, Exhibit P1139 (Expert report), p 65). The Chamber will rely upon the figure provided by the French forensic team of eight bodies being unidentified, not nine as stated by Eric Baccard because in their calculation they counted C38 and C38bis as one individual (*see*, Exhibit P1173, 0302-4227).

<sup>5460</sup> Eric Baccard, Exhibit P1139 (Expert report), p 65; Exhibit P1162, p 17.

<sup>5461</sup> Eric Baccard, Exhibit P1139 (Expert report), p 66.

<sup>5462</sup> Eric Baccard, Exhibit P1139 (Expert report), p 68; Exhibit P1162, p 18.

<sup>5463</sup> Eric Baccard, Exhibit P1139 (Expert report), p 68; Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10163-10164; Exhibit P1174.

<sup>5464</sup> Zoran Stanković, T 13442.

<sup>5465</sup> Zoran Stanković, D926 (expert report), p 6; Zoran Stanković, T 13442-13443; Exhibit P1774, pp 61, 73; *See* also Dušan Dunjić, T 3262.

<sup>5466</sup> Zoran Stanković, T 13442.

<sup>5467</sup> Zoran Stanković, T 13562, 13564; Exhibit P1166; Exhibit P1172; Exhibit P1174.

contention that certainty was not possible when there is putrefication.<sup>5468</sup> In any event it does not appear to the Chamber that this affects the reliability and credibility of other aspects of the work of the French expert teams. The objection of Zoran Stanković's to inconsistencies between the descriptions in the reports of the range of fire and the conclusions appears to be no more than a translation issue, as in the original French reports the same language is used in both contexts.<sup>5469</sup>

1427. As found earlier in this Judgement, the Chamber was not satisfied that some 100 Kosovo Albanians were killed by Serbian forces in circumstances that would constitute an offence.<sup>5470</sup> There is no evidence before this Chamber detailing the circumstances of these additional 100 killings or even if these people were part of the convoy in Vučitrn/Vushtrri at the time of their death or killing. Whilst the Prosecution sought, from the location of wounds on the bodies of the additional 100 victims, to draw an inference that they were not killed in the course of conflict, the Chamber is not persuaded that a reliable inference can be made on the facts. Furthermore, the evidence indicates that there was KLA activity in the area and therefore the possibility that these people were killed during an exchange of fire can not be excluded.<sup>5471</sup> In the case of the four Kosovo Albanians for whom the Chamber has accepted were killed by Serbian forces, the Chamber finds that the French forensic report established that the cause of death was related to gunshot wounds for the following three of the four individuals, Haki Gerxhaliu, Miran Xhafa and Veli Xhafa. No forensic evidence was received for Hysni Bunjaku, however, the Chamber recalls its earlier finding that he was shot near his tractor by MUP forces on 2 May 1999 in Vučitrn/Vushtrri.<sup>5472</sup> The Chamber accepts that these four men died as a result of being shot by MUP forces in Vučitrn/Vushtrri on or about 2 May 1999.

#### 7. Kotlina/Kotlinë, Kačanik/Kaçanik municipality

1428. In an earlier section of this Judgement the Chamber found that on 24 March 1999, a group of not less than 22 Kosovo Albanian men were captured on a hill to the north of Kotlina/Kotlinë by members of the police and VJ. The captured men, escorted by Serbian forces, were forced with their hands above their heads to go to the location of two dry wells where they were thrown into the wells. Some of the men had been beaten, some were also shot. The wells were mined with

<sup>5468</sup> Zoran Stanković, T 13442-13443, 13564-13565.

<sup>5469</sup> For example, the report initially states that damage was caused at close range and then in the conclusion that it occurred at short range. Zoran Stanković, Exhibit D926 (expert report), pp 6-9; Zoran Stanković, T 13562; Exhibit P1166, p 41; Exhibit P1174, pp 51, 54, 69-70. Zoran Stanković also observed that a depression mark on a skull as reported by the French forensic team could not have been caused by a rifle butt because no rifle-butt fitted the size described (Zoran Stanković, Exhibit D926 (Expert report), p 7; Zoran Stanković, T 13445). The Chamber did not accept this evidence of the witness.

<sup>5470</sup> See *supra*, paras 1197-1198. This does not include the Chamber's finding in regards to the killing of Hysni Bunjaku, Haki Gerxhaliu, Miran Xhafa and Veli Xhafa,

<sup>5471</sup> See *supra*, paras 1162, 1173, 1174, 1178, 1199.

explosives. The eyewitness evidence does not describe in detail what followed, but, about half an hour later a large explosion was heard and a cloud of dust and smoke rose above the area where the wells were located.<sup>5473</sup> The Chamber also found that Idriz Kuçi was taken away by Serbian police on 24 March 1999 in Kotlina/Kotlinë and was later found shot in the back of the head at close range.<sup>5474</sup>

1429. The site investigations in Kotlina/Kotlinë were conducted by a Crime scene team from the Austria on 7 and 9-16 September 1999.<sup>5475</sup> The first crime scene consisted of the two wells and their surroundings. The wells are situated on the Kodra-e-Bjehkës mountain about 280 metres, as the crow flies, from the centre of Kotlina/Kotlinë.<sup>5476</sup> The wells were referred to as the upper and lower wells. The Chamber also found earlier in this Judgement that Idriz Kuçi, Vejsel Vlashi and Zimer Loku were killed in this village on 24 March 1999. Their remains were buried in the courtyard of the mosque in the centre of Kotlina/Kotlinë, which became the second crime scene.<sup>5477</sup>

1430. Both crime scenes were subject to full forensic examination and autopsies were conducted on human remains recovered from both crime scenes. The Crime scene team from Austria also included members of the Swiss Disaster Victim Identification team.<sup>5478</sup> The evidence given by Dr Eric Baccard was based on the reports of these two teams.<sup>5479</sup>

(a) Eric Baccard's findings

1431. Eric Baccard concluded that the remains of a minimum of 22 persons were found in the upper and lower wells.<sup>5480</sup> The remains of 22 bodies were identified. The identification process was conducted by the Austrian team, in cooperation with the family members of missing individuals.<sup>5481</sup> The evidence does not indicate that any of the victims were wearing KLA uniforms; they were dressed in civilian clothes.<sup>5482</sup> No anthropological examination was conducted

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<sup>5472</sup> See *supra*, para 1184.

<sup>5473</sup> See *supra*, paras 1115, 1120, 1125; Hazbi Loku, Exhibit P652, p 6; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3160, 3233.

<sup>5474</sup> See *supra*, paras 1113, 1117-1118.

<sup>5475</sup> Eric Baccard, Exhibit P1139 (Expert report), p 48; Exhibit P1167 (Austrian Forensic Team Report), p 5.

<sup>5476</sup> Exhibit P1167, p 7.

<sup>5477</sup> See *supra*, para 1118; Exhibit P1167, p 8.

<sup>5478</sup> Eric Baccard, Exhibit P1139 (Expert report), p 48; Exhibit P1167 (Austrian Forensic Team Report), p 5.

<sup>5479</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10129; Eric Baccard, Exhibit P1139 (Expert report), p 48; Exhibit P1167, p 5.

<sup>5480</sup> Eric Baccard, Exhibit P1139 (Expert report), p 48; Exhibit P1167, p 6.

<sup>5481</sup> Exhibit P1167, p 6; Eric Baccard, Exhibit P1139 (Expert report), p 48; Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3161-3162.

<sup>5482</sup> The Austrian report details different types of clothes found on each victim. None of the descriptions of the clothes matched KLA uniforms. The Chamber is satisfied that they were wearing civilian clothes, see *infra*, para 1562-1563.



during the autopsies to assist with the determination of the age of the victims.<sup>5483</sup> The details and identification of the 22 persons who have been identified were listed earlier in this Judgement; 12 of the identified victims are listed in the Schedule of the Indictment. A further 10 victims have been added as “Additional named victims” to the Victim Chart, related to Kotlina/Kotlinë, annexed to this Judgement.

1432. The Austrian team recovered numerous artefacts from the wells, including cartridge cases with Cyrillic letters on them and soil samples. These were sent for scientific examination.<sup>5484</sup> A total of 10 cartridge cases from AK47’s were collected in the near vicinity of the upper well.<sup>5485</sup> A projectile (bullet) was found in a body part in the upper well and another was recovered from the clothing of another victim.<sup>5486</sup> At the lower well five projectiles,<sup>5487</sup> two cartridge cases,<sup>5488</sup> a projectile fragment,<sup>5489</sup> nine parts of projectiles,<sup>5490</sup> a “long nail-like piece of metal about five centimetres long”<sup>5491</sup> and three pieces of metal were recovered.<sup>5492</sup> An analysis of the above materials found in the lower and upper wells indicated that the cartridge cases were fired from three different rifles, “very probably Kalashnikov assault rifles”.<sup>5493</sup>

1433. In the vicinity of the wells, soot covered fragments of fabric were found.<sup>5494</sup> Carbonised fragments of clothing were also found in both the upper and lower wells.<sup>5495</sup> The wall of the upper well shaft was blackened with soot and partly carbonised fragments of clothing were also found. A test conducted on the clothing found in the upper well indicated that TNT was probably present. The presence of TNT on the wall of the well could not be ruled out.<sup>5496</sup> An analysis of the metal

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<sup>5483</sup> On the basis of a missing person list provided to Eric Baccard, the most represented age of victims was between 21 and 30 years and 20 of the victims were under the age of 40. However, the evidence does not disclose what missing person list was provided to Eric Baccard (Eric Baccard, Exhibit P1139 (Expert report), p 49). Nor does the Austrian report indicate the age of the victims (Exhibit P1167). For the above reasons, the Chamber will not rely upon this aspect of the evidence

<sup>5484</sup> Eric Baccard, Exhibit P1140 (*Milutinović* transcript), T 10130; Exhibit P1167 (Report on Kotlina/Kotlinë by the The Kosovo Crime Scene Team from the Republic of Austria, Federal Ministry of the Interior), p 42.

<sup>5485</sup> Exhibit P1167, p 8.

<sup>5486</sup> Exhibit P1167, pp 9, 10.

<sup>5487</sup> Exhibit P1167, pp 18, 23, 27, 31, 34.

<sup>5488</sup> Exhibit P1167, pp 17, 35.

<sup>5489</sup> Exhibit P1167, p 32.

<sup>5490</sup> Exhibit P1167, pp 32, 24, 25, 27, 34.

<sup>5491</sup> Exhibit P1167, p 38.

<sup>5492</sup> Exhibit P1167, p 32.

<sup>5493</sup> Zoran Stanković disputed that the killings were committed by members of the Serbian forces because of the presence of one Chinese cartridge case at the site. He asserts that Chinese ammunition was not used by Serbian forces (Zoran Stanković, Exhibit D926 (Expert report), p 4; Zoran Stanković, T 13420, 13429-13430, 13506, 13508). The Chamber notes that the findings of the Austrian Crime Scene team reported that the cartridge was of Chinese manufacture and fired from a Kalashnikov assault rifle. There is no further evidence to support the contention that this cartridge case was not fired by Serbian forces, especially as the other cartridge cases found at the lower and upper well were also fired from Kalashnikovs and these cartridge cases were all of Yugoslav manufacture (Exhibit P1167, p 80).

<sup>5494</sup> Exhibit P1167, p 7.

<sup>5495</sup> Exhibit P1167, pp 8, 9, 11.

<sup>5496</sup> Exhibit P1167, pp 90-91.

fragments taken from the lower and upper wells showed the presence of TNT.<sup>5497</sup> Moreover, a test conducted on the wall of the lower well shaft showed with certainty the presence of TNT.<sup>5498</sup> Large quantities of nitrate were also present in the lower well.<sup>5499</sup> The Austrian report notes that TNT has many uses during military operations in the field and it is used when an especially high "effective result", or an exceptionally fast detonation, is required.<sup>5500</sup> Based on the evidence before the Chamber, it is satisfied that after the bodies were thrown into the wells, explosions in each well left traces of TNT. While the eye witness heard what seemed to him to be one explosion, this could well have been the simultaneous detonation of two or more explosive devices. The evidence indicates, in the finding of the Chamber, that there had been an explosion of one or more charges of explosive in the lower well and also an explosion of one or more charges in the upper well.

1434. Eric Baccard reported that there were marks of explosions on 21 of the bodies located in the lower and upper wells. Injuries caused by explosions were equally distributed over the bodies.<sup>5501</sup> Gunshot wounds were also found in 10 bodies recovered from the wells.<sup>5502</sup> In a number of these bodies more than once gunshot wound had been sustained.<sup>5503</sup>

1435. In three of the bodies recovered from the wells, there was evidence of wounds to the head by a blunt instrument. It could not be ascertained if these were caused *ante mortem* or *post mortem*. None of these was considered to be the cause of death.<sup>5504</sup> There was also one body with a sharp injury to the throat.<sup>5505</sup> However, this was not considered the cause of death.<sup>5506</sup> The opinion of Eric Baccard as to the cause of death of the men whose remains were recovered from the wells is that death was related to an explosion and that many of the victims had also been shot.<sup>5507</sup> In the Chamber's view, the forensic examination did not conclusively determine whether the men who had also been shot, died from bullet wound(s), or from an explosion.

1436. The cause of death of the remains of the three other victims, including Idriz Kuçi, found buried in the courtyard of the Kotlina/Kotlinë mosque in the centre of town was gunshot wounds.<sup>5508</sup>

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<sup>5497</sup> Exhibit P1167, p 84.

<sup>5498</sup> Exhibit P1167, pp 42, 90-91.

<sup>5499</sup> Exhibit P1167, p 90.

<sup>5500</sup> Exhibit P1167, p 91.

<sup>5501</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 49-50.

<sup>5502</sup> Eric Baccard, Exhibit P1139 (Expert report), p 50.

<sup>5503</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 49-52.

<sup>5504</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 49-50.

<sup>5505</sup> Eric Baccard, Exhibit P1139 (Expert report), p 51.

<sup>5506</sup> Eric Baccard, Exhibit P1139 (Expert report), p 49-50.

<sup>5507</sup> Eric Baccard, Exhibit P1139 (Expert report), p 51.

<sup>5508</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 48, 50; Exhibit P1167, p 8.

(b) Objections to the findings of Eric Baccard

1437. A number of issues have been raised concerning the underlying reports relied upon by Eric Baccard and the views he formed in determining the cause of death of the bodies found in Kotlina/Kotlinë. These will be addressed below.

(i) Involvement of the local villagers

1438. When the Austrian crime Scene team arrived in Kotlina/Kotlinë, inhabitants of the village, mainly relatives of the missing persons, had already begun to excavate the two wells. The villagers had reached a depth of 5.8 metres in the upper well and a depth of 7.2 metres in the lower well.<sup>5509</sup> The evidence does not identify whether any, and if so what, articles or other material may have been excavated or located by the villagers of Kotlina/Kotlinë, or whether this was provided to the Austrian team. The Defence argued that this conduct of the villagers calls into question the validity of the investigation because the Law on Criminal Procedure in Serbia allowed only for competent authorities to take part in forensic examinations.<sup>5510</sup> The Defence expert witness argued that this law was not followed because villagers in clearing and extracting material from the well were “destroying important evidence”.<sup>5511</sup> To the extent to which the Law on Criminal Procedure in Serbia had formal operation, the Chamber accepts that the letter of the law was not followed in this respect. This is not surprising in the circumstances. It is possible for this reason that some material or articles relevant to the deaths in the wells may not have been discovered or had been disturbed before its discovery. The Chamber does not accept, that these factors materially affect the reliability of the findings of the Austrian or Swiss teams or of Eric Baccard.

(ii) The bodies were brought from elsewhere

1439. In making its finding about this issue the Chamber also took into account the matters discussed below. The Defence expert Zoran Stanković propounded the view that the results of the forensic examination of the Austrian team demonstrated that the men whose bodies were found in the wells did not die in the wells but were brought to the wells after death and then thrown in the wells. He supported this contention by arguing that his conclusion that the number of gunshot wounds on the bodies in the wells had far exceeded the number of spent cartridges, coupled with the amount of metal fragments found at and around the wells, jointly disclosed that the killings had not taken place in or near the wells.<sup>5512</sup> The Chamber found no merit in this argument. Its factual

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<sup>5509</sup> Exhibit P1167, p 7.

<sup>5510</sup> Defence Final Brief, para 928; Zoran Stanković, T 13415.

<sup>5511</sup> Zoran Stanković, Exhibit D926 (Expert report), p 2; Zoran Stanković, T 13415.

<sup>5512</sup> Exhibit P1167, pp 8-9, 75-76, 80; Zoran Stanković, Exhibit D926 (Expert report), pp 2, 3; Zoran Stanković, T 13416, 13419, 13490-13491; Defence Final Brief, para 931.

foundation was defective as it sought to take account of the metal fragments as being too few to be the remains, after explosions, of the missing cartridge cases, but because the precise nature and force of the explosion was not known, it would have been impossible for one to determine the quantum of those remaining metal fragments. More significantly, it ignored the existence of obvious explanations for the absence of cartridge cases from the site of the wells given the delay of some six months from the deaths to the arrival of the Austrian forensic team.

1440. The Defence expert further argued that the finding of traces of small body parts, both at the surface level and in the bottom-most layer of the wells, indicated that the remains were found elsewhere and then thrown in the wells.<sup>5513</sup> It was his contention that had the bodies been in the wells at the time of the explosion, there would have been small body parts at the surface level with the larger body parts better preserved in the lower levels of the wells.<sup>5514</sup> This argument fails to take into account, in the view of the Chamber, a number of circumstances that could explain why small body parts were found at various levels in the wells, including the use of more than one explosive device in each well which is indicated by some of the evidence.<sup>5515</sup> In this regard, the Chamber finds that there is no weight in this further argument of the Defence expert that the injuries to some of the bodies were not consistent with an explosion because of the position in which the bodies were found. The Chamber is of the opinion that crucial and material to the injuries would have been the position of those bodies in the wells at the time of the explosion and not after the explosion.<sup>5516</sup>

1441. The Defence witness appeared to the Chamber to have ignored many forensic findings which suggested a contrary view to the one he sought to propound, and to have focused on selected aspects of other forensic findings; he then speculated and endeavoured to explain the forensic findings on which he had focused, in an attempt to further justify his contention that the dead bodies were brought from elsewhere and thrown down the wells. He suggested that the presence of soot covered fabric in the vicinity of the wells could have been explained by clothing particles falling off dead bodies as they were carried to the wells and thrown in.<sup>5517</sup> Notwithstanding the lapse of six months from the deaths to the forensic examinations he was critical of the Austrian forensic team

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<sup>5513</sup> Zoran Stanković, Exhibit D926 (Expert report), pp 2-3; Zoran Stanković, T 13417, 13492-13493; Defence Final Brief, para 932.

<sup>5514</sup> Zoran Stanković, T 13417, 13492; Defence Final Brief, para 932.

<sup>5515</sup> *See supra*, paras 1115, 1125.

<sup>5516</sup> Zoran Stanković argued that the injuries to bodies 5, 12 and 13, were not consistent with the position in which the bodies were found. The blast injuries should have been on the back and not the abdominal region as that could have been protected by the ground (Zoran Stanković, D926 (Expert report), p 3; Zoran Stanković, T 13418, 13493). However, the witness acknowledged that the positions of the bodies at the time the explosions occurred could not be ascertained and this was the determining factor (Zoran Stanković, T 13493-13497). Nor, did he know what type of explosive device was used (Zoran Stanković, T 13495).

<sup>5517</sup> Zoran Stanković, Exhibit D926 (Expert report), p 2; Exhibit P1167, pp 7-8, 72, 91; Zoran Stanković, T 13414-13415, 13486-13489; Defence Final Brief, para 931.

for their lack of testing for traces of blood, human tissue and biological materials in the foliage around the wells. He then went on to contradict his own evidence by stating that the absence of forensic evidence of traces of blood, human tissue and biological matter around the wells demonstrates that the bodies could not have been subject to an explosion in the wells.<sup>5518</sup>

1442. It appeared to the Chamber that Zoran Stanković failed properly to address the forensic findings of the Prosecution witnesses which support the view that if not all, at least those men who had not already died from gunshot wounds, were indeed subject to lethal explosive force in the wells. The blackened walls in the well shafts, soil samples confirming the presence of TNT in the lower well and indicating the possibility of its presence in the upper well, the presence of TNT on metal fragments from both the lower and upper wells, the nature of the injuries to the bodies and the many other human remains in the wells, and the presence of soot covered fabric in the vicinity of the wells jointly satisfied the Chamber that the bodies were in the wells when explosives were detonated in the wells, thereby causing the deaths of the men, or of those who had not been killed when they were shot before the explosion. As indicated, the Chamber does not accept the Defence expert's contention that the forensic evidence demonstrates that the victims were killed elsewhere, brought to the wells and then thrown in.

(iii) Challenges to individual autopsy reports

1443. It is contended that the reports and findings concerning individuals at Kotlina/Kotlinë should not be relied upon because they were inconsistent. Further it is argued that the explanation provided is too brief to allow the causes of death of Izija Loku, Vejsel Vdashi and Nexhadi Kuqi to be determined. Whilst the autopsy reports might at times have been brief, it must be remembered that the expert forensic teams were working under the most difficult conditions. It is significant, in the view of the Chamber, that Eric Baccard was able to confirm the causes of death from the information provided.<sup>5519</sup> Further, the Chamber does not attach significance to the objection raised by Zoran Stanković concerning inconsistencies between the conclusions in the exhumation report and the conclusions in the autopsy report,<sup>5520</sup> for the reason that the conclusions of the exhumation reports were based on an initial finding prior to the autopsies being conducted on 13 September 1999. The autopsy report was more reliable in determining the cause of death.<sup>5521</sup> Further, the Defence expert objected to the reliability of certain reports because, in some cases, in his view, the cause of death could not be established. For example, in the case of Naser R Loku, and in other

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<sup>5518</sup> Exhibit P1167, p 7; Zoran Stanković, Exhibit D926 (Expert report), p 2; Zoran Stanković, T 13413-13414, 13485; Defence Final Brief, para 931.

<sup>5519</sup> See, Eric Baccard, Exhibit Exhibit P1139 (Expert report), pp 49-51.

<sup>5520</sup> Zoran Stanković, Exhibit D926 (Expert Report), pp 2, 4; Zoran Stanković, T 13412-13413, 13482-13485.

<sup>5521</sup> Exhibit P1167, pp 5, 12-13.

cases it was not apparent to him that account had been taken of other possible causes of death, such as the possibility that the injuries were sustained from falling down the well.<sup>5522</sup> In the circumstances, as established by the evidence, this appears fanciful, because even if this could have been the case, Serbian forces caused the victim's to fall down the well. Furthermore, the Chamber attaches no weight to the purely conjectural contention of the Defence expert that the cause of death of Naser R Loku was wrongly identified as a stab wound because, had someone wanted to kill the victim, there would have been more than the one stab wound.<sup>5523</sup> The Chamber recalls the actual finding of the Austrian Crime Scene team that the stab injury on the left side of the throat "did not damage any vital arteries".<sup>5524</sup> Thus, Zoran Stanković is raising an objection to a conclusion that is not about a cause of death.

1444. These aspects of the evidence of the Defence expert generally lacked weight because of the extent to which the witness relied on conjecture, much of which appeared rather fanciful, and because it was apparent that his approach was to concentrate on trying to identify some basis for doubt or criticism, no matter how theoretical or unrealistic. The Chamber notes that Zoran Stanković had the disadvantage that he had not examined the bodies of the deceased men and had not participated in the autopsies and the other examinations. As indicated earlier, however the expert Austrian forensic team (with Swiss assistance) reported their findings and reasons, they had the distinct advantage of direct involvement. Further, the Chamber notes that another expert, Eric Baccard, was able to draw conclusions from the report and confirm the findings made as to the causes of death.

(iv) Conclusion

1445. The Chamber accepts that the forensic evidence when taken alone, is not determinative of the cause of death of the men in the wells. In the Chamber's view the forensic evidence, in some material respects, is consistent with the evidence of eyewitness Hazib Loku about events in Kotlina/Kotlinë on 24 March 1999.<sup>5525</sup> However, the forensic evidence, together with the eyewitness account, satisfies the Chamber that the bodies of some of the victims were in the wells when explosives were detonated in the wells, thereby causing the deaths of the men, or of those who had not been killed when they were shot before the explosion. By virtue of these two separate sources of evidence, and despite the incompleteness of each, the Chamber is satisfied that the 22

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<sup>5522</sup> In relation to Neshat Rexha and Atmir Loku, Zoran Stanković testified that given the area and large amounts of rocks the possibility that as the bodies went down the well they hit rocks and this resulted in injury, Exhibit P1167, pp 15-16, 31-32; Zoran Stanković, Exhibit D926 (Expert Report), p 3; Zoran Stanković, T 13420, 13422, 13503-13504.

<sup>5523</sup> Exhibit P1167, pp 32-33; Zoran Stanković, Exhibit D926 (Expert Report), p 4; Zoran Stanković, T 13423-13424, 13501.

<sup>5524</sup> Exhibit P1167, p 33.

identified men were forced to go to the wells site by Serbian forces and were alive when thrown by Serbian forces into the wells, although they had been beaten and some had also been shot at the wells site. Quite distinctly, the Chamber is further satisfied by the forensic evidence that the three men, including Idriz Kuçi, whose bodies were exhumed from the mosque died as a result of gunshot wounds.

8. Slatina/Slatinë and Vata/Vataj, Kačanik/Kaçanik municipality

1446. The Chamber found earlier in this Judgement that on 13 April 1999, four men from the village of Vata/Vataj were captured and killed by VJ soldiers that day.<sup>5526</sup> No finding could have been made by the Chamber about the circumstances of the deaths of seven other unidentified bodies brought to Vata/Vataj from the surrounding areas.<sup>5527</sup>

(a) The report of Eric Baccard

1447. Eric Baccard has reported on the underlying forensic work of a Canadian forensic team and the Austrian forensic team, who conducted autopsies between 22 and 24 July 1999 on bodies from Vata/Vataj.<sup>5528</sup> Eleven bodies were exhumed from the small cemetery in the village. The report of the Canadian forensic team revealed that the graves were marked with the names of the victims and the identities of these 11 bodies were recorded in the report.<sup>5529</sup> These victims included four men who, in the Chamber's finding, were killed by VJ forces on 13 April 1999: Mahmut Caka, Hebib Lami, Brahim Lami and Rraman Lami.

1448. Autopsies were carried out on 10 of the exhumed bodies, they were all in a state of putrefaction; none were mummified or skeletonised.<sup>5530</sup> The gender of all the bodies was male and they were aged between 15 and 52 years old. In all cases, the cause of death, including the above named four victims, was a result of gunshot wounds.<sup>5531</sup> The victims sustained variously one to five gunshot wounds; 63% of the gunshot wounds were to the trunk; 37% of the gunshots were fired

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<sup>5525</sup> See *supra*, para 1120, 1125.

<sup>5526</sup> See *supra*, para 1138.

<sup>5527</sup> See *supra*, para 1139.

<sup>5528</sup> Eric Baccard wrote in his report (Exhibit P1139, p 57) that he based his examination on the Canadian forensic report (Exhibit P1168), however, it is evident that the autopsies were reported by the Austrian forensic team, entitled Lama, (Exhibit P1169) and this was the basis for his conclusions. The Austrian report provides details of 10 autopsies and may have been included in the Canadian Report. The Chamber will treat the two reports as one.

<sup>5529</sup> Eric Baccard, Exhibit P1139 (Expert report), p 57; Eric Baccard, T 7694-7695; Exhibit P1168, K0144172.

<sup>5530</sup> An autopsy was not conducted on the body of a member of the KLA as the investigators held the view it was not within their mandate to exhume bodies of combatant status. Eric Baccard, Exhibit P1139 (Expert report), p 56; Exhibit P1169, K0144158.

<sup>5531</sup> Exhibit P1169, K0144719, K0144735, K0144739, K0144167.

to the back and 23% to the front of the body. In three cases the appearance of the wound suggested long range fire.<sup>5532</sup>

1449. The Chamber has relied on the report of the Austrian and Canadian forensic teams as confirmed by Eric Baccard.

(b) The Danish forensic team report

1450. In relation to the murders charged in the Indictment in Slatina/Slatinë, the Chamber also received the report of a Danish Forensic team which conducted autopsies in Slatina/Slatinë from October 1999. This report related to autopsies that were conducted by forensic pathologist Hans P. Hougen on the bodies of three persons, listed in Schedule K of the Indictment as Qemajl Deda, Nazmi Elezi and Vesel Elezi.<sup>5533</sup> The Chamber has not received any evidence of the killing of these three persons, or the exhumation and identification of the bodies. This report is not included in Eric Baccard's analysis.<sup>5534</sup> The Chamber is unable to make findings related to their killing or cause of death.

9. Dubrava/Lisnaje, Kačanik/Kaçanik municipality

1451. The witness who had been listed to give evidence about these events was withdrawn from the Prosecution's witness list.<sup>5535</sup> No other evidence was called in support of these allegations.<sup>5536</sup> The Chamber is therefore unable to make findings.

10. Podujevo/Podujevë

1452. In an earlier section of this Judgement, the Chamber found that on 28 March 1999, a total of 14 women and children of the Bogujevci, Lugaliju and Duriqi families were killed in a courtyard in Podujevo/Podujevë town by members of the Serbian forces. In particular members of the Scorpions paramilitary unit attached to the SAJ of the MUP were involved in the shooting. Five of these women and children survived the incident.<sup>5537</sup> The Chamber also found that two elderly men,

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<sup>5532</sup> Eric Baccard, Exhibit P1139 (Expert report), pp 56-59.

<sup>5533</sup> Exhibit P1170 (Danish Forensic Report).

<sup>5534</sup> Eric Baccard concluded that all bodies died as a result of gunshot wounds, yet, in the Danish Forensic Report, the cause of death in one case was "possibly hit in the head by grenade" and in another not only gunshots but also a stab wound to the chest and an incised wound to the throat, Exhibit P1170, K0149424, K0149430.

<sup>5535</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Confidential Annex I, Pre-Trial Brief, Prosecution's Submission Pursuant to Rule 65ter(e) with Confidential Annex I, Annex II and Annex III", 1 September 2008, para 237; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Prosecution's Notice in Respect of its Rule 65ter Witness List with Annex A", 12 December 2008.

<sup>5536</sup> *See supra*, para 1136.

<sup>5537</sup> *See supra*, paras 1241-1258.



Hamdi Duriqi and Selmon Gashi, were shot by Serbian forces in a coffee-shop on the street outside the compound in which the 19 women and children were shot.<sup>5538</sup>

1453. The evidence includes an OSCE forensic report in respect of bodies exhumed at Podujevo/Podujevë in July 1999 and a British forensic report in respect of bodies exhumed at Podujevo/Podujevë in August 2000.<sup>5539</sup> In his evidence, which is accepted by the Chamber, Eric Baccard commented upon the report prepared by the British forensic team. The Chamber also accepts the reports of the OSCE and British forensic team as reliable and credible.

1454. On 19 July 1999, the OSCE team observed and documented the exhumation of 19 bodies alleged to have been killed in Podujevo/Podujevë on 28 March 1999.<sup>5540</sup> The bodies were buried in a line and each grave was marked with a piece of wood and numbered consecutively.<sup>5541</sup> Family members identified the bodies by virtue of the clothing on the bodies and information provided by persons who had assisted in the initial burial. The majority of the bodies were in a state of extreme decomposition.<sup>5542</sup> No autopsies were conducted. The bodies were immediately reburied in another graveyard.<sup>5543</sup> All 19 bodies were identified.<sup>5544</sup> Of these, 14 bodies were of the women and children who the Chamber has found were shot and killed in the courtyard in Podujevo/Podujevë on 28 March 1999.<sup>5545</sup> An additional two bodies were identified as Hamdi Duqiri and Selmon Gashi, who had been shot in the coffee shop in Podujevo/Podujevë that same day.<sup>5546</sup> No allegation is made in the Indictment about the deaths of the other three other bodies and no finding is made by the Chamber in relation to them.

1455. The British forensic team arrived in Podujevo/Podujevë on 24 August 2000 and exhumed the bodies of eight of the 14 women and children killed on 28 March 1999 in the courtyard of the house.<sup>5547</sup> Professor Peter Vanezis conducted autopsies on the eight bodies.<sup>5548</sup> No information was provided why autopsies were conducted on only eight of the 14 bodies.

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<sup>5538</sup> See *supra*, para 1246.

<sup>5539</sup> Exhibit P1150 (OSCE exhumation report); Exhibit P1142 (British Forensic Report).

<sup>5540</sup> The OSCE report states that these 19 bodies had been buried by unknown locals and marked with numbered pieces of wood. The family members of the victims wanted them to be buried properly and so set the 19 July 1999 as the date for exhumations (Exhibit P1150, 04603908).

<sup>5541</sup> Exhibit P1150, 04603908.

<sup>5542</sup> Exhibit P1150, 04603908-04603909.

<sup>5543</sup> Exhibit P1150, 04603913.

<sup>5544</sup> The Chamber notes that all 14 of the victims listed in Schedule L are listed in Exhibit P1150. In addition, Exhibit P1150 contains 5 additional individuals not contained in Schedule L. These are Hamdi Duriqi, Selmon Gashi, Idriz Tahir, Selmon Tahir, and Feriz Fazliu. As established in Chapter V, the Chamber has also found it established that Hamdi Duriqi and Selmon Gashi were killed on 28 March 1999 (Exhibit P1150, 04603992).

<sup>5545</sup> The 14 victims were identified by family members in Podujevo/Podujevë, see Exhibit P1150, 04603910-04603913.

<sup>5546</sup> Exhibit P1150, 04603911.

<sup>5547</sup> Exhibit P1142, K0290994-K0290995.

1456. The Chamber accepts that the autopsy reports of Professor Peter Vanezis were in a standard form and that the autopsies were carried out in accordance with international standards.<sup>5549</sup> The reports of the autopsies conducted by Professor Peter Vanezis are accepted by the Chamber as reliable.

1457. The Chamber finds, on the basis of the autopsy reports received into evidence, that all eight bodies re-exhumed in August 2000, died as a result of gunshot wounds to the chest, neck and head. Two types of bullets were retrieved from the eight bodies.<sup>5550</sup> These findings accord with the eyewitness accounts accepted by the Chamber of the shooting of the women and children in the courtyard or compound.<sup>5551</sup>

1458. With respect to the remaining eight bodies, six being the remains of persons who were found earlier in this Judgement to have been killed in the courtyard and the remaining two bodies being those of the elderly men found to have been killed in the coffee shop, the Chamber has not received any forensic evidence in relation to their cause of death. However, on the basis of the Chamber's earlier findings, it is satisfied that the six persons similarly died in the courtyard on 28 March 1999 as a result of being shot by Serbian forces, including Scorpions.<sup>5552</sup> Moreover, the Chamber also accepts that the two elderly men died as a result of being shot by Serbian forces at the coffee-shop on 28 March 1999.<sup>5553</sup>

## **B. Mass grave sites in Serbia**

1459. In 2001, a number of clandestine mass graves were discovered at 13 *Maj* Centre in Batajnica near Belgrade, a training ground for the SAJ of the MUP ("Batajnica SAJ Centre"), Petrovo Selo PJP Centre, and in an uninhabited area by Lake Perucac in Serbia.<sup>5554</sup> The Serbian authorities reportedly exhumed 705 remains from the Batajnica SAJ centre; 75 remains from Petrovo Selo; and

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<sup>5548</sup> While Eric Baccard mistakenly referred to 19 bodies, the British forensic report and the autopsy reports admitted into evidence, confirms that only eight bodies were exhumed and examined by the British forensic team. (Eric Baccard, T 7674-7675; Exhibit P1142, K0290994-K0290995). The Chamber does not find that this error impacts on the reliability of the other observations of Eric Baccard about these exhumations and autopsies.

<sup>5549</sup> With respect to the autopsy report of Shehide Bogujevci (Exhibit P1141, p 8) there was no identification whether the presence of modified blood in the right chest cavity indicated an *ante* or *peri* mortem injury, however, the cause of death was established to be multiple gunshot wounds so this is not a material omission (Eric Baccard, T 7675-7676).

<sup>5550</sup> Exhibit P1143, K0291140; Exhibit P1144, K0291162; Exhibit P1147, K0291052; Exhibit P1149, K0291096; Exhibit P1148, K0291074; Exhibit P1141, K0291118; Exhibit P1146, K0291030; Exhibit P1145, K0291008.

<sup>5551</sup> It appears to the Chamber, as suggested by Eric Baccard, that there is an error, affecting the identifications of two of the victims, in the autopsy reports of Shekate Bogujevic, body identification JS001-007B, and autopsy report of Nora Selatin Bogujevci, body identification JS001-0008B (Eric Baccard, T 7686-7688; Exhibit P1143, p 2; Exhibit P1144, p 2). The Chamber notes and acknowledges that this accounts for the discrepancy between the date of birth and the age range in these reports (Eric Baccard, T 7687-7688). The Victim Chart, related to Podujevo/Podujevo, annexed to this Judgement reflects this understanding. *See infra*, Schedule: Victim Charts.

<sup>5552</sup> *See supra*, para 1259.

<sup>5553</sup> *See supra*, para 1246.

48 remains from Lake Perucac.<sup>5555</sup> The vast majority of these remains were identified by the Serbian authorities, using DNA analysis, as persons from the region of Kosovo, and having been reported as missing or killed during the conflict in Kosovo between March and June 1999.<sup>5556</sup> Examinations and autopsies of these remains were carried out at the time, under the auspices of the judicial and forensic authorities of Serbia with a number of observers from local and international agencies.<sup>5557</sup> With respect to the grave sites of Batajnica and Lake Perucac the Serbian forensic authorities reported that they could not ascertain the cause of death in 100% of the cases, while at the Petrovo Selo site a cause of death was reported in some 50% of the cases.<sup>5558</sup>

1460. Following the identification and examination of these bodies, pursuant to an agreement between the FRY and UNMIK, the remains were repatriated to Kosovo and delivered over to OMPF.<sup>5559</sup> OMPF then transported the remains to the Orahovac/Rahovec mortuary facility where OMPF undertook a forensic inspection and re-examination of the remains.<sup>5560</sup> OMPF reported receiving the remains of 744 individuals from 13 *Maj* Centres in Batajnica; 61 individuals from Petrovo Selo; and 84 individuals from Lake Perucac.<sup>5561</sup> OMPF was able to determine the most probable cause of death in 506 of the 744 cases from Batajnica, 53 of the 61 cases from Petrovo Selo, and 29 of the 84 cases from Lake Perucac.<sup>5562</sup>

1461. Much attention has been given, in evidence and submissions, to the forensic investigations by the Serbian authorities and to further examinations by OMPF. As apparent above, there is a discrepancy in the number of bodies reported to have been exhumed by the Serbian authorities and reported as received and examined by OMPF.<sup>5563</sup> A number of factors may explain this difference

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<sup>5554</sup> Jose Pablo Baraybar, Exhibit P453, para 16; Jose Pablo Baraybar, T 2523-2524

<sup>5555</sup> The inconsistency between these number of remains exhumed from the mass grave and those recorded by OMPF will be discussed below, *see infra*, para 1461; Jon Sterenberg, Exhibit P815 (Expert report), pp 4, 28, 34.

<sup>5556</sup> Jose Pablo Baraybar, Exhibit P453, para 17.

<sup>5557</sup> Jose Pablo Baraybar, Exhibit P453, paras 16, 25; Jose Pablo Baraybar, T 2688.

<sup>5558</sup> The cause of death was reportedly established for 32 out of the 61 remains from Petrovo Selo. Issues related to the inconsistencies in the Serbian authorities findings as to the cause of death will be discussed below, *see infra*, para 1462-1468; Jose Pablo Baraybar, Exhibit P454 (Expert report), p 10.

<sup>5559</sup> The level and manner of cooperation between the Serbian government and the Office for Missing Persons and Forensics (“OMPF”) is based mainly on three signed protocols, which grew out of the “Common Document” agreed upon by the then Federal Republic of Yugoslavia (“FRY”) and United Nations Interim Administration Mission in Kosovo (“UNMIK”) on 5 November 2001 (Jose Pablo Baraybar, Exhibit P453, para 20). These protocols were based on the principle of the open exchange of information between the two authorities, including the protocol on exchange of forensic experts and expertise and the protocol on cross-boundary repatriation of identified remains (Jose Pablo Baraybar, Exhibit P453, paras 21, 23, 27-29). The repatriation of remains continued until early 2006 (Jose Pablo Baraybar, T 2526). *See*, Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5263-5264; *See also*, Dušan Dunjić, T 3240-3241.

<sup>5560</sup> Jose Pablo Baraybar, Exhibit P453, paras 25, 29; Jose Pablo Baraybar, T 2529.

<sup>5561</sup> The inconsistency between these number of remains exhumed from the mass graves and those recorded by OMPF will be discussed below, *see infra*, para 1461; Jose Pablo Baraybar, Exhibit P455.

<sup>5562</sup> Jose Pablo Baraybar, Exhibit P455.

<sup>5563</sup> Jon Sterenberg who was present at the exhumations reported that 705 bodies were exhumed from Batajnica, 75 bodies from Petrovo Selo and 48 bodies from Lake Perucac. Jose Pablo Baraybar who was responsible for the repatriation of the remains from Serbia to Kosovo (discussed below) recorded 744 remains found in Batajnica,

including the omission from the report of the Serbian authorities of the remains exhumed from two of the grave sites at Batajnica (6 and 8),<sup>5564</sup> the reference to “complete bodies” in the reports on the Serbian work, whereas in many instances there were only partial remains of a body, and inconsistencies between labelled and actual contents of body bags repatriated to Kosovo that included commingled body parts.<sup>5565</sup> For these reasons, and given that the Chamber accepts that the most probable cause of death could be as ascertained by OMPF, the figures of OMPF will be relied upon (as discussed below). Nevertheless, the records of the Serbian authorities will be included below in the discussion of the investigations and exhumations at the three mass grave sites.<sup>5566</sup>

### 1. Establishing the cause of death

1462. The remains exhumed from Batajnica, Petrovo Selo and Lake Perucac were repatriated to Kosovo after they had been identified by the Serbian authorities. In Kosovo, OMPF undertook what was intended merely as a cross-reference of the inventory of remains received from Serbia. Every body bag that was handed over to OMPF in Kosovo was accompanied by an autopsy report from the Serbian authorities and a death certificate.<sup>5567</sup> However, when inconsistencies were found between the remains in some body-bags and what was stated in the corresponding report, it became necessary for OMPF to undertake a second, albeit more cursory, forensic examination. This was conducted by a multi-disciplinary team of pathologists, anthropologists, radiographers, scene of crime officers, and as required even an odontologist.<sup>5568</sup> OMPF then attached to the Serbian authorities’ autopsy report and death certificate, its own short summary of the second examination and a second death certificate, which stated, in most cases, the most probable cause of death and included the name of the victim.<sup>5569</sup> The head of OMPF, forensic anthropologist, Jose Pablo Baraybar, prepared a report of the findings of the OMPF expert team.<sup>5570</sup>

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61 in Petrovo Selo and 84 from Lake Perucac (Jose Pablo Baraybar, Exhibit 454, p 10; Jon Sterenberg, Exhibit 815 (Expert report), pp 4, 28, 34).

<sup>5564</sup> The Chamber notes that in total the Serbian authorities exhumed at least 705 remains from the various grave sites at Batajnica. This figure did not include any of the human remains that were exhumed in Batajnica 6 and 8 (Jon Sterenberg, Exhibit P815 (Expert report), p 4).

<sup>5565</sup> For example, at times, the remains of multiple individuals were found within the same bag which according to the corresponding report only contained the remains of one individual. This will be discussed in more detail below, *see infra*, para 1462; Jose Pablo Baraybar, T 2526, 2664-2666.

<sup>5566</sup> The Chamber notes that the autopsy reports received may be relied upon in cases where the cause of death was established by the Serbian authorities, *see infra*, para 1463.

<sup>5567</sup> Jose Pablo Baraybar, Exhibit P453, paras 25, 29; Jose Pablo Baraybar, T 2526-2529, 2532-2533, 2663; *See*, for example, Exhibit P457-Exhibit P470.

<sup>5568</sup> Jose Pablo Baraybar, T 2527, 2529; Exhibit P456; Exhibit P472; Exhibit P473; Exhibit P474; Exhibit P475.

<sup>5569</sup> Jose Pablo Baraybar, Exhibit P453, paras 25, 29; Jose Pablo Baraybar, T 2528-2532, 2663-2664; Exhibit P456 (for example, pp 1-3, example of death certificate, cause of death and summary of findings of forensic inspection); Exhibit P472; Exhibit P473; exhibit P474; Exhibit P475.

<sup>5570</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report); Jose Pablo Baraybar, Exhibit P455.

1463. As has been indicated above, the Serbian forensic teams were not prepared to express a conclusion as to the cause of death in any of the cases at Batajnica and Lake Perucac and the majority of the other cases. A number of factors contributed to their position. In particular, and by way of illustration, in the view of the Chamber, the position the Serbian authorities seemed to have taken was that to be forensically certain of the cause of death, it was necessary not merely to identify injuries that could or would have caused death, but also to be able to exclude all other possible causes.<sup>5571</sup> In the majority of the cases above mentioned, the remains that were exhumed were skeletal or badly affected by decomposition; in other cases the remains were only parts of bodies. In those circumstances it appeared that the prevailing view of the Serbian authorities was that the cause of death could not have been forensically determined. They concluded that the absence of vital bodily organs and tissue or their decomposition precluded not only their ability to determine the cause of death but also to explore all other possible causes. They maintained this standard even in some cases where skeletal remains revealed a gunshot wound to the head or some other injury which, in the absence of some other cause, would be the obvious cause of death. Hence, while in some cases the Serbian forensic teams have recorded the most probable fatal injuries to the skeleton, these were not recorded as relevant to the final finding as to the cause of death.<sup>5572</sup> They further contended that only matters that would have been determined by actual forensic examination of the remains of an individual should properly be taken into account. On this basis it appears it was not considered relevant that many bodies were found together, each of which had a gunshot wound to the head. While this position may be appropriate under the legal or forensic professional procedures in Serbia, and may be justified by accepted distinctions between the roles of the Judiciary or Prosecutor on the one hand, and a forensic scientist on the other, which are said to prevail in Serbia, as discussed elsewhere, the process of the judicial determination of the cause of death in this Tribunal, in appropriate cases, may properly involve regard to evidentiary factors in addition to those considered by the Serbian forensic authorities in this case. Nevertheless, the Chamber has been able to rely on some of the Serbian autopsy reports for individuals exhumed from Petrovo Selo where the most probable cause of death was ascertained and was consistent with the findings made earlier in this Judgement as to the circumstances of the killing of these individuals.

1464. OMPF followed procedures which, in some respects were not restricted by the views of the Serbian forensic team above described. For example, in the absence of any other indications, the identification of death causing injuries, such as a gunshot wound to the head, has been accepted

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<sup>5571</sup> See, Dušan Dunjić, T 3255-3259; See also, Branimir Aleksandrić, T 3015-3017.

<sup>5572</sup> See, Exhibit P458; See also, Exhibit P461; See also, Exhibit P462; See also, Exhibit P463; See also, Exhibit P464; See also, Exhibit P465; See also, Exhibit P466; See also, Exhibit P467; See also, Exhibit P468; See also, Exhibit P469; See also, Exhibit P470.

forensically as the most probable cause of death. It is for the Chamber to evaluate whether the relevant circumstances established by the evidence, which include the most probable cause of death as determined on forensic examination, enables the Chamber to be satisfied beyond reasonable doubt of the actual cause of death. The circumstances relevant to each case will differ, but factors which may be relevant to this decision by the Chamber include what is established of the circumstances in which the victim suffered injuries capable of causing death, the apparent health of the victim at that time, the circumstances in which the body of the victim were found, other identified injuries to the victim, and whether other victims died at the same time and place from similar injuries.

1465. Much of this Judgement is concerned with the establishment of such matters, albeit in many cases dealing with groups of victims rather than individual cases in isolation. Further, with particular reference to the forensic examinations by the OMPF team of the bodies in this case which were all exhumed from clandestine mass graves located at Batajnica SAJ Centre, Petrovo Selo PJP Centre or Lake Perucac, the Chamber accepts that gunshot wounds were found to be the cause of death of 531 of the 535 persons for whom the cause of death could be established by OMPF from Batajnica and Lake Perucac; and of 53 of 61 persons from Petrovo Selo.<sup>5573</sup> It is also noted that of the remains of the 53 persons from Petrovo Selo, 20 had sustained at least one gunshot wound to the head, 21 suffered at least one gunshot wound to the chest, five to the upper limbs, and 13 to the lower limbs. Some had multiple gunshot wounds.<sup>5574</sup>

1466. The Chamber also accepts the evidence that the distribution of the wounds of these persons, across anatomical areas, is generally consistent with the wounding by gunshot of persons who are not defending themselves, or are unable to do so, rather than in the case of injuries sustained in an armed confrontation between two armed groups.<sup>5575</sup> It is also observed that the OMPF expert team was not able to determine the probable cause of death in the remaining cases because the remains were fragmented, incomplete, or lacked visible injuries.<sup>5576</sup>

1467. Not all autopsy reports from the Serbian authorities, nor from the OMPF, were tendered in evidence. Consequently, in situations where no autopsy report for an alleged victim has been received, the Chamber is unable to make a finding as to the cause of death solely on the report and statistics of Jose Pablo Baraybar. In some of these situations, other evidence available, such as eyewitness testimony and exhibits accepted by the Chamber has been sufficient to establish the

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<sup>5573</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report), pp 14-15; Jose Pablo Baraybar, Exhibit P455 (Corrigendum); Jose Pablo Baraybar, T 2538.

<sup>5574</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report), p 15.

<sup>5575</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report), pp 14-17. This will be discussed in more detail below, *see infra*, paras 1474-1476.

cause of death. Confirmation of these findings have been discussed in the relevant municipality sections.<sup>5577</sup> The Chamber also notes, that for some of the bodies exhumed from Petrovo Selo, for which no reports from OMPF were received, the Chamber has received some autopsy reports of the Serbian authorities where the most probable cause of death was ascertained. In these situations, and as the findings correspond with eyewitness accounts, and as in the view of Jose Pablo Baraybar there were no major discrepancies in the Serbian and OMPF autopsy findings where the cause of death was established, the Chamber has relied upon these findings of the Serbian authorities.<sup>5578</sup>

1468. There were numerous objections to the OMPF expert forensic team's conclusions as to the most probable cause of death in the above mentioned cases. These issues will be considered below.

(a) Qualifications of a forensic anthropologist

1469. Jose Pablo Baraybar, a forensic anthropologist, was the leader of the OMPF team and, as such, signed the OMPF report. The Defence argues that a forensic anthropologist does not have the required expertise or qualifications to make determinations of the cause of death.<sup>5579</sup> The qualifications of a forensic anthropologist differ from those of a forensic pathologist. In particular forensic anthropologists are not normally qualified to practise medicine. Their particular skills are more related to situations such as where human remains are skeletal or there is minimal soft tissue. It is not surprising, therefore, that the Serbian forensic teams, the ICMP and the OMPF forensic teams all included anthropologists, some of whom were also medical doctors, to assist in the determination of the cause of death.<sup>5580</sup> The Chamber considers that the OMPF team, while led by Jose Pablo Baraybar, consisted of a variety of forensic experts, including pathologists, anthropologists, radiographers, crime scene officers and odontologists; all of these areas of expertise were relevant and of assistance in establishing the cause of death of the bodies that were repatriated to Kosovo from the mass grave sites in Serbia.<sup>5581</sup> The Chamber accepts that, as leader of the OMPF team, Jose Pablo Baraybar acted with the assistance and advice of appropriately qualified members of his team in reaching conclusions in respect of the various remains and reporting on the work of the team. In the Chamber's view the same applied to the other teams. No one person, whether qualified as a forensic pathologist, forensic anthropologist or in one of the other areas of forensic expertise, was qualified to deal with all issues presented by the many and

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<sup>5576</sup> Jose Pablo Baraybar, T 2665-2666.

<sup>5577</sup> See *supra*, paras 485-486, 491, 493, 495, 620, 629, 632, 633, 634, 683, 898, 998-992.

<sup>5578</sup> The details are provided for in the Victim Chart related to Izbica/Izbicë, annexed to this Judgement, see *infra*, Schedule: Victim Chart; Jose Pablo Baraybar, Exhibit P454 (Expert report), p 14.

<sup>5579</sup> Dušan Dunjić, T 3252; Zoran Stanković, Exhibit D926 (Expert report), p 14; Zoran Stanković, T 13468; Defence Final Brief, para 949.

<sup>5580</sup> Dušan Dunjić, T 3272-3273.

<sup>5581</sup> Jose Pablo Baraybar, Exhibit P453, p 3; Jose Pablo Baraybar, T 2527.

varied remains which had to be examined in this case. The Chamber accepts that the reports signed by Jose Pablo Baraybar were in fact the product of the work of a team of appropriate experts, and sees no reason not to rely on the work because of the particular area of expertise of the leader.

(b) State of the remains

1470. The cause of death of decomposed bodies or of skeletal remains cannot be determined with absolute certainty by forensic examination. The absence of organs and tissue precludes this. Most bodies found in the mass graves, in Batajnica, Petrovo Selo and Lake Perucac were decomposed or skeletal. Nevertheless, the Chamber accepts from the evidence that in many cases, indeed in the majority of those relevant in this case, the most probable cause of death could have been ascertained.<sup>5582</sup> Jose Pablo Baraybar explained, and his explanation is accepted by the Chamber, that in many cases the most probable cause of death could have been established by distinguishing blunt force trauma from gunshot wounds, having regard to the effect of the impact of each of these on bones.<sup>5583</sup> This distinction also assists in the identification of injuries caused *post-mortem* as a result of exhumations and (in the present circumstances) the use of an excavator.<sup>5584</sup>

1471. It was also argued by the Defence that where bodies that had been in water for over two months, as was the case at Cirez, the cause of death could not be established merely by an autopsy.<sup>5585</sup> Dušan Dunjić suggested that bodies which had been in water for some time would require a specific analysis to establish the cause of death.<sup>5586</sup> Whether or not this is the case, as to which many factors would need to be weighed, the Chamber notes that the Prosecution did not lead any evidence in relation to the Cirez crime site so that the Defence contention is of no direct relevance in this case. In relation to the general remarks of Dušan Dunić, the Chamber does not find that this affects the findings of OMPF in relation to bodies exhumed in Batajnica, Petrovo Selo and Lake Perucac.

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<sup>5582</sup> Zoran Stanković initially objected to the finding of the cause of death, however, when it was put to him that the OMPF identified the most probable cause of death, not the absolutely certain cause, he agreed with the findings. Zoran Stanković, T 13544-13545; Jose Pablo Baraybar, T 2658-2660; Branimir Aleksandrić, T 3015-3017, 3022; Dušan Dunjić, T 3254-3257.

<sup>5583</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report), pp 7-8; Jose Pablo Baraybar, T 2535-2536; Dušan Dunjić, T 3258-3259. Jose Pablo Baraybar explained that blunt force trauma on bone is a “slow load”, meaning that the velocity involved is quite low and applied over a large area (Jose Pablo Baraybar, T 2535). This type of trauma can be distinguished from gun-shot trauma, which is high velocity trauma involving a much faster speed and effects a smaller part of the body (Jose Pablo Baraybar, T 2535). Blunt force trauma causes a deformation of the bone, while gun-shot trauma would perforate a bone and destroy it, making it break automatically (Jose Pablo Baraybar, T 2535-2536). Moreover, the Defence forensic expert, Zoran Stanković, acknowledged that gun-shot wound injuries on bones have certain characteristics that cannot be confused with trauma caused by blunt force (Zoran Stanković, T 13543-13544).

<sup>5584</sup> Jose Pablo Baraybar, T 2537; Dušan Dunjić, T 3278-2379, 3287-3289, 3294-3296.

<sup>5585</sup> Zoran Stanković, Exhibit D926 (Expert report), p 5; Zoran Stanković, T 13431-13432; Exhibit D924, pp 4-8, 56, 58; Defence Final Brief, paras 938-941.

<sup>5586</sup> Dušan Dunjić, T 3260-3261.



(c) The most probable cause of death

1472. The Defence attempted to challenge the credibility of Jose Pablo Baraybar and his report as to the most probable cause of death of human remains in this case, by putting to him aspects of a report he had made in another case. It was argued by the Defence expert Zoran Stanković that in that other case Jose Pablo Baraybar's report was based on assumptions rather than facts.<sup>5587</sup> The Chamber observes that its primary concern is with this case, rather than different circumstances in another case. Jose Pablo Baraybar explained, persuasively in the view of the Chamber, however, that when dealing with an extremely decomposed body necessarily it is the most probable cause of death, and not the mechanism of death, which is being determined. It was his contention that in such circumstances the context may also need to be taken into account. Hence, by way of examples, Baraybar suggested that it could be accepted that bodies found in mass graves did not get there themselves, and a body with a blindfold and hands tied behind its back is not a case of suicide.<sup>5588</sup> He went on to propose that in some cases a conclusion as to the cause of death of bodies in mass graves could be supported by a finding that the number of victims found in a grave, corresponded with the number of people killed in a specific village. Baraybar argued that these examples illustrated ways in which the context could be taken into account by a forensic physician when reaching conclusions as to the most probable cause of death.<sup>5589</sup>

1473. While these views and illustrations had no direct application in this case, the matters advanced by the Defence have not, in the Chamber's view, detracted from the credibility of Jose Pablo Baraybar.

(d) Determination that victims were not participating in hostilities

1474. Jose Pablo Baraybar testified that in traditional armed conflict, shrapnel was the primary cause of injury or death, followed by gunshot wounds,<sup>5590</sup> and that the distribution of the gunshot wounds in traditional armed conflict was most commonly to the limbs, followed by the trunk and then the head.<sup>5591</sup> He also stated that when one group was armed and the other was not, the distribution of gunshot wounds was reversed and the majority of injuries were sustained to the head.<sup>5592</sup> The head was the smallest area of the body, so that a high number of injuries to the head

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<sup>5587</sup> Jose Pablo Baraybar, T 2668; Zoran Stanković, D926 (Expert report), pp 14, 15; Zoran Stanković, T 13469, 13474, 13475-13476, 13539-13540, 13541-13543; Exhibit D64, pp 3, 9, 19, 25; Defence Final Brief, para 950.

<sup>5588</sup> Jose Pablo Baraybar, T 2668-2669.

<sup>5589</sup> Jose Pablo Baraybar, T 2660-2661.

<sup>5590</sup> Jose Pablo Baraybar, T 2545-2546, 2549, 2657-2659.

<sup>5591</sup> Jose Pablo Baraybar, T 2546, 2653-2654.

<sup>5592</sup> Jose Pablo Baraybar, T 2546, 2654.

was not to be expected unless the shots were purposely inflicted in that specific area,<sup>5593</sup> a situation usually found when the shooting was not opposed.

1475. In furtherance of this position it was noted that 300 out of the 828 bodies found in Batajnica and Lake Perucac had sustained gunshot wounds to the head, 323 bodies had gunshot wounds to the chest, 116 to the upper limbs and 153 to the lower limbs.<sup>5594</sup> For the Petrovo Selo victims, out of the 61 bodies exhumed, 20 victims sustained at least one gunshot wound to the head, 21 to the chest, 5 to the upper limbs and 13 to the lower limbs.<sup>5595</sup>

1476. It was advanced, therefore, by Jose Pablo Baraybar, that it was probable that the victims found in the mass graves in Serbia were not participating in a confrontation between two armed groups.<sup>5596</sup> This view appeared to the Chamber however, to fall short of being a universal truth. A number of factors could well influence the anatomical distribution of gunshot wounds.<sup>5597</sup> Nevertheless, in the view of the Chamber in cases where other evidence demonstrated that victims exhumed from these mass grave sites were not armed, the anatomical distribution of the gunshot wounds did not serve to call in question the evidence that they were not armed. Nevertheless, if Jose-Pablo Baraybar's contention were to be accepted, in the view of the Chamber the anatomical distribution of gunshot wounds of the bodies exhumed at Batajnica, Petrovo Selo and Lake Perucac was consistent with the victims being unarmed. That observation having been made, the Chamber is not able to see that this issue is of any greater significance. This is not an issue which the Chamber has considered in relation to its findings as to the cause of death of victims.

(c) Keyhole injuries

1477. The Defence expert Zoran Stanković argued that a conclusion made in the OMPF report in Case Ba-12 of Lirie Berisha (named in Schedule D of the Indictment), that the cause of death was a

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<sup>5593</sup> Jose Pablo Baraybar, T 2547.

<sup>5594</sup> The Chamber notes that this figure does not correspond with the number of bodies exhumed from Batajnica and Lake Perucac because some bodies sustained more than one gunshot wound, Jose Pablo Baraybar, Exhibit P454 (Expert report), p 15.

<sup>5595</sup> The Chamber notes that this figure does not correspond with the number of bodies exhumed from Petrovo Selo (61 bodies) because some bodies sustained more than one gunshot wound, Jose Pablo Baraybar, Exhibit P454 (Expert report), p 15; Jose Pablo Baraybar, T 2550.

<sup>5596</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report), pp 15, 16-17; Jose Pablo Baraybar, T 2546-2547, 2657-2661.

<sup>5597</sup> The Chamber notes that the Defence expert Zoran Stanković criticised the work of Jose Pablo Baraybar and his reliance on documentation from conflicts in Afghanistan, Cambodia or the Gulf war where heavy weaponry was used. He argued that this could not be relied upon to draw conclusions in a forensic report about Kosovo where the only weapons used were hand-held fire-arms, mines and explosives (Zoran Stanković, T 13473; Zoran Stanković, Exhibit D926 (Expert report), p 14). The witness did not know of any tanks, howitzers or large calibre weapons being used during the conflict in Kosovo. It was the basis of his criticism that heavy weaponry was not used in Kosovo. The basis for his understanding that heavy weaponry was not used was that it would have been contrary to the orders issued by the State to Serbian forces at the time (Zoran Stanković, T 13553-13554). The Chamber is not at all impressed by the criticism of Zoran Stanković, as there is overwhelming evidence of heavy weaponry,

“keyhole” gunshot wound through the head was incorrect. Stanković contended that as the head was burnt and there was no blood discolouration on the skull, the wound was not from a gunshot.<sup>5598</sup> He did acknowledge, however, that to be certain that the wound was not from a gunshot it would be best to actually examine the skull, which he had not done.<sup>5599</sup> Dušan Dunjić reported that his team had recorded this wound as a blunt force injury. However, when shown photos of the wound he acknowledged that some features suggested that the injury was attributable to a firearm.<sup>5600</sup> The Chamber was not persuaded by the matters advanced by the Defence that the injury was not inflicted by a gunshot. Nor does the evidence demonstrate why the team of Dušan Dunjić determined the injury to be caused by blunt force. The Chamber has not been persuaded that there is reason to question the reliability of the OMPF team’s finding that the most probable cause of death of Lirie Berisha was a gunshot wound to the head, nor the reliability of the eyewitness accounts that Lirie Berisha died from a gunshot wound to the head.

## 2. Forensic investigations and examinations

1478. As stated earlier in this Judgement, in 2001, a number of clandestine mass graves were discovered at Batajnica SAJ Centre near Belgrade, a training ground for the SAJ of the MUP, Petrovo Selo PJP Centre on land of the MUP, and by Lake Perucac in Serbia.<sup>5601</sup> The details of these investigations and examinations are detailed below.

### (a) Batajnica

1479. In June 2001, Dušan Dunjić, the head of the Forensic Institute in Belgrade, was appointed by order of an Investigative Judge, in Belgrade, Goran Cavlina, to lead a team of experts to conduct exhumations and forensic examinations of the human remains discovered at the Batajnica SAJ Centre.<sup>5602</sup> The team included an anthropologist and experts from Serbia and Montenegro.<sup>5603</sup> Representatives from the ICTY<sup>5604</sup>, the ICMP<sup>5605</sup> and NGOs<sup>5606</sup> were present as observers and at a later stage the ICMP had its own forensic team.<sup>5607</sup> At the onset of the exhumations, Dušan Dunjić was informed by Gordana Tomašević, a doctor working on the exhumations, that the bodies that

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including tanks, howitzers and other large calibre weapons being used by Serbian forces during the Kosovo conflict.

<sup>5598</sup> Zoran Stanković, T 13471-13472.

<sup>5599</sup> Zoran Stanković, T 13550-13551.

<sup>5600</sup> Dušan Dunjić, T 3285.

<sup>5601</sup> Jose Pablo Baraybar, Exhibit P453, para 16; Jose Pablo Baraybar, T 2523.

<sup>5602</sup> Dušan Dunjić, Exhibit P526, paras 3, 5, 6, 7; Dušan Dunjić, T 3228, 3237; Branimir Aleksandrić, Exhibit P507, para 3; Branimir Aleksandrić, T 3012, 3027.

<sup>5603</sup> Dušan Dunjić, T 3238, 3272-3273; Branimir Aleksandrić, Exhibit P507, para 3.

<sup>5604</sup> International Criminal Tribunal for the Former Yugoslavia (“ICTY”).

<sup>5605</sup> International Commission on Missing Persons (“ICMP”).

<sup>5606</sup> Non-Governmental Organisations (NGOs).

were buried at Batajnica had been previously buried elsewhere and that they were killed in various clashes between the “KLA terrorists attacking the police and the army” resulting in a high probability that injuries could have been caused at a number of different sites and in a variety of ways. He explained that this information had relevance to his findings as, during the time between the initial exhumation and reburial, a lot of things could have happened to the bodies that could affect the post mortem findings.<sup>5608</sup> He explained that during the exhumation of the bodies, a team of archaeologists analysed the soil at Batajnica 1 and Batajnica 2; he was uncertain of the archaeological analysis but believed that the bodies in BA1 and BA2, or at least the majority of them, were in primary graves.<sup>5609</sup> The Chamber has not relied upon the Serbian authorities findings in regards to the primary or secondary nature of the graves, for reasons addressed below in relation to each specific grave site.<sup>5610</sup>

1480. Following the completion of exhumations from the first two grave sites in early June 2002, Dušan Dunjić appointed Branimir Aleksandrić, also from the Forensic Institute in Belgrade, as coordinator to continue the exhumations of what proved to be an additional six grave sites at Batajnica.<sup>5611</sup> Branimir Aleksandrić appointed international archaeologists and anthropologists to the team to ensure impartiality.<sup>5612</sup> Branimir Aleksandrić also co-ordinated the work of the ICMP forensic team, which included Jon Sterenberg, also a witness in this case.<sup>5613</sup> The same methodology and procedure used by Dušan Dunjić at Batajnica 1 and 2 was employed by Branimir Aleksandrić.<sup>5614</sup>

(i) Methodology and procedure by Serbian forensic team

1481. During the exhumations and examinations at Batajnica, eight grave sites were identified, five of which were mass grave sites, two grave sites contained human remains and one grave site contained no human remains.<sup>5615</sup> Surface soil of each site was removed in very thin layers by an

<sup>5607</sup> Dušan Dunjić, T 3238-3240; Branimir Aleksandrić, Exhibit P507, para 3; Jon Sterenberg P814 (*Milutinović* transcript), T 8203; Jon Sterenberg, T 4928.

<sup>5608</sup> Dušan Dunjić, T 3289-3293.

<sup>5609</sup> Dušan Dunjić, T 3289-3293.

<sup>5610</sup> See *infra*, paras 1485, 1492, 1518.

<sup>5611</sup> Branimir Aleksandrić, Exhibit P507, paras 10, 15.

<sup>5612</sup> Branimir Aleksandrić's forensic team consisted of four specialists in forensic medicine: namely, Professor Slobodan Savić; Đorđe Alempijević; Dragan Ječmenica; Snežana Pavlekić, and two anthropologists: namely Professor Marija Đurić and Danijela Đonić (Branimir Aleksandrić, Exhibit P507, para 3). There were also two mortuary assistants and one photographer (Branimir Aleksandrić, Exhibit P507, para 3). Aleksandrić also co-ordinated the work of the ICMP team, which consisted of an anthropologist, Mark Skinner and an archaeologist, John Sterenberg. Skinner and Sterenberg rotated with other international experts (Branimir Aleksandrić, Exhibit P507, para 4).

<sup>5613</sup> Branimir Aleksandrić, Exhibit P507, para 4.

<sup>5614</sup> Branimir Aleksandrić, Exhibit P507, paras 9-11, 13, 14, 15; Branimir Aleksandrić, Exhibit P508 (*Milutinović* transcript), T 5297-5298; Dušan Dunjić, Exhibit P526, paras 5-7, 9-11; Exhibit P96; Exhibit P528.

<sup>5615</sup> Jon Sterenberg, P815 (Expert report), p 4; Branimir Aleksandrić, Exhibit P508 (*Milutinović* transcript), T 5297-5298.

excavator, with further digging by hand as soon as a difference in the soil or some clothing or bones was encountered. At every stage the entire scene was photographed, video-recorded and sketches were made.<sup>5616</sup> Photographs were used as an auxiliary resource for identification and to help establish a possible cause of death.<sup>5617</sup> All bodies and body parts uncovered were identified by the grave site number and sequential numbers, and then placed in a body bag.<sup>5618</sup> Body parts believed to belong to the same body were placed in the one body bag otherwise body parts were numbered and bagged separately.<sup>5619</sup>

1482. Autopsies were carried out in a tent at the location.<sup>5620</sup> A metal detector was used on each body to search for bullets or metal objects such as shrapnel or surgical steel. Clothing was removed and examined. At the completion of the autopsy, the bodies were placed in individual body bags and stored and secured in nearby tunnels.<sup>5621</sup> Clothing belonging to a body was put in a separate bag and placed at the head of the body bag. The artefacts were placed in a locked refrigerator in another tunnel.<sup>5622</sup>

1483. A report was compiled for each individual autopsy that was conducted.<sup>5623</sup> These original reports were then handed over to the Investigative Judge. ICMP archaeologists and anthropologists also compiled their own reports, and they too were provided to the investigative judge and the Belgrade Institute for Forensic Medicine.<sup>5624</sup> Samples of bones were taken from each individual body for DNA testing.<sup>5625</sup> Dr Antonio Alonso Alonso of the National Institute of Toxicology in Madrid was responsible for DNA analysis of remains from Batajnica 1 and the DNA samples from the other Batajnica sites were analysed in Belgrade by the ICMP.<sup>5626</sup> Following the identification of the remains, they were repatriated to Kosovo.

(ii) Batajnica 1

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<sup>5616</sup> Branimir Aleksandrić, P507, para 7.

<sup>5617</sup> This evidence included all details that would provide an insight into the mechanism of injury, the kind of injury, the way the injuries were inflicted, clothes, etc. Dušan Dunjić, T 3228-3229; Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5260-5261.

<sup>5618</sup> Exhibit P528, p 2.

<sup>5619</sup> Branimir Aleksandrić, Exhibit P507, para 9.

<sup>5620</sup> Exhibit P528, p 2.

<sup>5621</sup> Although in summertime the temperature in those tunnels was not as low as it is in a refrigerator, the temperature inside those tunnels was much lower than outside. Nevertheless, the result of storing the bodies in these tunnels was that the process of decomposition continued, Branimir Aleksandrić, P507, para 14; Branimir Aleksandrić, T 3015.

<sup>5622</sup> Branimir Aleksandrić, P507, para 14.

<sup>5623</sup> Dušan Dunjić, Exhibit P526, para 8; Exhibit P528, p 2; Branimir Aleksandrić, Exhibit P507, para 11, 15.

<sup>5624</sup> Branimir Aleksandrić, Exhibit P507, para 15.

<sup>5625</sup> Dušan Dunjić, Exhibit P526, para 9; Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5253; Branimir Aleksandrić, Exhibit P507, para 13.

<sup>5626</sup> Dušan Dunjić, Exhibit P526, para 9; Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5253, 5263; Branimir Aleksandrić, Exhibit P507, para 13.

1484. Exhumations from Batajnica 1 were undertaken between 1 and 28 June 2001.<sup>5627</sup> The remains of at least 36 individuals were exhumed from this site.<sup>5628</sup> Of these 17 were female, 16 male and three for which gender could not be determined. Nine of the bodies were of children younger than seven years old. The age of the bodies ranged from two years old to approximately 60 years old.<sup>5629</sup> With one female corpse there were also the remains of an unborn child of about eight months gestation.<sup>5630</sup> Traces of high temperatures on the bones were identified showing signs of an attempt to destroy the bodies by fire.<sup>5631</sup> The Serbian forensic team reported that they could not determine the cause of death of any of these bodies.<sup>5632</sup>

1485. One expert witness suggested that Batajnica 1 was a “primary grave”, as the bodies it contained are whole, or almost whole, rather than a “secondary grave” in which the bodies have been removed or robbed from a primary grave.<sup>5633</sup> However, an analysis by the Chamber of the autopsy reports of the remains found in Batajnica 1 indicates that the grave site consisted largely of disjointed body parts; indicating that it was in fact a secondary grave site.<sup>5634</sup> Moreover, earlier in this Judgement the Chamber found that clothes and artefacts belonging to members of the Berisha family, including a limb of Jashar Berisha, and articles belonging to Afrim Berisha, were exhumed at the VJ firing range near Koriša/Korishë, just above Prizren, also referred to as “Kroj-I-Popit”, in September 1999. The further remains of Jashar and Afrim Berisha were then later exhumed in June 2001 from Batajnica 1.<sup>5635</sup> These were some of the remains of villagers last seen alive in Suva Reka/Suharekë on 26 March 1999. Suva Reka/Suharekë is over 400 kilometres from Batajnica. Hence, in the Chamber’s finding, Batajnica 1 is not the primary grave site of Berisha family members, it was a secondary site.

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<sup>5627</sup> Jon Sterenberg states in his report exhumations began on 2 June 2000, however, the Chamber has referred to the date provided by Dušan Dunjić who was present during the exhumations. Dušan Dunjić, Exhibit P526, paras 3, 5, 6, 7; Exhibit P528, p 1; Dušan Dunjić, T 3228, 3237; Jon Sterenberg, P815 (Expert report), p 4.

<sup>5628</sup> During his testimony in this case Dušan Dunjić referred to “about 39” human bodies being located (Dušan Dunjić, T 3279-3280). The Chamber has referred to the number contained in the chart outlining the human bodies located at Batajnica which states 36 bodies, not 39 (Exhibit P581). The number 36 was also referred to in the *Milutinović* case (Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5253). The figure 36 includes the corpse of an unborn baby of some eight months gestation (Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5252-5253).

<sup>5629</sup> The figure of three bodies with undetermined gender includes one body that was most probably male, however it could not be established with certainty. The calculation of 16 male corpses includes the corpse of the unborn male. Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5253; Exhibit P581.

<sup>5630</sup> See *supra*, para 670; Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5252-5253.

<sup>5631</sup> Dušan Dunjić, Exhibit P527 (*Milutinović* transcript), T 5256, 5258-5259; Dušan Dunjić, T 3279-3280.

<sup>5632</sup> Jose Pablo Baraybar, Exhibit P 454 (Expert report), p 10.

<sup>5633</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 66.

<sup>5634</sup> See, Exhibit 528. This exhibit refers to the bodies found in the grave site and a brief description of the position they were found in and what body parts were exhumed.

<sup>5635</sup> See *supra*, para 1406.

1486. On 22 November 2001, the DNA samples that were collected from the remains at Batajnica 1 were delivered to the National Institute of Toxicology in Madrid for analysis.<sup>5636</sup> The Institute in Madrid received 56 samples, 13 reference DNA samples, 11 of which came from the ICMP and two directly from ICTY.<sup>5637</sup> In addition, the Institute also received a family tree from ICTY showing the family ties between the reference samples and the remains, and a table from the ICMP showing family ties between the reference samples and the remains.<sup>5638</sup> These documents were used to conduct a comparative analysis.<sup>5639</sup> The Institute was only told that the samples were taken from bodies found in a mass grave and they were provided with general anthropological analysis related to age and gender.<sup>5640</sup> No information was provided as to how many people were missing nor did the Institute receive any autopsy reports.<sup>5641</sup> The Chamber accepts the reliability of the DNA tests.<sup>5642</sup>

1487. The Defence expert witness, Zoran Stanković, objected for two reasons to the report from the National Institute of Toxicology. First, he suggested that the word “massacre” used in the report is not a term used by a geneticist.<sup>5643</sup> In the view of the Chamber this does not detract from the reliability of the report, even if the criticism were valid. Secondly, Zoran Stanković suggested that there was a great difference in the number of victims identified by autopsies and the number of individuals identified by DNA samples.<sup>5644</sup> The Chamber notes that Zoran Stanković is not a geneticist.<sup>5645</sup> Moreover, the analysis was conducted of 56 remains, not 56 individuals, which accounts for the difference in the number of remains provided for testing and the identification of individuals. In the view of the Chamber the reliability and validity of the DNA results are not affected by the matters relied on by Zoran Stanković.

1488. From the 56 remains sent for DNA testing, 41 individual DNA profiles were identified.<sup>5646</sup> Of these 41 individuals profiled, 21 were identified as members of the Berisha family.<sup>5647</sup> In

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<sup>5636</sup> Dušan Dunjić, T 3240-3241; Antonio Alonso Alonso, Exhibit P801 (*Milutinović* transcript), T 6664, 6681; Antonio Alonso Alonso, T 4682, 4693, 4697; Exhibit P800, p 10.

<sup>5637</sup> Each sample came in a hermetically sealed container and had been properly wrapped. (Exhibit P800, p 9; Antonio Alonso Alonso, T 4692, 4698) Most samples consisted of a large bone (Antonio Alonso Alonso, T 4682, 4692-4693, 4710).

<sup>5638</sup> Antonio Alonso Alonso, T 4685-4686; Exhibit P802.

<sup>5639</sup> Antonio Alonso Alonso, T 4686.

<sup>5640</sup> Antonio Alonso Alonso, T 4695, 4702.

<sup>5641</sup> Antonio Alonso Alonso, T 4692, 4700.

<sup>5642</sup> Antonio Alonso Alonso, Exhibit P801 (*Milutinović* transcript), T 6670-6671; Antonio Alonso Alonso, T 4690.

<sup>5643</sup> Zoran Stanković, Exhibit D926 (Expert report), p 16; Zoran Stanković, T 13479.

<sup>5644</sup> Zoran Stanković, Exhibit D926 (Expert report), p 16; Zoran Stanković, T 13535.

<sup>5645</sup> Zoran Stanković, T 13533-13534.

<sup>5646</sup> This meant that there were some individuals whose remains were repeated in the samples (Antonio Alonso Alonso, T 4684). There were 10 individuals whose remains appeared twice, and two individuals whose remains appeared three times (Antonio Alonso Alonso, T 4684, 4692-4693; Antonio Alonso Alonso, Exhibit P799 (Expert report), pp 4, 16).

<sup>5647</sup> The following members of the Berisha family were identified following DNA testing undertaken by Antonio Alonso: Afrim Berisha, Arta and/or Hanumusha and/or Merita and/or Zana Berisha, Besim Berisha, Dirlon

addition to the identification of the 21 members of the Berisha family, a further three members of the Berisha family were identified by DNA analysis conducted by ICMP.<sup>5648</sup> The Chamber accepts, on the basis of DNA evidence, that 24 members of the Berisha family were exhumed from Batajnica 1. During forensic examinations undertaken by the OMPF the cause of death was established for six of these Berisha family members. Four Berisha family members died as a result of gunshot wounds; one as a result of an injury to the trunk; and for another Berisha family member the cause of death was listed as a “possible gunshot wound”.<sup>5649</sup> The Chamber recalls its earlier finding that these six victims were reported last seen alive in the pizzeria in Suva Reka/Suharekë town on 26 March 1999 when MUP forces opened fire on a group of no less than 32 Berisha family members and threw grenades into the pizzeria.<sup>5650</sup> The injuries reported in the OMPF autopsy reports are consistent with this finding of the Chamber and therefore accepted.<sup>5651</sup>

1489. In the absence of an established cause of death for the remaining 18 individuals exhumed from Batajnica, the Chamber recalls its finding that 12 of these individuals were present in Suva Reka/Suharekë town on 26 March 1999 when MUP forces opened fire on a group of no less than 32

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Berisha, Fatmire Berisha, Hamdi Berisha, Hava Berisha, Majlinda and/or Herolinda Berisha, Lirije Berisha (who was pregnant at the time of death), Musli Berisha, Nexhmedin Berisha, Redon Berisha, Sofije Berisha, Vesel Berisha, Granit and/or Gene (Gene) Berisha and Jashar Berisha (Antonio Alonso Alonso, Exhibit P799 (Expert report), pp 5-9; Antonio Alonso Alonso, Exhibit P801 (*Milutinović* transcript), T 6665, 6668; Antonio Alonso Alonso, T 4683). In three cases, the DNA report stated that the remains belonged to, for example, Majlinda and/or Herolinda Berisha, in the second case, DNA analysis established that the remains belonged to Arta, Hanumusha, Merita and/or Zana Berisha; all of whom were Hamdi Berisha’s daughters. In the third case DNA analysis established that the remains belonged to Besim and/or Hajdin Berisha (*see*, Exhibit P799). It is noted, as stated below, that Hajdin Berisha, was identified by DNA testing undertaken by the ICMP. The evidence does not explain why the individual could not specifically be identified. Nevertheless, in the Chamber’s view, given that the individuals were direct family members and that all 21 of the above mentioned Berisha family members were listed as persons missing or killed in Suva Reka/Suharekë on 26 March 1999 (*see*, Exhibit P272), the Chamber does not find that this affects its conclusion that these people were killed in Suva Reka/Suharekë on 26 March 1999 and some, if not all of their remains, were identified in Batajnica 1 (Antonio Alonso Alonso, Exhibit P799 (Expert report), pp 4-9; Antonio Alonso Alonso, Exhibit P801 (*Milutinović* transcript), T 6665, 6668; Antonio Alonso Alonso, T 4683). Antonio Alonso explained, on the basis of the 13 reference samples he received, that 19 of the 21 identifications that could be made, were scientifically proven. The other two identifications were “preliminary identifications”. This did not affect his finding that no less than 21 individuals could be identified from the remains exhumed from Batajnica 1. (Antonio Alonso Alonso, Exhibit P801 (*Milutinović* transcript), T 6668-6669, 6674). Based on the evidence, the Chamber is satisfied that the above listed 21 individuals were identified following the exhumation of remains from Batajnica 1.

<sup>5648</sup> The following members of the Berisha family were identified following DNA testing undertaken by ICMP: Fatime Berisha, Hajdin Berisha and Mihrije Berisha (*See*, Exhibit P818, pp 20-21). The Chamber notes that DNA testing undertaken by ICMP also confirmed the identification of some of those victims identified through DNA testing undertaken by Antonio Alonso (Antonio Alonso Alonso, Exhibit P799 (Expert report), pp 4-9).

<sup>5649</sup> *See*, Exhibit P456; *See also*, Exhibit P473; *See infra*, Schedule: Victim Charts. The Chamber also received autopsy reports from the Serbian authorities. As discussed above, the Serbian authorities were unable to establish the cause of death because of the state of the remains (*see supra*, para 1459). For this reason, the following autopsy reports of the Serbian authorities have not been relied upon except for the purpose of identification of the individuals exhumed from Batajnica 1 - Exhibit P93; Exhibit P529; Exhibit P531; Exhibit P532; Exhibit P533; Exhibit P534; Exhibit P536; Exhibit P537; Exhibit P538; Exhibit P539; Exhibit P542; Exhibit P543; Exhibit P544; Exhibit P545; Exhibit P546; Exhibit P547; Exhibit P548; Exhibit P549; Exhibit P552; Exhibit P553; Exhibit P562; Exhibit P563; Exhibit P564; Exhibit P565; Exhibit P566; Exhibit P567; Exhibit P568; Exhibit P569; Exhibit P570; Exhibit P572.

<sup>5650</sup> *See supra*, para 676.

<sup>5651</sup> *See infra*, Schedule: Victim Charts.



Berisha family members and threw grenades into the pizzeria.<sup>5652</sup> Based on the totality of the evidence, the Chamber therefore finds that these 12 individuals died as a result of being shot by MUP forces or as a result of explosion of one or more grenades being thrown into the pizzeria where some of the victims were trapped.

1490. The Chamber also recalls, and accepts, its earlier finding that on 26 March 1999, Nexhmedin Berisha died as a result of being shot by MUP forces at the Berisha house, and further that Jashar Berisha also died as a result of being shot by a member of the local reserve police just after the killings at the Pizzeria.<sup>5653</sup> While no scientific forensic evidence was received as to the cause of death for Nexhmedin Berisha and Jashar Berisha, based on the totality of the evidence, including eyewitness evidence, it is accepted by the Chamber that each of these men, whose remains were amongst those 24 individuals exhumed from Batanjica 1, were killed in the manner described above.

1491. In regards to the remaining four Berisha family members also amongst those 24 individuals exhumed from Batajnica 1,<sup>5654</sup> in the circumstances disclosed by the evidence, specifically that these four members of the Berisha family members were buried with other members of the same family who were killed by Serbian forces in Suva Reka/Suharekë on 26 March 1999, the Chamber accepts that these four members of the Berisha family were also killed on that same day in Suva Reka/Suharekë by Serbian forces, although the Chamber can not make any specific findings as to the circumstances in which these four people met their death nor the scientific cause of death.

(iii) Batajnica 2

1492. On 10 July 2001, exhumations began at Batajnica 2 and continued until 18 September 2001.<sup>5655</sup> The exhumations were conducted by the same team of experts from the Institute for Forensic Medicine in Belgrade, lead by Dušan Dunjić.<sup>5656</sup> The Investigative Judge responsible for the exhumations was Milan Dilparić.<sup>5657</sup>

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<sup>5652</sup> See *supra*, para 676.

<sup>5653</sup> See *supra*, paras 672, 678.

<sup>5654</sup> These four members are Afrim Berisha, Arta Berisha, Hamdi Berisha and Zana Berisha.

<sup>5655</sup> Jon Sterenberg states in his report exhumations were completed on 21 September 2001 and not 18 September 2001. The Chamber has referred to the date provided for in the Order of the District Court in Belgrade which was responsible for authorising and conducting the initial exhumations. Exhibit P96, p 2; Jon Sterenberg, P815 (Expert report), p 4.

<sup>5656</sup> Jon Sterenberg states in his report exhumations began on 2 June 2000, however, the Chamber has referred to the date provided by Dušan Dunjić who was present during the exhumations (Dušan Dunjić, Exhibit P526, paras 3, 5, 6, 7; Dušan Dunjić, Exhibit P528, p 1; Dušan Dunjić, T 3228, 3237; Jon Sterenberg, Exhibit P815 (Expert report), p 4).

<sup>5657</sup> Following the completion of the exhumations Dušan Dunjić would forward the investigative judge a list of documents (Dušan Dunjić, Exhibit P583; Dušan Dunjić, T 3231, 3233).

1493. In the upper fill of the grave, stained soil, fragments of burnt clothing, burnt human bones and several buried vehicle tyres and parts of a truck trailer were unearthed. The exhumation process was reportedly very difficult because the bodies were intertwined in wire coils and tyres. The remains of at least 269 bodies were exhumed. All of the bodies were male, and of various ages. The bodies were in various stages of putrefaction and deterioration. The effects of high temperatures or fire were found on some of the bodies indicating the burning of a fire within the grave. The clothes on the bodies and loose clothes found in the gravesite were all civilian.<sup>5658</sup> The Serbian forensic team reported that it was unable to establish the cause of death of any of the remains because of the advanced putrefaction of the bodies.<sup>5659</sup> The Chamber has found that no less than 252 of the bodies, following identification through DNA analysis, were last seen alive in Meja/Mejë in Kosovo on 27-28 April 1999.<sup>5660</sup> Meja/Mejë is approximately 450 kilometres from Batajnica.

1494. The Chamber received autopsy reports based on examinations conducted by OMPF. The evidence established that the cause of death was related to gunshot wounds for 154 of the victims exhumed from Batajnica 2. For the remaining 98 individuals the cause of death was unascertained.<sup>5661</sup>

1495. As discussed later in this Judgement, based on the totality of the evidence, the Chamber accepts that all of the individuals exhumed from Batajnica 2, including those for whom no cause of death was established by forensic examination, were killed by MUP forces during Operation Reka in Meja/Mejë, in the Đakovica/Gjakovë municipality.<sup>5662</sup>

(iv) Batajnica 3 and 4

1496. Exhumations of human remains and other forensic material at Batajnica 3 took place from 20 June 2002 to 26 July 2002.<sup>5663</sup> Branimir Aleksandrić was the coordinator of the exhumations and Milan Dilparić was the Investigative Judge.<sup>5664</sup> At Batajnica 3, approximately 39 individuals were exhumed from the gravesite and 10 sets of identification documents were unearthed. The

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<sup>5658</sup> Exhibit P96, p 7.

<sup>5659</sup> Dušan Dunjić, Exhibit P526, paras 13, 14; Exhibit P96, pp 7-8.

<sup>5660</sup> See Exhibit P818; see also Exhibit P477. The Chamber notes, as discussed below, another 41 individuals were exhumed from Batajnica 5, and 2 individuals from Batajnica 8. These 43 individuals were also listed as last being seen alive in Meja/Mejë, See *infra*, paras 1500-1501, 1506.

<sup>5661</sup> See Exhibits P456; see also, Exhibit P472; see also, Exhibit P473; see also, Exhibit P474; see also, Exhibit P576; see also, Exhibit P818.

<sup>5662</sup> The Chamber has not relied upon the Serbian autopsy reports, for reasons explained earlier in this Chapter (see *supra*, para 1462-1468), except for the purpose of identifying the individuals that were last seen alive in Meja/Mejë on 27-28 April 1999 and that were exhumed from Batajnica 2. The reports of the OMPF have also been relied upon for this purpose, see Exhibits P456; see also, Exhibit P472; see also, Exhibit P473; see also, Exhibit P474; see also, Exhibit P576.

<sup>5663</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 19.

bodies were found to be wrapped in plastic sheeting, blankets and military body bags.<sup>5665</sup> The evidence does not identify any of these 39 individuals or suggest they are among the named victims in the Schedule to the Indictment.

1497. Between 20 June 2002 and 26 July 2002, the Belgrade Forensic Institute and the ICMP excavated Batajnica 4.<sup>5666</sup> During the examination of this site no human remains were found; this site will not be discussed further.<sup>5667</sup>

(v) Batajnica 5

1498. Exhumations took place at Batajnica 5 between 2 August 2002 and 26 November 2002.<sup>5668</sup> Branimir Aleksandrić was the coordinator of the exhumations and Milan Dilparić was the Investigative Judge.<sup>5669</sup>

1499. At Batajnica 5, the remains of 287 largely intact bodies were recovered. The bodies were in a single mass grave about 25 metres in length.<sup>5670</sup> These 287 bodies were positioned in the grave in twelve separate deposits, thus, as Jon Sterenberg reported, it is likely that several vehicles were used in bringing the bodies to the grave.<sup>5671</sup> None of the bodies was dressed in military style clothes. There was no evidence of ligatures or blindfolds.<sup>5672</sup> As discussed below, as with the Petrovo Selo I grave site, the grave site at Batajnica 5 was lined with a very large plastic sheet.<sup>5673</sup> It was evident that several fires had been ignited between the bodies using fuel and tyres, indicating

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<sup>5664</sup> Branimir Aleksandrić, Exhibit P507 (witness statement), paras 3-4, 6, 15.

<sup>5665</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 19.

<sup>5666</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 19.

<sup>5667</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 25, 26.

<sup>5668</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 20.

<sup>5669</sup> Branimir Aleksandrić, Exhibit P507, paras 3, 4, 6; Branimir Aleksandrić, Exhibit P508 (*Milutinović* transcript), T 5305.

<sup>5670</sup> Jon Sterenberg suggested that Batajnica 5 was a “primary grave” (Jon Sterenberg, Exhibit P815 (Expert report), p 21). However, an analysis of the autopsy reports of the remains found in Batajnica 5 indicates to the Chamber that there were both whole bodies and bodies that were disjointed or from which body parts were missing. (Exhibit P98; Exhibit P99; Exhibit P100; Exhibit P101). The Chamber recalls earlier evidence that bodies were immediately collected after they were killed in the municipality of Đakovica/Gjakovë and some were first buried in the municipality of Đakovica/Gjakovë and later exhumed (*See supra*, paras 985-995). In line with this finding, it is the view of the Chamber Batajnica 5 was both a primary and secondary grave site.

<sup>5671</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 25.

<sup>5672</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 21.

<sup>5673</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 20-21, 25, 26, 30. There is no note of the plastic sheet in the section dealing with Batajnica however it is stated in the Petrovo Selo section.

an attempt to burn the bodies in the excavation before the soil was put on top of the bodies.<sup>5674</sup> Many of the bodies were damaged by the fire.<sup>5675</sup>

1500. By virtue of DNA testing and identification it was later established that 41 of these bodies were of persons last seen alive on or about 27-28 April 1999 in Đakovica/Gjakovë municipality in Kosovo, either in Meja/Mejë or Korenica/Korenicë.<sup>5676</sup> The municipality of Đakovica/Gjakovë is some 450 kilometres from Batajnica.

1501. Of the 41 individuals last seen alive in Meja/Mejë or Korenica/Korenicë on 27-28 April 1999, the Chamber received autopsy reports conducted by OMPF for 37 persons. In 18 of these 37 cases, the cause of death was related to gunshot wounds.<sup>5677</sup> In the remaining 19 cases the cause of death was unascertained, but seven of these, and also Andrush Kabashi, for whom an autopsy report was not received, were all amongst those identified by an eyewitness as killed by Serbian forces on 27 April 1999 in Korenica/Korenicë, in the municipality of Đakovica/Gjakovë.<sup>5678</sup> In these circumstances, the Chamber concludes from the eyewitness testimony, that the only reasonable inference is that these eight men also died as a result of gunshots fired by Serbian forces on 27 April 1999.

1502. As discussed later in this Judgement, based on the totality of the evidence, the Chamber accepts that all individuals exhumed from Batajnica 5 for whom no cause of death was established

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<sup>5674</sup> Tyres below and above the bodies in the graves were burnt and traces of fire were found at autopsy on the bodies and artefacts found in the graves. Traces of fire were primarily seen on the bones but also on the soft tissues. Traces of fire were also seen on the clothing covering the bodies and personal documents found in the clothing. Branimir Aleksandrić, Exhibit P507 (witness statement), para 9; Branimir Aleksandrić, Exhibit P508 (*Milutinović* transcript), T 5312-5313.

<sup>5675</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 25.

<sup>5676</sup> The Chamber has not relied upon the Serbian autopsy reports, for reasons explained earlier in this Chapter (*see supra*, para 1459-1477), except for the purpose of identifying the individuals that were last seen alive in Meja/Mejë on 27-28 April 1999 and that were exhumed from Batajnica 5. The reports of the OMPF have also been relied upon for this purpose, Exhibit P818; Exhibit P98; Exhibit P99; Exhibit P100; Exhibit P101; Exhibit P456; Exhibit P472; Exhibit P473; Exhibit P474.

<sup>5677</sup> *See* Exhibit P98; *see also*, Exhibit P99; *see also*, Exhibit P100; *see also*, Exhibit P456; *see also*, Exhibit P472; *see also*, Exhibit P473; *see also*, Exhibit P474; *see also*, Exhibit P818. The cause of death of Pashuk Markaj reported on the death certificate was an injury to right lower leg that was as “lethal if untreated” (Exhibit P456, K0528077). The anthropological report stated “gunshot wound to left thigh – lethal if untreated” (Exhibit P473, K0503799). No explanation is provided as to why the injury was recorded as to the right leg in one report and the left leg in the other. Also, in relation to Pashk Deda, the cause of death was reported as a “possible gunshot wound to the right arm” (Exhibit P456, K0528083). In both these circumstances, the Chamber recalls that Pashuk Markaj and Pashk Deda were two of the males identified by witness, Merita Deda, who was made to line up against the wall in the courtyard of her house and then after hearing gunshots she saw all the men lying on the ground (*see supra*, para 958). The Chamber earlier accepted the killing of these men by Serbian forces, and finds, in the circumstances, Pashuk Markaj died as a result of the gun shot wound inflicted to his leg and Pashk Deda died as a result of a gunshot wound to the right arm.

<sup>5678</sup> *See supra*, paras 956, 958, 960.

by forensic evidence, were also killed by MUP forces during Operation Reka in Meja/Mejë, in the Đakovica/Gjakovë municipality.<sup>5679</sup>

(vi) Batajnica 7

1503. Exhumations were undertaken at Batajnica 7 between 4 November 2002 and 16 December 2002.<sup>5680</sup> Branimir Aleksandrić was the coordinator of the exhumations and Milan Dilparić was the Investigative Judge responsible for these sites.<sup>5681</sup>

1504. The remains of 74 persons were recovered in Batajnica 7.<sup>5682</sup> These 74 bodies were in five separate deposits in the grave, each deposit including artifacts and human remains in various states of decomposition. It was apparent that a heavy-wheeled vehicle had driven on the gravesite to compact the five deposits. No evidence of funeral boards or the like was observed.<sup>5683</sup> Several of the 74 remains had been damaged by fires that had been ignited between the five deposits of bodies utilising fuel and vehicle tyres.<sup>5684</sup> Approximately 90% of the remains were covered with intact clothing; none of these bodies were in military clothing. The nature and location of the five separate deposits indicates that they had been exhumed and transported from other locations, as concluded by Jon Sterenberg.<sup>5685</sup> The evidence does not identify any of these 74 individuals or suggest they are included in the Schedule of victims in the Indictment.

(vii) Batajnica 6 and 8

1505. Excavations at Batajnica 6 took place between 19 August 2002 and 2 September 2002. At Batajnica 8 exhumations were undertaken from 21 November to 26 November 2002.<sup>5686</sup> At both sites human remains were uncovered.<sup>5687</sup> For the human remains uncovered in Batajnica 6, the evidence does not identify any of the remains or suggest that they are included in the Schedule of victims in the Indictment.

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<sup>5679</sup> See *supra*, paras 967, 979, 985-995, 1493; see *infra*, para 1506, 1735-1741, Schedule: Victim Charts; see also, Exhibit P98; see also, Exhibit P99; see also, Exhibit P100; see also, Exhibit P456; see also, Exhibit P472; see also, Exhibit P473; see also, Exhibit P474; see also, Exhibit P818; See also Exhibit P477.

<sup>5680</sup> Jon Sterenberg, P815 (Expert report), pp 4, 22-23, 26.

<sup>5681</sup> Branimir Aleksandrić, P507 (witness statement), paras 3-4, 6, 15; Branimir Aleksandrić, Exhibit P508 (*Milutinović* transcript), T 5305.

<sup>5682</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 22.

<sup>5683</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 22-23, 26.

<sup>5684</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 22, 25.

<sup>5685</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 22-23, 26.

<sup>5686</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 4.

<sup>5687</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 26.

1506. At Batajnica 8, the remains of two individuals, Ramadan Beqaj and Rame Mehmeti, who were amongst those victims last seen alive in Meja/Mejë on 27 April 1999, were identified.<sup>5688</sup> No autopsy reports were received for these two individuals. As discussed elsewhere in this Judgement, based on the totality of the evidence, the Chamber accepts that these two men were killed by MUP forces during Operation Reka in Meja/Mejë, in the Đakovica/Gjakovë municipality.<sup>5689</sup>

(b) Petrovo Selo

1507. Elsewhere in this Judgement the Chamber has found that bodies were clandestinely buried in two mass grave sites at the Petrovo Selo PJP Centre in April 1999.<sup>5690</sup>

1508. In 2001 exhumations at Petrovo Selo, near Kladova in Eastern Serbia, were conducted under the authority of the Negotin District Court, by an expert forensic team from the Nis Institute of Forensic Medicine in Serbia. The ICMP and observers from the ICTY and the Humanitarian Law Centre in Belgrade were present during the exhumations.<sup>5691</sup> The exhumations were conducted at the sites of two mass graves, Petrovo Selo I and Petrovo Selo II, between 25 June 2001 and 28 June 2001.<sup>5692</sup> Autopsies on the remains from both sites took place between 25 June 2001 and 4 July 2001.<sup>5693</sup> Following the autopsies, the bodies were reburied in a temporary graveyard and marked with wooden grave markers for identification.<sup>5694</sup>

1509. The mass grave site Petrovo Selo I was lined with plastic sheeting similar to that found in Batajnica 5,<sup>5695</sup> and also contained surgical gloves and clothing.<sup>5696</sup> At the upper level of the grave, three bodies lay beside each other, the heads were pointing in the same direction.<sup>5697</sup> With these three bodies were ligatures, blindfolds, ballistic materials and identification documents with the names of the three bodies.<sup>5698</sup> These three male bodies had been shot in the head. The position of the bodies and injuries indicated that the three individuals had been executed at the site.<sup>5699</sup>

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<sup>5688</sup> These remains were not included in the calculation of the number of victims by Jon Sterenberg, Exhibit P815 (Expert report), p 4; *see supra*, paras 1461.

<sup>5689</sup> *See supra*, paras 988-993.

<sup>5690</sup> *See supra*, paras 1353-1355.

<sup>5691</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 28.

<sup>5692</sup> PS/I and PS/II were used as the prefix for labelling the remains exhumed from Petrovo Selo. Jon Sterenberg, Exhibit P815 (Expert report), p 29.

<sup>5693</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 29.

<sup>5694</sup> Jon Sterenberg, Exhibit P815, pp 29, 32.

<sup>5695</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 30-31; *see supra*, para 1499.

<sup>5696</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 30-31.

<sup>5697</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 30.

<sup>5698</sup> The report of Jon Sterenberg stated that at both PSI and PSII, ligatures were found, including on bodies with their wrists tied together. Two bodies were also recovered with their ankles wired together and the wire attached to a length of rope. There is no further detail whether these specific examples were from PSI or PSII, Jon Sterenberg, Exhibit P815, pp 30-32.

<sup>5699</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 31.

1510. About 1.8 metres below the three bodies, a jumbled mass of what was recorded as approximately 13 bodies was located within a layer containing garbage, eight blankets and four camouflage pattern canvas sheets. All of these approximately thirteen bodies were male.<sup>5700</sup>

1511. At the mass gravesite Petrovo Selo II, the remains of what was recorded as approximately 59 individuals were exhumed, seven of which were female.<sup>5701</sup> Some bodies were wrapped in plastic sheeting with the ends taped, similar to the wrapping used at Batajnica 5.<sup>5702</sup> Ligatures were also present in the grave site.<sup>5703</sup> The condition of the bodies indicates that they had lain decomposing for a time, between several days and a week, before they were buried.<sup>5704</sup> It appeared that the bodies had come from different locations.<sup>5705</sup> All but four individuals were dressed in civilian clothes.<sup>5706</sup> Gunshot wounds, in both soft and hard tissue of the recovered remains, were observed in bodies at both sites.<sup>5707</sup> Eight bullets were recovered.<sup>5708</sup>

1512. Hard tissue samples were taken from all the bodies for DNA analysis.<sup>5709</sup> The DNA analysis was performed by the ICMP.<sup>5710</sup> The ICMP identified the remains of 70 individuals from both graves.<sup>5711</sup> Some of the remains were repatriated to Kosovo. The OMPF received the remains of 61 individuals.<sup>5712</sup> Of these 61 individuals, 31 were identified as Kosovo Albanians last seen

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<sup>5700</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 30, 31.

<sup>5701</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 31.

<sup>5702</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 31; *see supra*, para 1499.

<sup>5703</sup> The report of Jon Sterenberg stated that at both PSI and PSII, ligatures were found, including on bodies with their wrists tied together. Two bodies were also recovered with their ankles wired together and the wire attached to a length of rope. There is no further detail whether these specific examples were from PSI or PSII. Jon Sterenberg, Exhibit P815, p 32.

<sup>5704</sup> There were teeth missing, dead insect larvae and grubs as well as pupae from which flies had not emerged. Jon Sterenberg, Exhibit P815, p 31.

<sup>5705</sup> One indication of this was the variety of body bags, mostly black in colour, some blue and others makeshift bags. At Petrovo Selo I, the jumbled mass of 13 bodies was in body bags while the three on the top were not. Jon Sterenberg, Exhibit P815 (Expert report), pp 30-31.

<sup>5706</sup> One body was dressed in a KLA uniform, two other bodies were dressed in partial uniforms and another body was wearing the uniform of a special policeman (Jon Sterenberg, Exhibit P815 (Expert report), p 31). As found earlier in this Judgement the remains of all the individuals from Izbica/Izbičë were dressed in civilian clothes. These four individuals dressed in uniform were not considered in the Chamber's finding as to the killings of the Kosovo Albanians in Izbica/Izbičë (*see supra*, para 630).

<sup>5707</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 28.

<sup>5708</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 32.

<sup>5709</sup> Jose Pablo Baraybar explained that the first eight sets of remains he received from the Serbian authorities that were exhumed from Petrovo Selo site did not have DNA results (Jose Pablo Baraybar, T 2524-2525). The OMPF was provided with photographs of the clothing that belonged to these remains and then a photograph exhibition was set up to allow family members to identify the remains based on the clothing. These eight remains were identified by their clothing and following this, a presumptive identification was made and the Serbian authorities notified. Based on this identification the eight remains were repatriated to Kosovo where DNA testing was conducted and it confirmed the identity of these eight remains (Jose Pablo Baraybar, T 2525).

<sup>5710</sup> Exhibit P818, pp 5-9.

<sup>5711</sup> The Chamber notes that there are 80 DNA results for remains sent to ICMP for identification. However, for 10 bodies there are two DNA results and therefore there has been 70 individuals identified by ICMP, Exhibit P818, pp 5-9.

<sup>5712</sup> Jose Pablo Baraybar, Exhibit P454, p 10; Dušan Dunjić, T 3266-3271; *see also*, the autopsy reports contained in Exhibit P457-470.

alive in Izbica/Izbicë on 28 March 1999.<sup>5713</sup> It is also recalled that the bodies of these Kosovo Albanians were filmed on 31 March or 1 April 1999 prior to their burial in Izbica/Izbicë, which is in the Srbica/Skenderaj municipality.<sup>5714</sup> Izbica/Izbicë is approximately 400 kilometres from the mass grave site in Petrovo Selo.

1513. The Chamber has received autopsy reports for 20 of the 31 individuals exhumed from Petrovo Selo and last seen alive in Izbica/Izbicë.<sup>5715</sup> These autopsy reports satisfy the Chamber that the most probable cause of death for 18 of these 20 people was related to gunshot wounds. For the remaining two, the cause of death was unascertained.<sup>5716</sup> These two have been identified as Zoje Osmani and Sofijie Draga. Earlier in this Judgement the Chamber has found that Zoje Osmani died when she was burnt to death on a tractor by Serbian forces.<sup>5717</sup> The Serbian authorities' autopsy report noted "changes found on the bones resulted from high temperatures" in respect of Zoje Osmani, but could not determine if these changes were *ante* or *post mortem*. In the view of the Chamber this autopsy finding does not suggest that any change should be made to its earlier finding that Zoje Osmani died as a result of being burnt to death on a tractor by Serbian forces.<sup>5718</sup>

1514. With respect to Sofijie Draga, and the remaining 11 bodies for which no autopsy reports were received, the Chamber recalls its earlier finding, based on eyewitness accounts, that these people were among those identified as killed by Serbian forces when shot on 28 March 1999 in Izbica/Izbicë.<sup>5719</sup>

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<sup>5713</sup> The following men were scheduled as Victims in the Indictment: Muhamet Behrami, Dibran Dani, Bajram Dervishi, Ali Dragaj, Rexhep Duraku, Muhamet Kadriu Emra, Lah (Hajrullah) Fetahu, Ram Gashi, Mehmet Hajra, Haliti Haliti, Hazr Hoti, Qerim Hoti, Hajzer Kotoori, Sami Loshi, Jashar Loshi, Selman Loshi, Ilaz Musli, Fatmir Osmani, Metush Qelaj, Hamdi Temaj, Hamit Thaqi, Sheremet Thaqi, Zenel Veiqi. An additional two listed victims, Zoje Osmana and Zada Dragaj, the Chamber earlier found were the women burnt to death on the tractor. In relation to Muhamet Emra, the Chamber notes that the OMPF Missing Person List (*see*, Exhibit P477) states that his full name is Muhamet Kadriem Ema. The Chamber does not find the discrepancy in his age listed as 60 in the OMPF Missing Persons List and 40 to 50 years in the Serbian authorities' autopsy report (*see*, Exhibit P128) affects its finding that Muhamet Kadriu Emra was killed and then buried in Izbica/Izbicë and later exhumed from Petrovo Selo. Based on the evidence, the following men were also named in the evidence and included in the Victim Chart, related to Izbica/Izbicë, annexed to this Judgement (*see infra*, Schedule: Victim Charts). These are: Pajazit Deshevc, Sofijie Draga, Qerime Mulaj, Rabije Osmani, Qazim Bajrami and Aziz Spahiu.

<sup>5714</sup> *See supra*, paras 625-630.

<sup>5715</sup> As stated above (*see supra*, paras 1461, 1463) the Chamber is able to rely on both the Serbian autopsy reports, where the most probable cause of death was ascertained, and the autopsy reports of OMPF, *see*, Exhibit P103; *see also*, Exhibit P112; *see also*, Exhibit P113; *see also*, Exhibit P115; *see also*, Exhibit P117; *see also*, Exhibit P122; *see also*, Exhibit P123; *see also*, Exhibit P124; *see also*, Exhibit P125; *see also*, Exhibit P126; *see also*, Exhibit P127; *see also*, Exhibit P128; *see also*, Exhibit P457; *see also*, Exhibit P458; *see also*, Exhibit P459; *see also*, Exhibit P461; *see also*, Exhibit P461; *see also*, Exhibit P463; *see also*, Exhibit P464; *see also*, Exhibit P465; *see also*, Exhibit P466; *see also*, Exhibit P467; *see also*, Exhibit P468; *see also*, Exhibit P469; *see also*, Exhibit P470; *see also*, Exhibit P472; *see also*, Exhibit P473; *see infra*, Schedule: Victim Chart.

<sup>5716</sup> *See infra*, Schedule: Victim Charts.

<sup>5717</sup> *See supra*, para 620.

<sup>5718</sup> Exhibit P113; *see supra*, para 620.

<sup>5719</sup> *See supra*, paras 620, 621-634.



(c) Lake Perucac

1515. Exhumations and forensic investigations commenced at Bajuna Basta, Lake Perucac in western Serbia on 6 September 2001 and continued until 13 September 2001. The area allegedly contained remains of victims from the war that had been transported to the site in the Spring of 1999. The investigations were conducted by the Uzice District Court with the assistance of a forensic team led by a military pathologist, Zoran Stanković. Autopsies were conducted on the remains from 9 September 2001 until 14 September 2001. Representatives of the ICMP were present at the investigations and autopsies.<sup>5720</sup>

1516. Bodies recovered during the exhumations were placed in body bags. Human body parts were placed in blue plastic bags.<sup>5721</sup> An anthropologist assisted to establish the minimum number of victims.<sup>5722</sup> The Chamber accepts from the evidence of Jon Sterenberg from ICMP, who was present at the exhumations at Lake Perucac, that the exhumations and autopsies were performed in accordance with accepted international standards.<sup>5723</sup> DNA samples were taken and submitted to ICMP for analysis and the ICMP report recorded identifications made as a result of the DNA analysis.<sup>5724</sup>

1517. At the site many items of ballistic relevance were noted.<sup>5725</sup> Metal parts and fibreglass from a refrigerated truck were also recovered.<sup>5726</sup> The refrigerated container of the truck was some 6 metres by 2.5 metres. There were signs of a fire within the refrigerated container, but the floor of the refrigerator container had been protected from the fire, which, with other evidence, indicated the presence of bodies in the container at the time of the fire.<sup>5727</sup>

1518. The precise number of bodies, of which remains were recovered, could not be determined with accuracy. Jon Sterenberg reported that there was a minimum of 48 individuals exhumed. Some remains were fragmentary.<sup>5728</sup> All but one of the recovered remains were male.<sup>5729</sup> The presence of both complete bodies and body parts indicated that this was a secondary burial site.<sup>5730</sup> Clear evidence of shattered crania was found in 21 cases and eight bullets were found in the remains of seven of the individuals. Direct evidence of gunshot wounds to the body was found in

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<sup>5720</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 34.

<sup>5721</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 35.

<sup>5722</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 36.

<sup>5723</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 38.

<sup>5724</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 36; Exhibit P818, pp 10-13.

<sup>5725</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 34.

<sup>5726</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 36.

<sup>5727</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 37.

<sup>5728</sup> Jon Sterenberg, Exhibit P815 (Expert report), pp 34, 36.

<sup>5729</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 36.

<sup>5730</sup> *See supra*, para 1483; Jon Sterenberg, Exhibit P815 (Expert report), pp 34, 35, 36.

nine cases. The entry wounds demonstrated that these nine individuals were shot in the back of the head.<sup>5731</sup>

1519. While Jon Sterenberg reported that gunshot wounds were found to be the “single cause of death” of all the remains”,<sup>5732</sup> this is inconsistent with the reported position taken by the Serbian forensic authorities that the cause of death could not be established in any of these cases because of post-mortem decomposition.<sup>5733</sup> Further, Jose Pablo Baraybar reported that the cause of death was not established for any individuals from Lake Perucac, and that the remains of 84 individuals, not 48, were repatriated to Kosovo.<sup>5734</sup> Given these unresolved inconsistencies and as none of the remains have been identified as persons named as victims in the Schedule in the Indictment, the Chamber will only make the limited finding that the remains (including part remains) of a minimum 84 individuals were exhumed from two mass graves by Lake Perucac. The Chamber will not make findings as to the cause of death of these remains even though there is evidence that a number of them had been shot.

### 3. Conclusion

1520. For the reasons expressed above, the Chamber accepts the findings made by the OMPF expert forensic team as to the most probable cause of death of persons whose bodies were exhumed from the mass graves in Batajnica and Petrovo Selo in Serbia that have been discussed. These findings of the OMPF team do not, in the Chamber’s view, call into question any of the factual findings of killings made by the Chamber earlier in this Judgement, in those cases where bodies exhumed from any of these locations have been related to killings in a particular town or village or other location. Rather, the findings of the OMPF team are in general harmony, in the Chamber’s view, with the factual findings made earlier by the Chamber. While the Chamber accepts that some of the findings of the OMPF expert team are not made with scientific certainty based solely on forensic examinations, as discussed in this Judgement, in the various circumstances revealed by the evidence, the Chamber finds itself entirely satisfied that the actual causes of death in each case were those identified by the OMPF team as the most probable cause of death.

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<sup>5731</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 37.

<sup>5732</sup> Jon Sterenberg, Exhibit P815 (Expert report), p 37.

<sup>5733</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report), p 10; Dušan Dunjić, T 3266-3271.

<sup>5734</sup> Jose Pablo Baraybar, Exhibit P454 (Expert report), p 10; Jose Pablo Baraybar, Exhibit P455.

## IX. GENERAL REQUIREMENTS OF ARTICLE 3 OF THE STATUTE

### A. Law

1521. The Accused is charged with murder, a violation of the laws or customs of war punishable under Article 3 of the Statute.<sup>5735</sup> There are several preliminary requirements which must be satisfied for the applicability of Article 3 of the Statute. It must be established that there was an armed conflict, whether international or internal, at the time material to the Indictment and that the acts of the Accused are closely related to this armed conflict.<sup>5736</sup> In addition, the following so called *Tadić* conditions should be met: there must be a serious infringement of a rule of international humanitarian law, whether customary or treaty law, which entails individual criminal responsibility.<sup>5737</sup>

#### 1. Armed conflict

1522. The test for armed conflict was set out by the Appeals Chamber in the *Tadić* Jurisdiction Decision: “[a]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State”.<sup>5738</sup> This test has been consistently applied in subsequent jurisprudence.<sup>5739</sup> Two criteria are to be assessed under this test, namely (i) the intensity of the conflict and (ii) the organisation of the parties to the conflict.<sup>5740</sup> These criteria are used solely as a way to distinguish an armed conflict “from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law”.<sup>5741</sup> They are factual matters which ought to be determined in light of the particular evidence available and on a case-by-case basis.<sup>5742</sup>

1523. Various factors have been taken into account by Trial Chambers to assess the “intensity” of the conflict. These include the seriousness of attacks and whether there has been an increase in

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<sup>5735</sup> Indictment, paras 74-77.

<sup>5736</sup> *Tadić* Jurisdiction Decision, para 70; *Delić* Trial Judgement, para 39.

<sup>5737</sup> *Tadić* Jurisdiction Decision, para 94. See also *Aleksovski* Appeal Judgement, para 20; *Kunarac* Appeal Judgement, para 66; *Mrkšić* Trial Judgement, paras 425-426.

<sup>5738</sup> *Tadić* Jurisdiction Decision, para 70.

<sup>5739</sup> *Delić* Trial Judgement, para 42; *Tadić* Trial Judgement, paras 561-562; *Čelebići* Trial Judgement, paras 183-185; *Krnjelac* Trial Judgement, para 51; *Kunarac* Appeal Judgement, para 56; *Kordić* Appeal Judgement, para 336; *Naletilić* Trial Judgement, para 225; *Limaj* Trial Judgement, paras 83-84; *Haradinaj* Trial Judgement, paras 37-38; *Milutinović* Trial Judgement, Volume I, paras 124-125; *Boškoski* Trial Judgement, para 175-176;.

<sup>5740</sup> See *Tadić* Trial Judgement, para 562; *Čelebići* Trial Judgement, para 184; *Limaj* Trial Judgement, para 84; *Mrkšić* Trial Judgement, para 407.

<sup>5741</sup> *Tadić* Trial Judgement, para 562; see also *Boškoski* Trial Judgement, para 175; *Limaj* Trial Judgement, para 89.

<sup>5742</sup> *Boškoski* Trial Judgement, para 175; *Rutaganda* Trial Judgement, paras 92- 93; *Limaj* Trial Judgement, para 90; *Mrkšić* Trial Judgement, para 407.

armed clashes,<sup>5743</sup> the spread of clashes over territory and over a period of time,<sup>5744</sup> any increase in the number of government forces and mobilisation and the distribution of weapons among both parties to the conflict,<sup>5745</sup> as well as whether the conflict has attracted the attention of the United Nations Security Council, and whether any resolutions on the matter have been passed.<sup>5746</sup> Trial Chambers have also taken into account in this respect the number of civilians forced to flee from the combat zones,<sup>5747</sup> the type of weapons used,<sup>5748</sup> in particular the use of heavy weapons<sup>5749</sup> and other military equipment, such as tanks and other heavy vehicles,<sup>5750</sup> the blockading or besieging of towns and the heavy shelling of towns,<sup>5751</sup> the extent of destruction<sup>5752</sup> and the number of casualties caused by shelling or fighting,<sup>5753</sup> the quantity of troops and units deployed;<sup>5754</sup> existence and change of front lines between the parties,<sup>5755</sup> the occupation of territory,<sup>5756</sup> and towns and villages,<sup>5757</sup> the deployment of government forces to the crisis area,<sup>5758</sup> the closure of roads,<sup>5759</sup> cease fire orders and agreements,<sup>5760</sup> the attempt of representatives from international organisations to broker and enforce cease fire agreements,<sup>5761</sup> the intensity, including the protracted nature, of

<sup>5743</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 565; *Čelebići* Trial Judgement, para 189; *Milošević* Rule 98bis Decision, para 28; *Kordić* Appeal Judgement, paras 340; *Haradinaj* Trial Judgement, paras 91 and 99.

<sup>5744</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 566; *Čelebići* Trial Judgement, para 186; *Milošević* Rule 98bis Decision, para 29; *Kordić* Appeal Judgement, paras 340-341; *Halilović* Trial Judgement, paras 163-166, 169; *Limaj* Trial Judgement, paras 168, 169. See also paras 136-163; *Hadžihasanović* Trial Judgement, paras 20, 22; *Martić* Trial Judgement, para 344.

<sup>5745</sup> *Boškoski* Trial Judgement, para 177; *Milošević* Rule 98bis Decision, paras 30-31. See also *Čelebići* Trial Judgement, para 188.

<sup>5746</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 567; *Čelebići* Trial Judgement, para 190; *Martić* Trial Judgement, para 345; *Haradinaj* Trial Judgement, para 49.

<sup>5747</sup> Because they have been evacuated (*Kordić* Appeal Judgement, para 340), expelled (*Tadić* Trial Judgement, para 565), threatened (*Limaj* Trial Judgement, para 139), or displaced (*Limaj* Trial Judgement, para 167; see also para 142); *Haradinaj* Trial Judgement, paras 49 and 97.

<sup>5748</sup> *Milošević* Rule 98bis Decision, para 31; *Limaj* Trial Judgement, para 166; *Haradinaj* Trial Judgement, para 49.

<sup>5749</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 565 (“artillery bombardment”), *Limaj* Trial Judgement, para 166; see also paras 136, 138, 156, 158, 163.

<sup>5750</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 143 (“heavy shelling, followed by the advance of tanks and infantry”); *Halilović* Trial Judgement, para 166 (“tank, artillery and infantry attack”); *Limaj* Trial Judgement, paras 136, 166.

<sup>5751</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 143 (blockade of Kozarac); *Halilović* Trial Judgement, paras 165-167 (blockade of Mostar), 168 (siege of Sarajevo); see also *Limaj* Trial Judgement, para 153; *Haradinaj* Trial Judgement, para 96.

<sup>5752</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 565; *Kordić* Appeal Judgement, paras 337-338; *Limaj* Trial Judgement, para 142; *Haradinaj* Trial Judgement, para 49.

<sup>5753</sup> *Boškoski* Trial Judgement, para 177; *Tadić* Trial Judgement, para 565; *Kordić* Appeal Judgement, paras 339; *Halilović* Trial Judgement, paras 164; *Limaj* Trial Judgement, para 142; *Haradinaj* Trial Judgement, para 49.

<sup>5754</sup> *Boškoski* Trial Judgement, para 177; *Halilović* Trial Judgement, para 168; *Haradinaj* Trial Judgement, para 49.

<sup>5755</sup> *Boškoski* Trial Judgement, para 177; *Halilović* Trial Judgement, paras 161, 169, 172.

<sup>5756</sup> *Boškoski* Trial Judgement, para 177; *Halilović* Trial Judgement, para 163; *Limaj* Trial Judgement, paras 146, 158.

<sup>5757</sup> *Boškoski* Trial Judgement, para 177; *Halilović* Trial Judgement, paras 162, 164; *Limaj* Trial Judgement, paras 143, 163.

<sup>5758</sup> *Boškoski* Trial Judgement, para 177; *Limaj* Trial Judgement, paras 142, 150, 164, 169.

<sup>5759</sup> *Boškoski* Trial Judgement, para 177; *Limaj* Trial Judgement, para 144.

<sup>5760</sup> *Boškoski* Trial Judgement, para 177; *Hadžihasanović* Trial Judgement, para 23; *Martić* Trial Judgement, para 345.

<sup>5761</sup> *Boškoski* Trial Judgement, para 177; *Hadžihasanović* Trial Judgement, para 23.

violence which has required the engagement of the armed forces and the high number of casualties and extent of material destruction.<sup>5762</sup>

1524. With respect to acts of terrorism, the Trial Chamber in *Boškoski*, having reviewed decisions of national courts and UN bodies, concluded that “while isolated acts of terrorism may not reach the threshold of armed conflict, when there is protracted violence of this type, especially where they require the engagement of the armed forces in hostilities, such acts are relevant to assessing the level of intensity with regard to the existence of an armed conflict”.<sup>5763</sup>

1525. The jurisprudence of the Tribunal has established that armed conflict of a non-international character may only arise when there is protracted violence between governmental authorities and organised armed groups, or between such groups, within a State.<sup>5764</sup> While the jurisprudence of the Tribunal requires an armed group to have “some degree of organisation”, the warring parties do not necessarily need to be as organised as the armed forces of a State.<sup>5765</sup> The leadership of the group must, as a minimum, have the ability to exercise some control over its members so that the basic obligations of Common Article 3 of the Geneva Conventions may be implemented.<sup>5766</sup>

1526. Trial Chambers have taken into account a number of factors when assessing the organisation of an armed group. These fall into five broad groups. First, are the factors signalling the presence of a command structure.<sup>5767</sup> Secondly, are factors indicating that an armed group could carry out operations in an organised manner.<sup>5768</sup> Thirdly, are factors indicating a level of logistics have been taken into account.<sup>5769</sup> Fourthly, are factors relevant to determining whether an armed group possessed a level of discipline and the ability to implement the basic obligations of Common

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<sup>5762</sup> *Boškoski* Trial Judgement, paras 178, 180-182.

<sup>5763</sup> *Boškoski* Trial Judgement, para 190

<sup>5764</sup> *Tadić* Jurisdiction Decision, para 70.

<sup>5765</sup> *Boškoski* Trial Judgement, paras 196-198; *Limaj* Trial Judgement, para 89; *Orić* Trial Judgement, para 254.

<sup>5766</sup> *Boškoski* Trial Judgement, para 196, citing ICRC Commentary to Geneva Convention II, p 34 (observing that if a non-State group does not apply Common Article 3, “it will prove that those who regard its actions as mere acts of anarchy or brigandage are right”). See also ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts”, Report prepared by the International Committee of the Red Cross, 28th International Conference of the Red Cross and Red Crescent, Geneva, 2 to 6 December 2003, at p 19 (referring to “armed forces or armed groups with a certain level of organization, command structure and, therefore, the ability to implement international humanitarian law.”).

<sup>5767</sup> *Limaj* Trial Judgement, paras 46, 94, 96-111; *Haradinaj* Trial Judgement, paras 60, 65-68; *Milošević* Rule 98bis Decision, paras 23-24.

<sup>5768</sup> *Limaj* Trial Judgement, paras, 105, 106, 108, 109, 129, 158; *Mrkšić* Trial Judgement, paras 410, 417, *Haradinaj* Trial Judgement, para 65.

<sup>5769</sup> *Limaj* Trial Judgement, paras 118-119, 121-124; *Haradinaj* Trial Judgement, paras 76-86; *Čelebici* Trial Judgement, para 118; *Limaj* Trial Judgement, para 119; *Milošević* Rule 98bis Decision, paras 23-24.

Article 3.<sup>5770</sup> A fifth group includes factors indicating that the armed group was able to speak with one voice.<sup>5771</sup>

## 2. Nexus between the alleged acts of the accused and the armed conflict

1527. To meet the general requirements of Article 3 of the Statute, the Prosecution must establish a sufficient link between the alleged acts of the Accused and the armed conflict.<sup>5772</sup> The nexus requirement serves to distinguish war crimes from purely domestic crimes and also prevents purely random or isolated criminal occurrences from being characterized as war crimes. The armed conflict need not have been causal to the commission of the crime charged, but it must have played a substantial part in the perpetrator's ability to commit that crime.<sup>5773</sup> It is not required that the alleged crimes occur at a time and in a place where fighting is actually taking place.<sup>5774</sup> The temporal applicability of the laws and customs of war was described by the Appeals Chamber in the case of internal armed conflicts as lasting until a peaceful settlement is achieved.<sup>5775</sup> In determining whether a nexus between the acts of the accused and the armed conflict exists, reliance may be placed, *inter alia*, upon whether the perpetrator was a combatant, whether the victim was a non-combatant, whether the victim was a member of the opposing party, whether the act may be said to have served the ultimate goal of a military campaign, and whether the crime is committed as part of or in the context of the perpetrator's official duties.<sup>5776</sup>

## 3. The Tadić conditions

1528. The jurisprudence of the Tribunal has consistently held that for an offence to fall under the scope of Article 3 of the Statute, four conditions must be met. First, the violation must constitute an infringement of a rule of international humanitarian law. Secondly, the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met. Thirdly, the violation must be serious, that is to say that it must constitute a breach of a rule protecting important values

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<sup>5770</sup> *Limaj* Trial Judgement, paras 110, 113-117, 119; *Haradinaj* Trial Judgement, para 69.

<sup>5771</sup> *Haradinaj* Trial Judgement, para 88.

<sup>5772</sup> *Boškoski* Trial Judgement, para 293; *Limaj* Trial Judgment, para 83; *Tadić* Trial Judgement, paras 572-573.

<sup>5773</sup> *Krajišnik* Trial Judgement, para 846; *Kunarac* Appeal Judgement, para 58; *Stakić* Appeal Judgement, para 342; *Popović* Trial Judgement, para 741.

<sup>5774</sup> *Delić* Trial Judgement, para 41; *Kunarac* Appeal Judgement, para 57. See also *Kunarac* Appeal Judgement, para 64, where the Appeal Chamber held that "the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties." The Appeal Chamber in the *Tadić* case held that international humanitarian law applies "in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, *whether or not actual combat takes place there*", *Tadić* Jurisdiction Decision, para 70 (emphasis added), reaffirmed in *Kordić* Appeal Judgement, para 319.

<sup>5775</sup> *Tadić* Jurisdiction Decision, para 70; *Kunarac* Appeal Judgement, para 57.

<sup>5776</sup> *Kunarac* Appeal Judgement, para 59.

and the breach must involve grave consequences for the victim.<sup>5777</sup> Finally, the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.<sup>5778</sup>

1529. In the present case, the charge of murder as a violation of the laws or customs of war is based on Common Article 3. It is settled jurisprudence that violations of Common Article 3 fall within the scope of Article 3 of the Statute. In particular, it is established that Common Article 3 forms part of customary international law and that violation of this provision entails criminal liability.<sup>5779</sup> The Appeals Chamber has accepted that serious violations of Common Article 3 would at once satisfy the four *Tadić* conditions.<sup>5780</sup>

#### 4. Whether the victims were taking an active part in hostilities

1530. As Common Article 3 protects persons taking no active part in the hostilities,<sup>5781</sup> it must be established that the victims of the alleged violation were not taking an active part in the hostilities at the time the crime was committed.<sup>5782</sup>

### **B. Findings**

#### 1. Existence of an armed conflict

1531. The Indictment alleges that at all relevant times, a state of armed conflict existed in Kosovo in the FRY.<sup>5783</sup>

##### (a) Intensity of the conflict

1532. The Chamber has established earlier in this Judgement that following the events in Cirez/Çirez, Likošane/Likoshan and Prekaz/Prekaze at the end of February and early March 1998 armed clashes between members of the MUP of Serbia and the VJ on the one hand, and the KLA on the other became more frequent, especially in western and central Kosovo. In March and April 1998 PJP units of the MUP carried out operations to hold the road between Klina/Klinë and

<sup>5777</sup> *Tadić* Jurisdiction Decision, para 94; see also *Kunarac* Appeal Judgement, para 66.

<sup>5778</sup> *Tadić* Jurisdiction Decision, para 94. See also *Aleksovski* Appeal Judgement, para 20; *Kunarac* Appeal Judgement, para 66; *Mrkšić* Trial Judgement, paras 425.

<sup>5779</sup> *Tadić* Jurisdiction Decision, para 129. While the Appeals Chamber found that Common Article 3 contains no explicit reference to criminal liability for violation of its provisions, it relied on the findings of the International Military Tribunal at Nuremberg, on State practice, national legislation, including the law of the former Yugoslavia, Security Council resolutions and the agreement reached under the auspices of the ICRC on 22 May 1992. Its finding was confirmed in the *Čelebići* Appeal Judgement, para 174.

<sup>5780</sup> *Tadić* Jurisdiction Decision, para 134; *Čelebići* Appeal Judgement, para 125; *Kunarac* Appeal Judgement, para 68.

<sup>5781</sup> Common Article 3(1).

<sup>5782</sup> *Kvočka* Trial Judgement, para 124; *Blagojević* Trial Judgement, para 540.

<sup>5783</sup> Indictment, para 78.

Srbica/Skenderaj and to de-blockade the road between Peć/Pejë and Dečani/Deçan which had been sealed off by the KLA.<sup>5784</sup> A further operation was conducted in April 1998 in Jablanica/Jabllanicë, Đakovica/Djakovë municipality.<sup>5785</sup> International observers noted that in early May 1998 the villages in Ponoševa/Ponoshec, Đakovica/Gjakovë municipality had been deserted; the houses were badly damaged by gunfire. PJP and JSO units of the MUP were present in the area.<sup>5786</sup> Houses in two villages north of Dečani/Deçan were burnt in May 1998.<sup>5787</sup> In May 1998, operations by the Serbian security forces took place along the main road between Đakovica/Gjakovë, Dečani/Deçan and Peć/Pejë. The villages along this road were held by the Serbian forces and attacked frequently by the KLA.<sup>5788</sup> Houses in the areas of Mališevo/Malishevë, Orahovac/Rahovec, and Komorane/Komorane were burnt to the ground.<sup>5789</sup> There were attacks by the KLA on members of the MUP and on police stations, incidents of kidnappings of Serbs, and sometimes Kosovo Albanians by the KLA.<sup>5790</sup>

1533. The armed violence in Kosovo increased significantly in June, July, August and September 1998. In June 1998 the KLA held up to 50 per cent of the territory of Kosovo and controlled three main roads.<sup>5791</sup> There were frequent attacks by the KLA on the police and the army.<sup>5792</sup> In June 1998 villages in the regions of Srbica/Skenderaj and Glogovac/Glllogoc were shelled causing some 40,000 people to flee the region.<sup>5793</sup> Serbian security forces conducted an operation in the municipalities of Dečani/Deçan and Đakovica/Gjakovë, which resulted in destruction of houses.<sup>5794</sup> The VJ participated in an operation in Đakovica/Gjakovicë in June 1998 which involved the moving the people of the village of Damjane/Damjan.<sup>5795</sup> In July 1998 fighting between the Serbian security forces and the KLA took place in the village of Loda/Loxhë, Peć/Pejë municipality, in the town of Orahovac/Rahovec, on the Priština/Prishtinë-Peć/Pejë road and near Mališevo/Malishevë.<sup>5796</sup> In August 1998 the Serbian security forces conducted an operation in Junik, Dečani/Deçan municipality and near Grebnik/Gremnik and Komorane/Komorane, in central Kosovo.<sup>5797</sup> In September 1998 Serbian security forces conducted operations in Bajgora/Bajgorë and Stari Trg/Stantërg in Kosovska Mitrovica/Mitrovicë municipality and in the region of Drenica.

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<sup>5784</sup> See *supra*, para 280.

<sup>5785</sup> See *supra*, para 281.

<sup>5786</sup> See *supra*, para 282.

<sup>5787</sup> See *supra*, para 283.

<sup>5788</sup> See *supra*, para 284.

<sup>5789</sup> See *supra*, para 285.

<sup>5790</sup> See *supra*, paras 279, 286.

<sup>5791</sup> See *supra*, para 300.

<sup>5792</sup> See *supra*, para 301.

<sup>5793</sup> See *supra*, para 302.

<sup>5794</sup> See *supra*, para 303.

<sup>5795</sup> See *supra*, para 305.

<sup>5796</sup> See *supra*, paras 307, 309, 310, 312, 317, 318.

<sup>5797</sup> See *supra*, para 319.



During the latter operation, 21 members of one family, including women, children and elderly, were killed in the village of Gornje Obrinje/Abri-c-Epërme in Glogovac/Gllogoc municipality.<sup>5798</sup> The operations which took place in June 1998 and in the following months involved not only forces of the MUP of Serbia but also VJ forces who on occasions would shell villages.<sup>5799</sup> The MUP and the VJ issued weapons to over 45,000 persons who were not Kosovo Albanians in Kosovo.<sup>5800</sup>

1534. The operations that took place in the summer of 1998 caused a great number of people to leave their villages. While on the evidence the Chamber is unable to make a finding as to their number, the Chamber would note here that the number of internally displaced persons in Kosovo at the end of July 1998 was estimated as exceeding 100,000 and reaching up to 171,000 in mid September 1998.<sup>5801</sup>

1535. The Kosovo crisis quickly attracted international attention. On 31 March 1998 the United Nations Security Council passed Resolution 1160 which imposed an arms embargo and called upon the FRY to take measures to achieve a political solution to the situation in Kosovo.<sup>5802</sup> In June and the following months foreign diplomatic observer missions were established in Kosovo in an effort to resolve the conflict.<sup>5803</sup> On 23 September 1998 the United Nations Security Council passed Resolution 1199 which called upon the FRY to immediately cease all action by the security forces affecting the civilian population in Kosovo and to withdraw its units used for civilian repression from Kosovo. Resolution 1199 also called for effective and continuous monitoring of the situation in Kosovo.<sup>5804</sup>

1536. Considering these findings, the Chamber is satisfied that as of the end of May 1998 the conflict in Kosovo between the Serbian security forces and the KLA had the requisite level of intensity to be considered as an armed conflict. The Serbian security forces comprised forces of the VJ and the MUP of Serbia and thus constituted government authorities within the meaning of the jurisprudence. The Chamber will review below whether the KLA possessed the characteristics of an organised armed group.

(b) Organisation of KLA

1537. As was discussed earlier in this Judgement, the KLA was established sometime in the mid 1990s. By the end of 1994 the organisation started to claim responsibility for some individual

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<sup>5798</sup> See *supra*, paras 335-339.

<sup>5799</sup> See *supra*, paras 336, 340, 344.

<sup>5800</sup> See *supra*, para 324.

<sup>5801</sup> See *supra*, paras 323, 345.

<sup>5802</sup> See *supra*, para 294.

<sup>5803</sup> See *supra*, paras 295-299.

<sup>5804</sup> See *supra*, para 346.

killings.<sup>5805</sup> It was also associated with guerrilla attacks against Serbian forces in 1996.<sup>5806</sup> KLA soldiers appeared in uniform for the first time in public on 28 of November 1997 in the town of Lauša/Laushë, Srbica/Skeneraj municipality, at a funeral of a teacher who was killed by Serbian police.<sup>5807</sup>

1538. Hashim Thaqi, Ramush Haradinaj, and Kadri Veseli, three members of the KLA General Staff who came from Albania to Kosovo, had the task of uniting several armed groups in Kosovo and to introduce a formal organised structure among them.<sup>5808</sup>

1539. John Crossland, the Defence Attaché at the UK Embassy in Belgrade from August 1996 to 23 March 1999,<sup>5809</sup> testified that the KLA started out as an insurgent force which had a “hard-core element” of no more than 400 active members throughout most of the time between 1997 and 1999.<sup>5810</sup> This figure increased towards the end of the campaign when it became apparent that NATO was going to intervene.<sup>5811</sup> The witness described that the KLA may have grown to 3,000 men. He was of the opinion that the KLA was composed of this “hard-core element” and “hangers-on” who supported the KLA.<sup>5812</sup> The witness believed there to be 24 KLA Headquarters with 15–20 members in each.<sup>5813</sup> Richard Ciagliniski, who was chief liaison person for the KVM with the VJ,<sup>5814</sup> testified that there were around 10,000 people in some sort of uniform loosely known as KLA when the KVM left Kosovo on 20 March 1999.<sup>5815</sup>

1540. Bislim Zyrapi, Chief of Staff of the KLA from November 1998 until the first half of April 1999, testified that during the time he occupied that position, the KLA had an establishment of 17,000 to 18,000 soldiers who performed tasks and duties within the KLA.<sup>5816</sup> He also testified that 4,000 to 5,000 soldiers were based in the Drenica Operational Zone and 6,000 in the Pashtrik Zone.<sup>5817</sup> However, he also testified that due to a lack of equipment not all the soldiers were

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<sup>5805</sup> In December 1994 the KLA informed the public in Kosovo that they were responsible for the assassination of Lutvi Ajvazi, a retired member of the security forces, and other terrorist acts, Momir Stojanović, T 11692. *See also supra*, para 35.

<sup>5806</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 8. *See also* Veton Surroi, T 257.

<sup>5807</sup> Veton Surroi, T 257- 258, 267; Frederick Abrahams, Exhibit P738, p9; Baton Haxhiu, Exhibit P993 (*Milutinović* transcript), T5408.

<sup>5808</sup> Momir Stojanović, T11694.

<sup>5809</sup> John Crossland, Exhibit P1400, para 1; John Crossland, T 9146.

<sup>5810</sup> John Crossland, Exhibit P1402 (*Milutinović* transcript), T 9777; John Crossland, Exhibit P1400, para 24.

<sup>5811</sup> John Crossland, Exhibit P1402 (*Milutinović* transcript), T 9777.

<sup>5812</sup> John Crossland, Exhibit P1400, para 24; John Crossland, Exhibit P1402 (*Milutinović* transcript), T 9777, 9896-9897.

<sup>5813</sup> John Crossland, Exhibit P1402 (*Milutinović* transcript), T 9898-9899.

<sup>5814</sup> Richard Ciagliniski, T 5244.

<sup>5815</sup> Richard Ciagliniski, Exhibit P833 (*Milošević* transcript), T 3336.

<sup>5816</sup> Bislim Zyrapi, T 2467; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5932; Bislim Zyrapi, Exhibit P427, paras 14-15.

<sup>5817</sup> Bislim Zyrapi, T 2467.

viewed as “full-time soldiers”.<sup>5818</sup> Momir Stojanović, who was Chief of the Security Section in the Command of the Priština Corps at the material time,<sup>5819</sup> testified that there were 25,000 armed KLA members between March and June 1998.<sup>5820</sup> It was the estimate of Richard Ciagliniski of the KVM, who was present in Kosovo, that in the second half of March 1999, the KLA had approximately 10,000 members.<sup>5821</sup> In the view of the Chamber, the estimates provided by Bislim Zyrapi and Momir Stojanović may not be entirely accurate. Each of the two witnesses was affiliated with a party participating in a conflict and may have had an interest in presenting higher figures. On the contrary, the estimates of Richard Ciagliniski were based on the direct observations of independent international observers who were present in Kosovo in 1998 and 1999. The Chamber accepts the evidence of Richard Ciagliniski and finds that in the second half of March 1999 the KLA had approximately 10,000 members.

(i) Command structure and territorial organisation

1541. While the evidence is not specific as to the date of its formation, the evidence establishes that in 1998 there was a General Staff of the KLA.<sup>5822</sup> There was a General Commander, a Deputy General Commander for operations and a Deputy General Commander acting as KLA spokesperson. In addition, there was a General Inspector, a judge at the KLA Military Court,<sup>5823</sup> a Chief of Staff,<sup>5824</sup> a Deputy Chief of Staff, Director of Political Issues, a Director of Personnel, a Director of Intelligence Services, a Director of Operational Issues, a Director of Logistics, a Director of Finance, a Director of Civil Administration, a Director of Police Issues and a Director of Radio Communication.<sup>5825</sup> The General Staff were located in the Berisha Mountains, near Mališevo/Malishevë in central Kosovo, from November 1998 until March 1999.<sup>5826</sup>

1542. Ground forces were required to ask the General Staff for approval to carry out important combat operations, but in reality before late 1998 more power lay with zone commanders than the

<sup>5818</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5959; Bislim Zyrapi, T 2467.

<sup>5819</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19683-19684; Momir Stojanović, T 11825-11826.

<sup>5820</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19712-19714. Momir Stojanović testified further that the KLA forced people to join the group. In the villages surrounding Prizren, KLA members entered houses and issued threats, Momir Stojanović, T 11745-11746; *see also* Exhibit D765.

<sup>5821</sup> Richard Ciagliniski, Exhibit P833 (*Milošević* transcript), T 3336; Richard Ciagliniski, T 5302. This is consistent with the estimate of General Drewienkiewicz who testified there were several hundred KLA “full-time fighters” and some more people who would defend their villages but would not actively fight elsewhere, Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7790-7791.

<sup>5822</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6063; John Crosland, Exhibit P1400, para 27.

<sup>5823</sup> Bislim Zyrapi, Exhibit P427, para 14; Exhibit P437, p 2.

<sup>5824</sup> This position was created in November 1998 and Bislim Zyrapi was the first to occupy the post. He was the only member of the General Staff of the KLA who had any experience of a professional military officer, Bislim Zyrapi, Exhibit P427, para 14; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5932, 6049; Bislim Zyrapi T 2460.

<sup>5825</sup> Bislim Zyrapi, Exhibit P427, para 14; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5941-5942, 6027; Bislim Zyrapi, T 2463.

<sup>5826</sup> Bislim Zyrapi, T 2463.

General Staff.<sup>5827</sup> From late 1998 operations were discussed first within the General Staff, and the zone commander of the particular zone for which the operation was prepared was also asked to attend. Once the operation plans were clear, the approval of the General Staff was given to the zone commander to carry out the operation. The zone commander would then act according to the instructions contained in the order about the operation. The zone commanders could, however, take action without the General Staff instruction if they were attacked within their own zones.<sup>5828</sup>

1543. The meetings between the General Staff and zone commanders would also be used to discuss operational requirements and developments within the respective zone's area of responsibility. Minutes were taken.<sup>5829</sup> Orders from the General Staff would be communicated verbally and always followed up with written instruction.<sup>5830</sup> Zone commanders would then implement the orders according to the instructions of the General Staff.<sup>5831</sup>

1544. After the NATO bombing campaign against the FRY started on 24 March 1999, the zone commanders had further discretion to take action as it was then impossible for them to hold meetings with the General Staff. If zone commanders made orders without initial instruction from the General Staff they were however obliged to contact the General Staff as soon as it was possible.<sup>5832</sup>

1545. The evidence suggests that a system for recording orders and other documents was in place within the KLA. There were archives of the General Staff of the KLA, containing combat reports and other documents, which were sent to Priština/Prishtinë immediately after the war.<sup>5833</sup> Every written document was archived in the relevant operational zone and with the General Staff, who obtained a seal in November or December 1998.<sup>5834</sup> Orders were archived with minutes, and oral orders issued by the General Staff to the zone commanders, or by zone commanders to brigades, would be followed up in writing, and then archived.<sup>5835</sup>

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<sup>5827</sup> Bislim Zyrapi, Exhibit P427, para 10; Bislim Zyrapi, T 2501; John Crosland, Exhibit P1400, para 27, *see also* KLA Rulebook, Exhibit P436, p 10.

<sup>5828</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5958-5959.

<sup>5829</sup> Bislim Zyrapi, Exhibit P427, para 23; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5956; for an example of minutes taken *see* Exhibit P431.

<sup>5830</sup> One example is an order from the General Staff to Pashtrik Zone commander on 1 April 1999; Exhibit P452.

<sup>5831</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5958. *See also* Bislim Zyrapi, Exhibit P427, paras 37-38.

<sup>5832</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5959.

<sup>5833</sup> Bislim Zyrapi, T 2486-2487; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6022; examples include minutes taken at meetings held by the KLA General Staff *see* Exhibit P 431; an evacuation order *see* Exhibit P452; an order from the Pashtrik Operational Zone commander concerning the stationing of brigades, Exhibit P432.

<sup>5834</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6022.

<sup>5835</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5969.

1546. As will be discussed in more detail below, the KLA had seven operational zones: Drenica, Dukagjin, Pashtrik, Shala, Llap, Nerodime and Karadak.<sup>5836</sup> Each operational zone had a zone commander, appointed by the General Staff, heading its command structure.<sup>5837</sup> Regular meetings between the General Staff and zone commanders took place every 15 days from January to March 1999, however only one meeting took place in March 1999. These meetings were attended by the Chief of Staff and Deputy Commander of the General Staff, and all zone commanders, if available. The zone commanders' deputies would attend in their absence.<sup>5838</sup>

1547. The KLA General Staff took the decision in 1998 to divide operational zones into brigades, each of which had a commander. Many of the brigades were formed in November and December 1998 and January 1999 but some were not fully established by the end of the war.<sup>5839</sup> The zone commander proposed a commander and deputy commander for each brigade and the General Staff approved the proposals.<sup>5840</sup> At least by the end of 1998 brigades were assigned to specific areas by written orders.<sup>5841</sup> Brigades were further divided into battalions, usually three to four infantry battalions, and battalions into companies and platoons.<sup>5842</sup> Brigades also had Rapid Intervention Companies with the duty to intervene rapidly where there were attacks.<sup>5843</sup> These special companies were typically the size of a platoon.

1548. In May 1998 only the Drenica Operational Zone was in existence. The Dukagjini Operational Zone started to be formed in June 1998, and five more operational zones were established later in that year.<sup>5844</sup> The KLA had a number of local headquarters.<sup>5845</sup> KLA soldiers were stationed in schools, collective facilities and houses as there were no barracks.<sup>5846</sup>

1549. In the Drenica Operational Zone the village of Likoc/Likovac served as a headquarters. The municipalities of Srbica/Skenderaj, Glogovac/Gllogoc and Klina/Klinë were included in this zone.

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<sup>5836</sup> Exhibit P430. See also Exhibit P1234.

<sup>5837</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5968.

<sup>5838</sup> Bislim Zyrapi.

<sup>5839</sup> Bislim Zyrapi, T 2494.

<sup>5840</sup> Bislim Zyrapi, Exhibit P427, para 21; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5964. See proposal from Ekrem Rexham for commanders in Pashtrik Operational Zone, Exhibit P433, which was accepted by General Staff, Exhibit P 434.

<sup>5841</sup> Exhibit P432 shows an order from the KLA General Staff to Pashtrik Operational Zone on 8 February 1999.

<sup>5842</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5960-5961. See also Exhibit P1234, pp 1-2, which stated that the size of brigades varied between 180 and 400 soldiers, Bislim Zyrapi, Exhibit P427, para 19.

<sup>5843</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5962; Bislim Zyrapi, Exhibit P427, para 22; Bislim Zyrapi, Exhibit P427, para 19; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5960. See KLA Rulebook, Exhibit P436, p 8.

<sup>5844</sup> Bislim Zyrapi, T 2496.

<sup>5845</sup> The local headquarters were in Dobratin/Dobrotin, Bradaš/Bradash, Magura/Magurë south of Prizren airport, Likoc/Likovac, Gladno Selo/ Gllanasellë (near Glogovac/ Gllogoc, Dobra Voda/ Ujmirë, Dobri DO/Dobërdol Svrke/Sverkë, Carralevë/Crnoljevo, Duhël/Dulje, Dragobilje/Dragobil, Budakovo/Budakovë, Junik, Sedlare/Shalë, Drenovac/Drenoc, Raçak, Nerodime e Eperme Gornje/Nerodimlje, Bajgora/Bajgorë, west of Gllogjan/Glodane, and Mališevë/Mališevë, John Crosland, Exhibit P1400, para 26.

The KLA 111<sup>th</sup> brigade was partly based in Likoc/Likovac. The 112<sup>th</sup>, 113<sup>th</sup> and 114<sup>th</sup> brigades were all active in this zone.<sup>5847</sup>

1550. Pashtrik Operational Zone included the municipalities of Prizren, Suva Reka/Suharekë, Mališevo/Malishevë in part, Orahovac/Rahovec and Dragaš/Dragash.<sup>5848</sup> The Commander of this zone had been an experienced officer in the VJ.<sup>5849</sup> The 121<sup>st</sup> brigade command was based in Klecke/Klečkë and Mališevo/Malishevë, the 122<sup>nd</sup> brigade command was based in Jovic/Joviq village from November 1998 until March 1999, the 123<sup>rd</sup> brigade command was based in Brezance village, the command of the 124<sup>th</sup>, 126<sup>th</sup> and 127<sup>th</sup> brigades was based in Retimlje/Reti village. The KLA 125<sup>th</sup> brigade had the responsibility of covering Prizren and its surrounding area. Most of the villages in Suva Reka/Suharekë municipality were within the area of responsibility of the 123<sup>rd</sup> brigade and some villages in the northern part of Suva Reka/Suharekë were under the 121<sup>st</sup> brigade.<sup>5850</sup>

1551. Dukagjin Operational Zone encompassed the municipalities of Peć/Pejë, Đakovica/Gjakovë, Istok/Istog, Dečani/Dečan and, in part, Klina/Klinë.<sup>5851</sup> In March 1999 command for this zone was based in the village of Glodane/Gllogjan, Peć/Pejë municipality. Ramsuh Haradinaj was the Zone Commander and Nazmi Ibrahim was Deputy Commander.<sup>5852</sup> The 131<sup>st</sup>, 132<sup>nd</sup>, 133<sup>rd</sup> and 134<sup>th</sup> brigades were operating in this zone but their location varied.<sup>5853</sup> The 134<sup>th</sup> brigade became operative around January or February 1999.<sup>5854</sup>

1552. Nerodime Operational Zone included the municipalities of Uroševac/Ferizaj, Štimlje/Shtime, Kačanik/Kaçanik and Štrpce/Shtërpçë.<sup>5855</sup> The Commander of this zone was Shukri Buja.<sup>5856</sup> The 161<sup>st</sup> and 162<sup>nd</sup> brigades were active in this zone.

1553. Shala Operational Zone included the municipalities of Kosovska Mitrovica/Mitrovicë, Vuçitër/Vushtrri, Leposavic/Leposaviq, Zvečan/Zveçan and Zubin Potok. Rrahmon Rama was the Commander of this zone in March 1999. The 141<sup>st</sup> and 142<sup>nd</sup> brigades were active in this zone.<sup>5857</sup>

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<sup>5846</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6182.

<sup>5847</sup> Bislim Zyrapi, T 2464-2465; Bislim Zyrapi, Exhibit P427, para 16. *See* Exhibit P1234, p 2.

<sup>5848</sup> Bislim Zyrapi, Exhibit P427, para 16.

<sup>5849</sup> Bislim Zyrapi, Exhibit P427, para 17.

<sup>5850</sup> Bislim Zyrapi, T 2430-2431. *See* Exhibit P1234, p 2.

<sup>5851</sup> Bislim Zyrapi, Exhibit P427, para 16.

<sup>5852</sup> Bislim Zyrapi, T 2475.

<sup>5853</sup> Bislim Zyrapi, T 2475-2476.

<sup>5854</sup> Bislim Zyrapi, T 2477. An example of an order issued from the General Staff to the Dukagjini Operational Zone was during the NATO air-strike, when the zone commander was instructed to establish defences and help the population withdraw outside the front lines; Bislim Zyrapi, T 2478.

<sup>5855</sup> Bislim Zyrapi, Exhibit P427, para 16.

<sup>5856</sup> Bislim Zyrapi, Exhibit P427, para 16.

<sup>5857</sup> Bislim Zyrapi, Exhibit P427, para 16; Bislim Zyrapi, T 2491-2492. *See* Exhibit P1234, p 1.

1554. Rustem Mustafa was the Commander in Llap Operational Zone. Priština/Prishtinë, Podujevo/Podujevë, Lipljan/Lipjan, Kosovo Polje/Fushë Kosovë, and Obilic/Obiliq were included in this operational zone.<sup>5858</sup> This zone had civil protection units to help the population evacuate if fighting occurred in areas where they lived.<sup>5859</sup> These units reported to the operational zone command and through the zone command the unit reported to the General Staff.<sup>5860</sup> The 151<sup>st</sup> and 152<sup>nd</sup> brigades operated in Llap in an area consisting of the left side of the Priština/Prishtinë - Podujevo/Podujevë road including the villages of the Podujevo/Podujevë up to the Bajgora/Bajgorë village, whilst the 153<sup>rd</sup> brigade was operating on the other side of the Priština/Prishtinë - Podujevo/Podujevë road including the villages of the Podujevo/Podujevë municipality.<sup>5861</sup> In total approximately 2,000-3,000 KLA soldiers were operating in this zone.<sup>5862</sup>

1555. Ahmet Isufi was the Commander for Karadak Operational Zone. The municipalities of Gnjilane/Gjilan, Vitina/Viti, Kamenica/Kamenicë and Novo Brdo/Novobërdë were included in Karadak operational zone.<sup>5863</sup> The 171<sup>st</sup> brigade operated in this zone until March 1999. The evidence suggests that there were very few soldiers in this zone, approximately 200-300.<sup>5864</sup>

1556. Support firing groups were formed by each brigade and a reconnaissance-sabotage unit. The KLA also demonstrated a capability to react to changing circumstances.<sup>5865</sup> The KLA had also established levels of military readiness, which the zone commanders would adopt after analyzing and evaluating the situation.<sup>5866</sup>

(ii) Ability to carry out operations and control territory

1557. As it has been discussed in more detail earlier in this Judgement, gradually in 1998 the KLA demonstrated that it was able to blockade roads,<sup>5867</sup> and control and evacuate various areas in Kosovo.<sup>5868</sup> The KLA took control of large territories, such as the Drenica area.<sup>5869</sup> In early 1999 the KLA set up checkpoints to control the local businesses in the territories it held. It collected

<sup>5858</sup> Bislim Zyrapi, Exhibit P427, para 16.

<sup>5859</sup> Bislim Zyrapi, T 2457.

<sup>5860</sup> Bislim Zyrapi, T 2457.

<sup>5861</sup> Exhibit P1234, p 1; Bislim Zyrapi, T 2490-2491.

<sup>5862</sup> Bislim Zyrapi, T 2491.

<sup>5863</sup> Bislim Zyrapi, Exhibit P427, para 16; Bislim Zyrapi, T 2489.

<sup>5864</sup> Bislim Zyrapi, T 2490.

<sup>5865</sup> Zone commanders sent reinforcements to some villages, for example Ramush Haradinaj sent 6 soldiers to Vokša/Voksh village, Exhibit P438. Officers were reassigned when needed, Exhibit P439.

<sup>5866</sup> Exhibit P444.

<sup>5867</sup> Momir Stojanović testified that between March and June 1998 the KLA had cut off almost all roads leading from Kosovo. Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19712; Exhibit D734 p 1. See also Exhibit P1234, p 3; Bislim Zyrapi, T 2500-2502.

<sup>5868</sup> Bislim Zyrapi, T 2502-2503; Shukri Gerxhaliu, Exhibit P512 para 6; Shukri Gerxhaliu T 3108 -3109, 3143-3144; Sabit Kadriu, Exhibit P515, p 5; Momir Stojanović, T 11698-11699.

<sup>5869</sup> Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6902; Emin Kabashi, Exhibit P515, p 5.

donations and organized for identification cards to be issued to residents, such as in Mališevo/Malishevë.<sup>5870</sup> By mid July 1998 the KLA held up to 50 per cent of the territory in Kosovo.<sup>5871</sup> It successfully blockaded villages, for example Kijevo/Kijevë, in the Mališevo/Malishevë municipality, roads<sup>5872</sup> and captured facilities, such as the Obilic Thermo-electric plant in 1998.<sup>5873</sup>

1558. In March 1999 KLA brigades gave orders regarding the security of the population.<sup>5874</sup> On or about 25 March 1999 the populations in the villages of Randubrava/Randubravë and Donji Retimlje/Reti-e-Ultë in the border area between Prizren and Orahovac/Rahovec municipality were moved out by the KLA for security reasons and were sheltered in Mamuša/Mamushë village, where there was no KLA presence.<sup>5875</sup> There is evidence about an order to evacuate the population of some villages in Vuçitrn/Vushtrri municipality to Drenica Operational Zone.<sup>5876</sup> It was Bislim Zyrapi's evidence, which the Chamber accepts, that in 1998 and 1999 there were no KLA operations which resulted in the permanent removal of the local population from its territory or which caused the population to move across the border to Albania or FYROM.<sup>5877</sup>

1559. In addition to the plans made for the protection of the population, the KLA prepared operations of an offensive nature. As discussed elsewhere in this Judgement the KLA carried out frequent attacks on Serbian police and military targets. On 9 April 1999 the KLA prepared and launched an attack from Albania in the Košare/Koshare border post area, Đakovica/Gjakovë municipality.<sup>5878</sup>

(iii) Recruitment of soldiers and training

1560. In the winter period of 1998-1999, all levels of KLA forces engaged in training.<sup>5879</sup> The KLA grew significantly in size. The KLA was initially composed of various unrelated groups which later grew together under a joint command.<sup>5880</sup> The KLA recruited new members for specific

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<sup>5870</sup> 6D2, T 12219-12220.

<sup>5871</sup> Bislim Zyrapi, T 2503; Momir Stovjanović, Exhibit D723 (*Milutinović* transcript), T 19712. *See supra*, para 300.

<sup>5872</sup> Bislim Zyrapi, T 2501 – 2502. The KLA had blocked the roads at Lapušnik/Llapushnik and between Kijevo/Kijevë and Klina/Klinë.

<sup>5873</sup> Bislim Zyrapi, T 2495. *See also supra*, paras 300-301.

<sup>5874</sup> Bislim Zyrapi, T 2466.

<sup>5875</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5992.

<sup>5876</sup> A document of the 3<sup>rd</sup> Army of the VJ dated 3 May 1999 refers to an order of the command of the Drenica Operational Zone to evacuate the local civilian population in the villages at the foot of Mount Čičavica/Qiqavica, from the village of Drvare/Druar in Vuçitrn/Vushtrri municipality to Vuçitrn/Vushtrri, deep into the territory of Drenica Operational Zone, Momir Stojanovic, Exhibit D723 (*Milutinović* transcript), T19725.

<sup>5877</sup> Bislim Zyrapi, T 2518.

<sup>5878</sup> Bislim Zyrapi, T 2495; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5967, 6230-6231, 6238; Fuad Haxhibeqiri, T 6945; Exhibit D630, p 2; Exhibit P948; Exhibit P1397, p 13; Exhibit P931; Exhibit P1544, p 2; Exhibit P921. *See supra*, para 859.

<sup>5879</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5987.

<sup>5880</sup> Ibrahim Rugova, Exhibit P286 (*Milošević* transcript), T 4263-4264.



roles.<sup>5881</sup> In March 1998 Bislim Zyrapi, who had been a member of the Yugoslav Army and later of the Bosnian Army, was asked to go to Tirana, Albania, to train commanders and soldiers in using weaponry and prepared them for technical operations. He trained soldiers from Kosovo and also from Albania, the latter had no previous military experience; some Albanians were from other countries in Europe.<sup>5882</sup> The training was brief; about one or two weeks long. The witness was also given the responsibility to assess the capacities of the commanders of local and zone staff at that time.<sup>5883</sup> Between December 1998 and March 1999 the focus was on training commanders from squad level up to battalion level.<sup>5884</sup> The training of new recruits by personnel with particular experience is an indication of the KLA's effectiveness in developing itself into an organized military unit with trained fighters.<sup>5885</sup>

1561. The KLA established training centres in Kosovo.<sup>5886</sup> In October or November 1998 the KLA had training camps in the Pagaruša/Pagarushë valley in central Kosovo, between Mališevo/Malishevë and Suva Reka/Suharekë.<sup>5887</sup>

(iv) Uniforms

1562. The Chamber accepts that although the KLA sometimes operated in civilian clothing whilst carrying arms, by 1999 a high number of KLA members wore military uniforms or insignia.<sup>5888</sup> The General Staff acknowledged in December 1998 that there was a lack of clothing for new members who had enlisted voluntarily.<sup>5889</sup> John Crosland observed that towards the end of 1998 the KLA showed increased signs of being organised, as “uniforms were worn more often and became more standardized”.<sup>5890</sup>

1563. Uniforms worn by the KLA varied in colour, some were green camouflage,<sup>5891</sup> and others non-camouflage, however all uniforms bore the KLA emblem on the left arm; red with a black

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<sup>5881</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5931-5932.

<sup>5882</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5930; Bislim Zyrapi, Exhibit P427, para 7; Momir Stojanović testified that Albanians temporarily employed in Germany were called up by the KLA; Exhibit D72; Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19719.

<sup>5883</sup> Bislim Zyrapi, Exhibit P428, (*Milutinović* transcript), T 5932, T 5982-5987.

<sup>5884</sup> Bislim Zyrapi, Exhibit P427, para 60.

<sup>5885</sup> See the KLA Rulebook on private soldier duties for example Exhibit P436, p 8.

<sup>5886</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12243.

<sup>5887</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12243.

<sup>5888</sup> 85-90 per cent of KLA soldiers had military uniform by March 1999 and the others wore improvised uniforms with KLA emblems, Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6269-6270. The KLA lacked sufficient uniforms due to a limit on the supplies available, Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5975-5976. Liri Loshi, who was a doctor, testified that some wounded KLA fighters whom he treated wore civilian clothes, Liri Loshi, Exhibit D24 (*Milutinović* transcript), T 5374.

<sup>5889</sup> Exhibit P446, p 2.

<sup>5890</sup> John Crosland, Exhibit P1400, para 23.

<sup>5891</sup> Exhibit D359; K20, T 8507, 8509-8510; K14, T9011; K79, T 8307.

eagle in the centre and read “KLA, Kosovo Liberation Army”.<sup>5892</sup> There were some women in the KLA, they wore uniforms and were armed.<sup>5893</sup> Witness K73, a VJ member deployed in Kosovo, testified that when he encountered the KLA they were wearing German uniforms with an “UÇK” (KLA) emblem on them.<sup>5894</sup> Witness K79 saw KLA members wearing blue work uniforms or green camouflage of German make or black uniforms.<sup>5895</sup> John Crosland testified that he saw some KLA uniformed personnel, including two females, dressed in black uniforms, which he interpreted as meaning that they belonged to the KLA police.<sup>5896</sup> There is also evidence that the rapid intervention units sometimes wore black uniforms.<sup>5897</sup> Some KLA members who wore civilian clothes also wore “head gear” displaying the KLA emblem.<sup>5898</sup> Badges of rank were not used because they could not be reliably obtained and commanders were known personally by their troops and other KLA personnel.<sup>5899</sup>

(v) Finances, logistics, weapons and communications

1564. The KLA established military hospitals and clinics.<sup>5900</sup> From December 1998 to March 1999 there were two military hospitals. Each operational zone had one or more clinics and an ambulance.<sup>5901</sup> There was a military hospital in Pagaruša/Pagarushë village, Pashtrik Operational Zone, and another in Drenica Operational Zone.<sup>5902</sup>

1565. The KLA was a voluntary army and therefore its staff was not paid. The KLA relied heavily on supporters for funding. The KLA received financial assistance from a fund called *Vendluadja Therret*, the “Fatherland Calling Fund”, and from donations inside Kosovo.<sup>5903</sup> The money was predominantly used to purchase weapons abroad.<sup>5904</sup>

1566. Logistics units supplied KLA soldiers with everyday requirements such as paper, medicine, food, uniforms and sanitary equipment.<sup>5905</sup> As discussed earlier in this Judgement, border control in Albania in 1996 and 1997 was weak and the KLA brought weapons and other equipment across the

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<sup>5892</sup> Bislim Zyrapi, Exhibit P427, para 59; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5975-5976.

<sup>5893</sup> Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2070, T 2388.

<sup>5894</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3366-3367.

<sup>5895</sup> K79, Exhibit P1259 (*Milutinović* transcript), T 9604; K79, T 8307.

<sup>5896</sup> John Crosland, Exhibit P1400, para 25.

<sup>5897</sup> Bislim Zyrapi, Exhibit P427, para 59.

<sup>5898</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5975-5976; K14, Exhibit P1327 (*Milutinović* transcript), T 10969.

<sup>5899</sup> Bislim Zyrapi, Exhibit P427, para 59.

<sup>5900</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5975.

<sup>5901</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5975.

<sup>5902</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5975; Military hospital in Suva Reka/Suharekë, Exhibit P445.

<sup>5903</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6016.

<sup>5904</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11881-11882.

<sup>5905</sup> Emin Kabashi, Exhibit P425 (*Milutinović* transcript), T 2086-2087.

border to Kosovo.<sup>5906</sup> The majority of arms for the KLA were smuggled over from northern Albania into Kosovo.<sup>5907</sup> Most weapons were purchased in Albania, however arms were also imported from other countries.<sup>5908</sup> By early 1998 the KLA had impressive weapons depots.<sup>5909</sup>

1567. The KLA used a range of weapons, including pistols, rifles, mortars and grenades.<sup>5910</sup> By around October 1998 the KLA were using up to date weaponry, including new rifles, sub-machine guns, anti-tank weapons and anti-armour grenades.<sup>5911</sup> The KLA did not have heavy weaponry, such as tanks and artillery.<sup>5912</sup> The KLA used pistols, Kalashnikov rifles, and semi-automatic rifles,<sup>5913</sup> and in addition, some light and heavy machine guns, a few recoilless guns and cannons, anti-tank mines, two to three grenades per soldier, RPGs (rocket propelled grenades) with a range of 150 to 500 metres, a few Zoljas, sniper rifles, and 82 and 120 millimetre mortars.<sup>5914</sup> Soldiers were permitted to carry only pistols in areas not controlled by the KLA.<sup>5915</sup> The KLA also had personal protective equipment for using chemical and nuclear weapons.<sup>5916</sup>

1568. It was difficult for the KLA to transport weaponry, and soldiers would carry the arms on their backs or use horses and donkeys. Vehicles such as Nivas, Suzukis, and Land Rovers were “confiscated” by the KLA from members of the civilian population in KLA controlled areas for use in KLA operations.<sup>5917</sup> Private vehicles, trucks and buses were used in areas in Kosovo not under Serbian control, until it became difficult to do so in March 1999, when transportation by foot and horses became most common.<sup>5918</sup> There is some evidence that in May and June 1998 the KLA may have looted abandoned houses, seized vehicles and obtained weapons from the population of the villages.<sup>5919</sup>

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<sup>5906</sup> Momir Stojanović, Exhibit D723 (*Milutinović* transcript), T 19692-19695, 19700. Frederick Abrahams testified that, after the fall of the communist regime in Albania in March 1997, large quantities of weapons were transferred to Kosovo, Frederick Abrahams, Exhibit P740 (*Milutinović* transcript), T 961.

<sup>5907</sup> Richard Ciagłinski, Exhibit P833 (*Milošević* transcript), T 3310; Frederick Abrahams, T 4043.

<sup>5908</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5980. John Crosland also described the Kosovo–Albanian border as highly porous, meaning that the KLA supply routes were well established; Exhibit P1401 (*Milutinović* transcript), T 10037.

<sup>5909</sup> John Crosland, Exhibit P1401 (*Milutinović* transcript), T 9898.

<sup>5910</sup> Richard Ciagłinski, Exhibit P833 (*Milošević* transcript), T 3309; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5979; Exhibit P447, p 3.

<sup>5911</sup> John Crosland, Exhibit P1400, para 23.

<sup>5912</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7901; Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11044-11045.

<sup>5913</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5979.

<sup>5914</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5979-5980. See also P1234, p 2.

<sup>5915</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5977.

<sup>5916</sup> Exhibit P434, p 7.

<sup>5917</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6190-6191, 5981.

<sup>5918</sup> Bislim Zyrapi, Exhibit P427, paras 56-58; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5980-5981; Exhibit P447, p 3.

<sup>5919</sup> Momir Stojanović, T 11701.

1569. With the start of the NATO bombing on 24 March 1998, it became impossible in some cases to have face to face meetings between zone commanders and the General Staff; therefore communications took place via phone or radio. For example, the movements of the KLA from 25 and 26 March 1999 in the Drenica Operational zone, caused by attacks of the Serbian forces were communicated to the General Staff via radio communication and satellite phones.<sup>5920</sup> When zone commanders could not contact the General Staff they were authorised to act using their own discretion.<sup>5921</sup>

1570. Within the General Staff and the operational zones personal Motorola two way radios, with a range of only a few kilometres, were used. This was an official form of communication, with each zone having its own radio communication base and the General Staff, primarily based in the Pashtrik Zone, having a radio repeater to increase the range of the radios to approximately 50 kilometres.<sup>5922</sup> Satellite telephones were issued to the General Staff and each zone commander.<sup>5923</sup> Couriers were also used as an official means of communication between the General Staff and the operational zone commands.<sup>5924</sup> Mobile telephones were not an official form of communication within the KLA, however they did exist in Kosovo at that time.<sup>5925</sup> The more frequent use of Motorola radios was a sign to John Crosland that the KLA was becoming more organized.<sup>5926</sup>

(vi) Discipline and ability to implement the basic obligations of Common Article 3

1571. A Rulebook on the Organisation of Internal Affairs in the KLA set out the code of conduct for everyone under the authority of the General Staff.<sup>5927</sup> The Rulebook distributed to the KLA soldiers included rules established by Western armies.<sup>5928</sup> The Rulebook was distributed to KLA soldiers throughout all seven operational zones and the zone commanders were responsible for the distribution of the books within their area of responsibility.<sup>5929</sup> Distribution of the Rulebook may have commenced in May or June 1998. In addition, Rexhep Selimi, Director of the Department for Military Affairs, distributed booklets, which stipulated the rules on warfare and relevant legal rules. Fighters were also informed of the laws of war and the Geneva Conventions in training. This training was carried out by members of the military court.<sup>5930</sup> The Chief of Staff alone issued orders concerning operational or military matters. He was also entrusted to issue orders relating to

<sup>5920</sup> Bislim Zyrapi, T 2466; Bislim Zyrapi, Exhibit P427, para 37.

<sup>5921</sup> Bislim Zyrapi, Exhibit P427, paras 37-38.

<sup>5922</sup> Bislim Zyrapi, Exhibit P427, para 552.

<sup>5923</sup> Bislim Zyrapi, Exhibit P427, para 53.

<sup>5924</sup> Example of a courier being used *see* Exhibit P 434, pp 7, 9; Bislim Zyrapi, Exhibit P427, para 55.

<sup>5925</sup> Bislim Zyrapi, Exhibit P427 paras 54.

<sup>5926</sup> John Crosland, Exhibit P1400, para 23.

<sup>5927</sup> Exhibit P436.

<sup>5928</sup> Bislim Zyrapi, Exhibit P427, para 27.

<sup>5929</sup> Bislim Zyrapi Exhibit P427, para 28.

<sup>5930</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5955.

other areas of the Rulebook.<sup>5931</sup> The distribution of Rulebooks reflected the ongoing process of developing and enforcing coordination within the growing KLA.

1572. Orders regarding disciplinary matters were not issued by the General Staff until November 1998. During August and September 1998, Bislim Zyrapi heard complaints from zone commanders regarding soldiers misusing their power. Complaints included reports that KLA soldiers had been killing or abducting Serbian civilians and Kosovo Albanian collaborators and were behaving in an improper manner. The Chief of Staff took measures in response to these complaints, for example, on 28 November 1998 he issued an order stating that “improper behaviour with respect to the civilian population is to be prevented in all KLA units”.<sup>5932</sup> That order detailed that unauthorised confiscation of property, arrests and mistreatment of civilians by members of the KLA units were to be prevented and all violations of military discipline were to be referred to the KLA military court.<sup>5933</sup> Bislim Zyrapi issued an order in January 1999 for zone commanders to compile or submit daily combat reports, and if this was not done the commanders would be subject to sanctions before the military court.<sup>5934</sup>

1573. Sokol Dobruna was appointed military judge and President of the KLA Military Court in December 1998 by the Commander of the General Staff. The post did not exist before his appointment.<sup>5935</sup> Sokol Dobruna was a member of the General Staff, above the Chief of Staff in the hierarchy.<sup>5936</sup> There were three assistants, investigative judges, who acted under Sokol Dobruna. The President of the Court had the power to issue orders to zone commanders which were authorised to execute such orders.<sup>5937</sup>

1574. The Military Court did not have regular hearings in one sole location.<sup>5938</sup> Sokol Dobruna was located in the villages in the Berisha Mountains, first in Divljaka/Divlakë for a short period of time and then in Novo Selo/Novosellë or Shati-i-Ri.<sup>5939</sup> The evidence indicates that the Military Court applied international conventions and KLA rules,<sup>5940</sup> and former laws used in the VJ and international laws.<sup>5941</sup>

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<sup>5931</sup> Bislim Zyrapi, Exhibit P427, para 28.

<sup>5932</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5950, 6054; Bislim Zyrapi, T 2425, 2511; Exhibit P441.

<sup>5933</sup> Bislim Zyrapi, Exhibit P427, para 29.

<sup>5934</sup> Exhibit P437.

<sup>5935</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5954, 6060.

<sup>5936</sup> Bislim Zyrapi, T 2426.

<sup>5937</sup> Bislim Zyrapi, T 2427; Exhibit P442.

<sup>5938</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5954.

<sup>5939</sup> Bislim Zyrapi, T 2462; Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5954.

<sup>5940</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 6061.

<sup>5941</sup> Bislim Zyrapi, T 2429.

1575. KLA soldiers who had violated the rules could be subject to an oral reprimand, a written critique, a short term detention sentence, or a referral to the General Staff and to the Military Court.<sup>5942</sup> Zone commanders could deal with minor breaches of military discipline with verbal or written admonishment, or short-term detention as means of punishment, and were required to report this action to the General Staff.<sup>5943</sup> Disciplinary measures taken against soldiers and commanders were to be mentioned in zone commander reports and could be reported to the General Staff at the regular meeting held between the General Staff and zone commanders.<sup>5944</sup> In more severe cases, zone commanders could detain offenders and refer the case to the Military Court.<sup>5945</sup> Every operational zone and some brigade commands had detention rooms for those who broke KLA rules.<sup>5946</sup> The General Staff did not issue orders regarding disciplinary matters until April 1999.<sup>5947</sup>

(vii) Ability of KLA to speak with one voice

1576. During 1998 the KLA grew in political relevance and became accepted as a factor which could no longer be ignored in attempts to find a solution of the Kosovo crisis.<sup>5948</sup> There was considerable and growing support for the KLA among the Kosovo population during 1998. The view that it was no longer sufficient to deal solely with Ibrahim Rugova, the president of the LDK, as the representative of the ethnic Albanians in Kosovo came to be recognised and acted on. Shaun Byrnes viewed the KLA as a real military force and believed that it was essential for it to be involved as a party to any agreement if an agreement was to have any chance of success.<sup>5949</sup> Indeed, as discussed earlier in this Judgement, the KLA were represented at the negotiations in February 1999 in Rambouillet for resolving the Kosovo crisis.<sup>5950</sup>

1577. In the late summer of 1998 a KLA political leadership was established and centred around Hashim Thaçi.<sup>5951</sup> Adem Demaçi became the political representative of the KLA, with an office in Priština/Prishtinë. Jakup Krasniqi, the spokesperson of the KLA, Rame Buja and Sokol Bashota became the three men with responsibility for negotiating agreements on behalf of the KLA.<sup>5952</sup>

(viii) Conclusion

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<sup>5942</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5950.

<sup>5943</sup> Bislim Zyrapi, Exhibit P427, para 25.

<sup>5944</sup> Bislim Zyrapi, Exhibit P428 (*Milutinović* transcript), T 5950-5951; Bislim Zyrapi, Exhibit P427, paras 23-25.

<sup>5945</sup> Bislim Zyrapi, Exhibit P427, para 26.

<sup>5946</sup> Bislim Zyrapi, T 2430-2431.

<sup>5947</sup> Bislim Zyrapi, Exhibit P427, para 26.

<sup>5948</sup> On 6 November 1998, the US ambassador to FYROM Christopher Hill and the chief of US-KDOM Shaun Byrnes established contact with representatives of the KLA who were then shown a US plan for a peaceful solution of the Kosovo issue, Momir Stojanović, T 11725-11726; Exhibit D740.

<sup>5949</sup> Shaun Byrnes, T 8262.

<sup>5950</sup> *See supra*, para 432.

<sup>5951</sup> Shaun Byrnes, T 8266.

<sup>5952</sup> Shaun Byrnes, T 8266-8267.

1578. This body of evidence is sufficient to satisfy the Chamber that the KLA became sufficiently organised to constitute an armed group within the meaning of the jurisprudence of Tribunal. The Chamber notes in particular in this respect its findings as to the ability of the KLA to conduct military operations in various parts of Kosovo, its ability to blockade roads and to hold extensive territories. The existence of training and medical facilities established by the KLA further supports the view that the KLA had become a sufficiently organised armed group. In the view of the Chamber, from at least the spring of 1998 onwards the KLA had a sufficiently formal structure including a General Staff and a clear chain of command to a territorial organisation. The KLA had established rules setting out a military code of conduct, increasingly used uniforms and had a developed communication system. In the Chamber's finding, as of May 1998, the KLA possessed sufficient characteristics of an organised armed force to be able to engage in an internal armed conflict.

(c) Conclusions regarding the existence of an armed conflict

1579. The Chamber is satisfied that as of the end of May 1998 an armed conflict existed in Kosovo between Serbian forces in particular forces of the VJ and the MUP, and the KLA. This armed conflict continued until at least June 1999.

1580. On 24 March 1999 NATO commenced its military operations in the FRY. On the same day the government of the FRY declared a state of war.<sup>5953</sup> On this basis the Chamber is satisfied that from 24 March 1999, until the end of hostilities in June 1999, an international armed conflict existed in Kosovo between Serbian forces and the forces of NATO.

2. Other requirements of Article 3

1581. Further, to meet the requirements of Article 3 of the Statute, a nexus between the armed conflict and the conduct alleged in the Indictment must be established. The Chamber notes that the perpetrators of the crimes alleged in the Indictment were members of the Serbian forces which, throughout the times alleged in the Indictment, were engaged in armed conflict with the KLA, and from 24 March 1999 also with NATO forces, and that the offences alleged occurred in the course of or in connection with that armed conflict. In the Chamber's finding the nexus element of Article 3 is established.

1582. In the present case the Accused is charged under Count 4 of the Indictment with one count of murder as a violation of the laws or customs of war pursuant to Article 3 of the Statute. The charge of murder is based on Common Article 3 of the 1949 Geneva Conventions. It is settled

jurisprudence that serious violations of Common Article 3 would at once satisfy the four *Tadić* conditions.<sup>5954</sup> The Chamber is satisfied that this requirement has been established.

1583. Finally, to meet the requirements of Common Article 3 it must also be established that the victims of the alleged violations were not taking an active part in the hostilities at the time the crime was committed. Earlier in this Judgement the Chamber has made many specific findings in this respect as it has dealt with the circumstances of each alleged violation. As has been recorded, the victims of the violations which have been established were civilians taking no active part in the armed conflict at the time relevant to each violation or, alternatively in some cases, if not civilians were fighters *hors de combat*, being in each case unarmed prisoners of the Serbian forces not taking any active part in the armed conflict, indeed not able to do so, at the time relevant to each violation.

### C. Conclusion

1584. The Chamber is satisfied that the jurisdictional requirements of Article 3 of the Statute have been satisfied.

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<sup>5953</sup> Exhibit P45.

<sup>5954</sup> *See supra*, para 1529.



## X. GENERAL REQUIREMENTS OF ARTICLE 5 OF THE STATUTE

1585. The Accused is charged with four counts of crimes against humanity, punishable under Article 5 of the Statute, namely, Deportation (Count 1), Other Inhumane Acts (Forcible Transfer) (Count 2), Murder (Count 3), and Persecutions on political, racial and religious grounds (Count 5).

### A. Law

1586. The preliminary requirements that must be satisfied in order for the Tribunal to have jurisdiction over crimes punishable under Article 5 are as follows.

1587. First, in order to constitute a crime against humanity, a crime listed under Article 5 of the Statute must be committed “in an armed conflict”.<sup>5955</sup> This requirement is satisfied by proof that there was an armed conflict at the relevant time and place, and that, objectively, the acts of the accused were linked geographically, as well as temporally, with the armed conflict.<sup>5956</sup> This requirement is specific to the Tribunal; as held by the Appeals Chamber, under customary international law crimes against humanity may also be committed in times of peace.<sup>5957</sup>

1588. Secondly, although not explicitly provided for in the text of Article 5 of the Statute, it is established in the jurisprudence of the Tribunal that a crime against humanity must be committed in the context of a widespread or systematic attack against a civilian population. In this respect, the following general elements must be satisfied: (i) there must be an attack; (ii) the attack must be widespread or systematic; (iii) the attack must be directed against any civilian population; and (iv) there must be a nexus between the acts of the accused and the attack.<sup>5958</sup>

1589. An “attack” within the meaning of Article 5 has been defined as a course of conduct involving the commission of acts of violence.<sup>5959</sup> It is not limited to the use of armed force and it may also encompass any mistreatment of the civilian population.<sup>5960</sup> The attack may be, but need not be, part of the armed conflict as such.<sup>5961</sup>

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<sup>5955</sup> *Tadić* Jurisdiction Decision, para 141: “It is by now a settled rule of customary international law that crimes against humanity do not require a connection to *international* armed conflict” (emphasis added).

<sup>5956</sup> *Tadić* Appeal Judgement, paras 249, 251; *Kunarac* Appeal Judgement, paras 82, 89.

<sup>5957</sup> *Tadić* Appeal Judgement, para 251. Instruments adopted after the Statute of the Tribunal, including the Rome Statute, the Statute of the Special Court for Sierra Leone, and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia no longer require such nexus. (See Article 7 of the Rome Statute (1998), Article 2 of the Statute of the Special Court for Sierra Leone (2002), and Article 5 of the Law on Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (2004))

<sup>5958</sup> *Kunarac* Appeal Judgement, para 85.

<sup>5959</sup> *Kunarac* Appeal Judgement, paras 86, 89.

<sup>5960</sup> *Kunarac* Appeal Judgement, para 86; *Popović* Trial Judgement, para 752.

<sup>5961</sup> *Kunarac* Appeal Judgement, para 86.

1590. Further, the attack must be widespread or systematic, the requirement being disjunctive rather than cumulative. The term “widespread” refers to the large scale nature of the attack and the number of victims, while the phrase “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>5962</sup> This requirement only applies to the attack itself, not to the individual acts of the accused.<sup>5963</sup> Only the attack, not the accused’s individual acts, must be widespread or systematic.<sup>5964</sup>

1591. The attack must be directed against any civilian population. The term “civilian population” must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as “civilian” even if non-civilians are among it, as long as it is predominantly civilian.<sup>5965</sup> The presence within a population of members of armed resistance groups, or former combatants, who have laid down their arms, does not as such alter its civilian nature.<sup>5966</sup>

1592. The term “directed against” requires that the civilian population is the primary object of the attack.<sup>5967</sup> Factors relevant to the consideration whether an attack was directed against a civilian population include, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.<sup>5968</sup>

1593. The Appeals Chamber held recently that “there is nothing in the text of Article 5 of the Statute, or previous authorities of the Appeals Chamber that require that individual victims of crimes against humanity be civilians.”<sup>5969</sup> Under customary international law, persons *hors de combat* can also be victims of crimes against humanity, provided that all other necessary conditions are met.<sup>5970</sup> The civilian status of the victims, the number of civilians, and the proportion of civilians within a civilian population, however, are factors relevant to the determination of whether

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<sup>5962</sup> *Blaškić* Appeal Judgement, para 101.

<sup>5963</sup> *Kunarac* Appeal Judgement, para 96; *Kordić* Appeal Judgement, para 94.

<sup>5964</sup> *Kunarac* Appeal Judgement, para 96; *Popović* Trial Judgement, para 756.

<sup>5965</sup> *Jelisić* Trial Judgement, para 54; *Kupreškić* Trial Judgement, paras 547-549; *Naletilić* Trial Judgement, para 235; *Kordić* Trial Judgement, para 180; *Blagojević* Trial Judgement, para 544; *Popović* Trial Judgement, para 753-754.

<sup>5966</sup> *Blaškić* Appeal Judgement, para 113.

<sup>5967</sup> *Kunarac* Appeal Judgement, para 91 (footnotes omitted).

<sup>5968</sup> *Kunarac* Appeal Judgement, para 91.

<sup>5969</sup> *Martić* Appeal Judgement, para 307; *Mrkšić* Appeal Judgement, para 29.

<sup>5970</sup> *Martić* Appeal Judgement, paras 311, 313; *Mrkšić* Appeal Judgement, para 29; *Popović* Trial Judgement, para 755.

the *chapeau* requirement of Article 5 that an attack be directed against a “civilian population” is met.<sup>5971</sup>

1594. If the requirement that there be a widespread or systematic attack against a civilian population is fulfilled, a nexus between the acts of the accused and the attack itself must be established. Such nexus consists of two elements: (i) the commission of an act which, by its nature or consequences, is objectively part of the attack; and (ii) knowledge on the part of the accused that there is an attack on the civilian population and that his acts are part thereof.<sup>5972</sup> This requirement does not entail knowledge of the details of the purpose or goal of the attack.<sup>5973</sup> A crime against humanity can be committed for personal reasons, so long as the underlying offence was committed during the attack directed against the civilian population.<sup>5974</sup> Where, in the specific circumstances, it is established that the perpetrators acted in a way which precludes a finding of intent that their acts form part of an attack against a civilian population, no nexus can be established.<sup>5975</sup>

## B. Findings

1595. The Chamber has found that an armed conflict existed in the territory of Kosovo as of May 1998 and continued through to, and including, the time period relevant to the Indictment.<sup>5976</sup>

1596. As established earlier in this Judgement, between May and September 1998, there was an increase in fighting between Serbian forces and the KLA in Kosovo that resulted in damage to civilian property and hardship to the civilian population.<sup>5977</sup> During this time a number of villages were destroyed, houses were burnt and fields with crops were set on fire.<sup>5978</sup> Specifically, it was established earlier that in May 1998, in two villages to the north of Dečani/Deçan and in the areas of Mališevo/Malishevë, Orahovac/Rahovec, and Komorane/Komoran houses were completely burnt to the ground.<sup>5979</sup> Many Kosovo Albanians were driven from their villages and internally displaced.<sup>5980</sup> In June 1998 the VJ and MUP participated in an operation in Đakovica/Gjakovë which involved the displacement of the people of the village of Damjane/Damjan.<sup>5981</sup> In July 1998

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<sup>5971</sup> *Mrkšić* Appeal Judgement, para 32.

<sup>5972</sup> *Tadić* Appeal Judgement, paras 248, 251, 271; *Kunarac* Appeal Judgement, paras 99, 102, 105; *Mrkšić* Appeal Judgement, para 41; *Popović* Trial Judgement, para 756.

<sup>5973</sup> *Kunarac* Appeal Judgement, paras 102, 105.

<sup>5974</sup> *Kunarac* Appeal Judgement, paras 103; *Popović* Trial Judgement, para 758.

<sup>5975</sup> *Mrkšić* Appeal Judgement, para 42; *Mrkšić* Trial Judgement, para 481. The jurisprudence of the Tribunal refers to the “nexus between the acts of the accused and the attack itself”. In situations where the Accused is not the direct perpetrator of the attack, it is established that it is the acts of the physical perpetrator that are to be assessed under this criterion, not the acts of the Accused, *see, Mrkšić* Appeal Judgement, paras 41-44.

<sup>5976</sup> *See supra*, para 1579.

<sup>5977</sup> *See supra*, paras 278-287, 300-345.

<sup>5978</sup> *See supra*, paras 282, 283, 285, 301, 316, 318, 320, 322, 335-338, 340, 341, 343, 344.

<sup>5979</sup> *See supra*, paras 283, 285.

<sup>5980</sup> *See supra*, paras 282, 302, 303, 305, 318, 320, 323, 325, 326, 329, 342, 345.

<sup>5981</sup> *See supra*, para 305.

fighting between the Serbian security forces and the KLA took place in the village of Loda/Loxhë, Peć/Pejë municipality, in the town of Orahovac/Rahovec, on the Priština/Prishtinë-Peć/Pejë road and near Mališevo/Malishevë.<sup>5982</sup> The Chamber found, that by the end of July 1998, as a result of these attacks and others throughout the area, the number of internally displaced persons in Kosovo was estimated as exceeding 100,000.<sup>5983</sup> Following similar operations in August and September 1998, the estimated number increased to approximately 171,000 internally displaced persons.<sup>5984</sup>

1597. Following the start of the NATO bombing on 24 March 1999, in the early morning of 25 March 1999 and continuing throughout the Indictment period, Serbian forces, including the VJ and the MUP, mounted attacks on tens of villages, in a number of municipalities, throughout Kosovo. Typically, the forces would first surround the individual villages and then the Serbian forces, in most cases the MUP alone, would take up positions in the village. Buildings, including houses and mosques, during the course of the attack were set on fire and destroyed. As a result of these attacks the Kosovo Albanian villagers were forced to flee. In some villages, when the women and children were ordered to leave, the men were detained by the Serbian forces and then killed. The Chamber has found elsewhere in this Judgement that, throughout the time period relevant to the Indictment, Kosovo Albanian civilians were deported or forcibly transferred by Serbian forces from no less than 13 municipalities.<sup>5985</sup> As part of these attacks by Serbian forces on the Kosovo Albanians the Chamber also found the wanton destruction or damage of Kosovo Albanian religious sites in no less than six municipalities.<sup>5986</sup> The evidence also established that no less than 729 Kosovo Albanians were murdered by Serbian forces in no less than seven municipalities. The Chamber finds that the individual attacks in each of the municipalities where the crimes were committed were undoubtedly part of the broader attack on the Kosovo Albanian population.

1598. The Chamber finds that the above pattern of events, and in particular the high number of villages attacked, the vast destruction of property, the large number of people murdered and of people forced to leave their homes establishes the widespread nature of the attack in Kosovo in the second half of 1998 and during the time period relevant to the Indictment. Furthermore, the Chamber is satisfied that the attack against the Kosovo Albanian civilian population was also systematic. As discussed elsewhere in this Judgement, actions of the Serbian forces, in particular,

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<sup>5982</sup> See *supra*, paras 307, 309, 310, 312, 317, 318.

<sup>5983</sup> See *supra*, para 323.

<sup>5984</sup> See *supra*, para 345.

<sup>5985</sup> See *supra*, paras 1701, 1702.

<sup>5986</sup> See *supra*, para 1854.

the VJ and MUP, which took place at a number of locations in a relatively short period of time, were carried out in a coordinated and systematic manner.<sup>5987</sup>

1599. The Chamber is also satisfied that the attack was primarily “directed against” the civilian population. As discussed in more detail in Chapter VI, the vast majority of the acts of the Serbian forces in the period of March to June 1999 were civilians. Had there been KLA fighters amongst the civilian population, which is not the finding of the Chamber, this would not have altered the fact that the population was predominantly civilian.

1600. Distinction was made in some cases between women and children, and the men, but actions were undertaken against both groups. There is no evidence suggesting that the Serbian forces attempted to distinguish between KLA members and Kosovo Albanians. The Chamber recalls one telling example of a local villager from Bela Crkva/Bellacërkë in Orahovac/Rahovec municipality trying to explain to MUP forces, “We are simple farmers. We are no KLA” and then immediately following this, the man was shot in the chest and his nephew next to him in the head.<sup>5988</sup> Following this the forces went on to kill at least 41 other unarmed men.<sup>5989</sup> Such an example is one of many throughout Kosovo during the Indictment period when civilian Kosovo Albanians begged for their lives and attempted to explain to forces prior to being killed that they were civilians. These characteristic actions by Serbian forces reveals that their objective was not just the finding and arrest (or even the killing) of KLA fighters and supporters. As found throughout this Judgement, Serbian forces in the commission of the above mentioned crimes, specifically directed their attacks against Kosovo Albanians because of their ethnicity.<sup>5990</sup> No distinction was made, or attempted to be made, between civilians and combatants. The civilian population was the primary, not an incidental, target. The Chamber finds that such an attack “directed against” the civilian population is reflective of the physical perpetrators intent to specifically target civilians.

1601. The Chamber finds that the acts of the Serbian forces established in this Judgement that occurred throughout Kosovo reflect that the perpetrators were aware that their actions were part of a larger attack on Kosovo Albanian civilian population throughout the region. The individual criminal responsibility of the accused will be discussed in more detail later in this Judgement.

### C. Conclusion

1602. The Chamber is satisfied that the general requirements of Article 5 have been established.

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<sup>5987</sup> See *supra*, paras 2027-2051, 2070-2080.

<sup>5988</sup> See *supra*, para 468.

<sup>5989</sup> See *supra*, para 472.

<sup>5990</sup> See *supra*, paras 1777, 1781, 1783-1789, 1854.

## XI. THE CHARGES

### A. Deportation (Count 1) and other Inhumane Acts (Forcible Transfer) (Count 2)

#### 1. Law

##### (a) Law on deportation

1603. The Accused is charged under Count 1 with deportation as a crime against humanity pursuant to Article 5(d) of the Statute.<sup>5991</sup>

1604. The offence of deportation, in the case-law of the Tribunal, is constituted by the following elements:

1. there is a forced displacement of individuals;<sup>5992</sup>
2. those individuals are lawfully present in the area from which they are displaced;<sup>5993</sup>
3. there is an absence of grounds under international law permitting the displacement;<sup>5994</sup>
4. there is displacement of individuals across a *de jure* state border or, in certain circumstances, which must be examined on a case-by-case basis and in light of customary international law, a *de facto* border;<sup>5995</sup> and
5. the forcible displacement must be carried out intentionally by the accused<sup>5996</sup> or persons for whom the accused bears criminal responsibility. There is no requirement that the intention to deport is an intention to do so on a permanent basis.<sup>5997</sup>

1605. The Appeals Chamber has held that the displacement must be “forced, carried out by expulsion or other forms of coercion such that the displacement is involuntary in nature, and the relevant persons had no genuine choice in their displacement”.<sup>5998</sup> It is the absence of genuine choice that makes the displacement unlawful.<sup>5999</sup> Consent, or a request, to be displaced must be determined to be real in the sense that it is given voluntarily and the result of an individual’s free

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<sup>5991</sup> Indictment, paras 71-72.

<sup>5992</sup> *Stakić* Appeal Judgement, paras 278, 279-282; *Krajišnik* Appeal Judgement, para 304.

<sup>5993</sup> *Stakić* Appeal Judgement, para 278; *Krajišnik* Appeal Judgement, para 304.

<sup>5994</sup> *Stakić* Appeal Judgement, paras 278, 284-287; *Krajišnik* Appeal Judgement, para 304.

<sup>5995</sup> *Stakić* Appeal Judgement, paras 278, 288-303; *Krajišnik* Appeal Judgement, para 304.

<sup>5996</sup> *Stakić* Appeal Judgement, paras 278. See also *Martić* Trial Judgement, para 111, *Krajišnik* Trial Judgement, para 726.

<sup>5997</sup> *Stakić* Appeal Judgement, paras 278, 304-307; *Krajišnik* Appeal Judgement, para 304.

<sup>5998</sup> *Stakić* Appeal Judgement, para 279, see also *ibid* paras 280-283.

<sup>5999</sup> *Stakić* Appeal Judgement, para 279; *Krnojelac* Appeal Judgement, para 229.

will, assessed in the light of surrounding circumstances.<sup>6000</sup> The forceful character of the displacement is determined not only by physical force but also by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment.<sup>6001</sup>

1606. The Defence submits that departures motivated by fear of discrimination or persecution, or by a preference to avoid areas of armed conflict, are not necessarily in violation of the law.<sup>6002</sup> The Chamber notes that, as held by the Appeals Chamber, what is important is that the displacement must be forced, carried out by expulsion or other forms of coercion, such that the displaced persons had no genuine choice. Therefore, the Chamber accepts that acts intended to arouse fear or to exercise coercion in order to make people leave their towns and villages, may constitute the *actus reus* of deportation, provided that the other elements are met. A determination should be made on a case by case basis.

1607. There are limited instances under international law in which it may be permissible to displace individuals during an armed conflict, namely if an evacuation is carried out for reasons of the security of those involved or for imperative military reasons.<sup>6003</sup> Individuals displaced on those grounds “shall be transferred back to their homes as soon as hostilities in the area in question have ceased”.<sup>6004</sup>

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<sup>6000</sup> *Stakić* Appeal Judgement, para 279. See also the *Krnjelac* Appeal Judgement, para 229 where the Appeals Chamber noted that it is “impossible to infer genuine choice from the fact that consent was expressed, given that the circumstances may deprive the consent of any value”, and, “when analyzing the evidence concerning these general expressions of consent, it is necessary to put it into context and to take into account the situation and atmosphere that prevailed in the KP Dom, the illegal detention, the threats, the use of force and other forms of coercion, the fear of violence and the detainees’ vulnerability”. See also *Martić* Trial Judgement, para 108; *Blagojević* Trial Judgement, para 596; *Brdanin* Trial Judgement, para 543.

<sup>6001</sup> *Stakić* Appeal Judgement, para 281. In the *Stakić* Trial Judgement, the Trial Chamber, at para 707, had concluded that “the atmosphere in the municipality of Prijedor during the time relevant to the Indictment was of such a coercive nature that the persons leaving the municipality cannot be considered as having voluntarily decided to give up their homes”. In *Milutinović* Trial Judgement, the Trial Chamber stated “Trial and Appeals Chambers have inferred a lack of genuine choice from threatening and intimidating acts that were calculated to deprive the civilian population of exercising its free will, such as the shelling of civilian objects, the burning of civilian property, and the commission of or threat to commit other crimes calculated to terrify the population and make them flee the area with no hope of return” (*Milutinović* Trial Judgement, Volume I, para 165).

<sup>6002</sup> Defence Final Brief, para 678.

<sup>6003</sup> *Stakić* Appeal Judgement, para 284-285, citing Article 49 of Geneva Convention IV and mentioning Article 17 of Additional Protocol II. Additionally, the Appeal Chamber noted that Article 19 of Geneva Convention III allows for the evacuation of prisoners of war away from combat zones so as to remove them from danger. See *Krstić* Trial Judgement, para 526, and the World War II cases cited there, for evacuations or displacements based on imperative military necessity.

<sup>6004</sup> *Stakić* Appeal Judgement, para 284, citing Article 49 of Geneva Convention IV. See also *Milutinović* Trial Judgement, Volume I, para 166.

(b) Law on other inhumane acts—forcible transfer

1608. The Accused is charged under Count 2 of the Indictment with forcible transfer, a crime charged as “other inhumane acts”, punishable under Article 5(i) of the Statute.<sup>6005</sup>

(i) Other inhumane acts

1609. The offence of “other inhumane acts” is a residual category for serious charges which are not otherwise enumerated in Article 5 of the Statute.<sup>6006</sup> The Appeals Chamber has recognized that the notion of “other inhumane acts” contained in Article 5(i) cannot be regarded as a violation of the principle of *nullum crimen sine lege* as it forms part of customary international law.<sup>6007</sup>

1610. According to the Tribunal’s case-law, the following conditions must be fulfilled in order for an act or omission to fall within the ambit of “other inhumane acts”:

1. there must be an act or omission of similar seriousness to the other crimes enumerated under Article 5;<sup>6008</sup>
2. the act or omission caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity;<sup>6009</sup> and
3. the act or omission was carried out intentionally by the accused or by persons for whom the accused bears criminal responsibility.<sup>6010</sup>

1611. To assess the seriousness of the conduct, consideration must be given to all the factual circumstances.<sup>6011</sup> These may include the nature of the act or omission, the context within which it

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<sup>6005</sup> Indictment, para 73.

<sup>6006</sup> *Stakić* Appeal Judgement, para 315; *Martić* Trial Judgement, para 82; *Vasiljević* Trial Judgement, para 234. See also *Kordić* Appeal Judgement, para 117, which took note of the *Kupreškić* Trial Judgement’s elaboration of other inhumane acts as a residual category (*Kupreškić* Trial Judgement, para 563).

<sup>6007</sup> *Stakić* Appeal Judgement, para 315. In paragraph 721 of the *Stakić* Trial Judgement, the Trial Chamber, whilst dismissing a count charging other inhumane acts (forcible transfer), recalled that the use of other inhumane acts as a basis for imposing criminal liability might violate the fundamental criminal law principle *nullum crimen sine lege certa* and disagreed with the *Kupreškić* Trial Judgement’s approach (at para 563) to other inhumane acts. The *Stakić* Appeal Chamber at para 315 considered, *proprio motu*, the issue of whether liability for forcible transfer pursuant to Article 5(i) of the Statute could be imposed. In holding that it can, it endorsed the finding in the *Kupreškić* Trial Judgement and noted that other inhumane acts had been widely used in the Tribunal’s case-law. In footnote 649, the *Stakić* Appeal Chamber cites the following international legal instruments that include the offence of other inhumane acts in their provisions: Article 6(c) of the Nuremberg Charter, Article 5(c) of the Tokyo Charter, Article II(c) of Control Council Law No. 10.

<sup>6008</sup> *Krajišnik* Appeal Judgement, para 331; *Milutinović* Trial Judgement, Volume I, para 170; *Martić* Trial Judgement, para 83; *Krnojelac* Trial Judgement, para 130; *Vasiljević* Trial Judgement, para 234.

<sup>6009</sup> *Martić* Trial Judgement, para 83; *Krnojelac* Trial Judgement, para 130 and footnote 382 citing the *Čelebići* Appeal Judgement, para 424; *Vasiljević* Trial Judgement, para 234.

<sup>6010</sup> *Martić* Trial Judgement, para 83; *Krnojelac* Trial Judgement, para 130; *Vasiljević* Trial Judgement, para 234. The third element, that “the act or omission was carried out *intentionally* by the accused [...]”, is sometimes rendered,



occurred, the individual circumstances of the victim, as well as the physical and mental effects on the victim.<sup>6012</sup> There is no requirement that the victim should experience long term effects as a result of the inhumane act. However, if such effects do occur, they will form part of the factual circumstances considered by the Trial Chamber when determining the seriousness of the conduct.<sup>6013</sup>

1612. The *mens rea* of “other inhumane acts” is satisfied where the perpetrator performed with the intent to inflict serious physical or mental suffering or to commit a serious attack on the victim’s human dignity, or with the knowledge that his conduct would probably cause serious physical or mental harm to the victim or constitute a serious attack upon human dignity.<sup>6014</sup>

(ii) Forcible transfer

1613. The elements of the crime of forcible transfer have been defined in the Tribunal’s case-law as follows:

1. there is a forcible displacement of individuals;<sup>6015</sup>
2. those individuals are lawfully present in the area from which they are displaced;<sup>6016</sup>
3. as in respect of the offence of deportation, there is an absence of grounds under international law permitting the displacement;<sup>6017</sup>

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in the Tribunal’s case-law, as “the act or omission was carried out *deliberately* by the accused”, see for example *Milutinović* Trial Judgement, Volume I, para 170. The Trial Chamber considers that these forms are equivalent.<sup>6011</sup> *Martić* Trial Judgement, para 84; *Vasiljević* Trial Judgement, para 235; *Krnojelac* Trial Judgement, para 131.<sup>6012</sup> *Martić* Trial Judgement, para 84; *Vasiljević* Trial Judgement, para 235; *Krnojelac* Trial Judgement, para 131.<sup>6013</sup> *Martić* Trial Judgement, para 84. See also *Kumarac* Trial Judgement, para 501, where this factor was considered in the context of the crime of outrages on personal dignity.<sup>6014</sup> *Milutinović* Trial Judgement, Volume I, para 170; *Martić* Trial Judgement, para 85.<sup>6015</sup> *Stakić* Appeal Judgement, para 317; *Krajišnik* Appeal Judgement, para 308 and 333. See also *Blagojević* Trial Judgement, para 595; *Brdanin* Trial Judgement, para 540.<sup>6016</sup> *Krajišnik* Appeal Judgement, para 308. See also *Milutinović* Trial Judgement, Volume I, para 164; *Blagojević* Trial Judgement, para 595; *Brdanin* Trial Judgement, para 540. The Trial Chamber in *Popović* held with respect to the requirement of lawful presence that the protection was intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community, *Popović* Trial Judgement, para 900.<sup>6017</sup> *Krajišnik* Appeal Judgement, para 308, 333. See also *Milutinović* Trial Judgement, Volume I, para 164; *Blagojević* Trial Judgement, para 595; *Brdanin* Trial Judgement, para 540; *Krnojelac* Appeal Judgement, para 222. The Tribunal’s case-law does not appear to make a distinction between the crime of deportation and forcible transfer with regard to the legitimate grounds allowing for evacuations under international law (see for example *Krajišnik* Trial Judgement, para 723, 725; *Blagojević* Trial Judgement, paras 597-599; *Brdanin* Trial Judgement, para 540; *Krnojelac* Appeal Judgement, para 222; *Milutinović* Trial Judgement, Volume I, para 166). The case-law sets out two general grounds under international law according to which an evacuation is legitimate: (1) it may be carried out either for the security of a civilian population or (2) for imperative military reasons. The Chamber accepts these reasons to be legitimate grounds allowing for evacuations. The jurisprudence of this Tribunal also provides that individuals displaced under those two general grounds “shall be transferred back to their homes as soon as hostilities in the area in question have ceased”. See *supra* para 1607. The Trial Chamber in *Popović*, citing the Commentary to Additional Protocol II at p 1473, held that it is unlawful to use evacuation measures based on

4. the forcible displacement takes place within national boundaries;<sup>6018</sup> and
5. the forcible displacement must be carried out intentionally by the accused or persons for whom the accused bears criminal responsibility. There is no requirement that this intent be to forcibly displace permanently.<sup>6019</sup>

1614. Although the case-law of this Tribunal has on several occasions indicated that acts of forcible transfer constitute the statutory offence of other inhumane acts pursuant to Article 5(i) of the Statute,<sup>6020</sup> the conduct charged as forcible transfer must also meet the elements of the offence of “other inhumane acts” set out in paragraph 1610 above.<sup>6021</sup>

## 2. Findings

### (a) Findings on events alleged in the Indictment

1615. The Indictment alleges that beginning on or about 1 January 1999 and continuing until 20 June 1999, forces of the FRY and Serbia, carried out actions which resulted in the forced deportation of approximately 800,000 Kosovo Albanian civilians.<sup>6022</sup> It is alleged that to facilitate these expulsions and displacements, forces of the FRY and Serbia deliberately created an atmosphere of fear and oppression through the use of force, threats of force and acts of violence. It is alleged in particular that forces of the FRY and Serbia systematically shelled towns and villages, burned homes and farms, damaged and destroyed Kosovo Albanian cultural and religious institutions, murdered Kosovo Albanian civilians and sexually assaulted Kosovo Albanian women. Specific actions of this nature are alleged in a number of towns and villages in the following municipalities: Orahovac/Rahovec, Prizren, Srbica/Skenderaj, Suva Reka/Suharekë, Peć/Pejë,

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imperative military reason as a pretext to remove the population and effectuate control over a desired territory, *Popović* Trial Judgement, para 901.

<sup>6018</sup> *Stakić* Appeal Judgement, para 317 citing *Krstić* Trial Judgement, para 521; *Krnjelac* Trial Judgement, paras 474, 476. See also *Blagojević* Trial Judgement, para 595; *Martić* Trial Judgement, para 111.

<sup>6019</sup> *Stakić* Appeal Judgement, para 317. For a discussion of the Appeals Chamber’s reasoning, in the context of deportation, see *Stakić* Appeal Judgement, paras 304-308. See also *Milutinović* Trial Judgement, Volume I, para 164; *Martić* Trial Judgement, para 111.

<sup>6020</sup> *Stakić* Appeal Judgement, para 317; *Milutinović* Trial Judgement, Volume I, para 171; *Krstić* Trial Judgement, para 523; *Kupreškić* Trial Judgement, para 566; *Blagojević* Trial Judgement, para 629.

<sup>6021</sup> With respect to the “seriousness” criterion of the offence of other inhumane acts, the Appeals Chamber in *Krajišnik* held in para 331 of the *Krajišnik* Appeal Judgement that “when finding that specific acts of forcible transfer amount to “other inhumane acts” under Article 5(i) of the Statute, a Trial Chamber has to be convinced that the forcible transfer is of a similar seriousness to other enumerated crimes against humanity”. In the *Krajišnik* Appeal Judgement, the Chamber found that the Trial Chamber had erred because it did not examine if the specific instances of forcible transfer in the case before it were sufficiently serious.

<sup>6022</sup> Indictment, para 72.

Kosovska Mitrovica/Mitrovicë, Priština/Prishtinë, Đakovica/Gjakovë, Gnjilane/Gjilan, Uroševac/Ferizaj, Kačanik/Kaçanik, Dečani/Deçan, and Vučitrn/Vushtrri.<sup>6023</sup>

1616. The Chamber has made factual findings in relation to the events alleged in the Indictment earlier in this Judgement. In what follows the Chamber will focus on the allegations of deportation and forcible transfer which are made in the Indictment. What follows is intended to supplement, and is not intended as a substitute or to replace, the findings made earlier. With respect to the element, of both deportation and forcible transfer, of lawful presence in the area, the Chamber finds this to be established in all cases. Inhabitants or residents of an area can be accepted readily as lawfully present in it. In some alleged cases, persons from one village, town or locality were temporarily sheltering in another, having been forced from them in fear. Some others were merely seeking safety in an isolated location. In the Chamber's finding in each case they were, for relevant purposes, lawfully in the area where they were sheltering.

(i) Orahovec/Rahovec

1617. The Chamber has established that on 25 March 1999 VJ tanks entered the village of Bela Crkva/Bellacërkë; forces of the MUP and the VJ directed automatic gunfire over the tops of the houses causing villagers to flee. Very many did so at this stage. Police then entered the village setting houses on fire. Some 700 of the villagers gathered by a stream outside the village and moved towards the Belaja Railway Bridge. Police arrived at the Belaja Bridge, where many of the villagers were, and proceeded to separate the women and children from the men. The women and children were told to follow the railway track to Zrze/Xërxë, which they did. Following their departure the police ordered the men, a group of about 65, to go to the stream where they shot at them to kill.<sup>6024</sup>

1618. The Chamber is satisfied that the residents of Bela Crkva/Bellacërkë who were not killed were forced to leave their village by the acts of the Serbian forces. The Chamber is satisfied that this displacement was not carried out under a ground permitted under international law and that the displaced persons were lawfully present in the area. Considering further that the Serbian forces opened fire on the village without there being any military necessity for that, that they explicitly ordered the women and children to leave, that they shot and killed a large number of men, the Chamber is satisfied that the Serbian forces acted with the requisite intent. The offence of forcible transfer has been established. While there is some evidence that some men from Bela Crkva/Bellacërkë who had been forced out of their village eventually crossed the border into

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<sup>6023</sup> Indictment, para 72.

<sup>6024</sup> See *supra*, 459-474.

Albania, the evidence does not deal specifically with the circumstances in which they left Kosovo nor is there evidence to establish whether the women and children left Kosovo. In the view of the Chamber, their deportation has not been established.

1619. The Chamber has found that on 25 March 1999 Serbian forces arrived at Mala Kruša/Krushë-e-Vogël, and started shelling and shooting at the village. This caused some 400 to 500 Kosovo Albanian residents of the village to flee towards a forest. On the following day MUP forces with the assistance of local Serbs fired their weapons in the village, looted houses in the village, set houses on fire and shot at individual Kosovo Albanians who were there. The police then sent a resident to call back the Kosovo Albanians who were in the forest. When they returned, the police separated the men from the women and children and told the women and children “to drown themselves in the Drini River or go to Albania”. The women and children left the village. Police then confined the men in a barn, shot at the men and set the barn on fire, killing not less than 108 men (some of whom were teenage boys). Nine people from the village who had refused to leave their homes were burnt to death inside their houses.<sup>6025</sup>

1620. In the Chamber’s findings the offence of forcible transfer is established with respect to the events in Mala Kruša/Krushë-e-Vogël. The residents of Mala Kruša/Krushë-e-Vogël were forced out of their homes by the shooting, shelling and destruction caused by the Serbian forces. There is no evidence that these acts were directed at military targets. In the finding of the Chamber, the perpetrators carried out these acts with the intent to rid the village of its Kosovo Albanian population by making the women and children leave, by killing a large number of men and by the destruction of homes. This intent is confirmed further by the specific orders given by the Serbian forces to the people in Mala Kruša/Krushë-e-Vogël. The Chamber is satisfied that the displacement of residents was not based on a ground permitted under international law. While the order given by the police to the women and children was for them to go to Albania, the evidence does not establish that the women and children actually crossed the border into Albania. The offence of deportation, therefore, has not been established.

1621. Between 24 and 27 March 1999, a great number of displaced persons passed through the Mala Kruša/Krushë-e-Vogël railway station and left for Prizren. Transport was provided by SUP Prizren for the women and children. The men had to walk. While the evidence is not specific, the Chamber accepts from the context of the events that among these people there were residents escaping Mala Kruša/Krushë-e-Vogël and that they were leaving out of fear of the Serbian forces. The Chamber also accepts that among the people leaving from the Mala Kruša/Krushë-e-Vogël

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<sup>6025</sup> See *supra*, paras 480-495.

railway station for Prizren there were residents from other neighbouring villages who were also leaving the area out of fear of the Serbian forces. The substantial majority if not all people were of Albanian ethnicity. As discussed in more detail earlier in this Judgement,<sup>6026</sup> the Chamber does not accept the Defence argument that this displacement was carried out for the safety and security of the displaced persons because of conflicts between the Serbian forces and the KLA in the area. This argument is not supported by the evidence. The offence of forcible transfer has been established with respect to the people leaving from the Mala Kruša/Krushë-e-Vogël railway station for Prizren between 24 and 27 March 1999.

1622. As discussed earlier, the Chamber was satisfied that on 25 March 1999 Serbian forces surrounded the village of Velika Kruša/Krushë-e-Vogël. VJ tanks stationed themselves at short intervals in the area of the village while Serbian military vehicles, including tanks and APCs moved along the main Orhovac/Rahovec-Prizren road which passed through the village. Because of these events, out of fear, 3,000 to 4,000 Kosovo Albanians lawfully in the village fled to the hills. A few days later some of them joined thousands of displaced persons in Nogavac/Nagavc.<sup>6027</sup> In the Chamber's finding these events establish the offence of forcible transfer. The Chamber notes in particular, that the residents of Velika Kruša/Krushë-e-Vogël were forced to leave their homes by the menace of the increasing presence of the Serbian forces including tanks positioned in close proximity to houses of the village. There is no evidence that there were KLA forces in the area at the time. The Chamber is satisfied that the Serbian forces carried out these acts with the knowledge that they would arouse fear among the Kosovo Albanian residents in the village and would make them flee and that the Serbian forces acted with this intent. In the Chamber's finding, this displacement was not carried out on a ground permitted by international law. The Chamber is satisfied that the offence of forcible transfer has been established with respect to Velika Kruša/Krushë-e-Vogël.

1623. Earlier the Chamber has made a finding that on 25 March 1999 the village of Celina/Celinë was shelled by Serbian forces. A large number of VJ forces surrounded the village. The shelling continued during most of the day with occasional interruptions when MUP forces would enter the village on foot. Residents of Celina/Celinë were killed. Out of fear many residents of Celina/Celinë fled the village and gathered in the woods where there were people from other villages in the area including Velika Kruša/Krushë-e-Madhe, Brestovac/Brestovc and Nogavac/Nagavc.<sup>6028</sup> In the Chamber's finding, the offence of forcible transfer has been established with respect to these events. The Chamber notes in particular that the residents of

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<sup>6026</sup> See *supra*, paras 499-500.

<sup>6027</sup> See *supra*, paras 503-506.

<sup>6028</sup> See *supra*, paras 517-522.

Celina/Celinë were forced to leave their village by the shelling and shooting of the Serbian forces. The shelling and shooting was not directed at military targets and, in the Chamber's finding, the shooting and shelling was carried out by the Serbian forces with the intent to displace the residents of Celina/Celinë.

1624. The Chamber has also made a finding that on 28 March 1999 police arrived in the forest, to which residents of Celina/Celinë had fled, separated the women and children from the men, marched both groups to Celina/Celinë and further down the main road connecting Đakovica/Gjakovë with Prizren following which the men were ordered by the police onto trucks and driven to Žur/Zhur on the border with Albania where their identification documents were demanded and the men were told to walk towards the border. The men crossed the border and were taken to a refugee camp in Kukës, Albania.<sup>6029</sup> The Chamber is satisfied that the offence of deportation has been established with respect to these events. The Chamber notes, in particular that the men were lawfully in the area, and forcibly displaced by Serbian forces across the border with Albania, and, as evidenced by the specific orders to the men to go to Albania and by the provision of transportation, the Serbian forces acted with the requisite intent. In the Chamber's finding, this displacement was not carried out on a ground permitted under international law.

1625. The Chamber was satisfied that on 2 April 1999 a plane flew over the village of Nogavac/Nagavc and bombs were dropped. The Chamber was unable to make a finding on the evidence what force bombed Nogavac/Nagavc on 2 April. Following the bomb detonations a fire started, many people were wounded and houses damaged. On the following day, out of fear of another attack, the 20,000 displaced Kosovo Albanians from the neighbouring villages of Mala Hoca/Hoçë-e-Vogël, Brestovac/Brestoc, Zocište/Zoqishtë, Opteruša/Optershë and Celina/Celinë who had gathered in Nogavac/Nagavc fled to the Albanian border. At the border Serbian police took the identification documents of people in the convoy and the license plates of their vehicles before they crossed over into Albania.<sup>6030</sup> In the Chamber's finding, it has not been established on the evidence that the people gathered in Nogavac/Nagavc were forcibly displaced by acts of Serbian forces. In the Chamber's finding, the bombing on Nogavac/Nagavc was a significant factor in the people's decision to leave the village. There is no convincing evidence that this bombing was caused by Serbian forces. There is no evidence that Serbian forces used aeroplanes to bomb villages in Kosovo during the period 24 March until 20 June 1999. In the circumstances, the Chamber is not satisfied that the offences of deportation and forcible transfer have been established with respect to Nogavac/Nagavc.

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<sup>6029</sup> See *supra*, paras 528-531.

<sup>6030</sup> See *supra*, paras 501-514.

(ii) Prizren

1626. The Chamber has found earlier in this Judgement that on 30 March police forces entered the neighbourhood of Jeta-e-Re in Prizren, went to individual houses and told residents and their guests to leave. As people were leaving they formed a convoy. The convoy passed between two lines of police forces, which threatened the people in the convoy. The convoy was directed by the Serbian forces towards Žur/Zhur and then towards Albania. At the border, Serbian police ordered the people to hand over their identification documents and license plates before they crossed into Albania.<sup>6031</sup> The Chamber was also satisfied that on 28 March 1999 Serbian forces, including forces of the MUP, entered the neighbourhood of Dušanovo/Dushanovë of Prizren and forced some 4,000 to 5,000 residents out of their homes. Police told the people there that they should go to Albania, and that there was no place for them in Kosovo. Houses were set on fire by the forces and individual Kosovo Albanians were beaten. A convoy of Kosovo Albanian residents of Prizren was formed stretching some 16 kilometres. The convoy was directed to Albania. At the last checkpoint before the border, Serbian policemen took valuables and identification documents from the people in the convoy before they crossed into Albania.<sup>6032</sup>

1627. The Chamber is satisfied that on 28 and 30 March 1999 Kosovo Albanian residents of Prizren were forcibly displaced from their homes by Serbian forces, across the border to Albania, without their being a ground permitting the displacement under international law. Considering the specific orders, the threats, the number of residents displaced, and the directions by Serbian forces to the convoy along the way, the Chamber is satisfied that the Serbian forces acted with the intent to displace these Kosovo Albanians outside Kosovo's borders. The offence of deportation is, therefore, established.

1628. The Chamber has found earlier that on 25 March 1999, the VJ shelled the village of Pirane/Piranë while members of the MUP set some 16 houses in the predominantly Kosovo Albanian village on fire causing the majority of the population to leave. Some 1,900 people went to the neighbouring village of Mamuša/Mamushë and some 800 to the village of Srbica/Sërbica. On 26 March another village in Prizren municipality, the village of Landovica/Landovicë, was shelled by the VJ which caused the residents to flee to the north-west and to the south-west of the village.<sup>6033</sup> In the Chamber's finding the displacement of these Kosovo Albanians from Pirane/Piranë and Landovica/Landovicë was caused by Serbian forces. While a KLA defence line has passed through Pirane/Piranë before these events there is no evidence that on 25 March KLA

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<sup>6031</sup> See *supra*, paras 559-561.

<sup>6032</sup> See *supra*, paras 568-578.

<sup>6033</sup> See *supra*, paras 582-586, 589-594.

fighters were present in the village. There is no evidence that the shelling by the Serbian forces was directed at military targets or that the burning of houses had a legitimate purpose. In the Chamber's finding, by shelling and burning the two villages the Serbian forces acted with the intent to forcibly displace the Kosovo Albanian population. The offence of forcible transfer has been established.

1629. The Chamber has also found that on a day between 9 and 16 April 1999 on the orders of the chief of police in Prizren, displaced persons from other villages who were lawfully in Srbica/Sërbica, having found shelter there, were told that everyone who was not originally from Srbica/Sërbica had to leave and go to Albania. The people left on buses towards Žur/Zhur and then walked some kilometres until they reached the border with Albania. At the border, police took the refugees' identification documents before they crossed into Albania.<sup>6034</sup> In the Chamber's finding, the Kosovo Albanians in Srbica/Sërbica were forcibly displaced at the order of Serbian forces to Albania without there being a ground permitting the displacement under international law. Considering the specific orders given the Chamber is satisfied that the chief of police acted with the requisite intent. The offence of deportation has been established.

(iii) Srbica/Skenderaj

1630. The Chamber has found that on 25 and 26 March 1999 the village of Leocina/Leçine was shelled by Serbian forces, which caused the residents of the village, fearing for their safety to flee to Izbica/Izbicë. Residents from other villages in the area, including Brocna/Burojë and Kladernica/Klladërnice, had also fled to Izbica/Izbicë after Serbian forces had positioned themselves in the villages or the broader area. Hence, on 26 March there were some 25,000 residents and others in Izbica/Izbicë. On 27 March Serbian forces entered Izbica/Izbicë setting houses on fire. The majority of the people there and the young men in particular, fearing for their safety, fled towards Tušilje/Tushilë. On 28 March some 5,000 people fled the village and gathered in a field. Serbian forces arrived in the field and separated the women and children from the men. The men were taken to a road and were made to sit. The women were ordered to raise three fingers, a sign meaning "this is Serbia" and were told that they would be sent to Albania. The women and children left as directed and in the course of the next seven days travelled towards Albania. Following their departure Serbian forces divided the men into two groups, took them to two separate locations and fired at them killing not less than 132 men.<sup>6035</sup>

1631. In the Chamber's finding the events established above satisfy the requirements of forcible transfer. The residents of Brocna/Burojë left their village after Serbian forces took positions in the

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<sup>6034</sup> See *supra*, paras 599-600.

<sup>6035</sup> See *supra*, paras 605-634.



village. The residents of Leocina/Leçine and Izbica/Izbicë were forcibly displaced from their home villages by Serbian forces shooting and shelling their villages. There is no evidence that the shooting or shelling or the burning of houses was directed at military targets. In the Chamber's finding it is established that by carrying out these acts the Serbian forces acted with the intent to displace the populations of Leocina/Leçine, Brocna/Burojë and Izbica/Izbicë from their homes. This displacement was not carried out on a ground permitted under international law. The women and children who had gathered in a field near Izbica/Izbicë were ordered to leave the area of their home villages and go to Albania. The Chamber is satisfied that the offence of forcible transfer has been established with respect to Leocina/Leçine, Brocna/Burojë and Izbica/Izbicë. While on 28 March the women and children in the field were told to go to Albania, the evidence does not establish that they crossed the border of Kosovo. Therefore, the offence of deportation has not been established with respect to the women and children gathered in a field near Izbica/Izbicë.

1632. The Chamber has also found that on 26 March 1999 the village of Turicevac/Turiqec was shelled which made the residents there, out of fear, leave for Tušilje/Tushilë. On 29 March 1999 Serbian forces surrounded Tušilje/Tushilë, and approached the village shooting and injuring people. On the same day VJ and MUP forces told the residents of Tušilje/Tushilë, and the displaced persons from other villages who were lawfully in Tušilje/Tushilë to go to Klina/Klinë. On the way some 1,500 men were separated from the convoy and taken to Srbica/Skenderaj for questioning. The convoy continued to Klina/Klinë under police escort. From Klina/Klinë, however, some of the people managed to return to their homes in Turicevac/Turiqec.<sup>6036</sup> The Chamber is satisfied that the facts established above meet the requirements of forcible transfer. The people in Turicevac/Turiqec and in Tušilje/Tushilë were forced to leave the two villages, on 26 March and on 29 March, respectively as a result of the acts of the Serbian forces, which were so intended. This displacement was not carried out on a ground permitted under international law.

1633. The Chamber has found further that on 1 April police forces entered the village of Turicevac/Turiqec which made the women and children flee towards the nearby woods. The police ordered them to stop and opened fire in their direction killing three villagers. The police ordered the people to go towards Klina/Klinë. The police did not allow the people to go back to their homes so that they continued to walk in a convoy towards Klina/Klinë. There were over 1,000 people in the convoy. On the following day the convoy attempted to return towards the village of Brocna/Burojë but was turned away by Serbian forces and directed to Klina/Klinë. In Klina/Klinë three trucks were provided by the Serbian forces which transported the persons so displaced to Volujak/Volljakë from where the convoy continued on foot towards the Albanian border. Serbian

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<sup>6036</sup> See *supra*, paras 636-639.

forces were present on the road; they told the people that the sides of the roads were mined and that they should hurry up. The convoy crossed into Albania on 4 April 1999 at Cafa Prushit/Qafe-e-Prushit border crossing.<sup>6037</sup> In the Chamber's finding the elements of deportation have been established with respect to the displacement of Kosovo Albanians from Turicevac/Turiquec on 1-4 April 1999. The Chamber is satisfied that Kosovo Albanians from Turicevac/Turiquec were forcibly displaced by Serbian forces to Klina/Klinë and then across Kosovo's border with Albania. This displacement was not carried out on a ground permitted by international law. The Chamber is satisfied that the Serbian forces acted with the intent to displace these Kosovo Albanians across Kosovo's border.

1634. The Chamber has found earlier that on 12 April 1999 the village of Kladernica/Klladërnice was shelled. Fearing for their safety the young men fled to the nearby woods while the rest of the people in the village, 10,000 to 12,000 persons, mainly women and children, went to the village school. Police arrived in the school and separated some 300 to 400 men. The rest of the people were ordered by the Serbian forces to go to Albania. The convoy travelled by foot and on tractors. On the way there were VJ on both sides of the road and other Serbian forces in vehicles. People in the convoy saw burnt villages along the road. The convoy moved under police escort until Prizren, from where the people were told to board buses and were driven to Žur/Zhur. The people in the convoy then continued on foot from there towards the border and on 15 April crossed into Albania after handing their identification documents to the border police.<sup>6038</sup> In the Chamber's finding the offence of deportation has been established with respect to the 10,000 to 12,000 people displaced from their village of Kladernica/Klladërnice on 12 April 1999. The Chamber is satisfied that these people were deported across the border with Albania by orders and acts of the Serbian forces who acted with the intent to displace them across the border. In the Chamber's finding, this displacement was not carried out on a ground permitted under international law.

(iv) Suva Reka/Suharekë

1635. The Chamber has found earlier in this Judgement that on 26 March 1999 at least 41 members of the Berisha family were killed by forces of the MUP in Suva Reka/Suharekë town. In the days following these killings, large numbers of the Kosovo Albanian population lawfully in Suva Reka/Suharekë town left en masse towards Prizren and Albania. On 27 March there was a large movement of police on the main road and back streets of Suva Reka/Suharekë town. Many houses were destroyed. On 28 March the mosque in Suva Reka/Suharekë town was destroyed. Convoys of Kosovo Albanian civilians were leaving town in the direction of Prizren. In some

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<sup>6037</sup> See *supra*, paras 640-644.

<sup>6038</sup> See *supra*, paras 646-651.

cases, local Serbs acting as reserve policemen told Kosovo Albanians to leave as paramilitaries would come and would kill them. Some went to nearby villages and spent a few days there before returning to Suva Reka/Suharekë town.<sup>6039</sup>

1636. In the Chamber's finding Kosovo Albanian residents of Suva Reka/Suharekë town left the town on 27 March 1999 and in the following days out of fear caused by the killings of large number of women, young children and of men, members of a prominent Suva Reka/Suharekë family, and by the destruction in town. These acts were carried out by Serbian forces. The Chamber is satisfied that by carrying out the killings of women and young children and the destruction of the mosque in town, the Serbian forces acted with the intent to arouse fear among the Kosovo Albanian population of Suva Reka/Suharekë town and to make them leave. This displacement was not carried out on a ground permitted under international law. In the Chamber's finding the elements of forcible transfer have been established with respect to the town of Suva Reka/Suharekë on 27 and 28 March 1999.

1637. The Chamber has found that on 3 April 1999 Serbian forces including forces of the MUP started shooting and setting houses on fire in the Gashi neighbourhood of Suva Reka/Suharekë town. Upon seeing this, residents of Suva Reka/Suharekë town left their homes and went to a nearby field where other people had collected. Valuables and in some instances vehicles were taken away from the people gathered there by Serbian forces and they were told to go towards Albania. A convoy left Suva Reka/Suharekë town and was joined by more displaced persons along the way. By the time the convoy reached Koriša/Korishë village in Prizren municipality, the convoy was some five kilometres long. Near the border the convoy was met by the police commander of the Suva Reka/Suharekë police station who told the people that the border was closed and that they should return home, which they did.<sup>6040</sup> In the Chamber's finding the events occurring on 3 April meet the requirements of the offence of forcible transfer. Lawful residents were forced to leave Suva Reka/Suharekë town by virtue of the conduct of Serbian forces, who were shooting and setting houses on fire. There were no military targets at which the conduct of the Serbian forces was directed, which, in the Chamber's finding, establishes that the shooting and destruction was carried out with the intent to drive Kosovo Albanian residents out of the town.

1638. The Chamber has found further that on 7 May Serbian forces arrived in Suva Reka/Suharekë town and started looting and burning houses on the main street. On 21 May 1999 residents of Suva Reka/Suharekë town were ordered to leave their homes by police. People who had vehicles were told to join a convoy while those without transportation were told to gather in the shopping centre

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<sup>6039</sup> See *supra*, paras 666-691.

where two buses and two trucks had been organised to transport them to Albania. At a checkpoint outside Prizren some people's personal documents were seized by members of the Serbian forces. The convoy continued to Žur/Zhur and eventually crossed into Albania. Before crossing the border, people's identification documents and vehicles' registrations plates were seized by Serbian police.<sup>6041</sup> In the Chamber's finding the displacement of Kosovo Albanians, lawfully in Suva Reka/Suharekë town on 21 May meets the elements of deportation. The displacement was caused by specific orders of the Serbian forces to the population to leave and by fear caused by acts of the Serbian forces in the previous days. There were no grounds under international law permitting this displacement. In the Chamber's finding, the Serbian forces acted with the intent to forcibly displace Kosovo Albanians from Suva Reka/Suharekë town.

1639. The Chamber has also established that on or about 20-21 March 1999 the village of Pecane/Peqan, two kilometres to the north of Suva Reka/Suharekë town, was shelled following which Serbian forces entered the village. As the attack by the Serbian forces started the people lawfully in the village fled towards Nišor/Nishor. It is the evidence that while residents of Pecane/Peqan had family members in the KLA, the displacement of civilians from the village did not result from any fighting with the KLA but was caused by the shelling of the village on 20 and 21 May 1999 by Serbian forces.<sup>6042</sup> The shelling on 20-21 March was not directed at any military targets. In the Chamber's finding the purpose of the shelling was to displace the population of the village.

1640. The Chamber has found that as a result of attacks by Serbian forces on many villages in Suva Reka/Suharekë municipality on or about 20-21 March and in the following days, thousands of civilians left their homes in the villages. Most of them gathered in Belanica/Bellanicë. On 1 April there were some 30,000 people lawfully in Belanica/Bellanicë, the peacetime population of which was about 3,500. On 1 April Serbian forces shelled Belanica/Bellanicë. Around 60 elderly men went to the mosque at the entrance of the village with a white cloth as a sign of surrender. They were searched and beaten by Serbian forces. Serbian forces entered the village and set houses on fire. Thousands of displaced Kosovo Albanian persons gathered in a field in the centre of the village as the Serbian forces were burning houses and killing livestock. At least three Kosovo Albanian men, who were not armed, were killed. A convoy of displaced persons left Belanica/Bellanicë as military vehicles and bulldozers entered the village. Members of the VJ and the police divided the convoy and directed both groups to Prizren, one through Orahovac/Rahovec and the other through Suva Reka/Suharekë. The final destination of both groups was the village of

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<sup>6040</sup> See *supra*, paras 692-695.

<sup>6041</sup> See *supra*, paras 696-702.

<sup>6042</sup> See *supra*, paras 704-707.

Morina/Morinë and then Žur/Zhur near the Albanian border, from where the convoy continued into Albania. Before the convoy crossed into Albania, people were searched by Serbian forces and their identification documents were removed from them.<sup>6043</sup>

1641. In the Chamber's finding, the displacement of Kosovo Albanians from Belanica/Bellanicë on 1 April was caused by the acts of the Serbian forces, who killed three men in the village, threatened the people, set houses on fire and killed livestock. The evidence does not disclose any basis on which this displacement could be justified under international law. The Chamber is satisfied that these acts were carried out with the intent to arouse fear among the people lawfully in Belanica/Bellanicë and to make them leave. The Chamber has found earlier that while there has been an order from the KLA for the evacuation of the civilian population of village that day, the villagers had not obeyed this order. Instead they sought to surrender to the Serbian forces. Moreover, it was the Serbian forces who directed the convoy to the border with Albania. In the Chamber's finding, the offence of deportation has been established with respect to Belanica/Bellanicë.

(v) Peć/Pejë

1642. The Chamber has established that on 27 March VJ tanks started shelling the neighbourhood of Kapeshnica in Peć/Pejë following which Serbian police entered the town. Members of the Serbian forces entered houses of Kosovo Albanians in Karagaq neighbourhood in Peć/Pejë and ordered the people lawfully there to leave within five minutes while shooting at the house. They directed the people to go towards Montenegro. As people were leaving, members of the Serbian forces in blue and green uniforms prevented them from taking any course other than to Montenegro. The same conduct by Serbian forces continued on the following day in the Jarina neighbourhood in Peć/Pejë. A convoy of Kosovo Albanians on foot and by car was formed. Serbian forces told those who had a car to proceed to Montenegro, the rest were told to return to the town centre. At the square in the centre of the town at gunpoint people were made to board some 20 trucks and buses. Police and soldiers kept the main road clear so that the trucks and buses could pass. The buses and trucks came back later the same day to reload and transport more people. The buses took the people to Vrbnica/Vërmicë. From there the Kosovo Albanians walked to the Albanian border and crossed over into Albania after being ordered by Serbian forces to give up their identification documents.<sup>6044</sup> In the Chamber's finding, the offence of deportation with respect to the displacement of Kosovo Albanians from the town of Peć/Pejë has been established. On 27 and 28 March 1999 Kosovo Albanians were ordered by Serbian forces to leave Peć/Pejë and go to

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<sup>6043</sup> See *supra*, paras 710-725.

<sup>6044</sup> See *supra*, paras 732-740.

Montenegro. The forces threatened Kosovo Albanian residents of Peć/Pejë and directed them to the border. Serbian forces organised the transportation of Kosovo Albanians who did not have a vehicle from Peć/Pejë towards Prizren and across the border into Albania. The Chamber is satisfied that in doing so the Serbian forces acted with the intent to forcibly displace the Kosovo Albanian population of Peć/Pejë. There is nothing in the evidence suggesting that this was done on a ground permitting displacement under international law.

1643. The Chamber has established further that on 14 May about 80 members of the Serbian forces, armed and in uniforms, approached on foot the village of Cuška/Qyshk, located three kilometres to the east of Peć/Pejë. They entered the village setting houses on fire. The villagers gathered at the cemetery in the centre Cuška/Qyshk. The forces proceeded to separate the men from the women and children. The men were taken in three small groups to individual houses in the village and were shot and killed by members of the Serbian forces, following which the houses were set on fire. The women and children were made to board tractors and sent to Peć/Pejë.<sup>6045</sup>

1644. In the Chamber's finding, the acts of the Serbian forces in Cuška/Qyshk were carried out with the intent to forcibly displace the female and young residents of the village while killing the men. Considering, in particular, the specific orders given to the women and children and the fact that tractors were provided to transport the women the Chamber is satisfied that the Serbian forces acted with intent to displace them. What they did was not permitted under international law. The elements of forcible transfer have been established with respect to Cuška/Qyshk.

(vi) Kosovska Mitrovica/Mitrovicë

1645. The Chamber has found that on 28 March 1999 forces comprising members of the VJ, police and paramilitary forces arrived in Tamnik/Tavnik neighbourhood of Kosovska Mitrovica/Mitrovicë, burned houses and ordered the people, who were lawfully in the area, to leave immediately for Albania, threatening that the people would be killed if they did not obey. As a result a column of Kosovo Albanians left the town. This was directed by Serbian forces to the village of Zabare/Zhabar. After three days in Zabare/Zhabar the displaced persons were told by Serbian forces to leave the village.<sup>6046</sup> In the Chamber's finding on 28 March 1999 Kosovo Albanians were forcibly displaced from Kosovska Mitrovica/Mitrovicë by Serbian forces considering the specific orders to leave town, the threats, and the fact that the column of people was directed to Zabare/Zhabar. The Chamber is satisfied that the Serbian forces acted with the requisite intent. This displacement was not carried out on a ground permitted under international law. While

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<sup>6045</sup> See *supra*, paras 751-762.

<sup>6046</sup> See *supra*, paras 774-776.

the Serbian forces ordered the people to go to Albania the evidence does not disclose that they did do so on this occasion. The offence of forcible transfer is established with respect to these events but not the offence of deportation.

1646. The Chamber has found earlier that on 1 to 3 April 1999 there was shooting in Kosovska Mitrovica/Mitrovicë and houses were burning. On 4 April 1999 Kosovo Albanian residents of Kosovska Mitrovica/Mitrovicë were driven in 16 or 17 buses, arranged for by Serbs, to the border with Montenegro. Serbian forces were present at the bus station in Kosovska Mitrovica/Mitrovicë and monitored the departure of the Kosovo Albanians. At the border with Montenegro the men were maltreated, interrogated and forced to shout “Serbia, Serbia”.<sup>6047</sup> The Chamber is satisfied that the people were forced to leave by the acts of Serbian forces which were intended to instil fear and make people leave. The Chamber is satisfied that by monitoring their departure, maltreating them and forcing them to shout “Serbia, Serbia” the Serbian forces acted with intent to displace the Kosovo Albanians to Montenegro, which constituted a *de facto* border at the time. The evidence does not disclose any basis on which this displacement could be justified under international law. The offence of deportation has been established with respect to displacement of people from Kosovska Mitrovica/Mitrovicë on 4 April 1999.

1647. The Chamber has also established that on 14 April 1999 Serbian forces again entered the upper part of Zabare/Zhabar village in Kosovska Mitrovica/Mitrovicë municipality and began shooting with machineguns. As a result some 35,000 persons lawfully in the area gathered in the lower part of the village. These displaced persons left in the course of the following day, out of fear, for the neighbouring village of Šipolje/Shipol. On 17 April, Serbian forces, including members of the MUP, ordered some 8,000 or 9,000 displaced persons who were lawfully in the area, to leave and head towards Peć/Pejë. On the way, part of the convoy consisting of some 2,000 was sent back by a policeman to Kosovska Mitrovica/Mitrovicë town; the remaining 6,000 or 7,000 people were directed towards Peć/Pejë. The convoy eventually crossed over into Albania, after the refugees had to hand over their identification documents and car registration plates to the Serbian border police.<sup>6048</sup>

1648. The Chamber is satisfied that the displacement of Kosovo Albanians from Zabare/Zhabar to Albania on 17 April 1999 was caused by the shooting of the Serbian forces in the previous days and by specific orders given by members of the MUP to the population. The Chamber is satisfied that this shooting was not directed at legitimate military targets, but it was intended to instil fear in the people and to cause them to leave. The evidence does not disclose any basis on which this

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<sup>6047</sup> See *supra*, para 777.

displacement could be justified under international law. In the Chamber's finding the Serbian forces acted with the requisite intent. The offence of deportation with respect to Kosovo Albanians in Zabare/Zhabar on 17 April has been established.

(vii) Priština/Prishtinë

1649. The Chamber is satisfied that on 26 March 1999 and in the following days, Serbian forces, including VJ and MUP, entered different neighbourhoods of Priština/Prishtinë town and forced Kosovo Albanians out of their homes and shops; they ordered them to go to Albania or FYROM. Kosovo Albanians on foot were then directed by the VJ and MUP to the railway stations where they were forced to board buses or trains to the FYROM border. Kosovo Albanians that had their own vehicles were escorted to the FYROM border by the Serbian forces. As they were leaving Priština/Prishtinë town, Kosovo Albanians were beaten, killed, robbed of their valuables and their houses and shops were set on fire. In Đeneral Janković/Han-i-Elezit, the border crossing point with FYROM, some Kosovo Albanians were beaten, looted of their valuables and forced to hand over their identification documents by the VJ and MUP.<sup>6049</sup>

1650. While the Chamber has heard evidence about the expulsion of Kosovo Albanians from various neighbourhoods of Priština/Prishtinë town, there has not been any evidence relevant to the allegations in the Indictment in respect to villages in the municipality of Priština/Prishtinë. For this reason, the Chamber finds, that the forcible displacement of Kosovo Albanians from other villages in the municipality of Priština/Prishtinë charged in the Indictment has not been established. The Chamber is however satisfied that from 26 to 31 March 1999 Kosovo Albanians were forcibly displaced from Priština/Prishtinë town by Serbian forces. The Chamber is satisfied that by destroying property belonging to Kosovo Albanians, by ordering people to go to Albania or FYROM, by directing them to the border with FYROM, and other acts of intimidation, the Serbian forces acted with the requisite intent. This displacement of persons lawfully in the area was not carried out on a ground permitted under international law. The offence of deportation with respect to Priština/Prishtinë has been established.

(viii) Đakovica/Gjakovë

1651. The Chamber has found earlier in this Judgement that in the night of 24 March 1999 Serbian forces carried out an attack on the old town of Đakovica/Gjakovë causing extensive burning and destruction, including the destruction of the Hadum Mosque. During that night Serbian forces, including police, entered houses in various neighbourhoods of Đakovica/Gjakovë and ordered the

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<sup>6048</sup> See *supra*, paras 782-787.



inhabitants to leave or caused them to leave.<sup>6050</sup> The Chamber is satisfied that on 24 March 1999 Kosovo Albanians were forcibly displaced from their homes and Đakovica/Gjakovë by Serbian forces. This displacement was not carried out on a ground permitted under international law. The Chamber is satisfied that by burning Kosovo Albanian property, by destroying the Hadum Mosque and by specifically ordering Kosovo Albanians to leave the Serbian forces acted with the requisite intent. The offence of forcible transfer is established with respect to Đakovica/Gjakovë in the night of 24/25 March 1999.

1652. The Chamber has also found earlier that during the night of 1 April 1999 Serbian police killed not less than 60 Kosovo Albanian civilians in the Ćerim/Qerim district of Đakovica/Gjakovë, including 19 women and children hiding in a basement of Lulzim Vejsa's pool hall on 157 Miloš Gilić/Millosh Giliq Street, and set many Kosovo Albanian houses on fire. On 2 April 1999 and on the following days there was a mass exodus of Kosovo Albanian residents of Đakovica/Gjakovë to Albania. At a checkpoint outside the city police asked the people in the convoys to hand over their identification documents. The convoys were escorted to the border crossing point by VJ forces from where the people crossed into Albania.<sup>6051</sup> The Chamber is satisfied that the killing of a large number of civilians and the burning of many Kosovo Albanian houses forced large numbers of Kosovo Albanians in Đakovica/Gjakovë to leave on 2 April and on the following days and to go to Albania. In the Chamber's finding by burning Kosovo Albanian property and by killing Kosovo Albanian women, children and other civilians, the Serbian forces acted with the intent to arouse fear in the Kosovo Albanian population of Đakovica/Gjakovë and to make them leave. This displacement was not carried out on a ground permitted under international law. The offence of deportation with respect to the events in Đakovica/Gjakovë in the night of 1 April and the following days has been established.

1653. The Chamber has established that on 27 March VJ forces expelled the residents of the village of Guska/Guskë and made them join a convoy of some 1,000 other Kosovo Albanian people who had been expelled from neighbouring villages. The convoy proceeded to Meja/Mejë where the people were ordered to go and stay in Korenica/Korenicë.<sup>6052</sup> The Chamber is satisfied that the offence of forcible transfer is established with respect to the people of the village of Guska/Guskë and approximately 1,000 residents of neighbouring villages on 27 March and the following days. Considering that the Serbian forces told the Kosovo Albanians to leave, first to go to Albania but then directed them to Korenica/Korenicë, the Chamber is satisfied that the Serbian forces acted with

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<sup>6049</sup> See *supra*, paras 808, 819-830.

<sup>6050</sup> See *supra*, paras 863-873.

<sup>6051</sup> See *supra*, paras 881-900.

<sup>6052</sup> See *supra*, para 930.

the intent to displace these people against their will. This displacement was not carried out on a ground permitted under international law.

1654. The Chamber has also found earlier that on 4 April 1999 police forces entered houses in the village of Korenica/Korenicë and told the residents to leave immediately and go to Albania. A convoy was formed but at the village of Suvi Do/Suhadoll the convoy was directed back to Korenica/Korenicë by local police.<sup>6053</sup> In the Chamber's finding, the offence of forcible transfer has been established with respect to the displacement of Kosovo Albanians from Korenica/Korenicë on 4 April. The Chamber is satisfied that by ordering people to leave immediately the police acted with the intent to displace them. It is satisfied further that this displacement was not carried out on a ground permitted under international law.

1655. The Chamber has found also that in early April 1999 VJ forces went door to door in nine or 10 Kosovo Albanian villages in Đakovica/Gjakovë municipality, including Žub/Zhub, telling the people to leave within two hours. The villagers left as told.<sup>6054</sup> The Chamber is satisfied that the offence of forcible transfer has been established with respect to these acts. Considering the specific orders given by the Serbian forces the Chamber is satisfied that they acted with intent to displace the Kosovo Albanian population of these villages against their will. This displacement was not carried out on a ground permitted by international law.

1656. The Chamber has been satisfied further that on 27 and 28 April 1999, Serbian forces comprising VJ, MUP and paramilitary forces carried out an operation in the area between the villages of Junik, Korenica/Korenicë and Meja/Mejë, including the villages of Dobroš/Dobrosh, Ramoc, Orize and Guska/Guskë, with the purpose to clean out the area of its Kosovo Albanian inhabitants. The VJ secured the area following which large numbers of police were deployed. The police entered villages in the area and randomly fired into houses which caused the Kosovo Albanian residents to leave the villages. Houses were set on fire and entire villages were torched. The Chamber has found earlier that during this operation not less than 296 Kosovo Albanian men were killed. On 27 April 1999 a convoy composed of Kosovo Albanian women and children left the villages in the area of Meja/Mejë and Korenica/Korenicë and went to the Albanian border. VJ soldiers and police were lining the road and forcing the people to walk on, and not to stop. Serbian forces escorted the convoy throughout the journey to the border and did not allow the people travelling in the convoy to rest or to have any food or drink. At the border Serbian police took identification documents from the people in the convoy; those on tractors were forced to remove

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<sup>6053</sup> See *supra*, para 934.

<sup>6054</sup> See *supra*, para 935.

and hand over the registration plates of their tractors. On 28 April 1999 the Kosovo Albanians travelling in the convoy crossed into Albania.<sup>6055</sup>

1657. The Chamber is satisfied that the offences of forcible transfer and deportation have been established with respect to the villages of Junik, Dobroš/Dobrosh, Ramoc, Meja/Mejë, Orize, Korenica/Korenicë, Guska/Guskë, and other villages in this area on 27 and 28 April 1998. The Chamber is satisfied that the Kosovo Albanian inhabitants of these villages were forced to leave by acts of the Serbian forces, including direct orders, threats, burning of houses, and killing of men. The Chamber is satisfied that by directing these acts against civilian population, the Serbian forces acted with the intent to forcibly displace them from the area where they were lawfully present. In accepting that the Serbian forces acted with the intent to forcibly displace the population of these villages the Chamber has considered the presence of large numbers of Serbian forces along the road of the convoy to the border, the escort provided by the Serbian forces, that the people were not allowed to stop until they reached the border and that at the border Serbian police took personal identification documents from the people in the convoy. This displacement of Kosovo Albanians from the area of the villages in the area of Junik, Dobroš/Dobrosh, Ramoc, Meja/Mejë, Orize, Korenica/Korenicë, Guska/Guskë was not carried out on a ground permitted under international law. The offence of deportation is established.

(ix) Gnjilane/Gjilan

1658. The Chamber has found that on 6 April Serbian forces arrived in Prilepnica/Prëlepticë, Gnjilane/Gjilan municipality, told the residents that they had received information that there was a KLA presence in the village and that the forces had orders to mine the village. The Serbian forces told the residents that they had two hours to leave. The residents of Prilepnica/Prëlepticë left the same day as directed but on their way they were told by police that they could safely return to the village. By 7 April most of them had returned.<sup>6056</sup> The Chamber is satisfied that the demands of the Serbian forces and the threats that the village would be mined by them on the following day caused the residents of Prilepnica/Prëlepticë and the displaced persons lawfully in the village to leave. There is no support in the evidence for the statement of the officer of the Serbian forces that the villagers were being moved out for their own safety. While the villagers were told that they were being moved out “for their own safety” as the soldiers were to place mines in the village on the following day, in the finding of the Chamber, it is not established by the evidence that the displacement of the people or the mining the village was to be carried out on a ground permitted under international law. The Chamber is satisfied that by threatening the people in

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<sup>6055</sup> See *supra*, paras 950-983.

<sup>6056</sup> See *supra*, paras 1016-1024.

Prilepnica/Prëlepnice that the village would be mined and by ordering them to leave the Serbian forces acted with the intent to displace them against their will. The charge of forcible transfer has been established with respect to the displacement of the population of Prilepnica/Prëlepnice on 6 April 1999.

1659. The Chamber has found further that on 13 April 1999 the villagers of Prilepnica/Prëlepnice, Gnjilane/Gjilan municipality were ordered to leave their village by Serbian forces. By 0730 in the morning the 3,000 residents of Prilepnica/Prëlepnice and the approximately 1,000 displaced persons from other villagers who were lawfully in Prilepnica/Prëlepnice were on the road, in tractors, motor cultivators, and cars. Traffic policemen escorted the convoy towards FYROM. On the way two buses with people from neighbouring villages joined the convoy. The convoy passed through several checkpoints. At the last one people were beaten by members of the Serbian forces and were told to leave their vehicles with the car keys inside in a field. The people from the convoy then crossed over into FYROM.<sup>6057</sup> In the Chamber's finding the offence of deportation with respect to Prilepnica/Prëlepnice on 13 April 1999 has been established. The Chamber notes in particular that some 4,000 Kosovo Albanians left the village on orders of the VJ, that police escorted the convoy and Serbian forces took their vehicles from them at the border with FYROM. In the Chamber's finding it is established that the Serbian forces acted with the intent to displace these Kosovo Albanians from Prilepnica/Prëlepnice across the border to FYROM.

1660. The Chamber has also found that on 29 March 1999 members of the Serbian forces went house to house in the village of Žegra/Zhegër and ordered people to leave. They shot at inhabitants and entered houses in order to make the inhabitants leave. Out of fear some 1,300 or so villagers left Žegra/Zhegër and spent the night on a hill nearby. The inhabitants attempted to return on the following day but Serbian forces shot at houses and at the villagers who then fled to Donja Stubla/Stubëll-e-Poshtme where they stayed for some five weeks.<sup>6058</sup> In the Chamber's finding the 1,300 residents of Žegra/Zhegër were forcibly displaced from their village to Donja Stubla/Stubëll-e-Poshtme by Serbian forces on 29 March 1999. The Chamber is satisfied that by shooting at inhabitants of the village and entering houses the Serbian forces acted with the intent to make the people leave. The Chamber does not accept the argument of the Defence that residents of Žegra/Zhegër left of their own free will as it is not supported by the evidence. However, while the Chamber has been satisfied that three weeks after arriving in Donja Stubla/Stubëll-e-Poshtme people from Žegra/Zhegër left for FYROM, the Chamber is unable to accept that this further movement was caused by Serbian forces, or that, accordingly, it constitutes deportation.

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<sup>6057</sup> See *supra*, paras 1025-1033.

<sup>6058</sup> See *supra*, paras 1039-1041.

1661. The Chamber has found that on 29 March 1999 some villagers of Vladovo/Lladovë left the village and went towards the area of the Black Mountain (Kodra-e-Zeze) because of the Serbian military presence nearby. On 2 April a group of six villagers attempted to return to the village but they were fired at by members of the Serbian forces who killed three of them, including one woman. On the same day, those residents of Vladovo/Lladovë who had not fled were ordered by VJ soldiers to leave the village which they did. Nobody from the village dared to return.<sup>6059</sup> The Chamber is satisfied that on 29 March and 2 April residents of Vladovo/Lladovë were forcibly displaced by acts of the Serbian forces. Considering in particular the shooting by members of the Serbian forces at residents attempting to return the Chamber is satisfied that the Serbian forces acted with the intent to forcibly displace the population of Vladovo/Lladovë. In reaching its findings, the Chamber has also considered the minutes of a meeting of the Chief of SUPs in Kosovo, PJP detachment commanders and SAJ and JSO commanders held in the MUP Staff on 4 April 1999, at which it was reported that some 50,000 people had moved out (presumably of the territory of SUP Gnjilane/Gjilan) while 15,000 persons had been turned back from the “Vranje sector”.<sup>6060</sup>

1662. On or about 6 April 1999 Serbian forces attacked Rimnik/Ribnik, Gornja Budrika/Burrke-e-Eperme and Mogila/Mogille in Vitina/Viti municipality and the villages of Nosalje/Nosaljë and Vladovo/Lladovë in Gnjilane/Gjilan municipality. The inhabitants of these villages and the remaining inhabitants of Vladovo/Lladovë went to Donja Stubla/Stubëll-e-Poshtme so that there were about 20,000 people there. Some 1,500 of them returned to villages in Vitina/Viti municipality on 20 April, the remaining left for FYROM in groups of 500 to 1,000 each day, out of fear of being attacked by Serbian forces.<sup>6061</sup> The Chamber is satisfied that the inhabitants of these villages were forcibly displaced from their homes by the attacks of the Serbian forces who acted with the requisite intent. The evidence does not suggest that these attacks were directed at legitimate military targets. The Chamber is satisfied that by attacking these villages the Serbian forces acted with the intent to forcibly displace the civilian population. The Chamber is satisfied that the charge of forcible transfer has been established with respect to the villages of Nosalje/Nosaljë and Vladovo/Lladovë in Gnjilane/Gjilan municipality as charged in the Indictment, and also that the populations of the villages of Rimnik/Ribnik, Gornja Budrika/Burrke-e-Eperme and Mogila/Mogille in Vitina/Viti municipality were forcibly displaced. The Chamber is satisfied further that after 20 April 1999 Kosovo Albanians from these two villages as charged, left Donja Stubla/Stubëll-e-Poshtme and went to FYROM. However, in the circumstances the Chamber is not

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<sup>6059</sup> See *supra*, paras 1051-1052.

<sup>6060</sup> Exhibit P764, p 2.

<sup>6061</sup> See *supra*, paras 1042-1043.

persuaded that this movement was caused by acts of Serbian forces. The evidence establishes that some of the people in Donja Stubla/Stubëll-e-Poshtme were able to return to their villages in Vitina/Viti municipality but that some decided to leave for FYROM as they did not have any food.

1663. The Chamber has established that on 6 April 1999 members of the Serbian forces, including VJ and police entered the village of Vlačica/Llashticë, forced its inhabitants out of their houses, looted the houses and set them on fire. The mosque was heavily damaged and its library was destroyed. On or about 11 April VJ and police collected the population of the village and directed part of it to go to Preševo in Serbia, which they did. From there the refugees eventually went to FYROM.<sup>6062</sup> The Chamber is satisfied that in the period 6 to 11 April the inhabitants of Vlačica/Llashticë were forcibly displaced by Serbian forces across Kosovo's border with Serbia. The Chamber is satisfied that the Serbian forces acted with the intent to displace the population of Vlačica/Llashticë. To reach this conclusion the Chamber has taken into account the fact that the Serbian forces looted houses of Kosovo Albanians and set them on fire and that they gave orders to the convoy of Kosovo Albanians to cross Kosovo's border. This displacement was not carried out on a ground permitted under international law. The offence of deportation has been established with respect to Vlačica/Llashticë.

(x) Uroševac/Freizaj

1664. The Chamber has accepted that on 6 April 1999 Serbian forces, including members of the VJ and the MUP, entered the village of Sojevo/Sojevë in Uroševac/Freizaj municipality setting houses on fire. Two Kosovo Albanian men died as a result of the fires. A paralysed man and his wife were shot and killed by members of the Serbian forces. As the Serbian forces advanced, some 200 residents of Sojevo/Sojevë fled out of fear into the woods. One group of them was stopped by members of the Serbian forces who ordered them to go to Uroševac/Freizaj. Another group stayed for a few days in the woods. They were joined by a further group of residents of Sojevo/Sojevë who reported that the army stationed in Sojevo/Sojevë had ordered that they leave the village and go to Uroševac/Freizaj town.<sup>6063</sup> The Chamber accepts that the displacement from Sojevo/Sojevë, of residents of Sojevo/Sojevë and displaced persons from other villages present there, on 6 April and the following days, was caused by Serbian forces setting houses on fire and killing civilian residents of the village. The Chamber is satisfied that these acts were intended to arouse fear in the Kosovo Albanians in the village and make them flee. A few days later those who did not flee the village were specifically ordered by Serbian forces to leave. This displacement was not carried out on a ground permitted under international law. In the Chamber's finding the charge of forcible

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<sup>6062</sup> See *supra*, paras 1054-1056.

<sup>6063</sup> See *supra*, paras 1067-1071.

transfer with respect to the displacement of Kosovo Albanians from Sojevo/Sojevë on 6 April and in the following days has been established.

1665. The Chamber also accepts that on or about 27 April 1999 residents of Sojevo/Sojevë and displaced persons from other locations, who had fled to Uroševac/Ferizaj, left the town to go to FYROM. They decided to leave for FYROM because it was too dangerous to remain in Uroševac/Ferizaj—most Kosovo Albanians had left the town, police, paramilitary forces and VJ tanks were present, there were checkpoints manned by the VJ and police and gunshots could be heard constantly. At Đeneral Janković/Han-i-Elezit, border police had the Kosovo Albanian people cross the border in groups of 10.<sup>6064</sup> The Chamber is satisfied that in the circumstances Kosovo Albanians had no genuine choice but to leave Uroševac/Ferizaj and go to the closest safe location which was FYROM. They left in fear caused by acts of the Serbian forces. The Chamber is satisfied that by creating this atmosphere of fear the Serbian forces acted with the intent to make the Kosovo Albanian people present in Uroševac/Ferizaj town leave for FYROM. The charge of deportation with respect to Kosovo Albanians present in Uroševac/Ferizaj town on 27 April has been established.

1666. The Chamber has found further that on 5 April 1999 a group of 80 paramilitary soldiers from Serbia arrived in Staro Selo/Fshati-i-Vjeter in Uroševac/Ferizaj municipality, imposed a curfew, took the motor vehicles and money from the inhabitants of the village, threatened the inhabitants telling that there would be many “mass graves” and that the villagers would be used as human shields and “cannon fodder”, and forced some of them to dig defensive trenches. On 14 April, out of fear of the paramilitaries who were staying in the village, after hearing that three residents of Staro Selo/Fshati-i-Vjeter had been killed, almost all of the 500-600 Kosovo Albanian inhabitants of Staro Selo/Fshati-i-Vjeter left the village to go to Uroševac/Ferizaj town.<sup>6065</sup> In the Chamber’s finding the offence of forcible transfer with respect to Staro Selo/Fshati-i-Vjeter has been established. These inhabitants of Staro Selo/Fshati-i-Vjeter were forced to flee the village by acts of the Serbian forces, including threats, stealing of motor vehicles, and forced labour. In the Chamber’s finding, in doing so, the Serbian forces acted with the intent to make the population of Staro Selo/Fshati-i-Vjeter leave the village.

1667. The Chamber is satisfied that on 5 April residents of Mirosavlje/Mirosalë heard the sound of shelling and automatic weapon fire coming from the direction of Pojatište/Pojatë village. About 1,000 displaced persons from Pojatište/Pojatë, Muhadžer Prelez/Prelez-i-Muhaxherëve, Muhovce/Muhoc and other villages arrived later in Mirosavlje/Mirosalë and told the people there

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<sup>6064</sup> See *supra*, paras 1074-1075.

that tanks had come along the main road towards their villages and that Serbian soldiers then told them to leave as soon as possible. The Chamber was also satisfied that on 8 April military vehicles approached the village of Miroslavlje/Miroslalë. Soldiers jumped off the vehicles and ran towards the houses which made people flee. The Chamber was satisfied that people fled in fear for their lives, having seen or heard what the Serbian military had done in surrounding villages. Some of them headed in a convoy towards the town of Uroševac/Ferizaj, but at a checkpoint outside the town policemen directed the convoy to Skopje in FYROM.<sup>6066</sup> In the Chamber's finding the 3,000 residents of Miroslavlje/Miroslalë and the approximately 1,000 displaced persons from other villages in Uroševac/Ferizaj municipality who were lawfully in Miroslavlje/Miroslalë at the time, were forced to flee the village by fear caused by acts of Serbian forces in the village and in neighbouring villages. Considering the absence of evidence about potential military targets in the village, which may have provided a reason for the behaviour of the Serbian forces, the Chamber is satisfied that these acts of the Serbian forces were intended to make the people in Miroslavlje/Miroslalë leave the village. The Chamber is satisfied further that by directing the convoy to FYROM, the Serbian police acted with the intent to forcibly displace the Kosovo Albanians across the border into FYROM. The Chamber is satisfied that the offence of deportation has been established with respect to Miroslavlje/Miroslalë.

1668. The Chamber has found that on 15 and 16 April 1999 large numbers of displaced Kosovo Albanians, some 4,000 to 5,000 on 15 April alone, left Kosovo from the Uroševac/Ferizaj train station by train to Đeneral Janković/Han-i-Elezit at the border with FYROM. Among them there were people from villages in Uroševac/Ferizaj municipality, including from Staro Selo/Fshati-i-Vjeter who had been displaced earlier from their villages by Serbian forces. From the train station Serbian police ordered the refugees to walk to the border on the railway tracks, telling them that the ground beside the tracks had been mined. The police escorted the refugees to the border.<sup>6067</sup> The Chamber is satisfied that the people leaving from the Uroševac/Ferizaj train station by train did not have a genuine choice but to leave. They were escorted to the border by police, who made sure that the refugees went nowhere else but across the border to FYROM. On this basis the Chamber is satisfied that these forces acted with the requisite intent. This displacement was not carried out on a ground permitted under international law. In the Chamber's finding, the offence of deportation has been established with respect to residents of villages and towns in Uroševac/Ferizaj municipality, from Uroševac/Ferizaj train station on 14 and 15 April 1999.

(xi) Kaçanik/Kaçanik

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<sup>6065</sup> See *supra*, paras 1080-1083.

<sup>6066</sup> See *supra*, paras 1089-1095.

<sup>6067</sup> See *supra*, paras 1096-1100.



1669. The Chamber has established that on 24 March 1999 the village of Kotlina/Kotlinë in Kačanik/Kaçanik municipality was shelled following which Serbian forces on foot entered the village causing the male population to flee. Women, children and elderly men were made to board two military trucks which drove them to the town of Kačanik/Kaçanik. Those who could not fit in were made to follow the trucks on foot. On the following day a group of not less than 22 men who had been captured by the Serbian forces were thrown into two wells located on a hill close to the village. The wells were mined and blown up by Serbian forces. As a result of these events, out of fear, most of the remaining men from the village, some 48 of them, who had fled the village at the arrival of the Serbian forces, left for FYROM.<sup>6068</sup> In the Chamber's finding the inhabitants of Kotlina/Kotlinë were forcibly displaced by Serbian forces on 24 March 1999 and on the following days. Having killed some of the population, the Serbian forces acted with the intent to displace the remaining population. This is evidenced by the killing of some men and by the specific orders to leave given to the women and children and by the provision of transportation for their displacement. In the Chamber's finding the shelling of the village, the killing of not less than 22 men in two wells above Kotlina/Kotlinë and the forcible displacement of the women and children were intended to drive the remainder of the male population out of the village. The offence of forcible transfer has been established with respect to Kotlina/Kotlinë.

1670. The Chamber has established further that on 27 March 1999 a rocket was fired at a village adjacent to the town of Kačanik/Kaçanik. MUP forces took positions at a lime factory in the outskirts of the town and fired into houses, killing two Kosovo Albanians and injuring others. The shooting continued for about one hour, grenades were also thrown. On the following day out of fear, residents of Kačanik/Kaçanik left town; some went across the border to FYROM.<sup>6069</sup> In the Chamber's finding the residents of Kačanik/Kaçanik were forced to leave their town on 27 and 28 March by the shelling and shooting of the outskirts of the town carried out by Serbian forces. Considering the absence of military targets the Chamber is satisfied that this shelling and shooting were carried out with the intent to arouse fear among the population and make them leave to the closest safe location which was FYROM. This displacement was not carried out on a ground permitted by international law. The charge of deportation with respect to Kačanik/Kaçanik on 27 and 28 March 1999 has been established.

1671. The Chamber has established further that on 13 April Serbian forces arrived in the hamlet of Vata/Vataj in Kačanik/Kaçanik municipality and opened fire at the village. The shots frightened the residents of Vata/Vataj and persons displaced from other villages who were lawfully staying

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<sup>6068</sup> See *supra*, paras 1102-1126.

<sup>6069</sup> See *supra*, paras 1127-1130.

there. Out of fear they fled into the mountains. The Serbian forces burnt houses in Vata/Vataj and killed four villagers. The bodies of two of them were mutilated. On the following two days, out of fear, all residents of Vata/Vataj fled to FYROM.<sup>6070</sup> In the Chamber's finding the offence of deportation has been established with respect to Vata/Vataj on 13 April 1999. The Kosovo Albanians in the village were forced to leave by the shooting and killings of the Serbian forces. Considering the absence of evidence of any KLA presence in the village on that day the Chamber is satisfied that this shooting was intended to drive the people in Vata/Vataj out of the village and make them go to the closest safe location which was FYROM. The Chamber is satisfied that the people left out of fear caused by the shooting of the Serbian forces and by the sighting of the dead bodies of residents of the village killed by Serbian forces, two of which had been mutilated. The Chamber is satisfied that this displacement was not carried out on a ground permitted under international law. The charge of deportation has been established with respect to Vata Vataj on 14 April 1999.

(xii) Dečani/Deçan

1672. The Chamber has established that on 26 March 1999 Serbian forces, including police, positioned themselves in the village of Drenovac/Drenoc in Dečani/Deçan municipality setting houses on fire. This made the Kosovo Albanians in this village flee to the neighbouring village of Beleg.<sup>6071</sup> The Chamber is satisfied that the population of Drenovac/Drenoc was forced to flee by the acts of the Serbian forces and that the Serbian forces acted with such intent. This displacement was not carried out on a ground permitted under international law. The offence of forcible transfer has been established with respect to the village of Drenovac/Drenoc on 26 March 1999.

1673. The Chamber has established further that on 28 March Serbian forces arrived in Beleg. On the following day police entered houses in the village and told the people there that they had to leave. People were taken to basements of houses. They were searched by members of the Serbian forces and their personal identification documents were collected during the search. Some men were beaten. The people were kept in several buildings in the village under armed guard during the night. On 30 March Serbian forces ordered the people in Beleg to go to Albania. A convoy of vehicles and tractors with women and children and some men set off. Police and army vehicles travelled with the convoy to the border. The convoy crossed over into Albania in the evening of 30 March or on the following day.<sup>6072</sup> In the Chamber's finding on 30 March the residents of Beleg and people from other villages lawfully staying in Beleg were deported to Albania by Serbian

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<sup>6070</sup> See *supra*, paras 1131-1141.

<sup>6071</sup> See *supra*, para 1144.

<sup>6072</sup> See *supra*, paras 1145-1153.

forces. The Chamber notes in particular that the Serbian forces kept the people under armed guard the previous night, that the Serbian forces explicitly ordered them to go to Albania and that police and army vehicles travelled with the convoy to the border. The Chamber is satisfied that in doing so the Serbian forces acted with the intent to displace the people in Beleg across the border to Albania. The offence of deportation has been proved with respect to the inhabitants of Beleg and the displaced people from other villages staying in Beleg, on 30 March 1999.

(xiii) Vučitrn/Vushtrri

1674. The Chamber has found earlier that on 27 March 1999 Serbian forces arrived in the town of Vučitrn/Vushtrri shooting and setting houses and the town centre on fire, including the minaret of a 17<sup>th</sup> century mosque located in the town centre. On 1 April police told the residents of Vučitrn/Vushtrri to leave their homes and to go to the cemetery. There, three buses awaited the residents of the town and, on instructions of the police, drove the residents to FYROM. Those who could not board the buses because of the lack of space walked behind them.<sup>6073</sup> The Chamber is satisfied that residents of Vučitrn/Vushtrri town were forcibly displaced on 27 March and the following days and forced to go to FYROM by Serbian forces. The conduct of the Serbian forces demonstrates that they acted with the intent to forcibly displace the people to FYROM. Their actions were not justified under international law. The offence of deportation has been established with respect to Vučitrn/Vushtrri town on 27 March 1999 and the following days.

1675. The Chamber has also found that on 27 March 1999 the Kosovo Albanian residents of Donji Svracak/Sfaraçak-i-Poshtëm in Vučitrn/Vushtrri municipality, left the village after hearing shooting in the adjoining village of Gornji Svracak/Sfaraçak-e-Epërm and seeing houses there burning. A family attempted to remain in the village but had to leave shortly after the main convoy departed because sniper shots were coming from Nedakovac/Nedakofc, just to the southwest of the village.<sup>6074</sup> The Chamber is satisfied that on 27 March 1999 the residents of Donji Svracak/Sfaraçak-i-Poshtëm left the village out of fear after hearing shooting. In the absence of more evidence the Chamber is unable to make a finding whether this shooting was directed against Kosovo Albanian civilians or it was the result of fighting. The offence of forcible transfer has not been established with respect to Donji Svracak/Sfaraçak-i-Poshtëm on 27 March 1999.

1676. The Chamber has also found earlier that on or about 28 March 1999 the village of Donja Sudimlja/Studime-e-Poshtme was shelled causing people to flee towards the surrounding hills. On the following day police entered the village and told the remaining residents that they had

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<sup>6073</sup> See *supra*, paras 1163-1167.

<sup>6074</sup> See *supra*, para 1170.

15 minutes to leave the village or face the consequences. The villagers fled immediately to the hills.<sup>6075</sup> The Chamber is satisfied that on 28 March 1999 the residents of Donja Sudimlja/Studime-e-Poshtme were displaced by Serbian forces. Considering the fact that the shooting was directed against civilian houses, that specific orders for the people to leave were given and houses were set on fire, the Chamber is satisfied that the Serbian forces acted with the requisite intent. This displacement was not carried out on a ground permitted under international law. The offence of forcible transfer is proved with respect to Donja Sudimlja/Studime-e-Poshtme on 28 and 29 March 1999.

1677. The Chamber has established that on 1 May 1999 Serbian forces arrived in the village of Vesekovce/Vesekoc and shelled the village of Slakovce/Sllakoc. The KLA who were present in the area told the population that they could no longer protect them and advised them to go to Vuçitrn/Vushtrri town. On 2 May 1999 a convoy of not less than 30,000 Kosovo Albanians, including displaced persons lawfully sheltering in the area, left Slakovce/Sllakoc on foot, by horses and by vehicles and headed towards Vuçitrn/Vushtrri. Not long after its departure, the convoy came under Serbian shelling. Shortly thereafter Serbian forces approached the convoy; they threatened and demanded money from people in the convoy, and directed the convoy towards Vuçitrn/Vushtrri town. During the night Kosovo Albanians travelling in the convoy were killed. The convoy was specifically directed by Serbian forces to go to the Agricultural Cooperative in Vuçitrn/Vushtrri town. The people in the convoy did so arriving in the night of 2/3 May 1999.<sup>6076</sup> The Chamber is satisfied that the offence of forcible transfer has been established with respect to the convoy from Vesekovce/Vesekoc and Slakovce/Sllakoc to Vuçitrn/Vushtrri on 2 May 1999. While the Chamber accepts that the people in the convoy departed after the KLA had told them that they could no longer protect them as the Serbian forces were approaching the village, it was Serbian forces who ordered the convoy to Vuçitrn/Vushtrri town, while shelling the convoy, threatening the people and killing some men. In the Chamber's finding these acts were intended to make the Kosovo Albanians travelling in the convoy leave the area. This displacement was not carried out on a ground permitted under international law. The offence of forcible transfer has been established with respect to the convoy from Vesekovce/Vesekoc and Slakovce/Sllakoc on 2 May 1999.

1678. The Chamber has also found that on 4 May at the Agricultural Cooperative in Vuçitrn/Vushtrri police separated the men from the women and children. 30 of them who had driving licenses were sent back to the Agricultural Cooperative. The rest were taken to the Smerkovnica/Smerkovnicë prison situated between Vuçitrn/Vushtrri town and Kosovoska

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<sup>6075</sup> See *supra*, para 1172.

<sup>6076</sup> See *supra*, paras 1177-1195.

Mitrovica/Mitrovicë. The women, children and elderly men were ordered by the police to get registration certificates and to leave Vuçitrn/Vushtrri. Those who had tractors were told to drive to Albania, those who were on foot were told to go to Smrekovnica/Smerkovicë or to Dobra Luka/Dobërllukë. The Chamber has already found that the offence of forcible transfer has been established with respect to the people at the Agricultural Cooperative. While orders were given to people who had tractors to go to Albania there is no evidence that they actually did. In the Chamber's finding, the offence of deportation has not been proven with respect to the displacement from the Agricultural Cooperative in Vuçitrn/Vushtrri town on 4 May 1999.

1679. The Chamber has also established that on 15 May 1999 Serbian forces arrived in Dobra Luka/Dobërllukë and separated the men from the women and children. The men were sent to Smrekovnica/Smrekonicë where they were detained for several days before being sent to Albania. The women and children were required to register and were given identity cards following which they were told to return to their houses. Buses with the men held in the prison in Smrekovnica/Smrekonicë left the prison on 23 May and drove to the border with Albania near Žur/Zhur. At the border crossing, six or seven policemen and men in green uniforms took the detainees' identification documents and forced them to cross the border to Albania.<sup>6077</sup> The Chamber is satisfied that the offence of deportation has been established with respect to the forcible displacement of men from Smrekovnica/Smrekonicë prison to Albania, on 23 May 1999. The Chamber is satisfied of the intent of the Serbian forces to displace the Kosovo Albanian men across the border to Albania. This displacement was not carried out on a ground permitted under international law. The offence of deportation has been established with respect to this forcible displacement of Kosovo Albanian men to Albania.

(b) Defence arguments

1680. The Defence submits that non-Albanian population of Kosovo was also leaving Kosovo at a comparable rate.<sup>6078</sup> It submits that while the information provided by the UNHCR and relied on by the Prosecution indicates that 860,000 people left Kosovo between 24 March and 10 June 1999, these numbers do not distinguish between ethnic groups in Kosovo.<sup>6079</sup> The Defence submits further that these numbers are unreliable as they were "based on estimates rather than on an actual head count".<sup>6080</sup>

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<sup>6077</sup> See *supra*, paras 1215-1217.

<sup>6078</sup> Defence Final Brief, para 681.

<sup>6079</sup> Defence Final Brief, paras 686-687, 689 citing Exhibit P734. The Defence also submits that no attempt was made by the UNHCR to confirm the numbers reported by FRY and Serbian authorities of refugees to Serbia, Defence Final Brief, para 689. See also Defence Final Brief, paras 693-698.

<sup>6080</sup> Defence Final Brief, para 688.

1681. The Chamber has made its factual findings on the basis of the evidence admitted in this case. It has established that the vast majority of the population in the villages and towns in respect of which the offences of deportation or forcible transfer have been established were Kosovo Albanians. While the Chamber accepts the possibility that people of other ethnicities may have also left Kosovo during the Indictment period, this fact, if proven, would not have altered the Chamber's findings with respect to the towns and villages listed in the preceding subsection.

1682. The Defence submits further that based on the cumulative figures for 10 June 1999, provided by the UNHCR, nine per cent of the people who left Kosovo had not left the FRY as they had gone to Montenegro. It is the Defence submission that this defies "any sort of a plan to expel a population" as the population was being moved to another territory of the same country.<sup>6081</sup>

1683. The Chamber cannot accept this submission. First, the Tribunal's jurisprudence has firmly established that the offence of deportation may be established if there is a displacement across a *de facto* border. Considering the previous degree of autonomy enjoyed by Kosovo and Montenegro's status as a republic, and its findings made earlier that an armed conflict between forces of the FRY and Serbia on one hand and the KLA on the other existed during the material time, the Chamber accepts that displacement to Montenegro constitutes a displacement across a *de facto* border and thus meets the requirement for deportation. Secondly, in the view of the Chamber, displacement of ethnic Albanians from Kosovo to Montenegro would have much the same effect as displacement across a State border because it would still cause a serious hardship to the displaced persons. They would be deprived of their income, property, and means of subsistence, of their communities, their ability to speak their language and live their normal life. Significantly, displacement of Kosovo Albanians out of Kosovo would have made it easier for the authorities of FRY and Serbia to exercise control over the province, while the presence of small groups of Kosovo Albanians in other parts of the FRY or Serbia would not have had a significant impact on the FRY and Serbian authorities' control over these territories. Considering further that some parts of Kosovo are significantly closer to Montenegro than they are to Albania or to FYROM, in some circumstances displacement to Montenegro may have been the most convenient solution to implement a plan to expel the ethnic Albanian population out of Kosovo so as to alter the ethnic balance in Kosovo.

1684. The Defence submits next that it can offer a plethora of reasons why people may have been leaving Kosovo at the material time. It submits first that on 24 March 1999 the FRY declared a state of war, which in and of itself, could have made many people leave Kosovo. It also identifies,

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<sup>6081</sup> Defence Final Brief, para 692.

*inter alia*, NATO bombing, fighting between the KLA and Serbian forces, sanctions and war-time conditions, evacuations and deliberate population movements of the KLA.<sup>6082</sup>

1685. To support its further argument that it was the fear caused by the NATO air-campaign which made people leave the Defence seeks to rely on the evidence of Saranda Bogujevci who testified that they could constantly hear explosions from the villages so that everyone was moving from the villages into town, and on the evidence of Miloš Đošan and Vukmir Mirčić.<sup>6083</sup> The Chamber notes that it is not established that such explosions were from the NATO air-campaign. It is more likely these explosions were shelling by Serbian forces. Further, Saranda Bogujevci testified with respect to events in Podujevo/Podujevë which are not specifically alleged in support of the allegations of deportation and forcible transfer in the Indictment. Hence the Chamber will not address this Defence argument further. The evidence of Miloš Đošan relied on by the Defence indicates that groups of people would wait for each other and then continue their journey together, but it does not establish why these people were leaving. The evidence of Vukmir Mirčić suggests that people on the road from Peć/Pejë to Đakovica/Gjakovë told him that they were leaving because the combination of NATO bombing and fighting with the terrorists made them feel unsafe. As discussed earlier, the Chamber has carefully analysed the evidence of Vukmir Mirčić, the chief of OUP Dečani/Dečan at the time material to the Indictment. The Chamber was not able to be satisfied that his evidence was reliable or balanced or that he was prepared to speak the truth in material respects. The Chamber is not able to rely on anything said by Vukmir Mirčić unless there is corroborative evidence. It does not accept his evidence that people leaving on the road from Peć/Pejë to Đakovica/Gjakovë told him that they were leaving because of NATO bombing or fighting with terrorists.

1686. To support its assertion that it was the fighting between the KLA and the Serbian forces which made people leave, the Defence seeks to rely on the evidence of witnesses 6D2 and Miloš Đošan who testified to hearing about general fighting being a cause for fear amongst the population.<sup>6084</sup> As discussed earlier, the Chamber has not been able to be satisfied that either witness was an honest or a reliable witness. It does not accept their evidence in this respect.

1687. In determining whether the offences of deportation or forcible transfer have been established the Chamber has relied on the evidence establishing the circumstances in which people left a number of towns and villages in the 13 municipalities listed in the Indictment. With respect to the locations for which the offences of forcible transfer or deportation have been established, no

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<sup>6082</sup> Defence Final Brief, paras 699, 700.

<sup>6083</sup> Defence Final Brief, para 701.

<sup>6084</sup> Defence Final Brief, para 708.

evidence has been tendered to establish that people were leaving because of the NATO bombings or because of fighting between the Serbian forces and the KLA, or because of hardship caused by sanctions or wartime conditions.<sup>6085</sup> To the contrary, the Chamber has been able to be satisfied in each occasion, as discussed in more detail above, that people left Kosovo because they were specifically ordered to by Serbian forces, or because Serbian forces made them leave by shelling, shooting, killing and by burning houses in their villages and towns. Identification documents and vehicles' licence plates were collected at the border by the Serbian police from most Kosovo Albanian refugees. Had the displacement of Kosovo Albanians been caused by NATO bombing or fighting between the KLA and the Serbian forces it is not apparent why Kosovo Albanian refugees were stripped of their identification documents. Telling in this respect is the evidence of Karol John Drewienkiewicz and Richard Ciagliniski who visited Kosovo on 12 and 13 June 1999. In the evening they observed MUP officers burning tens of thousands of documents in a courtyard adjacent to the MUP building in Priština/Prishtinë.<sup>6086</sup> When Richard Ciagliniski went up to the fire to examine what was being burnt he found that these documents consisted of personal identification documents, passports, and applications for passports.<sup>6087</sup> He examined documents from different parts of the pile and observed that the names of all samples he removed were names of Kosovo Albanians.<sup>6088</sup>

1688. The Defence submits that only unlawfully issued personal documents were confiscated.<sup>6089</sup> It seeks to rely on the evidence of Shukri Gerxhaliu, who testified that on 4 of 5 June 1999 at a checkpoint at Zveçan/Zveçane, Kosovska Mitrovica/Mitrovicë municipality, the police tore those identification documents issued in Albanian by "the Ministry of Interior of Kosovo".<sup>6090</sup> This evidence is not typical of the evidence on this subject. In almost all cases all identification documents were taken as well as all vehicle registration documents. This one incident occurred at a checkpoint in Kosovo and not at a border. No other evidence was offered about the nature of documents issued by a Ministry of Interior of Kosovo. Nothing in the evidence suggests that the identification documents taken from Kosovo Albanians crossing into Albania, FYROM, or Montenegro, or their vehicles' license plates, had not been lawfully issued. Further, there is no explanation in the Defence assertion as to why personal identification documents bearing Kosovo

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<sup>6085</sup> With respect to the Defence argument that the lack of basic necessities in the region created "miserable" living conditions, the Chamber notes that the sanctions in force at the time were the sanctions of the UN arms embargo which were in force since 31 March 1998. The Chamber also notes that an armed conflict existed in Kosovo since the end of May 1998, therefore, people in Kosovo were living in similar conditions for many months without leaving Kosovo in such large numbers.

<sup>6086</sup> Karol John Drewienkiewicz, T 6398-6399; Richard Ciagliniski, Exhibit P832, Statement of 21-23 March 2000, p 10.

<sup>6087</sup> Richard Ciagliniski, Exhibit P832, Statement of 21-23 March 2000, p 10.

<sup>6088</sup> Richard Ciagliniski, T 5291.

<sup>6089</sup> Closing Arguments, T 14466-14467.

<sup>6090</sup> Shukri Gerxhaliu, T 3117-3118; *see also* Shukri Gerxhaliu, Exhibit P512, para 35.



Albanian names were destroyed in the evening of 12 June 1999 in a building adjacent to the MUP building in Priština/Prishtinë. The Chamber does not accept the Defence assertion that only unlawfully issued personal documents were confiscated.

1689. The Defence also refers to the evidence of witnesses who testified that they left their houses because there was shooting in the area and submits that the witnesses could not have known who was actually firing in the area.<sup>6091</sup> The Chamber has made its findings with respect to the perpetrators of each incident elsewhere in the Judgement. It suffices to note here that on each occasion and irrespectively of the eye-witnesses' individual perceptions, the Chamber has been able to make a finding as to the forces carrying out these acts on the basis of their description, the weapons they used, their numbers, and orders, reports, military diaries and other documents in evidence. This argument of the Defence is, therefore, dismissed.

1690. While not extensively explored in its Final Brief, it was part of the Defence case that people left Kosovo during the Indictment period because of fear of the effects of depleted uranium.<sup>6092</sup> The evidence of Slobodan Petković did not establish any satisfactory basis for his suggestion that people left Kosovo out of fear of the effects of depleted uranium. None of the witnesses who left Kosovo during the Indictment period testified that he or she left because of fear of the effects of depleted uranium. The witnesses each gave detailed evidence as to the circumstances in which they left Kosovo. None of these witnesses was questioned about fear of depleted uranium being a reason for their departure during cross-examination. The Chamber has made its findings as to the reasons for the displacement of Kosovo Albanians in the towns and villages listed in the Indictment. It cannot accept that fear of the effects of depleted uranium was a reason causing people in the villages and towns to leave. This argument of the Defence is dismissed.

1691. The Defence submits further that there were a handful of situations where there may have existed a legitimate need to temporarily evacuate the population in accordance with customary international law.<sup>6093</sup> The Defence cites the evidence of Milan Đaković to the effect that if there are combat operations in progress, it is the duty of the brigade commander to evacuate the population from the area of combat operations. The Defence also relies on the evidence of Slobodan Spasić to the effect that the only way to help the threatened population was to organise for its direct

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<sup>6091</sup> Defence Final Brief, para 710.

<sup>6092</sup> See Defence Final Brief, para 701. See also Slobodan Petković, Exhibit D512, paras 7-10.

<sup>6093</sup> Defence Final Brief, para 716.

evacuation.<sup>6094</sup> It is submitted further that when legitimate evacuation was not necessary, VJ and MUP forces were actually attempting to stop the population from leaving.<sup>6095</sup>

1692. In the Chamber's finding, while evacuation for the security of those involved or for imperative military reasons is permitted under international law, there has been nothing in the evidence concerning the circumstances in the cases where the Chamber has established the offences of deportation or forcible transfer occurred, to suggest that the displacement in question was in fact, an evacuation carried out to protect those involved. Nor has it been shown that in any cases the Serbian forces followed the proceedings of a genuine evacuation to protect the inhabitants or for the subsequent return of the residents. The Chamber has made a finding in each of these cases, that the displacement was not carried out on a ground permitted by international law. Indicative of the nature of the displacement is the fact that in most of the occasions Serbian forces burned houses, killed livestock, and killed civilians. The Chamber recalls that individuals evacuated for reasons of security or for imperative military reasons shall be transferred back to their homes as soon as the hostilities have ceased.<sup>6096</sup> After the people's departure from many villages in Kosovo all houses were burnt. The Chamber cannot accept that the displacement was carried out to protect the population or on other grounds permitted under international law.

1693. The Chamber further cannot accept the Defence argument that VJ and MUP forces were attempting to stop people from leaving when evacuation was not necessary. This argument is supported by the evidence of 6D2 and Vukmir Mirčić. The Chamber has not been able to be satisfied of the reliability of either of these two witnesses. 6D2 was a most unsatisfactory witness. He had a role of quite senior leadership in the MUP in Prizren, yet he suggested that he had no knowledge of grave wrongdoing by MUP officers in that SUP. The Chamber was astonished by his claim that the police units did carry out their duties always according to the law and that only VJ soldiers would have threatened Kosovo Albanian civilians in columns of displaced persons. The Chamber accepts that most of 6D2's evidence was unreliable and deliberately contrived to protect his own personal interest. The Chamber has already commented on the lack of credibility of Vukmir Mirčić.

1694. Finally, the Defence submits that the KLA exercised control and manipulated the civilian population in Kosovo through forced movement and fear.<sup>6097</sup> It seeks to rely on the evidence of Byslim Zyrapi that the KLA would issue orders pertaining to the movements of the units and

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<sup>6094</sup> Defence Final Brief, para 718.

<sup>6095</sup> Defence Final Brief, para 722.

<sup>6096</sup> See *supra*, para 1607.

<sup>6097</sup> Defence Final Brief, para 723.

withdrawal of the population and on evidence about KLA activities in 1998 and the beginning of 1999.<sup>6098</sup>

1695. The Chamber has made its finding on the charges of deportation and forcible transfer on the basis of the particular available evidence. Where there has been evidence that movement of the population may have been ordered by the KLA, *i.e.* in Belanica/Bellanicë, Suva Reka/Suharekë municipality, the Chamber has assessed this evidence together with all other evidence. It has not been able to be satisfied that the population acted on orders of the KLA. To the contrary, in each of these cases there has been convincing evidence that the displacement of people was caused by acts of Serbian forces, either explicitly ordering the persons involved to leave or coercing them by firing automatic weapons, shelling, burning of houses, and killings. The Defence argument is, therefore, dismissed.

1696. Notwithstanding the lack of any sure evidentiary foundation that people left because of fear of aerial bombing or the fighting between the Serbian forces and the KLA, the Chamber can see that one or both such factors may well have played some part in the concern felt by some people about the dangers of remaining in Kosovo in the period relevant to the Indictment. Even so it must be remembered that the KLA and Serbian forces had been engaged in combat for a year or so. The NATO bombing was a new factor but, as far as the evidence satisfies the Chamber, NATO bombing was generally directed to military or Serbian government targets. The evidence does not suggest any widespread occurrence of bombing of civilian targets in cities, towns or villages. It is not apparent, therefore, that NATO bombing would have been a significant reason causing Kosovo Albanians to leave Kosovo, or their homes, in such large numbers.

1697. What was new, however, were the attacks on villages, towns and cities in which Kosovo Albanians and their homes and other properties were deliberately targeted by Serbian forces, and in very large numbers Kosovo Albanians were killed, placed in grave physical danger, or found their houses destroyed. In almost all cases which have been the subject of specific evidence in this case, it has been established that what caused the civilian population (if not murdered) to leave their homes and join masses of other similarly displaced, were the specific attacks by Serbian forces against Kosovo Albanians. Hence, in the Chamber's finding, while NATO bombing and fighting between the Serbian forces and the KLA may have caused concerns in the minds of some Kosovo Albanians, the factor which was dominant and compelling in causing Kosovo Albanians to leave homes in villages, towns, and cities, and in many cases in causing them to leave Kosovo, was the campaign conducted against Kosovo Albanian civilians by Serbian forces.

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<sup>6098</sup> Defence Final Brief, paras 724-725.

(c) Number of Kosovo Albanian civilians victims of deportation

1698. The Chamber recalls that Indictment allegation that actions carried out by forces of the FRY and Serbia between 1 January 1999 and 20 June 1999 resulted in the forced deportation of approximately 800,000 Kosovo Albanian civilians.<sup>6099</sup> In support of this allegation the Prosecution seeks to rely on statistical information from the UNHCR showing that during the period 24 March to 10 June 1999 an estimated 860,000 Kosovars left the province—some 444,600 went to Albania, 345,500 to FYROM, and 69,000 to Montenegro.<sup>6100</sup> The Prosecution also seeks to rely on MUP reports recording large numbers of Kosovo Albanians leaving at specific border crossings.<sup>6101</sup> Indeed, it was the UNHCR's estimate that from 24 March till 10 June 1999 some 860,000 people left Kosovo, almost half of whom, some 400,000, in the period between 24 March and 6 April 1999.<sup>6102</sup> A report of the MUP Staff to the MUP, dated 20 April 1999 records that from 24 March 1999 until 18 April 1999, a total of 651,987 Kosovo Albanians left the territory of the FRY of whom 489,714 through Vrbica/Vërmicë border crossing in Prizren municipality, 23,622 through Cafa Prushit border crossing, 16,873 through Globočica/Gilboçicë border crossing in Drgaš/Dragash municipality, and 121,778 through Đeneral Janković/Han-i-Elezit border crossing in Kačanik/Kaçanik municipality.<sup>6103</sup>

1699. The Chamber notes that the information contained in these sources is of a very general nature. There is no indication where in Kosovo these displaced persons came from. Alleged in the Indictment are specific instances of deportation and forcible transfer from locations in 13 of Kosovo's 29 municipalities. The evidence led by the Prosecution has been centred around these allegations, as it should be. People may have been leaving all or many parts of Kosovo during the Indictment period, but the Chamber has only heard evidence pertaining to the specific locations in the 13 municipalities included in the Indictment. It is unable to make a finding as to why people from other locations may have left Kosovo. The Chamber, therefore, cannot accept that approximately 800,000 Kosovo Albanian civilians were victims of forced deportation from the locations and municipalities of Kosovo specifically alleged in the Indictment.

1700. The evidence does establish, however, that residents of locations listed in the following paragraph were forcibly displaced across a border. However, the evidence is not sufficiently reliable to enable findings as to the numbers from specific locations alleged in the Indictment. In almost all cases there are only estimates of the number of people in a convoy that crossed a border

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<sup>6099</sup> Indictment, para 72.

<sup>6100</sup> Prosecution Final Brief, para 460, citing Exhibit P734, p 4.

<sup>6101</sup> Prosecution Final Brief, para 461 citing Exhibits P695; P696; P697; P718; P719; P720; P721; P698; P722; P723; P699; P700; D304; D305; and P694.

<sup>6102</sup> Exhibit P734, p 4.

and, typically, such convoys included people from different locations. It can be concluded from the evidence that the number of Kosovo Albanians deported from the specific locations listed in the next paragraph to Albania, FYROM, and Montenegro from 24 March 1999 to 20 June 1999 was at least 200,000. However, this estimate is incomplete and very conservative and the true figure is likely to be very much higher.

### 3. Conclusions

1701. The Chamber is satisfied that the offence of deportation has been established with respect to the following towns and villages: Celina/Celinë (28 March 1999) in Orahovac/Rahovec municipality, Dušanovo/Dushanovë and Prizren town (28-30 March 1999), and Srbica/ Sërbica (9 to 16 April 1999) in Prizren municipality, Kladernica/Klladërnice (12 to 15 April 1999) and Turicevac/Turicec (1 April 1999) in Srbica/Skenderaj municipality, Suva Reka/Suharekë town (7 to 21 May 1999) and Belanica/Bellanicë (1 April 1999) in Suva Reka/Suharekë municipality, the town of Peć/Pejë (27-28 March 1999), Kosovska Mitrovica/Mitrovicë town (4 April 1999), Zabare/Zhabar (14 April 1999 and following days) in Kosovska Mitrovica/Mitrovicë municipality, Priština/Prishtinë town (26 to 31 March 1999), Đakovica/Gjakovë town (2 to 3 April 1999), Guska/Guskë (27-28 April 1999), Korenica/Korenicë (27-28 April 1999), Žub/Zhub (27-28 April 1999), Meja/Mejë (27-28 April 1999), Junik (27-28 April 1999), Dobroš/Dobrosh (27-28 April 1999), Ramoc (27-28 April 1999), and Orize (27-28 April 1999) in Đakovica/Gjakovë municipality, Prilepnica/Prelepnice (13 April 1999), Vlačica/Llashticë (6 April 1999) in Gnjilane/Gjilan municipality, Mirosavlje/Mirosalë (8 April 1999), Uroševac/Ferizaj train station (14-15 April 1999) and Uroševac/Ferizaj town (27 April 1999) in Uroševac/Ferizaj municipality, Kačanik/Kaçanik town (27-28 March 1999) and Vata/Vataj (14 April 1999) in Kačanik/Kaçanik municipality, Beleg (30 March 1999) in Dečani/Dečan municipality, Vučitrn/Vushtrri town (27 March 1999) and Dobra Luka/Dobërlukë via Smerkovnica/Smerkovicë prison (23 May 1999) in Vučitrn/Vushtrri municipality.

1702. The Chamber is satisfied that the offence of forcible transfer has been established with respect to the following towns and villages: Bela Crkva/Bellacërkë (25 March 1999), Mala Kruša/Krushë-e-Vogël (25-27 March 1999), Velika Kruša/Krusë-e-Vogël (25 March 1999 and following days) and Celina/Celinë (25 March 1999) in Orahovac/Rahovec municipality, Pirane/Piranë (25 March 1999) and Landovica/Landovicë (26 March 1999) in Prizren municipality, Leocina/Leçine (25-26 March 1999), Kladernica/Klladërnice (25 March 1999), Izbica/Izbicë (27-28 March 1999), Brocna/Burojë (25-26 March 1999), Turicevac/Turicec (26 March 1999),

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<sup>6103</sup> Exhibit P699, p 5.

Tušilje/Tushilë (29 March 1999) and in Srbica/Skenderaj municipality, Suva Reka/Suharekë town (26-28 March 1999 and 3 April 1999), Pecane/Peqan (20-21 March 1999), Čuska/Qyushk (14 May 1999) in Peć/Pejë municipality, Kosovska Mitrovica/Mitrovicë town (28 March 1999), Đakovica/Gjakovë town (24 March 1999), Guška/Gushkë (27 March 1999), Korenica/Korenicë (4 April 1999) and Žub/Zhub (early April 1999) in Đakovica/Gjakovë municipality, Prilepnica/Prelepticë (6 April 1999), Žegra/Zhegër (29 March 1999), Nosalje/Nosaljë (6 April 1999), Vladovo/Lladovë (29 March and 6 April 1999), in Gnjilane/Gjilan municipality; Sojevo/Sojevë (6 April 1999), and Staro Selo/Fshati-i-Vjeter (14 April 1999) in Uroševac/Ferizaj municipality, Kotlina/Kotlinë (24 March 1999) in Kačanik/Kaçanik municipality, Drenovac/Drenoc in Dečani/Dečan municipality, Donja Studimlja/Studime-e-Poshtme (28 March 1999), Vesekovce/Vesekoc (2 May 1999) and Slakovce/Sllakovc (2 May 1999) in Vuçitër/Vushtrri municipality.

1703. In the present case the acts of forcible transfer have been charged as “other inhumane acts” under Article 5(i) of the Statute. The Chamber is satisfied that the acts of forcible transfer established in the present case and listed in the preceding paragraph are of a similar seriousness to other enumerated crimes against humanity. The acts of forcible transfer were of similar gravity as the acts of deportation. They involved a forced departure from the people’s homes and communities, often gave physical and emotional disruption and uncertain prospects for their return.

1704. In conclusion, the Chamber is satisfied that Count 1 (Deportation) and Count 2 (Other Inhumane Acts (Forcible Transfer) have been established.

#### **B. Murder (Counts 3 and 4)**

1705. The Indictment alleges the criminal responsibility of Vlastimir Đorđević for the murder of hundreds of Kosovo Albanian civilians, including the 840 known by name and specifically listed in the Schedules of the Indictment. In this respect the Accused is alleged to be responsible for murders at the following 11 locations: Bela Ckva/Bellacërkë, Mala Kruša/Krusë-e-Vogël, Suva Reka/Suharekë, Izbica/Izbiçë, Miloš Gilić Street/Millosh Giliq Street, Meja/Mejë, Vuçitër/Vushtrri, Kotlina/Kotlinë, Slatina/Slatinë, Vata/Vataj, Dubrava/Lisnaje and Podujevo/Podujevë. These allegations support two counts of murder, one charged as a crime against humanity, punishable pursuant to Article 5(a) of the Statute (Count 3), and, the other as a violation of the laws or customs of war, punishable pursuant to Article 3 of the Statute (Count 4).

1706. What follows below are the Chamber’s findings with respect to the allegations of murder. The victims of each murder incident, with respect to whom the charge of murder has been

established, are listed in the Victim Charts annexed to this Judgement.<sup>6104</sup> Those alleged victims for whom the charge of murder has not been established are not included in the Victim Charts. While the Indictment lists those victims who are known by name, the murder allegations in the Indictment are not limited only to these victims. The Chamber, therefore, has included murder findings for unlisted victims who were also killed during the events alleged in each murder incident where this has been established by the evidence. Some of the unlisted victims are known by name and others are not known by name.

1707. The Defence submits that operations in which the MUP was engaged were genuine police operations to arrest and deal with terrorist forces.<sup>6105</sup> For reasons given in this Chapter, and those discussed earlier in this Judgement, this is not the view of the events the Chamber finds established by the evidence. In almost all cases those killed were unarmed, in custody of Serbian forces and not involved in armed conflict, yet they were killed. No attempt was made to identify or arrest, for the purpose of investigation or trial as terrorists or suspected terrorists. The evidence only establishes the outright intent of the Serbian forces to kill male Kosovo Albanians. Whilst the issue does not really arise on the facts, the murder of the Kosovo Albanians was in no sense proportionate to any military advantage to be gained.<sup>6106</sup> The argument of the Defence is not accepted by the Chamber.

#### 1. Law

1708. Three elements are required to establish the offence of murder:

- a) the death of a victim (*actus reus*), although it is not necessary to establish that the body of the deceased person has been recovered;<sup>6107</sup>
- b) that the death was the result of an act or an omission of the perpetrator; it is sufficient that the “perpetrator’s conduct contributed substantially to the death of the person”,<sup>6108</sup> and

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<sup>6104</sup> The Chamber notes that in some cases in the evidence and the Indictment the spelling of the name of a victim varies. Where possible, variation in the spelling of names has been noted in the Victim Charts annexed to this Judgement, *see infra*, Schedule: Victim Charts.

<sup>6105</sup> Defence Final Brief, para 328, 330-331.

<sup>6106</sup> *See infra*, para 2052-2069.

<sup>6107</sup> *Boškovski* Trial Judgement, para 305. *See also Krnojelac* Trial Judgement, para 326. In *Kvočka* the Appeals Chamber further held that “[t]he fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber. All that is required to be established from that evidence is that the only reasonable inference from the evidence is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.” *Kvočka* Appeal Judgement para 260; *See also Tadić* Trial Judgement, para 240.

<sup>6108</sup> *Milutinović* Trial Judgement, Volume 1, para 137; *Orić* Trial Judgement, para 347; *Čelebići* Appeal Judgement, para 423; *Kordić* Appeal Judgement, para 37.

c) that the perpetrator, at the time of the act or omission, intended to kill the victim or, in the absence of such a specific intent, in the knowledge that death was a probable consequence of the act or omission (*mens rea*).<sup>6109</sup> It has been found that negligence and gross negligence do not form part of indirect intent.<sup>6110</sup>

In addition, the general requirements of Article 3 and Article 5 of the Statute must be satisfied.

## 2. Findings

### (a) Bela Ckva/Bellacërkë, Orahovac/Rahovec municipality

1709. Earlier in this Judgement the Chamber made findings in relation to three separate incidents of killings in Bela Ckva/Bellacërkë on 25 March 1999, which are charged as murder in the Indictment.<sup>6111</sup>

1710. The Chamber found that after MUP forces entered the village of Bela Ckva/Bellacërkë on 25 March 1999, the civilian population of the village was forced to flee along the Belaja river. As a group of 14 Kosovo Albanian villagers fled from Bela Ckva/Bellacërkë, they were shot by members of the MUP. A two year old boy was the only survivor of the shooting. It is accepted by the Chamber, as discussed earlier in this Judgement, that these 13 Kosovo Albanians died as a result of being shot.<sup>6112</sup> All of the victims were civilians not participating in the hostilities; three victims were women and seven were children. The Chamber is satisfied that the perpetrators had the requisite intent to murder these people given that the victims included women and children and all were unarmed. It is accepted that these 13 Kosovo Albanians, listed by name earlier in this Judgement, were murdered by MUP forces in the Belaja river in Bela Ckva/Bellacërkë on 25 March 1999.<sup>6113</sup>

1711. Following this incident the same MUP force continued further along the river and located another group of civilians who had fled from the village. A group of about 65 Kosovo Albanians were ordered into the river under the Belaja bridge and fired upon. As found earlier in this Judgement some 41 of these Kosovo Albanian male villagers were killed at the Belaja bridge, in the river, when shot by MUP forces.<sup>6114</sup> All of these 41 men died as a result of gunshot wounds

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<sup>6109</sup> *Delić* Trial Judgement, para 48. See also *Martić* Trial Judgement, para 60; *Boškoski* Trial Judgement, para 305; *Strugar* Trial Judgement, para 236; *Limaj* Trial Judgement, para 241; *Mrkšić* Trial Judgement, para 486.

<sup>6110</sup> *Delić* Trial Judgement, para 48; *Martić* Trial Judgement, para 60; *Strugar* Trial Judgement, paras 235-236.

<sup>6111</sup> See *supra*, paras 465, 469-472, 473; Indictment, para 75(b).

<sup>6112</sup> See *supra*, para 464, 1393, 1394.

<sup>6113</sup> See *supra*, para 465.

<sup>6114</sup> See *supra*, para 469-472.



inflicted by the MUP forces.<sup>6115</sup> There is no evidence to suggest that any of these victims were participating or had participated in terrorist activities. Even if some or all of these men had previously been participating in terrorist activities, which is not the finding of the Chamber, no attempt was made to distinguish between those who had and others, or to arrest those who had. All the men were deliberately shot having been first systematically separated from the women and children and ordered down into the stream. This evidence clearly reflects the perpetrators intent to murder these men, not to direct their activities at KLA terrorists. It is accepted that no less than the 41 Kosovo Albanian men, named earlier in this Judgement, were murdered by MUP forces at the Belaja bridge on 25 March 1999.<sup>6116</sup>

1712. After these shootings at the Belaja bridge, the same MUP forces shot and killed an additional six men in a channel about 70 to 85 metres from the Belaja Bridge.<sup>6117</sup> Forensic evidence established that all six men died as a result of multiple gunshot wounds.<sup>6118</sup> There is no evidence to suggest that these men were armed or taking part in the hostilities at the time or that they were members of the KLA. Given that the men were deliberately shot, and the general circumstances, the Chamber is satisfied that the perpetrators had the requisite intent to murder these six men. The Chamber accepts that these six Kosovo Albanian men, listed by name earlier in this Judgement, were murdered at the channel behind the Belaja bridge in Bela Ckva/Bellacërkë on 25 March 1999.<sup>6119</sup>

1713. To the extent indicated by the specific findings made in this Judgement, the Chamber finds the events alleged in paragraph 75(b) of the Indictment are established.

(b) Mala Kruša/Krusë-e-Vogël, Orahovac/Rahovec municipality

1714. Earlier in this Judgement the Chamber made findings in relation to four separate incidents of killings in Mala Kruša/Krusë-e-Vogël that all fall within the scope of the murder incident alleged in the Indictment.<sup>6120</sup>

1715. As established earlier in this Judgement, nine Kosovo Albanians were burnt to death inside their own houses in Mala Kruša/Krusë-e-Vogël by Serbian police, who were assisted by local Serb

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<sup>6115</sup> See *supra*, para 1393-1394.

<sup>6116</sup> See *supra*, para 472.

<sup>6117</sup> See *supra*, para 473.

<sup>6118</sup> Exhibit P1151, K0138760; see *supra*, para 1393-1394.

<sup>6119</sup> See *supra*, para 473.

<sup>6120</sup> See *supra*, paras 485, 486, 490-495.

villagers.<sup>6121</sup> All nine were listed on the OMPF Missing Persons List.<sup>6122</sup> These nine people were not killed in the Batusha barn, as alleged in the Indictment, nonetheless, the Chamber accepts that these deaths occurred in the course of the attack by Serbian forces on the village of Mala Kruša/Krusë-e-Vogël on 25 March 1999. The nine victims were Kosovo Albanian civilians and not taking any active part in the hostilities. The intent of the perpetrators to murder these victims is evidenced by the fact that their houses were deliberately set on fire, with the victims inside, when the victims refused to leave their houses.<sup>6123</sup> Notwithstanding the absence of specific forensic evidence as to the cause of death, the Chamber is satisfied, in the circumstances, that the only reasonable inference is that these nine Kosovo Albanians, listed by name earlier in this Judgement, were murdered by Serbian police in Mala Kruša/Krusë-e-Vogël on 25 March 1999.

1716. Earlier in this Judgement, the Chamber also found that in Mala Kruša/Krusë-e-Vogël on 26 March 1999, Hysen Ramadani was shot by MUP forces. Although no forensic evidence was led in relation to Hysen Ramadani's death, the eyewitness evidence satisfies the Chamber that he died as a result of being shot by MUP forces. It was reported that he was last seen alive on the day of the above mentioned shooting.<sup>6124</sup> Hysen Ramadani was unarmed at the time of his killing and not participating in the hostilities.<sup>6125</sup> The Chamber is satisfied in the circumstances that he was deliberately shot and that the perpetrators had the requisite intent to commit murder. It is the finding of the Chamber that Hysen Ramadani, a Kosovo Albanian, was murdered by MUP forces in the course of their attack on Mala Kruša/Krusë-e-Vogël on 26 March 1999.

1717. Following the murder of Hysen Ramadani, the evidence established that MUP forces forced a group of approximately 114 Kosovo Albanian men and boys into the Batusha barn located at the outskirts of Mala Kruša/Krusë-e-Vogël. The Chamber has also found that 10 of these men and boys managed to escape from the barn. The Chamber earlier found that the remaining 104 men and boys died either as a result of being shot dead in the barn by these MUP forces, or by being burnt to death when the barn was then set on fire by these MUP forces.<sup>6126</sup> All of these 104 victims were unarmed at the time of their killing, they were prisoners of the MUP forces under armed guard and not participating in the hostilities.<sup>6127</sup> The overwhelming majority of these men and boys were reported missing from Mala Kruša/Krusë-e-Vogël on 26 March 1999.<sup>6128</sup> Serbian forces first

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<sup>6121</sup> The Chamber notes that only three of these nine Kosovo Albanian civilians were listed as victims in the Schedule of the Indictment. The Chamber has listed the further six victims named in the evidence in the Victims Chart annexed to this Judgement, *see infra*, Schedule: Victim Charts.

<sup>6122</sup> *See* Exhibit P477.

<sup>6123</sup> *See supra*, para 485.

<sup>6124</sup> *See* Exhibit P477.

<sup>6125</sup> *See supra*, para 486.

<sup>6126</sup> *See supra*, para 495, 1401.

<sup>6127</sup> *See supra*, para 495.

<sup>6128</sup> *See* Exhibit P477.

sought to shoot all these prisoners in the barn, and then, deliberately, set fire to the barn with the victims, or their bodies, still inside. The circumstances demonstrate that the perpetrators had the requisite intent to murder. Notwithstanding the absence of forensic evidence, the Chamber finds that in the circumstances the only reasonable inference available is that these 104 Kosovo Albanian men and boys, listed by name earlier in this Judgement, were murdered by MUP forces on 26 March 1999 in Mala Kruša/Krusë-e-Vogël.<sup>6129</sup>

1718. Earlier in this Judgement, it was also found to be established, that two of the men who managed to escape from the barn as it burned, were then shot by Serbian forces which included members of the MUP.<sup>6130</sup> A forensic examination of the remains of these two victims, Adnan Shehu<sup>6131</sup> and Refki Rahskaj, was inconclusive. Nevertheless, the Chamber is satisfied from eyewitness evidence that these two young men died as a result of being shot by Serbian forces on 26 March 1999.<sup>6132</sup> The men were unarmed, and were making good their escape from the burning Batusha barn when taken prisoner by the Serbian forces. They were ordered to put their hands on their heads and were deliberately shot. The Chamber is satisfied that the perpetrators had the requisite intent to murder these two young men. Similarly, Hysni Hajdari had also escaped from the Batusha barn when it was set on fire. He was later found dead nearby in the mountains having been shot.<sup>6133</sup> While there is no specific forensic evidence, the Chamber accepts that the only reasonable inference open in the circumstances is that Hysni Hajdari died as a result of being shot by MUP forces in Mala Kruša/Krusë-e-Vogël on 26 March 1999.<sup>6134</sup> Hysni Hajdari was last seen alive in the Batusha barn.<sup>6135</sup> As with the two above mentioned victims, Hysni Hajdari was unarmed. The evidence indicates that MUP forces had set out that day to kill all Kosovo Albanian men and boys in the area. The Chamber accepts therefore that the perpetrators had the requisite intent. It is accepted that these three Kosovo Albanian men were murdered by MUP forces during the course of the attack on Mala Kruša/Krusë-e-Vogël.

1719. To the extent indicated by the specific findings made in this Judgement, the Chamber finds that the Indictment allegation, in paragraph 75(c) of the Indictment have been established.

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<sup>6129</sup> See *supra*, para 495.

<sup>6130</sup> See *supra*, para 491.

<sup>6131</sup> Adnan Shehu was listed as a missing person, *see* Exhibit P477.

<sup>6132</sup> See *supra*, paras 491, 1399, 1402.

<sup>6133</sup> See *supra*, para 493.

<sup>6134</sup> See *supra*, paras 493, 1402.

<sup>6135</sup> He was listed as a missing person, *see* Exhibit P477.

(c) Suva Reka/Suharekë municipality

1720. Earlier in this Judgement the Chamber made findings in relation to several separate incidents of killings of Berisha family members in Suva Reka/Suharekë all of which fall within the scope to the murder incident alleged in the Indictment.<sup>6136</sup> As set out above, the remains of these Berisha family members were discovered at three different locations, namely, the Suva Reka/Suharekë cemetery, the VJ firing site near Prizren referred to as “Kroj-I-Popit”, and in a mass grave at the Batajnica SAJ Centre in Serbia.<sup>6137</sup> All of the victims of the killings in Suva Reka/Suharekë on 26 March 1999 were reported as missing on the OMPF Missing Person list.<sup>6138</sup>

1721. The evidence established that on 26 March 1999, in Suva Reka/Suharekë, the following members of the Berisha family were shot by local police in the vicinity of the Berisha family compound on the street called “Restanski Put”: Bujar, Sedat, Nexhat, Nexhmedin, Faton and Fatime (wife of Ismet and mother of Faton).<sup>6139</sup> On the basis of the forensic and eyewitness evidence the Chamber finds that all six of these people died as a result of being shot by MUP forces.<sup>6140</sup> None of these six individuals were armed, nor were they taking an active part in the hostilities, at the time they were killed. In the circumstances, it is accepted, based on the totality of the evidence, including eyewitness accounts of the killings, that the above mentioned six Kosovo Albanian civilians were murdered by MUP forces, in the vicinity of the Berisha family compound on the street called “Restanski Put”, in Suva Reka/Suharekë town on 26 March 1999. The Chamber is also satisfied that two elderly Berisha family members, left unnamed by the evidence, were injured when shot by MUP forces while running away from the site of these killings and then later were killed, when shot again, by MUP forces. They were unarmed.<sup>6141</sup> Notwithstanding the absence of forensic evidence, the Chamber is satisfied that the only inference open on the evidence is that these two elderly Berisha family members were killed when shot by MUP forces. In the circumstances it is accepted that the perpetrators had the requisite intent to murder all of these members of the Berisha family. They were deliberately shot. The victims were all unarmed civilians not taking any part in the hostilities. The Chamber finds it established that these two elderly Berisha family members were also murdered by local MUP forces on 26 March 1999 in the vicinity of the Berisha compound in Suva Reka/Suharekë.

1722. The Chamber also earlier found that following the above mentioned killings a further 32 members of the Berisha family were killed by local police in a pizzeria at the nearby shopping

<sup>6136</sup> See *supra*, paras 672, 676, 678, 683.

<sup>6137</sup> See *supra*, paras 683-684, 1403-1406, 1484-1491.

<sup>6138</sup> See Exhibit P477.

<sup>6139</sup> See *supra*, paras 670-672.

<sup>6140</sup> See *supra*, paras 670-672, 1405, 1406, 1484-1491.

centre in Suva Reka/Suharekë town on 26 March 1999.<sup>6142</sup> As was mentioned in Chapter VIII, of these 32 Berisha family members, 18 were exhumed from a mass grave at the Batajnica SAJ Centre near Belgrade, some two and a half years later, and identified.<sup>6143</sup> The remains of the other 14 persons have not yet been located. Notwithstanding the absence of detailed forensic evidence for the remaining individuals, the Chamber finds on the totality of the evidence that all of these 32 Berisha family members died as a result of being shot by local MUP forces in the pizzeria, or as a result of the explosive force of one or more grenades which were thrown by local MUP forces into the pizzeria following the shootings.<sup>6144</sup> These Berisha family members were unarmed civilians, most were women and children, and were not taking any part in the hostilities at the time they were killed. Given that the victims, including women and children, had been confined in the pizzeria and were deliberately shot and exposed to grenade explosions in a confined area, the Chamber is satisfied that the perpetrators had the requisite intent to murder these 32 Berisha family members. The Chamber is satisfied that the 32 Berisha family members, listed by name earlier in this Judgement, were murdered by MUP forces on 26 March 1999 in Suva Reka/Suharekë.<sup>6145</sup>

1723. The Chamber has also found that following the killings in the pizzeria, another member of the family, Jashar Berisha, was shot in the back by a local policeman and killed near the pizzeria in Suva Reka/Suharekë town on 26 March 1999.<sup>6146</sup> Some of Jashar's clothing, as well as a part of his leg, were later recovered from a mass grave at a VJ firing range near Prizren referred to as "Kroj-I-Popit".<sup>6147</sup> In 2001, the remainder of the mortal remains of Jashar Berisha were recovered at a mass grave site at the Batajnica SAJ Centre near Belgrade.<sup>6148</sup> Jashar Berisha was unarmed at the time he was killed. He was being detained by the Serbian forces and was not taking an active part in hostilities. In the Chamber's finding the police had the requisite intent to kill Jashar Berisha. The Chamber finds it established that Jashar Berisha was murdered by a local policeman on 26 March 1999 in Suva Reka/Suharekë.

1724. The Chamber has earlier found that the following members of the Berisha family were also killed in Suva Reka/Suharekë town on 26 March 1999: Afrim Berisha, Arta Berisha, Hamdi Berisha and Zana Berisha.<sup>6149</sup> Notwithstanding the absence of forensic evidence of their causes of death, the Chamber recalls that these four Berisha family members were among the remains of

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<sup>6141</sup> See *supra*, paras 672.

<sup>6142</sup> See *supra*, paras 673-676.

<sup>6143</sup> Five of these Berisha family members died as a result of gunshot wounds and another as a result of an injury to the trunk, see *infra*, Schedule: Victim Charts; see *supra*, paras 1488-1489.

<sup>6144</sup> See *supra*, paras 675-676, 682-684, 1484-1491.

<sup>6145</sup> See *supra*, para 676.

<sup>6146</sup> See *supra*, para 678.

<sup>6147</sup> See *supra*, para 1406.

<sup>6148</sup> See *supra*, para 1490.

<sup>6149</sup> See *supra*, para 683.

24 members of the Berisha family exhumed from a mass grave in Batajnica SAJ Centre in 2001.<sup>6150</sup> The evidence does not suggest that these victims were armed at the time of their death, in fact, one of the victims was a woman and another was a child. Based on the totality of the evidence, in particular the numerous killings of Berisha family members throughout Suva Reka/Suharekë on 26 March 1999, the Chamber is satisfied that the perpetrators had the requisite intent to murder these four people. The Chamber finds that these four Berisha family members were murdered by MUP forces on 26 March 1999 in Suva Reka/Suharekë.

1725. The remains of Mirat, Nefije, Sait and Zelihe Berisha have not been located; they are still listed as missing persons by the OMPF.<sup>6151</sup> Personal items belonging to Mirat Berisha, along with belongings of other Berisha family members whom the Chamber has established were murdered on 26 March 1999 in Suva Reka/Suharekë, were found at the VJ firing range near Prizren, referred to as “Kroj-I-Popit”.<sup>6152</sup> As detailed earlier in this Judgement, the bodies of almost all those killed in Suva Reka/Suharekë on 26 March 1999 were taken by MUP forces to the VJ firing range, near Prizren, referred to as “Kroj-I-Popit”, buried there for a short period of time, then exhumed under MUP direction and re-buried at the Batajnica SAJ Centre some 400 kilometres away in Serbia.<sup>6153</sup> While there are grounds for suspecting that Mirat, Nefije, Sait and Zelihe Berisha were killed in Suva Reka/Suharekë on 26 March 1999, by MUP forces, given the limited evidence before the Chamber it is not able to make a positive finding that this was the case.

1726. To the extent indicated by the specific findings made in this Judgement, the Chamber finds that the allegation in paragraph 75(d) of the Indictment, with respect to the murder of members of the Berisha family have been established.

(d) Izbica/Izbicë, Srbica/Skenderaj municipality

1727. Earlier in this Judgement, the Chamber found that no less than 132 Kosovo Albanians were killed by MUP forces in Izbica/Izbicë on 28 March 1999.<sup>6154</sup> The overwhelming majority were listed as missing persons with the OMPF.<sup>6155</sup> 29 of these 132 victims were among those exhumed

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<sup>6150</sup> See *supra*, para 1488; see *infra*, Schedule: Victim Charts.

<sup>6151</sup> See Exhibit P477.

<sup>6152</sup> As stated in Chapter VIII in September 1999, many artefacts including clothing, shoes, wallets and other items, that belonged to members of the Berisha family, including Mirat Berisha, who was last seen alive on 26 March 1999, were found at the VJ firing range, referred to as “Kroj-I-Popit”. The human remains of Mirat Berisha were not amongst those remains exhumed from the Batajnica SAJ Centre near Belgrade, Halit Berisha, T 3614, 3383, 3386-3387; see *supra*, para 1406.

<sup>6153</sup> See *supra*, para 684.

<sup>6154</sup> See *supra* para 621-630, 632-634, 1407-1417.

<sup>6155</sup> See Exhibit P477.

from the mass grave site at Petrovo Selo PJP Centre.<sup>6156</sup> Autopsies confirmed that the cause of death was related to gunshot wounds for 17 of these 29 victims; for the remaining victims no cause of death could be established by forensic examination.<sup>6157</sup> However, for these victims and the remaining 103 victims for whom the whereabouts of their remains is still unknown, the eyewitness testimony establishes, in the finding of the Chamber, that they too died as a result of being shot by MUP forces in Izbica/Izbicë on 28 March 1999.<sup>6158</sup> All of these 132 unarmed Kosovo Albanians were being held under armed guard by MUP forces at the time of their death and were not participating in the hostilities.<sup>6159</sup> Given that these Kosovo Albanians were being detained at gunpoint by the MUP forces and were deliberately shot, the only reasonable inference open on the facts is that the perpetrators had the requisite intent to kill these 132 individuals. The Chamber accepts that these 132 men, named earlier in this Judgement, were murdered by MUP forces in Izbica/Izbicë on 28 March 1999.<sup>6160</sup>

1728. The Chamber also refers to its earlier finding that three women, Zoje Osmani (Osmana), Zada Dragaj and Ajmone Citaku, were also killed in Izbica/Izbicë on 28 March 1999. Two were killed on a tractor and one in a nearby field.<sup>6161</sup> Although the forensic evidence was inconclusive for Zoje Osmani (Osmana), and the remains of Ajmone Citaku have not been located, the Chamber accepts, on the basis of eyewitness evidence, that they were both deliberately burnt to death on a tractor by Serbian forces.<sup>6162</sup> The Chamber was also satisfied that Zada Dragaj was killed in the fields in Izbica/Izbicë by Serbian forces. Her remains were also exhumed from Petrovo Selo PJP Centre in Serbia and an autopsy confirmed that she died as a result of gunshot wounds to the head and trunk.<sup>6163</sup> All three victims were elderly women; Zoje Osmani (Osmana) was 67 years old, Zada Dragaj was 71 years old<sup>6164</sup> and Ajmone Citaku was 81 years old. Given the circumstances of their deaths, the age and gender of the victims and the brutal nature of the killings, the Chamber

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<sup>6156</sup> See *supra*, para 1512. The Chamber notes that the 29 victims exhumed from Petrovo Selo PJP Centre do not include the three elderly female victims that the Chamber found were killed in the field in Izbica/Izbicë. Two of these elderly women were also exhumed from Petrovo Selo. This is discussed below, *see infra*, para 1728.

<sup>6157</sup> See *supra*, para 1513.

<sup>6158</sup> See *supra*, paras 1407-1417.

<sup>6159</sup> See *supra*, paras 633-634.

<sup>6160</sup> See *supra*, paras 633-634.

<sup>6161</sup> See *supra*, para 620; Mustafa Dragaj, T 615; Liri Loshi, T 702; Exhibit P288.

<sup>6162</sup> The remains of Ajmone Citaku and Zoje Osmana were amongst those buried in Izbica/Izbicë on 31 March or 1 April 1999 and later exhumed by Serbian forces. While the remains of Zoje Osmana were exhumed from Petrovo Selo, the remains of Ajmone Citaku have not been located. In the circumstances, the Chamber finds that the absence of this one body is of no significance and it is possible that her remains were amongst the commingled and unidentified remains from Petrovo Selo. Based on the eyewitness evidence discussed earlier in this Judgement, the Chamber accepts that Ajmone Citaku was burnt to death on the tractor by MUP on 28 March 1999. See *supra*, para 1512; *see infra*, Schedule: Victim Charts.

<sup>6163</sup> See *supra*, para 1512; *see infra*, Schedule: Victim Charts.

<sup>6164</sup> The Chamber notes that Zada Dragaj was listed as male in the Schedule to the Indictment, however, based on the autopsy report the Chamber accepts that Zada Dragaj was female, *see supra*, para 620; *see infra*, Schedule: Victim Charts.

finds that the perpetrators had the requisite intent to kill these women. The murder by Serbian forces of these three elderly women is accepted by the Chamber.

1729. To the extent indicated by the specific findings made in this Judgement, the Chamber finds that the Indictment allegation, in paragraph 75(f) of the Indictment have been established.

(c) Miloš Gilić Street/Millosh Giliq Street, Đakovica/Gjakovë, Đakovica/Gjakovë municipality

1730. Earlier in this Judgement the Chamber made findings in relation to killings at 157 Miloš Gilić Street/Millosh Giliq Street in Đakovica/Gjakovë and at 80 Miloš Gilić Street/Millosh Giliq Street in Đakovica/Gjakovë both on the night of 1 April 1999.<sup>6165</sup>

1731. As found elsewhere in this Judgement, on 1/2 April 1999, within the compound located at 157 Miloš Gilić/Millosh Giliq Street, 20 Kosovo Albanian civilians were killed by MUP forces. 12 of those killed were children, seven were women, and there was one mentally impaired man.<sup>6166</sup> These 20 people were shot and then burned in the house by MUP forces. Their remains were later buried in Đakovica/Gjakovë public cemetery. A survivor identified the 20 people who died. Subsequent forensic examination and the eyewitness evidence satisfies the Chamber that these 20 people died as a result of gunshot wounds or as a result of being burnt to death.<sup>6167</sup> All of the victims were unarmed civilians at the time and were taking no part in hostilities. In these circumstances the deliberate shooting, and burning, satisfies the Chamber that the perpetrators intended to murder the victims at the time. The Chamber accepts that these 20 Kosovo Albanian civilians, listed by name earlier in this Judgement, were murdered on 1/2 April 1999 by MUP forces.<sup>6168</sup>

1732. Earlier in this Judgement, the Chamber also found that four members of the Cana family were killed by MUP forces late on the night of 1 April 1999 at 80 Miloš Gilić/Millosh Giliq Street, in Đakovica/Gjakovë. They were Januz Cana, Ganimete Cana, Shpresa Cana, and Fatmir Cana.<sup>6169</sup> Because of the burnt state of the remains, autopsies could not identify the causes of death.<sup>6170</sup> Nevertheless, based on the totality of the evidence, the Chamber is satisfied that these four people died as a result of injuries deliberately inflicted by MUP forces on 1 April 1999. These four Kosovo Albanians were unarmed at the time and not taking part in any hostilities. Ganimete and Januz Cana were an elderly couple. In their house was their son, Fatmir Cana, who was shot when

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<sup>6165</sup> See *supra*, paras 886-889, 891.

<sup>6166</sup> See *supra*, para 889.

<sup>6167</sup> See *supra*, paras 886-889, 898, 1419-1421.

<sup>6168</sup> See *supra*, para 889.

<sup>6169</sup> See *supra*, para 891.

<sup>6170</sup> See *supra*, paras 892, 1422.



the perpetrators entered the house, and their daughter, Shypresa Cana, who was dragged off screaming by the perpetrators and then killed. The evidence clearly establishes the intent of the MUP perpetrators to murder these four victims. The Chamber accepts that the murder of the four named victims has been established.

1733. The Chamber has also heard some evidence of the killing of no less than 16 further Kosovo Albanians in Đakovica/Gjakovë late on the night of 1 April and the early morning of 2 April 1999. Given the limited evidence before the Chamber, while their killing by MUP forces has been established earlier in this Judgement, the Chamber is not able to make a positive finding that they were murdered.

1734. To the extent indicated by the specific findings made in this Judgement, the allegations in paragraph 75(g) of the Indictment have been established.

(f) Meja/Mejë, Đakovica/Gjakovë municipality

1735. Earlier in this Judgement the Chamber found that five Kosovo Albanian men, Blerim Malaj, Vat Malaj, Nikoll Kabashi, Andrush Kabashi and Arben Kabashi, were shot by Serbian forces, which included soldiers, paramilitaries and police, on 27 April 1999 at Lizane Malaj's courtyard in Korenica/Korenicë, in the municipality of Đakovica/Gjakovë.<sup>6171</sup> Where possible forensic examination established that the cause of death was gunshot wounds.<sup>6172</sup> The remains of all of these men were exhumed from the Batajnica SAJ Centre.<sup>6173</sup> The victims were all unarmed at the time of their death, were being detained by the Serbian forces and were lying on the ground as directed. They were not participating in hostilities. Given the circumstances of these killings the Chamber accepts that the perpetrators had the requisite intent at the time to murder these men. The Chamber accepts that the murder of the above five named Kosovo Albanian men has been proved.

1736. Elsewhere in this Judgement, the Chamber has accepted that the following nine Kosovo Albanians were shot by VJ soldiers at Prend Markaj's courtyard in Meja/Mejë on 27 April 1999: Mark Deda, Pashk Deda, Linton Deda, Prend Markaj, Pashk Markaj, Mark Markaj, Bekim Markaj, Petrit Markaj and Skender Pjetri.<sup>6174</sup> In those cases where it was possible, forensic analysis established that the men had died of gunshot wounds.<sup>6175</sup> The remains of Skender Pjetri have not been located, but given the eyewitness evidence of the circumstances surrounding these killings, the Chamber is satisfied and finds that Skender Pjetri was killed with the other eight men by VJ

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<sup>6171</sup> See *supra*, paras 955-957.

<sup>6172</sup> See *supra*, paras 1500-1502; see *infra*, Schedule: Victim Charts.

<sup>6173</sup> See *infra*, Schedule: Victim Charts.

<sup>6174</sup> See *supra*, paras 958-960.

<sup>6175</sup> See *supra*, para 1500-1502; see *infra*, Schedule: Victim Charts.

soldiers.<sup>6176</sup> The remains of the other eight victims were exhumed at the Batajnica SAJ Centre. Many other remains from that location remain unidentified. They may include the remains of Skender Pjetri. All nine victims were unarmed at the time, in the custody of Serbian forces, and had been forced to line up against a wall in a courtyard. They were not able to participate in the hostilities. This evidence clearly establishes the requisite intent of the perpetrators to murder these nine people. The Chamber finds that the above mentioned nine men were murdered by Serbian forces.

1737. The Chamber also found that Kolë Duzhmani was shot by Serbian forces, including MUP forces and two volunteer “Russian soldiers”, on 27 April 1999 in Meja/Mejë.<sup>6177</sup> Forensic evidence established that he died as a result of multiple gunshot wounds.<sup>6178</sup> There is no evidence that Kolë Duzhmani was a member of the KLA. In any event, at the time of his killing he was detained by Serbian forces and not participating in any hostilities. The Chamber recalls that prior to the killing of Kolë Duzhmani, the Serbian forces detaining him received a radio message asking if they had “Gjelosh Kola”. The forces, mistaking Kolë Duzhmani for Gjelosh Kola, confirmed that they had “Gjelosh Kola”. They were then ordered to “destroy him”.<sup>6179</sup> The mistake on the part of the Serbian forces as to the identity of the victim may explain, but does not alter, their intention at the time which was to commit the murder. In the circumstances the only inference open, and that which the Chamber accepts, is that Kolë Duzhmani was murdered by Serbian forces, including MUP forces, in Meja/Mejë on 27 April 1999.

1738. The Chamber also found earlier in this Judgement that a large coordinated joint MUP and VJ operation known as “Operation Reka” took place on 27-28 April 1999 in the Carragojs Valley. As discussed, the Chamber had found that numerous groups of men were taken out of a convoy of Kosovo Albanian people by Serbian forces at different locations, and then were shot.<sup>6180</sup> The remains of no less than 281 victims were exhumed from Batajnica mass grave sites, some 420 kilometres from Meja/Mejë, all of them being listed on the OMPF Missing Persons List as having last been seen alive in Meja/Mejë on 27-28 April 1999.<sup>6181</sup> Forensic examinations determined that 172 of these 281 victims died as a result of gunshot wounds. Because of the state of the remains exhumed from Batajnica, no cause of death could be established by forensic examination for the

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<sup>6176</sup> See *supra*, paras 959-960.

<sup>6177</sup> See *supra*, para 961-963.

<sup>6178</sup> See *supra*, paras 963, 1493-1494.

<sup>6179</sup> See *supra*, paras 961-963.

<sup>6180</sup> See *supra*, paras 967-979, 985-995.

<sup>6181</sup> See *supra*, paras 1493, 1500, 1506. This number does not include 14 of the victims discussed earlier, *see supra*, paras 1735-1737.

other 109 victims.<sup>6182</sup> However, the totality of the evidence and the circumstances establishes, and the Chamber finds, that the only reasonable inference is that all 281 victims were killed by Serbian forces on 27-28 April 1999 during “Operation Reka” in circumstances similar to those established in respect of the 172 victims. It is further found by the Chamber that the perpetrators intended to murder these 281 victims.

1739. There is no evidence that any of the Kosovo Albanians killed in Meja/Mejë were armed at the time or taking an active part in hostilities.<sup>6183</sup> Indeed, there is no evidence of fighting between the Serbian forces and the KLA in the area at the time of these events in Meja/Mejë.<sup>6184</sup> Further, while the Defence has contended that the actions of the Serbian forces were directed against Kosovo Albanian terrorists there is no evidence to suggest that those killed had participated or were participating in terrorist activities. Based on the totality of the evidence, with regard to the 281 persons whose remains the Chamber has identified as being exhumed from Batajnica SAJ Centre in Serbia, the only inference open on the evidence is that they were deliberately killed by Serbian forces as part of “Operation Reka” in Meja/Mejë on 27-28 April 1999. The Chamber accepts that the murder of these 281 persons by Serbian forces in Meja/Mejë on 27-28 April 1999 has been established.

1740. While it is likely that the remaining 48 victims, listed in Schedule H of the Indictment, for whom no evidence as to their fate has been received, were also killed as part of Operation Reka, the evidence does not enable the Chamber to make a positive finding that they were murdered by Serbian forces in Meja/Mejë on 27-28 April 1999.

1741. For the reasons given above, the Chamber is satisfied that no less than 296 individuals were murdered by Serbian forces on 27-28 April 1999 during “Operation Reka”. To the extent indicated by the specific findings made in this Judgement, the Chamber finds that the allegations, in paragraph 75(h) of the Indictment have been established.

(g) Vučitrn/Vushtrri municipality

1742. As found earlier in this Judgement, the evidence established that four Kosovo Albanian men, Hysni Bunjaku, Haki Gerxhaliu, Miran Xhafa and Veli Xhafa, were killed in the night of 2/3 May 1999 while travelling to Vuçitrn/Vushtrri in a convoy.<sup>6185</sup> Forensic evidence has satisfied

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<sup>6182</sup> Jose Pablo Baraybar, T 2665-2666; Exhibit P98; Exhibit P99; Exhibit P100; Exhibit P456; Exhibit P472; Exhibit P473; Exhibit P474; Exhibit P576; Exhibit P818; *See also* Exhibit P477; *see supra*, paras 1494, 1501-1502, 1506; *see infra*, Schedule: Victim Charts.

<sup>6183</sup> *See supra*, paras 980, 990-995.

<sup>6184</sup> *See supra*, para 980.

<sup>6185</sup> *See supra*, paras 1184, 1185, 1191, 1192, 1197.

the Chamber that Haki Gerxhaliu, Miran Xhafa and Veli Xhafa died as a result of gunshot wounds.<sup>6186</sup> In the absence of forensic evidence related to Hysni Bunjaku, the evidence of an eyewitness satisfies the Chamber that this young man was shot dead by MUP forces as he sat on his tractor. The Chamber earlier found that these four men were not participating in hostilities at the time of their death. The evidence establishes in the finding of the Chamber that they were actually being detained by Serbian forces.<sup>6187</sup> Given the circumstances of the killings, discussed earlier in this Judgement, the intent of the perpetrators to murder these four Kosovo Albanian men is clear. The intent of the forces to kill civilians is further supported by the fact that following the killing of Hysni Bunjaku, a witness heard it said by Serbian forces that “they would not stop till they reached 100”, a reference in the Chamber’s finding to an intention of these Serbian forces to kill 100 Kosovo Albanians.<sup>6188</sup> The Chamber accepts that these four Kosovo Albanian men were murdered by MUP forces near Vuçitër/Vushtrri in the night of 2/3 May 1999.

1743. As indicated by the specific findings in this Judgement, the allegation in paragraph 75(i) of the Indictment that at least 105 Kosovo Albanians were murdered by Serbian forces near Vuçitër/Vushtrri on 24 March 1999 has only been established with regards to these four victims named in the previous paragraph.

(h) Kotlina/Kotlinë, Kačanik/Kaçanik municipality

1744. Earlier in this Judgement the Chamber has found that on 24 March 1999, not less than 22 Kosovo Albanian men were killed at the wells near the north entrance to Kotlina/Kotlinë by members of the Serbian forces. The totality of the evidence has satisfied the Chamber that not less than 22 men were in the wells when explosives were detonated in the wells, thereby causing the deaths of the men, or of those who had not been killed when they were shot before the explosion.<sup>6189</sup> At the time the victims were unarmed and prisoners of the Serbian forces. They were not in a position to participate in the hostilities. If any of them had been members of the KLA, they were *hors de combat*. The deliberate shooting, and use of explosives, on unarmed prisoners who had been forced into the wells, demonstrates, in the finding of the Chamber, the necessary intention of the perpetrators to murder. Their detention at the time discloses in the circumstances that the Serbian forces intended to murder these men. The Chamber finds that the 22 men, listed by name earlier in this Judgement, were murdered by Serbian forces at the wells in Kotlina/Kotlinë on

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<sup>6186</sup> See *supra*, paras 1423-1427.

<sup>6187</sup> See *supra*, paras 1184, 1185, 1191, 1192, 1197.

<sup>6188</sup> See *supra*, para 1184.

<sup>6189</sup> See *supra*, paras 1120, 1125-1126.

24 March 1999.<sup>6190</sup> The Chamber is also satisfied that Idriz Kuçi was murdered on 24 March 1999 while in custody of the Serbian police.<sup>6191</sup>

1745. The Chamber found that two other men, who had been killed in the village of Kotlina/Kotlinë on 24 March 1999 and whose bodies were exhumed from the mosque, died as a result of gunshot wounds inflicted by Serbian forces in the village of Kotlina/Kotlinë on 24 March 1999.<sup>6192</sup> Nevertheless, as found earlier in this Judgement, the Chamber was not satisfied that at the time of their killing these men were not taking an active part in the hostilities. Moreover, given the limited evidence before the Chamber, no finding can be made as to the intent of the perpetrators in killing these people. While the Chamber accepts that these three men, whose names were included in the Schedule of the Indictment, were killed by MUP forces, no finding of murder under Article 3 or murder under Article 5 can be made for the reasons stated above.

1746. To the extent indicated by the specific findings in this Judgement, the allegations in paragraph 75(k)(i) of the Indictment have been established.

(i) Slatina/Slatinë and Vata/Vataj, Kačanik/Kaçanik municipality

1747. It is alleged in the Indictment that on or about 13 April 1999, 13 civilians were shot dead in Slatina/Slatinë.<sup>6193</sup> The Chamber earlier found that on 13 April 1999, four men from the village of Vata/Vataj were captured by VJ soldiers and killed in Slatina/Slatinë that day.<sup>6194</sup> Notwithstanding the lack of detailed forensic evidence as to the cause of death of these men, the eyewitness evidence satisfies the Chamber that these four men died as a result of injuries inflicted by VJ forces.<sup>6195</sup> At the time the four men were dressed in civilian clothes and had no weapons.<sup>6196</sup> Prior to being killed, as prisoners, they were paraded by the VJ forces through the village. They were not participating in the hostilities. If they were KLA members they were *hors de combat*. Their bodies were badly mutilated and the eyes of a victim had been cut out.<sup>6197</sup> The Chamber is satisfied that the perpetrators had the requisite intent at the time to commit murder. The Chamber finds that the following four men were murdered in Vata/Vataj by members of the VJ on 13 April 1999: Mahmut Caka, Hebib Lami, Brahim Lami and Rraman Lami.

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<sup>6190</sup> See *supra*, para 1115-1116, 1120. The majority of these men were listed in the OMPF Missing Person list, see Exhibit P477.

<sup>6191</sup> See *supra*, paras 1117-1118.

<sup>6192</sup> See *supra*, paras 1429, 1436, 1445.

<sup>6193</sup> Indictment, paragraph 75(k)(ii).

<sup>6194</sup> See *supra*, paras 1138-1139.

<sup>6195</sup> See *supra*, paras 1138-1139, 1147-1449.

<sup>6196</sup> Sada Lama, T 3722- 3724; Sada Lama, Exhibit P661, p 5.

<sup>6197</sup> See *supra*, paras 1138-1139.

1748. To the extent indicated by the specific findings in this Judgement, the allegations in paragraph 75(k)(ii) of the Indictment have been established.

(j) Dubrava/Lisnaje, Kačanik/Kaçanik municipality

1749. The Indictment alleges that on or about 25 May 1999 Serbian forces entered the village of Dubrava/Lisanje and separated the men from the women and children, and killed four men. It is alleged further that four members of a family were killed while trying to escape. The witness who was to give evidence about these allegations was withdrawn from the Prosecution's witness list.<sup>6198</sup> No other evidence was called in support of these allegations. The events in Dubrava/Lisnaje alleged in the Indictment have not been established and no finding can be made in relation to the murder of these alleged victims in paragraph 75(k)(iv) of the Indictment.<sup>6199</sup>

(k) Podujevo/Podujevë municipality

1750. The Chamber has found earlier in this Judgement that on 28 March 1999, 19 unarmed Kosovo Albanian women and children were led into a courtyard of a compound in Podujevo/Podujevë town by Serbian forces. 14 of the women and children were killed. Five survived the shooting, some of them sustaining most severe injuries. The shooting of the victims was grave and deliberate and at a close range. Some were shot many times.<sup>6200</sup> The Chamber is satisfied that the perpetrators intended to murder these women and children. The remains of the 14 women and children were identified by family members following their exhumation at a local cemetery in Podujevo/Podujevë town by a British forensic team in July 1999.<sup>6201</sup> In August 2000, eight of these victims were again exhumed and it was determined that each of these eight victims died of gunshot wounds variously to the chest, neck and head.<sup>6202</sup> In the Chamber's finding the only inference open on the evidence is that the Serbian forces who perpetrated these offences intended to kill the victims so that the crime of murder has been established for all 14 of the victims who were named earlier in this Judgement.<sup>6203</sup>

1751. The Chamber has also found that two elderly Kosovo Albanian men, Hamdi Duriqi and Selmon Gashi, who are not specifically listed by name in the Indictment, were killed in

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<sup>6198</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Confidential Annex I, Pre-Trial Brief, Prosecution's Submission Pursuant to Rule 65ter (e) with Confidential Annex I, Annex II and Annex III", 1 September 2008, para 237; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Prosecution's Notice in Respect of its Rule 65ter Witness List with Annex A", 12 December 2008.

<sup>6199</sup> *See supra*, para 1136.

<sup>6200</sup> *See supra*, paras 1241-1258.

<sup>6201</sup> *See supra*, para 1454.

<sup>6202</sup> *See supra*, paras 1455-1457.

<sup>6203</sup> *See supra*, paras 1241-1258.

Podujevo/Podujevë town on 28 March 1999.<sup>6204</sup> They were shot and killed by Serbian forces at a coffee shop outside the courtyard where, a little later, the 14 women and children were shot and killed. They too were shot at close range. The bodies of these two men were likewise identified by family members following the exhumation that took place by the British forensic team at the Podujevo/Podujevë cemetery in July 1999.<sup>6205</sup> They were unarmed civilians at the time of their deaths and were not taking any active part in hostilities. The circumstances of their death satisfy the Chamber that the perpetrators acted with the requisite intent to murder these two elderly men. Accordingly, the Chamber finds that these two men were murdered by Serbian forces.

1752. To the extent indicated by the specific findings in this Judgement, the allegations in paragraph 75(l) of the Indictment have been established.

### 3. Conclusion

1753. The Chamber finds that the charges of murder, Count 3 and 4 of the Indictment, have been established as detailed above.

## C. Persecutions (Count 5)

### 1. Law

1754. In addition to the general requirements for crimes against humanity set out above, certain specific requirements must also be satisfied in order for an underlying offence to qualify as an act of persecutions under Article 5(h) of the Statute.

1755. The crime of persecutions consists of an act or omission which:

- (i) discriminates in fact and denies or infringes upon a fundamental right laid down in international customary or treaty law (*actus reus*); and
- (ii) was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (*mens rea*).<sup>6206</sup>

1756. While the crime of persecutions, or persecution, may be considered an “umbrella” crime, the Appeals Chamber has warned that “[p]ersecution cannot, because of its nebulous character, be used

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<sup>6204</sup> See *supra*, para 1246.

<sup>6205</sup> See *supra*, para 1454.

<sup>6206</sup> *Deronjić* Appeal Judgement, para 109; *Kvočka* Appeal Judgement, paras 320, 454; *Blaškić* Appeal Judgement, para 131; *Krnjelac* Appeal Judgement, para 185.

as a catch-all charge”.<sup>6207</sup> The Prosecution must plead particular acts or omissions which it alleges amount to persecution in the indictment.<sup>6208</sup>

(a) *Actus Reus*

1757. The crime of persecution can include acts which are listed as crimes under Article 5 of the Statute, or under other articles of the Statute,<sup>6209</sup> as well as acts which are not listed in the Statute.<sup>6210</sup> Acts underlying persecutions under Article 5(h) of the Statute need not necessarily be considered a crime under international law.<sup>6211</sup> However, not every act or omission denying a fundamental human right is sufficiently serious to constitute a crime against humanity.<sup>6212</sup> For acts not enumerated as a crime in the Statute to amount to the crime of persecution, they must be of equal gravity to the crimes listed in Article 5 of the Statute, whether considered in isolation or in conjunction with other acts.<sup>6213</sup> Although persecution often refers to a series of acts, a single act may be sufficient as long as it discriminates in fact and is carried out deliberately with the intention to discriminate.<sup>6214</sup>

1758. An act is discriminatory when a victim is targeted because of his or her membership in a group defined by the perpetrator on a political, racial or religious basis.<sup>6215</sup> In practice, discrimination on the basis of ethnicity has also been accepted as a ground upon which the requirement is satisfied.<sup>6216</sup> The Chamber is satisfied that discrimination against Kosovo Albanians on the basis of their ethnicity meets this requirement. In order to constitute a discriminatory act or omission, the act or omission must “discriminate in fact”, that is, it results in discriminatory consequences.<sup>6217</sup>

(b) *Mens Rea*

1759. In order to constitute the crime of persecution, the underlying act or omission must have been carried out deliberately, with the specific intent to discriminate on political, racial or religious

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<sup>6207</sup> *Kupreškić* Appeal Judgement, para 98.

<sup>6208</sup> *Blaškić* Appeal Judgement, para 139; *Kupreškić* Appeal Judgement, para 98

<sup>6209</sup> *See Krnojelac* Appeal Judgement, para 219; *Brdanin* Appeal Judgement, para 296.

<sup>6210</sup> *See Kvočka* Appeal Judgement, paras 321-323; *Brdanin* Appeal Judgement, para 296.

<sup>6211</sup> *Kvočka* Appeal Judgement, paras 322-323; *Brdanin* Appeal Judgement, para 296.

<sup>6212</sup> *Kvočka* Appeal Judgement, para 323.

<sup>6213</sup> *Brdanin* Appeal Judgement, para 296; *Kvočka* Appeal Judgement, paras 321-323; *Kordić* Appeal Judgement, para 102; *Blaškić* Appeal Judgement, para 160.

<sup>6214</sup> *Vasiljević* Appeal Judgement, para 113.

<sup>6215</sup> *Krnojelac* Appeal Judgement, para 185; *Stakić* Trial Judgement, para 733.

<sup>6216</sup> *Krnojelac* Appeal Judgement, para 185; *Krstić* Trial Judgement, para 538; *Kupreškić* Trial Judgement, para 636; *Kordić* Appeal Judgement, para 111; *Kvočka* Appeal Judgement, paras 366, 455; *Simić* Trial Judgement, para 56; *Brdanin* Trial Judgement, paras 992-993; *Milutinović* Trial Judgement, Volume I, para 176. *See also* Article 7(1)(h) of the Statute of the International Criminal Court, which explicitly lists ethnic grounds as part of the definition of persecution as a crime against humanity.

<sup>6217</sup> *Krnojelac* Appeal Judgement, para 185; *Stakić* Trial Judgement, para 733.



grounds.<sup>6218</sup> It is not sufficient for the accused to be aware that he or she is in fact acting in a way that is discriminatory, he or she must consciously intend to discriminate.<sup>6219</sup> There is no requirement, however, that a discriminatory policy exist. In the event that such a policy is shown to have existed, there is no requirement that the accused has taken part in the formulation of such a discriminatory policy.<sup>6220</sup>

1760. The Appeals Chamber has held that discriminatory intent may not be inferred directly from the general discriminatory nature of an attack against a civilian population.<sup>6221</sup> However, discriminatory intent may be inferred from such a context as long as, in the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.<sup>6222</sup>

1761. With respect to the question whether the actor, *i.e.* the direct perpetrator, must possess the requisite discriminatory intent, the Appeals Chamber approved of the statement of the Trial Chamber in *Stakić* that “it is immaterial for the assessment of the intent of the indirect perpetrator whether or not the actor had such a discriminatory intent”,<sup>6223</sup> since “the actor may be used as an innocent instrument or tool only”.<sup>6224</sup> Therefore, the requirement of discriminatory intent may be satisfied as long as either, the direct perpetrator acted with discriminatory intent, or the indirect perpetrator possessed this intent.<sup>6225</sup>

(c) Elements of underlying acts of persecution charged

1762. Vlastimir Đorđević is charged with the crime of persecution committed through the following underlying acts: (1) forcible transfer and deportation; (2) murder; (3) sexual assault; and (4) wanton destruction or damage of Kosovo Albanian religious sites. The elements for each of these forms of persecution are considered below.

(i) Forcible transfer and deportation

1763. The elements of the crimes of deportation and forcible transfer as crimes against humanity have been set out above.<sup>6226</sup> Deportation is specifically listed as a crime under Article 5 of the

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<sup>6218</sup> *Kordić* Appeal Judgement, para 711.

<sup>6219</sup> *Brdanin* Trial Judgement, para 996; *Kordić* Trial Judgement, para 217.

<sup>6220</sup> *Brdanin* Trial Judgement, para 996; *Krnjelac* Trial Judgement, para 435; *Kupreškić* Trial Judgement, para 625.

<sup>6221</sup> *Kordić* Appeal Judgement, para 674; *Blaškić* Appeal Judgement, para 164; *Krnjelac* Appeal Judgement, para 184.

<sup>6222</sup> *Kordić* Appeal Judgement, para 674; *Blaškić* Appeal Judgement, para 164; *Krnjelac* Appeal Judgement, para 184.

<sup>6223</sup> *Stakić* Appeal Judgement, paras 329 and 339, quoting *Stakić* Trial Judgement, para 741.

<sup>6224</sup> *Stakić* Trial Judgement, para 741.

<sup>6225</sup> *Milutinović* Trial Judgement, Volume I, para 181.

<sup>6226</sup> *See supra*, paras 1613-1614.

Statute.<sup>6227</sup> Although forcible transfer is not so listed, the Appeals Chamber has held that “acts of forcible transfer may be sufficiently serious as to amount to other inhumane acts” if it is of similar seriousness as other enumerated crimes against humanity.<sup>6228</sup> Therefore, a specific instance or instances of forcible transfer may be deemed to be sufficiently serious to amount to “other inhumane acts” under Article 5(i) of the Statute, depending on the facts.<sup>6229</sup>

1764. In order to constitute persecution, the crimes of forcible transfer and deportation must be committed with the requisite discriminatory intent.<sup>6230</sup>

(ii) Murder

1765. The elements of the crime of murder have been set out above.<sup>6231</sup> Murder is specifically listed in Article 5 of the Statute. Such an act clearly denies or infringes upon a fundamental right, *i.e.* the right to life.<sup>6232</sup> In order to prove that murder was committed as an underlying act of persecution, the Prosecution must prove: (a) the *actus reus* and *mens rea* of murder, (b) the specific requirements of persecution, and (c) the general requirements of crimes against humanity.<sup>6233</sup>

(iii) Sexual assault

1766. The charges of persecution set out in Count 5 of the Indictment include “[t]he sexual assault by forces of the FRY and Serbia of Kosovo Albanians, in particular women...” The Chamber will interpret the term “sexual assault” as an offence that may include rape where there is evidence of sexual penetration, as well as other forms of sexual assault.<sup>6234</sup> While the narrower offence of rape requires sexual penetration,<sup>6235</sup> sexual violence other than rape can constitute “sexual assault”. The ICTR found in *Akayesu* that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact”.<sup>6236</sup> In *Brdanin*, the Trial Chamber held that the offence of sexual assault “embraces all serious abuses of a

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<sup>6227</sup> Article 5(d) of the Statute.

<sup>6228</sup> *Stakić* Appeal Judgement, para 317. Article 5(i) of the Statute lists “other inhumane acts” as crime amounting to a crime against humanity.

<sup>6229</sup> *Krajišnik* Appeal Judgement, para 330.

<sup>6230</sup> *Krajišnik* Trial Judgement, para 749.

<sup>6231</sup> *See supra*, para 1708.

<sup>6232</sup> *Kordić* Appeal Judgement, para 106; *Blaškić* Appeal Judgement, para 143.

<sup>6233</sup> *Milutinović* Trial Judgement, Volume I, para 182; *Krajišnik* Trial Judgement, paras 744.

<sup>6234</sup> *See Milutinović* Trial Judgement, Volume I, para 183.

<sup>6235</sup> The *actus reus* of the crime of rape in international law is constituted by the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim. *Kunarac* Trial Judgement, para 460, affirmed by *Kunarac* Appeal Judgement, paras 127-128. *See also Furundžija* Trial Judgement, para 185.

<sup>6236</sup> *Akayesu* Trial Judgement, para 688.

sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim's dignity".<sup>6237</sup>

1767. "Sexual assault" *per se* is not listed in Article 5 of the Statute, while rape is listed under subparagraph (g). For those forms of sexual assault other than rape, it must be shown that the act denies or infringes upon a fundamental human right. In this respect, it is well established that sexual assault may amount to a denial of or infringement upon the fundamental right to physical integrity,<sup>6238</sup> depending on the specific circumstances. It has also been held that rape and sexual assault may constitute torture or cruel, inhuman or degrading treatment.<sup>6239</sup> In addition, sexual assault may amount to an inhumane act or to an "outrage upon personal dignity"<sup>6240</sup> in the specific circumstances. Therefore, in the view of the Chamber, an act of sexual assault, in the specific circumstances, may be of equal gravity to the crimes listed in Article 5 of the Statute and may amount to persecutions, provided that the other requisite elements are established.

1768. The elements of the offence of sexual assault were set out in the *Milutinović* Trial Judgement, as follows:

- (a) The physical perpetrator commits an act of a sexual nature on another; this includes requiring that other person to perform such an act.
- (b) That act infringes the victim's physical integrity or amounts to an outrage to the victim's personal dignity.
- (c) The victim does not consent to the act.
- (d) The physical perpetrator intentionally commits the act.
- (e) The physical perpetrator is aware that the victim did not consent to the act.<sup>6241</sup>

1769. The Chamber considers that these requirements correctly reflect the elements of the crime of sexual assault other than rape.

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<sup>6237</sup> *Brdanin* Trial Judgment, para 1012.

<sup>6238</sup> *Milutinović* Trial Judgement, Volume I, para 188; *Furundžija* Trial Judgment, para 170; *Čelibići* Trial Judgement, para 491. See also Article 27 of the Fourth Geneva Convention, providing that women shall be "especially protected against any attack on their honour, in particular rape, enforced prostitution, or any form of indecent assault"; Additional Protocol II to the Geneva Conventions prohibiting "outrages upon personal dignity, in particular rape, enforced prostitution and any form of indecent assault"; Article 3 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, which, read together with articles 1 and 2, establishes the right of women to be free from sexual harm, sexual abuse and rape.

<sup>6239</sup> *Milutinović* Trial Judgement, Volume I, para 192; *Čelibići* Trial Judgement, paras 495-496, *Kvočka* Trial Judgement, paras 144-145; *Kunarac* Trial Judgement, paras 711, 816; *Akayesu* Trial Judgement, paras 687-697.

(iv) Destruction of religious and cultural sites

1770. The charges of persecution set out in Count 5 of the Indictment include “the wanton destruction or damage of Kosovo Albanian religious sites”. Destruction of property is not specifically listed under Article 5 of the Statute. It is listed as a war crime under Article 3 of the Statute. It is well established that the destruction of property which belongs to a given civilian population can be punished pursuant to Article 5(h), provided all the elements of the crime of persecution are satisfied.<sup>6242</sup>

1771. Whether the destruction of property meets the equal gravity requirement depends on the nature and extent of destruction.<sup>6243</sup> A number of Trial Chambers have noted that the destruction of religious property amounts to “an attack on the very religious identity of a people” and as such manifests “a nearly pure expression” of the notion of crimes against humanity.<sup>6244</sup> Article 3(d) of the Statute penalises “the seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science” as violations of the laws or customs of war. As noted by Trial Chambers, the destruction or damage to religious institutions as an act of persecution “is the same as the ‘destruction or wilful damage done to institutions dedicated to religion’, a violation of the laws or customs of war enumerated under Article 3(d) of the Statute”.<sup>6245</sup> The International Military Tribunal,<sup>6246</sup> the 1991 ILC Report,<sup>6247</sup> and national courts,<sup>6248</sup> *inter alia*, have singled out the destruction of religious buildings as a clear case of persecution as a crime against humanity.<sup>6249</sup> In the view of the Chamber, therefore, the destruction and wilful damage to Kosovo Albanian religious sites, coupled with the requisite discriminatory intent, may amount to an act of persecution.

1772. The property destroyed must not have been used for military purposes at the time when the acts of hostility directed against this property took place. This is equally applicable in the case of

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<sup>6240</sup> *Furundžija* Trial Judgement, para 272; *Kunarac* Trial Judgement, paras 766-774; *Akayesu* Trial Judgement, para 688.

<sup>6241</sup> *Milutinović* Trial Judgement, Volume I, para 201.

<sup>6242</sup> *Blaškić* Appeal Judgement, paras 144-149; *Kordić* Appeal Judgement, para 108.

<sup>6243</sup> *Kordić* Appeal Judgement, para 108.

<sup>6244</sup> *Milutinović* Trial Judgement, Volume I, para 205; *Kordić* Trial Judgement, paras 206-207; *Stakić* Trial Judgement, para 766; *Blaškić* Trial Judgement, para 227. See also *Krajišnik* Trial Judgement, paras 780-783.

<sup>6245</sup> *Kordić* Trial Judgement, para 206.

<sup>6246</sup> *Kordić* Trial Judgement, para 206, referring to *U.S. v. Goring*, International Military Tribunal: Trial of the Major War Criminals, Volume I, pp 248 and 302 (1947). The IMT found the accused Streicher guilty of crimes against humanity, *inter alia*, for the demolition on 10 August 1938 of the synagogue in Nuremberg. (*US v Goring (Streicher Judgment) ibid*, at 302).

<sup>6247</sup> *Ibid*, referring to the 1991 ILC Report, p. 268.

<sup>6248</sup> In *Israel v Adolph Eichmann*, District Court of Jerusalem, Judgment of 12 December 1961, translated in 36 ILR 5-276, the District Court noted the burning and demolition of 267 synagogues on the so-called “*Kristallnacht*” when discussing “The Persecution of the Jews in Germany”.

<sup>6249</sup> *Kordić* Trial Judgement, para 206.

the destruction of religious sites.<sup>6250</sup> The “military purpose” exception to the protection of institutions dedicated to religion has been confirmed consistently by this Tribunal.<sup>6251</sup> It is for the Prosecution to establish that the destruction or damage was not justified by military necessity.<sup>6252</sup>

1773. The destruction of religious sites as an underlying act of persecution is understood as the destruction or damage of an institution dedicated to religion, when the perpetrator acted with the intent to destroy or damage that property or in the reckless disregard of the substantial likelihood of the destruction or damage.<sup>6253</sup> In addition to the general elements of crimes against humanity and the specific elements of persecution, the Prosecution must prove the following elements of destruction of religious sites as an underlying offence:

- (a) The religious site must be destroyed or damaged extensively.
- (b) The destruction or damage must follow from an act directed against the property.
- (c) The destruction or damage must not be justified by military necessity, that is, the religious institution must not have been used for a military purpose or been in the immediate vicinity of military objectives.<sup>6254</sup>
- (d) The physical perpetrator, intermediary perpetrator, or accused acted with the intent to destroy or extensively damage the property, or in reckless disregard of the likelihood of destruction or damage.<sup>6255</sup>

## 2. Findings

### (a) Persecutions committed through forcible transfer and deportation

1774. Earlier in this Judgement the Chamber has made a finding that the offence of deportation has been established with respect to the following towns and villages: Celina/Celinë (28 March 1999) in Orahovac/Rahovec municipality, Dušanovo/Dushanovë and Prizren town (28-30 March 1999), and Srbica/ Sërbica (9 to 16 April 1999) in Prizren municipality, Kladernica/Klladërnice (12 to 15 April 1999) and Turicevac/Turqec (1 April 1999) in

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<sup>6250</sup> See Article 53(b) Additional Protocol I; Article 4(1) and (2) Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954.

<sup>6251</sup> *Brdanin* Trial Judgement, para 598.

<sup>6252</sup> *Brdanin* Appeal Judgement, para 337.

<sup>6253</sup> *Krajišnik* Trial Judgement, para 782.

<sup>6254</sup> *Blaškić* Trial Judgement, para 185; see also *Brdanin* Trial Judgement, para 598.

<sup>6255</sup> *Brdanin* Trial Judgement, paras 598-599; *Milutinović* Trial Judgement, Volume I, para 206; see also *Strugar* Appeal Judgement, para 277 (“The crime of destruction or wilful damage of cultural property under Article 3(d) of the Statute is *lex specialis* with respect to the offence of unlawful attacks on civilian objects. The *mens rea*

Srbica/Skenderaj municipality, Suva Reka/Suharekë town (7 to 21 May 1999) and Belanica/Bellanicë (1 April 1999) in Suva Reka/Suharekë municipality, the town of Peć/Pejë (27-28 March 1999), Kosovska Mitrovica/Mitrovicë town (4 April 1999), Zabare/Zhabar (14 April 1999 and following days) in Kosovska Mitrovica/Mitrovicë municipality, Priština/Prishtinë town (26 to 31 March 1999) in Priština/Prishtinë municipality, Đakovica/Gjakovë town (2 to 3 April 1999), Guska/Guskë (27-28 April 1999), Korenica/Korenicë (27-28 April 1999), Žub/Zhub (27-28 April 1999), Meja/Mejë (27-28 April 1999), Junik (27-28 April 1999), Dobroš/Dobrosh (27-28 April 1999), Ramoc (27-28 April 1999), and Orize (27-28 April 1999) in Đakovica/Gjakovë municipality, Prilepnica/Prelepticë (13 April 1999), Vlastica/Llashticë (6 April 1999) in Gnjilane/Gjilan municipality, Mirosavlje/Mirosalë (8 April 1999), Uroševac/Ferizaj train station (14-15 April 1999) and Uroševac/Ferizaj town (27 April 1999) in Uroševac/Ferizaj municipality, Kačanik/Kaçanik town (27-28 March 1999) and Vata/Vataj (14 April 1999) in Kačanik/Kaçanik municipality, Beleg (30 March 1999) in Dečani/Deçan municipality, Vučitrn/Vushtrri town (27 March 1999) and Dobra Luka/Dobërllukë via Smerkovnica/Smerkovnicë prison (23 May 1999) in Vučitrn/Vushtrri municipality.

1775. The Chamber has also found earlier that the offence of forcible transfer has been established with respect to the following towns and villages: Bela Crkva/Bellacërkë (25 March 1999), Mala Kruša/Krushë-e-Vogël (25-27 March 1999), Velika Kruša/Krusë-e-Vogël (25 March 1999 and following days) and Celina/Celinë (25 March 1999) in Orhaovac/Rahovec municipality, Pirane/Piranë (25 March 1999) and Landovica/Landovicë (26 March 1999) in Prizren municipality, Leocina/Leçine (25-26 March 1999), Kladernica/Klladërnice (25 March 1999), Izbica/Izbicë (27-28 March 1999), Brocna/Burojë (25-26 March 1999), Turicevac/Turiquec (26 March 1999), Tušilje/Tushilë (29 March 1999) and in Srbica/Skenderaj municipality, Suva Reka/Suharekë town (26-28 March 1999 and 3 April 1999), Pecane/Peqan (20-21 March 1999), Čuska/Qyushk (14 May 1999) in Peć/Pejë municipality, Kosovska Mitrovica/Mitrovicë town (28 March 1999), Đakovica/Gjakovë town (24 March 1999), Guška/Gushkë (27 March 1999), Korenica/Korenicë (4 April 1999) and Žub/Zhub (early April 1999) in Đakovica/Gjakovë municipality, Prilepnica/Prelepticë (6 April 1999), Žegra/Zhegër (29 March 1999), Nosalje/Nosaljë (6 April 1999), Vladovo/Lladovë (29 March and 6 April 1999), in Gnjilane/Gjilan municipality; Sojevo/Sojevë (6 April 1999), and Staro Selo/Fshati-i-Vjeter (14 April 1999) in Uroševac/Ferizaj municipality, Kotlina/Kotlinë (24 March 1999) in Kačanik/Kaçanik municipality, Drenovac/Drenoc in Dečani/Deçan municipality, Donja Studimlja/Studime-e-Poshtme (28 March 1999),

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requirement of this crime is therefore also met if the acts of destruction or damage were wilfully (*i.e.* either deliberately or through recklessness) directed against such ‘cultural property’”).

Vesekovce/Vesekoc (2 May 1999) and Slakovce/Sllakovc (2 May 1999) in Vuçitër/Vushtrri municipality.

1776. The Chamber is satisfied that the acts of forcible transfer are of sufficient gravity to constitute persecutions. The Chamber notes in particular that they affected a very large number of Kosovo Albanian civilians, that these people were typically deprived of their homes, their means of subsistence, and they were often subjected to severe hardship being deprived of normal amenities and forced to spend nights in the open or in overcrowded houses, without adequate conditions for caring for themselves and for the children, elderly and the sick, and such hardship and deprivation was accompanied by emotional turmoil and grief.

1777. The Chamber also finds that the acts of forcible transfer and deportation established earlier in this Judgement were committed with the requisite discriminatory intent. The overwhelming majority of those forcibly displaced were Kosovo Albanians, which, given the circumstances, in the Chamber's finding indicates that Kosovo Albanians were targeted specifically. The Chamber has found earlier that on a number of occasions Serbian forces carrying out the forcible displacement made specific remarks to the effect that there was no place for Kosovo Albanians in Kosovo and were insulting Kosovo Albanians on the basis of their ethnicity.

1778. In the Chamber's finding, the offence of persecutions committed through forcible transfer and deportation has been established with respect to the locations listed in paragraphs 1701 and 1702 above, respectively. The evidence of these matters also demonstrates that the offences charged are merely examples, and by no means exhaustive, of the criminal conduct by Serbian forces against the Kosovo Albanian population in the course of the widespread and systematic attack referred to.

(b) Persecutions committed through murder

1779. The Indictment charges the Accused with persecutions committed through the murder of hundreds of Kosovo Albanian civilians and other persons taking no active part in the hostilities by Serbian forces.<sup>6256</sup>

1780. Earlier in this Judgement, the Chamber has found that the charge of murder as alleged in the Indictment has been established with respect to 10 locations in Kosovo. The Chamber has found that not less than 724 individuals specifically listed in the Schedule to the Judgement were murdered by Serbian forces. In the large majority of cases the victims, including many women and children, were civilians, who were unarmed and not in any way participating in any form of armed

conflict. Some of those killed may have been members of the KLA but, virtually universally, these too were prisoners of the Serbian forces, unarmed and unable to participate in any form of armed conflict at the time they were killed. The evidence of these matters also demonstrates that the offences charged are merely examples, and by no means exhaustive, of the criminal conduct by Serbian forces against the Kosovo Albanian population in the course of the widespread and systematic attack referred to.

1781. In relation to the killings of identified persons charged as murder in the Indictment, and also those that were not specifically named as victims of the charge of murder, the evidence has established that the overwhelming majority of victims were Kosovo Albanians.<sup>6257</sup> The fact that the overwhelming majority of victims were Kosovo Albanians, in and of itself, is telling of the perpetrators' intent to carry out these crimes against members of one ethnic group. Given this, and the overall circumstances, the Chamber finds that the requisite special intent is established.

1782. To the extent that the Indictment identifies in a Schedule some 840 victims of murder, it is the case that this is not an exhaustive statement of the murders committed, but rather reflects an attempt to name those victims, in specific locations, that have been identified. Other victims not named in the Indictment have been identified in the evidence and included in the Victims Charts annexed to this Judgement. They too are of Kosovo Albanian ethnicity. While that also appears to be the case for many unknown victims of murders, there is no absolute certainty as the identity of the victims is unknown.<sup>6258</sup>

1783. In relation to some of these killings, there is additional specific evidence of discriminatory remarks, conduct and demands by Serbian forces in connection with the killings of these Kosovo Albanians. The Chamber is satisfied that these remarks, conduct and demands, as detailed below, further confirm that the perpetrators acted deliberately and with the intent to direct their acts against Kosovo Albanians when committing the offences charged in the Indictment. Below are examples of the discriminatory remarks, conduct and demands and orders prior to killings of Kosovo Albanians.

1784. In Orahovac/Rahovec, during the events in Pusto Selo/Pastasellë on 31 March 1999, described earlier in this Judgement, the men were ordered to sit down "as you do in the mosque", remove their caps and "look down at the soil of Serbia".<sup>6259</sup> Following this the men were killed.

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<sup>6256</sup> Indictment, para 77(b).

<sup>6257</sup> The Chamber has relied upon the OMPF Missing Persons List that details, amongst other things, the name and ethnicity of persons missing or killed during the war in Kosovo, *see*, Exhibit P477.

<sup>6258</sup> *See supra*, paras 538-547, 751-764.

<sup>6259</sup> *See supra*, paras 538-547.



1785. In the events leading to the killings of a large number of people in the pizzeria in Suva Reka/Suharekë town on 25 March 1999, members of the MUP also yelled that they were going to kill all the Albanians.<sup>6260</sup>

1786. In Izbica/Izbicë, in Srbica/Skenderaj municipality on 28 March 1999, Kosovo Albanian men were ordered to take off their traditional *plis* hats and throw them on the ground. The men were then told that they would be slaughtered. Following the killing of not less than 132 men, a survivor heard a member of the Serbian forces state “Let’s go, our work is over”.<sup>6261</sup>

1787. The conduct of MUP forces in the Ćerim/Qerim neighbourhood in Đakovica/Gjakovë on 1-2 April 1999 is one of many that confirms that Kosovo Albanians were not sought out because they were KLA fighters, which is what police said they were doing. These forces shot Kosovo Albanian women and children in the room of a house and then set the house on fire.<sup>6262</sup> 13 children and six women were killed during this incident.<sup>6263</sup>

1788. In the municipality of Đakovica/Gjakovë, not less than 296 individuals were killed on 27 and 28 April 1999. Prior to some of the killings the Kosovo Albanians were forced to sing Serbian nationalistic songs.<sup>6264</sup>

1789. In Podujevo/Podujevë, before the shootings, MUP forces demanded that the men who had been gathered in the compound of Selmon Gashi remove their traditional *plis* Albanian headgear and the women were ordered to take off their headscarves.<sup>6265</sup>

1790. The Chamber is satisfied that the offence of persecutions by murder of hundreds of Kosovo Albanian civilians and other persons taking no active part in the hostilities by Serbian forces has been established.

(c) Persecutions committed through sexual assault

1791. The Chamber has established earlier that on 21 May 1999, a young Kosovo Albanian woman was taken from her home in the municipality of Priština/Prishtinë by policemen to a hotel, physically assaulted, and then raped in a hotel by one of them.<sup>6266</sup> The Chamber is in no doubt that the victim was subjected to sexual intercourse, that she did not consent and that the policeman knew

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<sup>6260</sup> See *supra*, paras 675-676.

<sup>6261</sup> See *supra*, paras 618, 621-622, 633.

<sup>6262</sup> See *supra*, paras 886-887.

<sup>6263</sup> See *supra*, para 889.

<sup>6264</sup> See *supra*, para 969.

<sup>6265</sup> See *supra*, para 1243.

<sup>6266</sup> See *supra*, paras 833-836.

that she did not consent. Therefore, the Chamber finds that her right to physical integrity was violated and that the legal requirements of the crime of sexual assault are satisfied.

1792. The Chamber has heard evidence that sometime in April 1999 a Kosovo Albanian girl who was travelling in a convoy to Priština/Prishtinë was taken off a tractor and taken to the woods by men, including a policeman. The girl was heard from the convoy screaming and crying and when she was brought back to the convoy she was flushed from crying and appeared naked under the blanket that was wrapped around her body. There is no further evidence as to this incident. In the circumstances, the Chamber cannot make a finding that this sexual assault has been established.<sup>6267</sup>

1793. The Chamber has found that a young Kosovo Albanian woman was subjected to multiple rapes by VJ soldiers while police stood guard, in the night of 29/30 March 1999 in the village of Beleg in Dečani/Deçan municipality.<sup>6268</sup> The Chamber is satisfied that the offence of sexual assault has been established.

1794. The Chamber also heard that other young Kosovo Albanian women were selected and taken away by soldiers, for lengthy periods of time throughout the night of 29/30 March 1999 in Beleg. When the young women were brought back, they were crying and had dishevelled hair. One of them was heard telling her mother that she had been raped.<sup>6269</sup> No further evidence has been presented. In the absence of further evidence the Chamber is unable to make a finding that these two women were subjected to sexual assault.

1795. In addition to the allegations about sexual assault in the municipalities of Priština/Prishtinë and Dečani/Deçan, the Indictment also contains allegations of sexual assaults in Srbica/Skenderaj municipality and Prizren municipality. No evidence to support these allegations has been presented. The allegations of sexual assault in Srbica/Skenderaj and Prizren municipalities have not been proven.

1796. The charge of sexual assault as a form of persecution requires the Prosecution to prove that the perpetrators acted with the intent to discriminate against Kosovo Albanians as an ethnic group. The Chamber has found that two incidents of sexual assault have been established. No specific evidence has been presented with respect to either of the incidents that the perpetrators acted with intent to discriminate. While the victims in each of these incidents were Kosovo Albanians and the perpetrators were members of the Serbian forces, considering the limited number of incidents relied on to support this underlying act of persecutions, the Chamber finds that the ethnicity of the two

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<sup>6267</sup> See *supra*, para 832.

<sup>6268</sup> See *supra*, paras 1150-1151.

<sup>6269</sup> See *supra*, para 1152.

victims alone is not a sufficient basis to establish that the perpetrators acted with discriminatory intent.

1797. In the Chamber's finding the offence of persecutions committed through sexual assault has not been established.

(d) Persecutions committed through wanton destruction or damage of Kosovo Albanian religious sites

1798. In support of the charge of persecutions the Indictment also alleges that during and after the attacks on towns and villages, Serbian forces systematically damaged and destroyed cultural monuments and Muslim sacred sites, including the mosques in Vučitrn/Vushtrri, Suva Reka/Suharekë, Celina/Celinë, Rogovo/Rogovë, Bela Crkva/Bellacërkë, Cirez/Çirez, Kotlina/Kotlinë, Ivaja/Ivajë, Mitrovica/Mitrovicë, Vlačica/Llashticë, Landovica/Landovicë, and Đakovica/Gjakovë.<sup>6270</sup>

1799. The Prosecution's expert witness on religious and cultural sites is András Riedlmayer. Riedlmayer has been director of the Documentation Centre for Islamic Art and Architecture of the Aga Khan Program at Harvard University's Fine Arts Library since 1985.<sup>6271</sup> He has worked and published extensively on the Ottoman Empire and Islamic culture, which are his academic specialties.<sup>6272</sup> He has been studying the Balkans for over three decades and throughout the 1990s, he specifically studied the destruction of cultural property in the conflicts in Croatia and Bosnia and Herzegovina.<sup>6273</sup> He has written many papers and articles about the Balkans and about the destruction of cultural heritage.<sup>6274</sup>

1800. Riedlmayer carried out a survey of the wartime damage to the cultural and religious heritage in Kosovo covering the period from the spring of 1999 until June 1999 for this Tribunal.<sup>6275</sup> The survey provides a description of the condition of buildings, the likely cause of damage and the patterns of destruction.<sup>6276</sup> Riedlmayer enlisted an architect, Andrew Herscher, to collaborate in the survey. Mr Herscher had previous experience in on the restoration of buildings in Mostar, in Bosnia and Herzegovina, after the war which ended in 1995.<sup>6277</sup>

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<sup>6270</sup> Indictment, para 77(d).

<sup>6271</sup> András Riedlmayer, T 7484, T 7557-7565; Exhibits P1097; P1098, p 11.

<sup>6272</sup> Exhibit P1097.

<sup>6273</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5413.

<sup>6274</sup> Exhibit P1097, p 2.

<sup>6275</sup> András Riedlmayer, T 7496.

<sup>6276</sup> András Riedlmayer, T 7584.

<sup>6277</sup> András Riedlmayer, T 7566; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5415, 5620.

1801. The Defence objects that Riedlmayer is not an expert in military matters and so could not determine the cause of damage to buildings.<sup>6278</sup> Riedlmayer acknowledged that he had no such specific expertise but countered, in the Chamber's view most persuasively, that he has a wide range of experience in assessing damaged buildings so that, in certain cases, he was able to determine the cause of damage.

1802. Riedlmayer, however, did not visit all the sites the subject of allegations in paragraph 77(d) of the Indictment. In such cases he relied on a range of secondary sources to assess the damage and its cause, including photographs and a database provided by the "International Management Group" which is an expert group in the identification and assessment of damage to buildings.

1803. The Chamber finds that while Riedlmayer's report and evidence are of obvious assistance to the determination of the scope of the damage to religious and cultural buildings, it is only of assistance in identifying the cause of the damage in some cases. The Chamber, therefore, will consider the weight to be given to Riedlmayer's evidence on a case by case basis.

(i) Orahovac/Rahovec municipality

1804. The Chamber has found earlier that on or about 28 March 1999, police wearing blue camouflage uniforms arrived at the mosque in Celina/Celinë in an APC and stayed inside for about an hour.<sup>6279</sup> After they left, there was a loud explosion and the mosque was blown up.<sup>6280</sup> This was confirmed by another witness who, that evening, saw that the mosque had been completely destroyed.<sup>6281</sup> In the Chamber's finding the destruction of the mosque in Celina/Celinë on 28 March 1999 was by explosives detonated by members of the MUP.

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<sup>6278</sup> Defence Final Brief, para 976.

<sup>6279</sup> Sabri Popaj, in his original witness statement said that the mosque was blown up in April, on the day the police returned and buried bodies, Sabri Popaj, Exhibit P1082, p 11. In *Milutinović*, the witness explained that the original date given was incorrect and the mosque was actually blown up on the same day as the other mosques in Bela Crkva/Bellacërkë and Rogovo/Rogovë, Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650, 5678-5682. It was suggested to the witness in this case that Agim Jemini had testified that the mosque was blown up on 30 or 31 March 1999, Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4241-4242; Exhibit P638; Agim Jemini, T 3543-3544. Sabri Popaj explained that this was not correct and that Agim Jemini had not seen the mosque explosion as he was hiding, Sabri Popaj, T 7417-7418, 7422. The Chamber prefers the date given by Sabri Popaj as he actually viewed the destruction of the mosque and the forces involved in the village of Celina/Celinë. The Chamber finds the mosque was destroyed by explosives on 28 March 1999.

<sup>6280</sup> Sabri Popaj, Exhibit P1082, p 11; Sabri Popaj, Exhibit 1083 (*Milutinović* transcript), T 5678-5681; Exhibit P1089 (photo of mosque with markings indicating where minaret was before the explosion); Exhibit P1090 (photo of mosque with markings indicating where minaret was before the explosion); Sabri Popaj, T 7417-7418, 7422; Exhibit P634 (pre-war photo of the mosque in Celina/Celinë that identifies the minaret); Exhibit P638; Agim Jemini, T 3542, 3544.

<sup>6281</sup> Reshit Salihi also testified that when he returned from Albania he saw that the mosque in the village had been destroyed, Agim Jemini, Exhibit P637 (*Milutinović* transcript), T 4241-4242; Exhibit P638; Agim Jemini, T 3543-3544; Reshit Salihi, Exhibit P633 (*Milutinović* transcript), T 4208-4209; Reshit Salihi, T 3464-3465, 3468-3469.

1805. András Riedlmayer reported that the mosque in Celina/Celinë was “completely destroyed”.<sup>6282</sup> András Riedlmayer did not visit the Celina/Celinë mosque in person. His assessment is based on statements of informants as well as a comparison of pre-war and post-war photographs of the mosque.<sup>6283</sup> In this case the Chamber is satisfied of the destruction of the mosque by Serbian forces by the evidence other than that of András Riedlmayer.

1806. The Chamber has also found that on or about 28 March 1999, a loud explosion coming from Bela Crkva/Bellacërkë was heard, following which the mosque in the village was no longer standing.<sup>6284</sup> Serbian forces had arrived in the village on 25 March 1999 and were still present in Bela Crkva/Bellacërkë on 28 March 1999, while the local villagers had fled from the area on 25 March 1999.<sup>6285</sup>

1807. Having reviewed photographs taken pre-war and post-war, András Riedlmayer concluded from the damage depicted, that the mosque had been shelled, that the minaret had been destroyed by explosives and that the interior of the mosque had been burnt out.<sup>6286</sup> He classified this mosque as “heavily damaged”.<sup>6287</sup>

1808. On the basis of the evidence of the nature of the destruction and its findings made in Chapter VI, the Chamber is satisfied that the Bela Crkva/Bellacërkë mosque was substantially destroyed on or about 28 March 1999 by Serbian forces.

1809. The Defence argues that on 25 March 1999 legitimate anti-terrorist activities against KLA were being carried out in Orahovac/Rahovec municipality.<sup>6288</sup> There is no evidence that there were individuals connected to the KLA in Celina/Celinë or in Bela Crkva/Bellacërkë or that, as submitted, there was a KLA stronghold in Bela Crkva/Bellacërkë towards the end of March 1999. Nor is there evidence indicating any military activity against Serbian forces in or around either village. There is no basis in the evidence for a finding that either the mosque in Celina/Celinë or the mosque in Bela Crkva/Bellacërkë was a legitimate military objective at the respective times of their destruction.

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<sup>6282</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5466-5467; Exhibits P1114; Exhibit P1137, p 76.

<sup>6283</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5463-5466.

<sup>6284</sup> Sabri Popaj states that the Rogovo/Rogovë mosque was also blown up on 28 March 1999. This allegation is dealt with in the Đakovica/Gjakovë municipality, Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5729-5730, 5650.

<sup>6285</sup> Exhibit P1317, p 1.

<sup>6286</sup> András Riedlmayer, T 7528-7529; Exhibit P1118; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5424, 5473, 5563.

<sup>6287</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5473; Exhibit P1137.

<sup>6288</sup> Defence Final Brief, paras 734-735.

1810. The Chamber concludes that both mosques were the subject of a separate and deliberate attack which caused extensive damage. No specific reason for either attack is suggested by the evidence. The Chamber, therefore, is assisted by other events in these villages at the time. Both villages had been subjected to severe military attack by Serbian forces at the relevant time. There had been serious and deliberate destruction of property by Serbian forces. The attacks on each village were directed against the inhabitants. In each village the inhabitants were Kosovo Albanians. The attackers were Serbian forces. There is a religious divide between most Kosovo Albanians who are Muslim, and most Serbs, who are not. In each village the mosque was a centre of religious significance for the inhabitants and a place of social and cultural importance. The mosques were destroyed, *inter alia*, by the use of significant explosives or shelling, both of which were available to Serbian forces. In the circumstances the Chamber is persuaded and finds that the mosques in Celina/Celinë and Bela Crkva/Bellacërkë were destroyed by elements of the Serbian forces, and were destroyed because of their religious and cultural significance to the Kosovo Albanian inhabitants of the villages.

1811. In the Chamber's finding, the elements of the offence of persecutions by destruction of cultural property with respect to the mosques in Celina/Celinë and Bela Crkva/Bellacërkë have been established.

1812. Evidence has been tendered in support of the destruction of the 16<sup>th</sup> century mosque in Brestovac/Brestoc and the mosque in Velika Kruša/Krushë-e-Madhe. In both cases, evidence about destruction was given by the Prosecution's expert witness, Andrés Riedlmayer. He classified the mosque in Brestovac/Brestoc on the basis of photographs as "almost destroyed".<sup>6289</sup> The Chamber accepts, as Riedlmayer testified, that the mosque was completely burnt, that it no longer had a roof and that the minaret had been destroyed above its balcony.<sup>6290</sup> Members of the Islamic community had provided information to Riedlmayer, which was included in the witness's report, that the mosque was destroyed on 25 March 1999.<sup>6291</sup>

1813. Andrés Riedlmayer's report describes the Xhamia-e-Bajramcurrajt Mosque, in the village of Velika Kruša/Krushë-e-Madhe, as "heavily damaged".<sup>6292</sup> He did not visit the mosque, but from photographs provided to him he observed that the minaret and the mosque were destroyed by a blast

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<sup>6289</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5481; Exhibit P1137, p 3; Andrés Riedlmayer, T 7541; Exhibits P1130; P1129.

<sup>6290</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5481; Andrés Riedlmayer, T 7541; Exhibits P1137, p 3; P1130; P1129.

<sup>6291</sup> Andrés Riedlmayer, T 7542; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5481; Exhibits P1137, p 3; P1130; P1129; P1098, p 32.

<sup>6292</sup> Exhibits P1137, pp 4-5; P1127, p 1; P1098, p 35; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5482.

and that the interior had been vandalised and partially burnt.<sup>6293</sup> There is no direct evidence of the destruction of either of these two mosques, however it was said by Albanian human rights groups that the mosques were burnt by Serbian soldiers.<sup>6294</sup>

1814. While the Chamber accepts that the Brestovac/Brestoc and the Xhamia-e-Bajramcurrajt Mosques were substantially damaged, there is no satisfactory evidence that the damage to either mosque was inflicted by Serbian forces, or that at the relevant time the mosques were not being used for military purposes. The offence of destruction of religious property with respect to the mosques in Brestovac/Brestoc and Velika Kruša/Krushë-e-Madhe has not been established.

(ii) Srbica/Skenderaj municipality

1815. The only evidence on the destruction of the 20<sup>th</sup> century mosque in the village of Cirez/Çirez, located in Srbica/Skenderaj municipality, was given by Andrés Riedlmayer.<sup>6295</sup> He did not visit Cirez/Çirez but based his assessment of the damage sustained on what was said to be pre-war and post-war photographs provided by a witness.<sup>6296</sup> Andrés Riedlmayer observed that only some identifiable parts of the structure standing above the ground remained and described the building as “almost destroyed”.<sup>6297</sup> While the “pre-war” photograph depicts a two level building, the “post-war” photographs shows a one level building. Riedlmayer confirmed that the top level had collapsed onto the ground level. The three roof domes are relatively intact.<sup>6298</sup> While Riedlmayer considered that this damage was due to an extensive blast, he could not determine whether the damage was caused by shelling, or by explosives placed within the mosque’s structure,<sup>6299</sup> and he could not describe when this damage occurred or the circumstances in which the destruction happened.

1816. The Chamber is unable to make a finding about the cause of the destruction of the mosque in Cirez/Çirez or who caused it. Nor does the evidence enable a conclusion to be reached whether the mosque was used for a military purpose. The offence of destruction of religious property with respect to the mosque in Cirez/Çirez has not been established.

(iii) Prizren municipality

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<sup>6293</sup> Andrés Riedlmayer, T 7540; Exhibits P1127, p 1; Exhibit P1098, pp 35-36; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5482-5483, 5567.

<sup>6294</sup> Exhibits P1098; P1127.

<sup>6295</sup> Exhibit P1137.

<sup>6296</sup> Andrés Riedlmayer, T 7544-7546, 7636; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5473, 5476-5477.

<sup>6297</sup> Andrés Riedlmayer, T 7544-7546; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5425-5426; Exhibit P1133.

1817. The Chamber has found earlier that on 26 March the village of Landovica/Landovicë was shelled by the VJ which caused the population to flee. Following the shelling, Serbian forces entered the village setting houses on fire. One witness saw that the mosque was also burning.<sup>6300</sup> On the following day, 27 March 1999, the same witness observed that approximately 20 to 30 VJ soldiers arrived in Landovica/Landovicë. Some of the soldiers went into the mosque, where they remained for a short time.<sup>6301</sup> They carried in something which the witness could not see.<sup>6302</sup> After they left, a loud explosion was heard and the minaret of the mosque collapsed over the mosque's roof and destroyed it.<sup>6303</sup> The evidence of this witness was received pursuant to Rule 92*quater*.

1818. András Riedlmayer reported that the Landovica/Landovicë mosque, built in 1997, had been "heavily damaged".<sup>6304</sup> During his inspection Riedlmayer observed that the minaret had been toppled and, when it fell, had left a large hole through the mosque's central dome.<sup>6305</sup> He concluded that the damage was caused by mines and shells and that the mosque was further damaged by fire. Accounts given to Riedlmayer by members of the Islamic community suggested the destruction was on 27 March 1999.<sup>6306</sup>

1819. The Chamber is satisfied that the offence of persecutions by the destruction the mosque in Landovica/Landovicë by Serbian forces has been established. The Chamber is satisfied in particular that Serbian forces were present in the village on 26 and 27 March and at the time had deliberately caused destruction to houses in the village and damage by shelling and burning of houses. In the Chamber's finding the nature of the damage to the mosque and its mechanism, as suggested by András Riedlmayer, is consistent in material respects with the observations of the witness and provides independent confirmation of his account. The Chamber finds that Serbian forces set fire to the interior of the mosque on 26 March 1999 and caused substantial destruction to the minaret and the structure of the mosque by an explosive device on 27 March 1999. There is no basis in the evidence before the Chamber for any view that the mosque may have been used for any military purpose on these days. Given the nature of the damage to the mosque and the circumstances the Chamber is satisfied that the Serbian forces who were responsible for the damage had the necessary intention.

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<sup>6298</sup> András Riedlmayer, T 7544-7546; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5473, 5476-5477; Exhibits P1132; P1133; P1134; András Riedlmayer, T 7634, 7543-7545, 7547-7550.

<sup>6299</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5473, 5476-5477.

<sup>6300</sup> Halil Morina, Exhibit P283, p 3.

<sup>6301</sup> Halil Morina, Exhibit P283, p 4; Halil Morina, Exhibit P284 (*Milošević* transcript), T 896-897.

<sup>6302</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 897.

<sup>6303</sup> Halil Morina, Exhibit P284 (*Milošević* transcript), T 897; Halil Morina, Exhibit P283, p 4.

<sup>6304</sup> András Riedlmayer, Exhibit P1124.

<sup>6305</sup> András Riedlmayer, Exhibit P1124.

<sup>6306</sup> András Riedlmayer, Exhibit P1124.



(iv) Suva Reka/Suharekë municipality

1820. The Chamber has found earlier that around noon on 28 March 1999 an explosion coming from the mosque in Suva Reka/Suharekë town was heard, and at the site of the explosion the minaret of the mosque was destroyed.<sup>6307</sup> A few minutes after the explosion, a green and olive camouflage Gazik Serbian army vehicle drove away from the vicinity of the mosque in the direction of the military base in Birač/Biraq.<sup>6308</sup> The mosque is identified elsewhere in the evidence as the Xhamia-e-Bardhe Mosque (White Mosque).

1821. Andrés Riedlmayer concluded from his examination of the structure that the minaret of the Xhamia-e-Bardhe Mosque was blown away by a blast from the inside of the building.<sup>6309</sup> This in turn caused damage to the mosque's domes and wall.<sup>6310</sup> The Chamber accepts Riedlmayer's evidence.

1822. Another witness, 6D2, testified that the mosque and its minaret were damaged by NATO bombing.<sup>6311</sup> This, however, is not supported by any other evidence and is contrary to evidence the Chamber accepts. The Chamber has already made clear that it is not persuaded of the truthfulness of 6D2 and that it will accept his evidence only when it is corroborated by other evidence. 6D2's evidence with respect to the destruction of the mosque in Suva Reka/Suharekë is not confirmed by other evidence. It contradicts the evidence of Halit Berisha, an eyewitness to the events, whom the Chamber finds to be a reliable witness. 6D2's evidence is also contradicted by the opinion of Andrés Riedlmayer, that the damage was caused by a blast coming from the inside of the building, which the Chamber accepts is not consistent with damage caused by aerial bombing. The evidence of 6D2 with respect to the destruction of the mosque in Suva Reka/Suharekë is not accepted.

1823. In the Chamber's finding, the mosque in Suva Reka/Suharekë was destroyed by Serbian forces, apparently the VJ. This finding is based on the presence of VJ forces in Suva Reka/Suharekë town on or about 27 March 1999,<sup>6312</sup> and on the account of an eyewitness who described a military vehicle leaving the area of the mosque immediately before the destructive

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<sup>6307</sup> Halit Berisha, T 3387-3389, 3416; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3608-3609, 3614-3615; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7456; Exhibit P613, marking "H" to indicate the location of the mosque; Exhibit P614. See also Hysni Berisha, Exhibit P586, p 2.

<sup>6308</sup> Halit Berisha, T 3387-3388, 3420; Halit Berisha, Exhibit P599 (*Milutinović* transcript), T 3615-3616, 3661, 3666-3667; Halit Berisha, Exhibit P600 (*Milošević* transcript), T 7456.

<sup>6309</sup> Andrés Riedlmayer, T 7519-7521, 7644; see also Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5461-5462; Exhibits P1098, pp 44-46; P1111, pp 1-2.

<sup>6310</sup> Andrés Riedlmayer, T 7519-7521, 7644; see also Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5461-5462; Exhibits P1098, pp 44-46; P1111, pp 1-2.

<sup>6311</sup> 6D2, T 12307-12308.

<sup>6312</sup> See *supra*, para 690.

explosion. The Chamber accepts that cause and nature of the damage demonstrate that the perpetrators acted with the requisite intent.

1824. Nothing in the evidence suggests that either the mosque or its minaret was being used for any military purpose at the time it was damaged, or that there were even KLA forces in the area.

1825. In the Chamber's finding, the offence of persecutions by the destruction of religious property with respect to the destruction of the Xhamia-e-Bardhe Mosque (the White Mosque) has been established.

(v) Kosovska Mitrovica/Mitrovicë municipality

1826. Mahmut Halimi testified that when he returned to Kosovska Mitrovica/Mitrovicë on 11 July 1999, he observed that all four mosques in Kosovska Mitrovica/Mitrovicë town had been destroyed. He heard from people who had stayed in the town that Serbian forces had destroyed all four mosques<sup>6313</sup> and he believed the mosques were destroyed during the war sometime after 25 March 1999.<sup>6314</sup>

1827. Andrés Riedlmayer confirmed that the Ibar Mosque in Kosovska Mitrovica/Mitrovicë and the adjoining buildings owned by the Islamic community had been completely destroyed in 1999.<sup>6315</sup> Andrés Riedlmayer was unable to draw any conclusion as to how the damage was inflicted.<sup>6316</sup> He had heard that the mosque had been destroyed by bombs, which hit and destroyed the nearby police headquarters. He also heard conflicting accounts that the mosque had been looted, burned and bulldozed in May 1999.<sup>6317</sup>

1828. No specific evidence with respect to the destruction of mosques in Kosovska Mitrovica/Mitrovicë has been presented.

1829. In the circumstances the Chamber is unable to establish how the mosques were destroyed, by which forces, or whether they were used for military purpose. The offence of persecutions by destruction of religious property with respect to Kosovska Mitrovica/Mitrovicë has not been established.

(vi) Đakovica/Gjakovë municipality

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<sup>6313</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4461.

<sup>6314</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4461; Mahmut Halimi, T 2907-2908.

<sup>6315</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5485-5486; Exhibits P1121; P1122, p 2; P1137, p 9.

<sup>6316</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5484-5486.

<sup>6317</sup> Andrés Riedlmayer, T 7536; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5484-5486.

a. Hadum Mosque and adjoining Islamic library

1830. Earlier in this Judgement the Chamber was satisfied that in the night of 24/25 March 1999 the historic centre of Đakovica/Gjakovë town was deliberately set on fire by Serbian police, possibly working together with paramilitaries. The fire caused extensive destruction to the historical centre of the town. Shops in the bazaar and in the historic quarter were entirely burnt, houses were burnt and damaged by bullet holes. On the following morning witnesses observed that the minaret of the Hadum Mosque located in the historic centre of Đakovica/Gjakovë had been “snapped”, the top was lying on the ground and the external walls of the mosque were damaged. The Chamber is satisfied that in the night of 24/25 March 1999 the Hadum Mosque in the historic centre of Đakovice/Gjakovë sustained heavy damage.

1831. Earlier in this Judgement, the Chamber has rejected a submission by the Defence that the damage to the Hadum Mosque was caused by NATO bombing. In reaching this conclusion the Chamber relied on documentary evidence regarding the events in the night of 24/25 March, on eyewitnesses’ accounts and evidence establishing that the damage sustained by the mosque and nearby buildings is inconsistent with damage caused by aerial bombing. The Chamber has also found earlier in the Judgement that the fire in the historic centre of Đakovica/Gjakovë has been set by Serbian police forces, possibly working together with paramilitaries. The Chamber infers from these circumstances and finds that the damage to the Hadum Mosque in the night of 24/25 March was caused by Serbian police, possibly acting together with paramilitary forces. The evidence does not suggest that at the time when it was damaged the Hadum Mosque was being used for military purposes or that in its immediate vicinity there were military objectives. The Chamber infers from the evidence and finds that the Hadum Mosque was damaged deliberately by Serbian police, possibly working together with Serbian paramilitary forces, who acted with the required intent.

1832. The Chamber is satisfied that the charge of persecutions committed by the destruction by Serbian forces of the Hadum Mosque and the adjoining Islamic Library in the historic centre of Đakovica/Gjakovë in the night of 24/25 March 1999 has been established.

b. Rogovo/ Rogovë mosque

1833. On 28 March 1999<sup>6318</sup> Sabri Popaj was standing in his field which is on the side of a mountain. With him was another villager Nazim Rexhepi. From the position where he stood Sabri Popaj could see three villages which were close by. The villages were Celina/Celinë, Bela

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<sup>6318</sup> Sabri Popaj, Exhibit P1082, p 15; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5681; Exhibit P1098, p 59. While Sabri Popaj was not certain of the date other evidence confirms it was 28 March 1999.

Crkva/Bellacërkë, both in Orahovac/Rahovec municipality, and Rogovo/Rogovë in Đakovica/Gjakovë municipality.<sup>6319</sup> As the Chamber has found earlier in this Judgement<sup>6320</sup> at about 1500 hours on this day, Sabri Popaj saw police arrive at the mosque in Celina/Celinë in an APC. They went inside the mosque, then left.<sup>6321</sup> Then there was an explosion and the mosque was blown up. Some time after this he heard another explosion and saw that the mosque in Bela Crkva/Bellacërkë was no longer standing.<sup>6322</sup> The minaret had been destroyed by explosion. Sabri Popaj then heard and saw the mosque in Rogovo/Rogovë explode.<sup>6323</sup> This was a 16<sup>th</sup> century mosque (the Mosque of Kel Hasan Aga or Xhamia e Hasan Ages).<sup>6324</sup>

1834. The Chamber has already in this section recorded its findings that Serbian forces had destroyed the mosques in Celina/Celinë and Bela Crkva/Bellacërkë. Serbian forces had arrived in the area on 25 March 1999 and were still present. Local villagers had fled from the area on 25 March. While there is evidence that KLA had been in the area the evidence does not indicate they were still active in the area on 28 March 1999. While the village of Rogovo/Rogovë was in a different municipality, the three villages were in close proximity to one another.

1835. The destruction of the mosque in Rogovo/Rogovë was documented by András Riedlmayer in his report. He concluded that the minaret had been blown up with charges placed under the stairs, causing its complete destruction, and that the falling minaret had damaged the main dome of the mosque and smashed a large section of the portico roof.<sup>6325</sup> The exterior walls and dome were cracked in several places but remained standing.<sup>6326</sup> In the Chamber's view Riedlmayer's opinion is consistent with the view that explosives had been set inside each of the three mosques. While the Chamber notes that an informant had told Riedlmayer that the damage was caused on 3 April 1999,<sup>6327</sup> the Chamber does not consider a discrepancy about the recollection of a date—a mere few days—to be material to its findings.

1836. In the Chamber's finding, it is significant that the three mosques, each located in villages in close proximity, were destroyed successively, on the same day, and by similar methods. The

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<sup>6319</sup> Celina/Celinë was located a kilometre and a half from Bela Crkva/Bellacërkë and Rogovo/Rogovë was 800 metres further from the Belaja River. In the field Sabri Popaj testified that he was standing on the side of the mountain that allowed him to see Bela Crkva/Bellacërkë, Celina/Celinë and Rogovo/Rogovë. In cross-examination on *Milutinović* one of the Defence counsel raises the issue of whether Sabri Popaj was standing in the field or on the side of the mountain. The witness explains that the mountain was part of his field and that is where he was standing, Sabri Popaj, Exhibit P1082, p 11; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650, 5678-5679, 5729-5730.

<sup>6320</sup> See *supra*, para 528.

<sup>6321</sup> Sabri Popaj, Exhibit P1082, p 15; Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5681.

<sup>6322</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650, 5679, 5729-5730.

<sup>6323</sup> Sabri Popaj, Exhibit P1083 (*Milutinović* transcript), T 5650.

<sup>6324</sup> Exhibit P1098, p 59.

<sup>6325</sup> Exhibit P1098, p 59; Exhibit P1090.

<sup>6326</sup> Exhibit P1098, p 59; Exhibit P1090.

reasoning of the Chamber which is set out earlier in relation to the mosques in Celina/Celinë and Bela Crkva/Bellacërkë, in the view of the Chamber applies also in the case of the mosque in Rogovo/Rogovë.<sup>6328</sup> The Chamber finds that the only reasonable inference from the evidence is that the mosque in Rogovo/Rogovë was deliberately severely damaged in the same operation by the same Serbian forces for the same reasons and with the same intention.

1837. In the Chamber's finding, the elements of the offence of persecutions by the destruction of cultural property with respect to the historic mosque in Rogovo/Rogovë by Serbian forces on 28 March 1999 has been established.

(vii) Gnjilane/Gjilan municipality

1838. The Chamber has found that on 6 April 1999 Serbian forces entered the village of Vlaštica/Llashticë, looted and set houses on fire. The mosque in the village was also set on fire by Serbian forces that day. It was heavily damaged and its library destroyed. András Riedlmayer also observed, on the basis of the examination of a photograph provided by the Islamic community, dated August 1999, that the Vlaštica/Llashticë Mosque had been "heavily damaged" by an intense fire.<sup>6329</sup>

1839. It is also the finding of the Chamber, as recorded earlier, that members of the regular and reserve forces of the VJ and the MUP were present in the village of Vlaštica/Llashticë at the time of the events described above.<sup>6330</sup> Considering the evidence that members of these forces burned houses in the village, with the mosque being the first building that was set on fire, the Chamber is satisfied that these forces acted with the intent to destroy the mosque or to cause extensive damage.

1840. There is nothing in the evidence suggesting that the mosque in Vlaštica/Llashticë was used for military purposes or that the KLA were present in the village at the time.

1841. The Chamber finds that the offence of persecutions by the destruction of religious or cultural property has been established with respect to the mosque in Vlaštica/Llashticë.

(viii) Kaçanik/Kaçanik municipality

1842. The Chamber has found earlier that on 8 March 1999, VJ and MUP forces shelled and burnt the village of Ivaja/Ivajë. A few days after the attack, Hazbi Loku visited Ivaja/Ivajë and found the village's mosque burnt and destroyed and the minaret partly destroyed. Most of the houses had

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<sup>6327</sup> Exhibit P1098, pp 59-60.

<sup>6328</sup> See *supra*, paras 1810-1811.

<sup>6329</sup> Exhibit P1125.

either been burnt or knocked down and other buildings were still smouldering.<sup>6331</sup> Andrés Riedlmayer classified the Ivaja/Ivajë mosque, built in 1982, as “almost destroyed”.<sup>6332</sup> He testified that the mosque was burnt. The perimeter walls were still standing but the roof was missing and the interior was shattered.<sup>6333</sup> He also found evidence that shots had been fired at close range damaging the mosque. His report indicates that the mosque was damaged by shooting at close range and subsequently burned by Serbian forces.<sup>6334</sup> Riedlmayer did not visit the site of the mosque and based his conclusions on the examination of photographs and other information he received from “informants” and media reports, in particular Reuter.<sup>6335</sup>

1843. While persuasive evidence has been presented as to the extent of damage, the Chamber has received no evidence as to how this damage was caused. It is important in this respect that as found earlier, KLA were present in the area. The Chamber recalls that on 25 February 1999 the KLA attempted to open a new zone of operations in the Kačanik/Kaçanik area, in response to which on 8 March 1999 the VJ commenced a counter operation. On 8 March 1999, there were KLA forces in Ivaja/Ivajë; these forces were fighting Serbian forces.<sup>6336</sup>

1844. In the circumstances, the Chamber is unable to make a finding as to the circumstances in which the mosque in Ivaja/Ivajë was damaged or to conclude that it was not used for military purposes. The charge of persecutions by destruction of religious property with respect to the mosque in Ivaja/Ivajë has not been established.

1845. The Indictment also alleges the destruction of the mosque in Kotlina/Kotlinë. The Chamber recalls its earlier finding that on 24 March 1999, the VJ entered Kotlina/Kotlinë and prepared to burn houses. Shortly thereafter, the village was set on fire.<sup>6337</sup> The Chamber has found that a school and several houses were burnt.<sup>6338</sup> However, there has been no eye-witness evidence that the mosque was burnt or damaged along with other buildings in Kotlina/Kotlinë or as to the circumstances in which this might have occurred.

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<sup>6330</sup> See *supra*, paras 1054-1055.

<sup>6331</sup> Hazbi Loku, Exhibit P652, p 2; Hazbi Loku, Exhibit P653 (*Milutinović* transcript) T 3209-3210; Hazbi Loku, T 3636-3637, 3671.

<sup>6332</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5478-5479; Exhibit P1135.

<sup>6333</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5478-5479; Exhibits P1135; P1137, p 15.

<sup>6334</sup> Andrés Riedlmayer, T 7551, 7555; Exhibit P1098, p 68; Exhibit P1135, p 1; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5480.

<sup>6335</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5479-5480; Exhibits P1098, p 70; P1135, pp 1, 3.

<sup>6336</sup> Hazbi Loku, Exhibit P652, p 2; Hazbi Loku, Exhibit P653 (*Milutinović* transcript) T 3209-3210; Hazbi Loku, T 3636-3637, 3671.

<sup>6337</sup> Hazbi Loku, Exhibit P652, p 6.

<sup>6338</sup> Hazbi Loku, Exhibit P653 (*Milutinović* transcript), T 3165; Hazbi Loku, Exhibit P658; Hazbi Loku, T 3644-3645.

1846. András Riedlmayer found that the mosque in the village of Kotlina/Kotlinë had been “lightly damaged”. He reported that the interior of the mosque had been “vandalized”.<sup>6339</sup> The Chamber notes that Riedlmayer did not visit the mosque himself and that he relied on the visual evidence provided by the International Management Group, an inter-governmental agency.<sup>6340</sup>

1847. In the circumstances the Chamber is unable to make a finding that the mosque in Kotlina/Kotlinë was destroyed in the way alleged in the Indictment. It has not been shown that the mosque was destroyed by Serbian forces or that it was not then being used for military purposes. The Charge of persecutions by destruction of the mosque in Kotlina/Kotlinë has not been established.

(ix) Vučitrn/Vushtrri municipality

1848. The Chamber has found that on 27 March 1999, in the evening, the old part of Vuçitrn/Vushtrri and the town centre were burnt by Serbian forces. The minaret of the mosque located in the town centre was burnt and fell down. The surrounding buildings belonging to the mosque were also burnt.<sup>6341</sup>

1849. András Riedlmayer reported that this market mosque complex, also known as Charshi Mosque, Xhamia e Carshisë and Tash Xhamia, in the old town centre of Vuçitrn/Vushtrri town, had been “completely destroyed”. The market mosque was built in the 15<sup>th</sup> century and was surrounded by a traditional Albanian goldsmith market.<sup>6342</sup> Riedlmayer reported that while both the mosque and the traditional Albanian goldsmith market were burnt, the more modern buildings surrounding the market area did not show any signs of damage.<sup>6343</sup> The Chamber accepts and finds that this negates aerial bombing of the area as a cause of the damage. The report also indicates that smashed tombstones found on the mosque’s site confirmed deliberate damage to the mosque property and that the mosque’s building had been razed to the ground.<sup>6344</sup> Riedlmayer’s report includes the statement of informants.<sup>6345</sup> Riedlmayer visited the market mosque complex in October 1999 and he took photographs during the visit. The Chamber notes that Riedlmayer’s observations and evidence on the destruction of the market mosque complex is consistent with that of Sabit Kadriu concerning the destruction of buildings in Vuçitrn/Vushtrri town.

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<sup>6339</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5478; András Riedlmayer, Exhibit P1137, p 14.

<sup>6340</sup> Exhibit P1098, p 65; Exhibit P1131.

<sup>6341</sup> Sabit Kadriu, Exhibit P515, p 12. *See supra*, para 1164.

<sup>6342</sup> Exhibit P1103, pp 7-9; András Riedlmayer, T 7499.

<sup>6343</sup> András Riedlmayer, T 7647-7648; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5442, 5573, 5603; Exhibit P1100.

<sup>6344</sup> Exhibits P1103, pp 7-9; P1100; András Riedlmayer, T 7499-7501; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5613.

<sup>6345</sup> Exhibits P1098, p 72; P1103, p 7.

1850. The Chamber is satisfied that the charge of persecutions by destruction of religious property has been established with respect to the market mosque in the town centre of Vučitrn/Vushtrri, the Charshi Mosque. In the Chamber's finding, the mosque was destroyed by Serbian forces on 27 March 1999. There is no suggestion in the evidence that the mosque has been used for military purposes. Considering its findings that Serbian forces burnt many other civilian buildings that evening, the Chamber is satisfied that they acted to destroy or extensively damage the mosque and its surrounding buildings with the required intent.

1851. Andrés Riedlmayer describes the condition of two other mosques in Vučitrn/Vushtrri town, which sustained similar damages. The Gazi Ali-Bey Mosque, also known as Xhamia e Ali-beut, is the oldest mosque in Vučitrn/Vushtrri town and was a protected monument.<sup>6346</sup> The Karamanli Mosque, also known as Xhamia e Karamanlise or Kahramanlar Camii, was built in 1675.<sup>6347</sup> Riedlmayer describes the condition of the mosques as "lightly damaged".<sup>6348</sup> In both cases, the minaret had been sheared off and had collapsed on the mosque's roof.<sup>6349</sup> With regards to the Gazi Ali-Bey Mosque, there are conflicting accounts as to how the minaret was destroyed.<sup>6350</sup> With regards to the Karamanli Mosque, Riedlmayer had been told that on 6 April 1999, Serbs wearing paramilitary uniforms with "Tigers" insignia, shelled the minaret.<sup>6351</sup> In the case of both mosques, informants stated that the tombstones in the mosques' cemetery had been damaged but indicated that this occurred around September 1999.<sup>6352</sup>

1852. The Mosque Xhamia-e-Trimorit/Xhamia-e-Hilivodes, built in 1946, was classified as "heavily damaged". Riedlmayer's report indicates that the mosque had been completely destroyed by fire. According to the Islamic Community, the mosque was burned by Serbian forces in the spring of 1999.<sup>6353</sup>

1853. The Chamber is satisfied that the Gazi Ali-Bey Mosque, the Karamanli Mosque and the Xhami-e-Trimorit Mosque in Vučitrn/Vushtrri town were damaged or destroyed in 1999. However, the Chamber has not received evidence as to the circumstances in which these mosques were damaged or whether they were then being used for military purpose. The offence of persecutions by destruction of religious property has not been established with respect to these mosques.

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<sup>6346</sup> Andrés Riedlmayer, T 7503; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5443-5444.

<sup>6347</sup> Andrés Riedlmayer, T 7503-7504; Exhibit P1103, pp 1-3.

<sup>6348</sup> Exhibit P1103, pp 1-3; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5444; Andrés Riedlmayer, T 7503.

<sup>6349</sup> Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5444-5455; Exhibit P1102.

<sup>6350</sup> Andrés Riedlmayer, T 7503, 7507; Andrés Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5443-5444; Exhibit P1103, pp 4-6.

<sup>6351</sup> Exhibit P1103, pp 1-3; Andrés Riedlmayer, T 7503, 7507.

<sup>6352</sup> Exhibit P1103, pp 1-6.

<sup>6353</sup> Exhibit P1103, p 22.



(x) Conclusion

1854. Hence, the Chamber is satisfied that the offence of persecutions by destruction of the following mosques by Serbian forces has been established: the mosque in Celina/Celinë, the mosque in Bela Crkva/Bellacërkë, the mosque in Landovica/Landovicë, Xhamia-e-Bardhe (White Mosque) in Suva Reka/Suharekë town, Hadum Mosque in Đakovica/Gjakovë, the mosque in Rogovo/Rogovë, the mosque in Vlačica/Llashticë, and the market mosque (Charshi Mosque) in Vuçitër/Vushtrri town.

1855. The Chamber is satisfied further that the destruction of these mosques occurred pursuant to a campaign by Serbian forces, against the Kosovo Albanian population based in particular on religious grounds, which included the systematic damage and destruction of cultural monuments and Muslim sacred sites.

3. Conclusion

1856. The Chamber is satisfied that the offence of persecutions by deportation, forcible transfer, murder, and destruction of religious property has been established as detailed above.

## XII. RESPONSIBILITY

### A. Law

#### 1. Responsibility under Article 7(1)

1857. Article 7(1) of the Statute provides:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

1858. The Appeals Chamber has held that Article 7(1) “covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law.”<sup>6354</sup> However, criminal liability not only attaches to the physical perpetrator of a particular crime but in certain circumstances, it extends to those who participate in and contribute to its commission in various ways.<sup>6355</sup>

#### (a) Committing through participation in a joint criminal enterprise

1859. The Indictment alleges that the Accused Vlastimir Đorđević is individually criminally responsible for the crimes charged through his participation in a joint criminal enterprise (“JCE”).

1860. JCE is a form of “commission” under Article 7(1) of the Statute.<sup>6356</sup> The jurisprudence of the Tribunal has established three categories of JCE. The *actus reus* of a participant in a JCE is common to all three categories.

1861. First, a plurality of persons is required.<sup>6357</sup> It is not necessary to identify by name each of the persons involved; depending on the circumstances of the case, it can be sufficient to refer to categories or groups of persons.<sup>6358</sup> However, such categories or groups must be adequately identified as to avoid vagueness or ambiguity.<sup>6359</sup> They need not be organised in a military, political, or administrative structure.<sup>6360</sup>

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<sup>6354</sup> *Tadić* Appeal Judgement, para 188.

<sup>6355</sup> *Kordić* Trial Judgement, para 373; *Tadić* Appeal Judgement, para 192.

<sup>6356</sup> *Kvočka* Appeal Judgement, paras 79-80; *Tadić* Appeal Judgement, para 188; *Krajišnik* Appeal Judgement, para 662.

<sup>6357</sup> *Vasiljević* Appeal Judgement, para 100.

<sup>6358</sup> *Krajišnik* Appeal Judgement, para 156, citing *Limaj* Appeal Judgement, para 99; *Brdanin* Appeal Judgement, para 430; *Stakić* Appeal Judgement, para 69.

<sup>6359</sup> *Krajišnik* Appeal Judgement, para 157 (finding that the Trial Chamber’s finding that the JCE included a “rank and file consist[ing] of local politicians, military and police commanders, paramilitary leaders, and others” was erroneously unspecific and impermissibly vague, so far as this finding was not further specified by the JCE members individually named in the following paragraph of the Trial Judgement).

<sup>6360</sup> *Tadić* Appeal Judgement, para 227; *Stakić* Appeal Judgement, para 64.

1862. Secondly, the existence of a common plan, design or purpose, which amounts to or involves the commission of a crime provided for in the Statute, must be established.<sup>6361</sup> There is no need for the plan, design or purpose to have been previously arranged or formulated. Nor does JCE liability require an understanding or an agreement between the accused and the principal perpetrator of the crime to commit that particular crime. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a JCE.<sup>6362</sup> The way in which the crime or underlying offence is committed may support an inference that it must have been pursuant to a common plan.<sup>6363</sup> The criminal means of realising the common objective of the JCE can evolve over time; a JCE can come to embrace expanded criminal means, as long as the evidence shows that the JCE members agreed on this expansion of means.<sup>6364</sup> In this respect, it is not necessary to show that the JCE members explicitly agreed to the expansion of criminal means; this agreement may materialise extemporaneously and be inferred from circumstantial evidence.<sup>6365</sup>

1863. Thirdly, the accused must have participated in the common design,<sup>6366</sup> either by participating directly in the commission of the agreed crime itself, or by assisting or contributing to the execution of the common purpose.<sup>6367</sup> The accused's contribution need not be necessary, in a sense of *sine qua non*, to achieve the common criminal purpose;<sup>6368</sup> indeed, the accused's contribution to the common purpose does not even need to be substantial, as a matter of law.<sup>6369</sup> However, the contribution of the accused in the common plan should at least be a significant one,<sup>6370</sup> and not every type of conduct amounts to a sufficiently significant contribution to the common purpose to impute criminal liability to the accused for crimes committed.<sup>6371</sup> What is important is that the conduct contributes to the common purpose, not the nature of the conduct charged.<sup>6372</sup> The accused need merely act or fail to act "in some way [...] directed to the

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<sup>6361</sup> *Tadić* Appeal Judgement, para 227; *Krnjelac* Appeal Judgement, para 31; *Vasiljević* Appeal Judgement para 100. *Kvočka* Appeal Judgement, para 81; *Stakić* Appeal Judgement, para 73; *Brdanin* Appeal Judgement, para 390; *Krajišnik* Appeal Judgement, para 704.

<sup>6362</sup> *Tadić* Appeal Judgement, para 227; *Krnjelac* Appeal Judgement, para 97, *Vasiljević* Appeal Judgement, paras 100, 109; *Brdanin* Appeal Judgement, paras 415, 418.

<sup>6363</sup> *Blagojević* Trial Judgement, para 699; *Brdanin* Trial Judgement, para 262; *Simić* Trial Judgement, para 158; *Krnjelac* Trial Judgement, para 80; *Milutinović* Trial Judgement, Volume I, para 102.

<sup>6364</sup> *Krajišnik* Appeal Judgement, para 163.

<sup>6365</sup> *Krajišnik* Appeal Judgement, para 163.

<sup>6366</sup> *Tadić* Appeal Judgement, paras 196; 202-203; 227-228.

<sup>6367</sup> *Tadić* Appeal Judgement, para 227.

<sup>6368</sup> *Kvočka* Appeal Judgement, para 98.

<sup>6369</sup> *Kvočka* Appeal Judgement, para 97; *Krajišnik* Appeal Judgement, para 675.

<sup>6370</sup> *Brdanin* Appeal Judgement, para 430; *Krajišnik* Appeal Judgement, para 675.

<sup>6371</sup> *Brdanin* Appeal Judgement, para 427.

<sup>6372</sup> *Krajišnik* Appeal Judgement, para 696.

furtherance of the common plan or purpose.”<sup>6373</sup> An omission may lead to responsibility under Article 7(1), where there is a legal duty to act.<sup>6374</sup> The presence of the participant in the JCE at the time the crime is committed by the principal offender is not required.<sup>6375</sup>

1864. As to the *mens rea*, the requirements of the three categories of JCE differ. In the first, basic type of JCE the accused intends to perpetrate a crime and this intent is shared by all co-perpetrators.<sup>6376</sup> Intent may, in certain circumstances, be inferred from knowledge combined with continuing participation.<sup>6377</sup> In the second type, not charged in the present case, embracing the so-called “concentration camp” cases, or systemic JCE, the accused has knowledge of the system of repression, in the enforcement of which he participates, and the intent to further the common concerted design to ill-treat the inmates of a concentration camp.<sup>6378</sup>

1865. The third type concerns cases in which one of the participants commits a crime outside the common design. The *mens rea* in such cases is twofold. First, the accused must have the intention to take part in and contribute to the common criminal purpose. Secondly, in order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused must also know that such a crime might be perpetrated by a member of the group or a person used by a member of the group, and willingly take that risk by joining or continuing to participate in the enterprise.<sup>6379</sup> It is not sufficient that an accused created the conditions making the commission of a crime falling outside the common purpose possible.<sup>6380</sup> Whether the crimes committed outside the common purpose of the JCE were “a natural and foreseeable consequence thereof” must be assessed in relation to the knowledge of a particular accused, *i.e.* the Prosecution must prove that the accused had sufficient knowledge that the additional crimes were a natural and foreseeable consequence.<sup>6381</sup> In other words, it has to be reasonably foreseeable on the basis of the information available to the accused that the crime or underlying offence would be committed.<sup>6382</sup>

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<sup>6373</sup> *Tadić* Appeal Judgement, para 229; see also *Kvočka* Appeal Judgement, para 187 (clarifying that the requisite contribution can be performed by either an act or an omission); *Brdanin* Appeal Judgement, para 427; *Milutinović* Trial Judgement, Volume I, para 103.

<sup>6374</sup> *Galić* Appeal Judgement, para 175. See also *Milutinović* Trial Judgement, Volume I, para 103.

<sup>6375</sup> *Krnojelac* Appeal Judgement, para 81.

<sup>6376</sup> *Tadić* Appeal Judgement, paras 220, 228.

<sup>6377</sup> *Krajišnik* Appeal Judgement, para 697.

<sup>6378</sup> *Tadić* Appeal Judgement, paras 202-203; 227-228.

<sup>6379</sup> *Tadić* Appeal Judgement, paras 204; 227-228; *Kvočka* Appeal Judgement, para 83.

<sup>6380</sup> *Martić* Appeal Judgement, para 83.

<sup>6381</sup> *Kvočka* Appeal Judgement, para 86.

<sup>6382</sup> *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Interlocutory Appeal, 19 March 2004, para 5; *Martić* Appeal Judgement, para 83; *Milutinović* Trial Judgement, Volume I, para 111.

1866. The perpetrators carrying out the *actus reus* of the crimes set out in the indictment do not have to be members of the JCE. What matters in such cases is whether the crime in question forms part of the common purpose<sup>6383</sup> and whether at least one member of the JCE used the perpetrators acting in accordance with the common plan.<sup>6384</sup> Such a link is established by a showing that the JCE member used the non-JCE member to commit a crime pursuant to the common criminal purpose of the JCE.<sup>6385</sup> Factors indicative of such a link include evidence that the JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit the crime.<sup>6386</sup> In this respect, when a member of the JCE uses a person outside the JCE to carry out the *actus reus* of a crime, the fact that this person knows of the existence of the JCE, *i.e.* of the common purpose, may be a factor taken into consideration when determining whether the crime forms part of the common criminal purpose.<sup>6387</sup> However, it is not determinative whether the non-JCE member shared the *mens rea* of the JCE member or that he knew of the existence of the JCE; what matters is whether the JCE member used the non-JCE member to commit the *actus reus* of the crime forming part of the common purpose.<sup>6388</sup>

1867. When the direct perpetrator commits a crime beyond the common purpose of the JCE, but which is its natural and foreseeable consequence,<sup>6389</sup> the accused may be found responsible if he participated in the common criminal purpose with the requisite intent and if, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.<sup>6390</sup>

1868. The establishment of a link between the crimes in question and a member of the JCE is a matter to be assessed on a case-by-case basis.<sup>6391</sup> In order to convict a member of a JCE for crimes committed by non-members of the JCE, a Trial Chamber must be satisfied beyond reasonable doubt that the commission of the crimes by non-members of the JCE formed part of a common criminal purpose (first category of JCE), or of an organised criminal system (second category of JCE), or

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<sup>6383</sup> *Brdanin* Appeal Judgement, paras 410, 418; *Martić* Appeal Judgement, para 82.

<sup>6384</sup> *Brdanin* Appeal Judgement, paras 413, 430; *Martić* Appeal Judgement, para 168.

<sup>6385</sup> *Krajišnik* Appeal Judgement, para 225, citing *Brdanin* Appeal Judgement, paras 413 and *Limaj* Appeal Judgement, para 120.

<sup>6386</sup> *Krajišnik* Appeal Judgement, para 226.

<sup>6387</sup> *Brdanin* Appeal Judgement, para 410.

<sup>6388</sup> *Krajišnik* Appeal Judgement, para 226.

<sup>6389</sup> *Brdanin* Appeal Judgement, paras 413, 431.

<sup>6390</sup> *Brdanin* Appeal Judgement, para 411.

<sup>6391</sup> *Brdanin* Appeal Judgement, para 411; *Martić* Appeal Judgement, para 169; *Krajišnik* Appeal Chamber, para 226.

were a natural and foreseeable consequence of a common criminal purpose (third category of JCE).<sup>6392</sup>

(b) Planning

1869. The *actus reus* of “planning” requires that one or more persons plan or design, at both the preparatory and execution phases, the criminal conduct constituting one or more crimes, provided for in the Statute, which are later perpetrated.<sup>6393</sup> Such planning need only be a feature which contributes substantially to the criminal conduct.<sup>6394</sup> As regards the *mens rea*, the accused must have acted with an intent that the crime be committed, or with an awareness of the substantial likelihood that a crime will be committed, in the execution of that plan.<sup>6395</sup>

(c) Instigating

1870. The term “instigating” has been defined to mean “prompting another to commit an offence.”<sup>6396</sup> Both acts and omissions may constitute instigating, which covers express and implied conduct.<sup>6397</sup> Additionally, liability for instigating does not require that the Accused have “effective control” over the perpetrator or perpetrators.<sup>6398</sup> There must be proof of a nexus between the instigation and the perpetration of the crime, which is satisfied where the particular conduct substantially contributes to the commission of the crime.<sup>6399</sup> It need not be proven that the crime would not have occurred without the instigation.<sup>6400</sup> As regards the *mens rea*, it must be shown that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that a crime would be committed as a result of that instigation.<sup>6401</sup>

(d) Ordering

1871. The *actus reus* of “ordering” requires that a person in a position of authority instructs another person to commit an offence.<sup>6402</sup> Closely related to “instigating”, this form of liability

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<sup>6392</sup> *Brdanin* Appeal Judgement, paras 410, 411 and 418; *Martić* Appeal Judgement, para 171.

<sup>6393</sup> *Boškoski* Trial Judgement, para 398; *Brdanin* Trial Judgement, para 268; *Krstić* Trial Judgement, para 601; *Stakić* Trial Judgement, para 443; *Kordić* Appeal Judgement, para 26, citing *Kordić* Trial Judgement, para 386.

<sup>6394</sup> *Kordić* Appeal Judgement, paras 26-31; *Nahimana* Appeal Judgement, para 479; *Limaj* Trial Judgement, para 513.

<sup>6395</sup> *Kordić* Appeal Judgement, para 31; *Blaškić* Appeal Judgement, para 42.

<sup>6396</sup> *Boškoski* Trial Judgement, para 399; *Krstić* Trial Judgement, para 601; *Akayesu* Trial Judgement, para 482; *Blaškić* Trial Judgement, para 280; *Kordić* Appeal Judgement, para 27; *Kordić* Trial Judgement, para 387; *Limaj* Trial Judgement, para 514.

<sup>6397</sup> *Milutinović* Trial Judgement Volume I, para 83; *Brdanin* Trial Judgement, para 269; *Blaškić* Trial Judgement, para 280.

<sup>6398</sup> *Milutinović* Trial Judgement Volume I, para 83; *Semanza* Appeal Judgement, para 257.

<sup>6399</sup> *Boškoski* Trial Judgement, para 399.

<sup>6400</sup> *Kordić* Appeal Judgement, para 27.

<sup>6401</sup> *Kordić* Appeal Judgement, para 32.

<sup>6402</sup> *Kordić* Appeal Judgement, para 28, citing *Kordić* Trial Judgement, para 388; *Semanza* Appeal Judgement, para 361.

additionally requires that the accused possess the authority, either *de jure* or *de facto*, to order the commission of an offence.<sup>6403</sup> That authority may reasonably be implied from the circumstances.<sup>6404</sup> Further, there is no requirement that the order be given in writing, or in any particular form, and the existence of the order may be proven through circumstantial evidence.<sup>6405</sup> However, ordering requires a positive act; it cannot be committed by omission.<sup>6406</sup> The accused need not give the order directly to the physical perpetrator,<sup>6407</sup> and an intermediary lower down than the accused on the chain of command who passes the order on to the physical perpetrator may also be held responsible as an orderer for the perpetrated crime or underlying offence, as long as he has the required state of mind.<sup>6408</sup>

1872. With regard to the *mens rea*, the accused must have intended to bring about the commission of the crime, or have been aware of the substantial likelihood that a crime would be committed as a consequence of the execution or implementation of the order.<sup>6409</sup>

(c) Aiding and abetting

1873. “Aiding and abetting” is a form of accomplice liability<sup>6410</sup> which has been defined as acts or omissions which assist, encourage or lend moral support to the perpetrator of a specific crime and which have a substantial effect on the perpetration of that crime.<sup>6411</sup>

1874. With respect to the *actus reus*, a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct was a condition precedent to the commission of the crime, need not be established.<sup>6412</sup> However, it needs to be shown that the assistance provided by the accused had a substantial effect on the commission of the crime,<sup>6413</sup> which requires a fact-based inquiry.<sup>6414</sup> Such assistance may occur before, during or after the

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<sup>6403</sup> *Boškoski* Trial Judgement, para 400; *Brdanin* Trial Judgement, para 270; *Mrkšić* Trial Judgement, para 550.

<sup>6404</sup> *Brdanin* Trial Judgement, para 270; *Limaj* Trial Judgement, para 515.

<sup>6405</sup> *Kamuhanda* Appeal Judgement, para 76, citing *Kordić* Trial Judgement, para 388; *Blaškić* Trial Judgement, para 281; *Limaj* Trial Judgement, para 515; with respect to proving an order by circumstantial evidence, see also *Galić* Appeal Judgement, paras 170 -171.

<sup>6406</sup> *Galić* Appeal Judgement, para 176; *Milutinović* Trial Judgement Volume I, para 87.

<sup>6407</sup> *Milutinović* Trial Judgement Volume I, para 87; *Kordić* Trial Judgement, para 388; *Blaškić* Trial Judgement, para 282.

<sup>6408</sup> *Milutinović* Trial Judgement Volume I, para 87; *Kupreški* Trial Judgement, paras 827, 862.

<sup>6409</sup> *Blaškić* Appeal Judgement, para 42; *Kordić* Appeal Judgement, para 30; *Brdanin* Trial Judgement, para 270; *Boškoski* Trial Judgement, para 400.

<sup>6410</sup> *Tadić* Appeal Judgement, para 229; *Boškoski* Trial Judgement, para 401.

<sup>6411</sup> *Mrkšić* Appeal Judgement, para 81; *Nahimana* Appeal Judgement, para 482; *Blagojević* Appeal Judgement, para 127; *Blaškić* Appeal Judgement, para 45 citing *Vasiljević* Appeal Judgement, para 102; *Aleksovski* Appeal Judgement, para 162, citing *Furundžija* Trial Judgement, para 249.

<sup>6412</sup> *Mrkšić* Appeal Judgement, para 81; *Blaškić* Appeal Judgement, para 48; *Limaj* Trial Judgement, para 517.

<sup>6413</sup> *Blaškić* Appeal Judgement, para 48, *Boškoski* Trial Judgement, para 402; *Furundžija* Trial Judgement, para 249; *Kunarać* Trial Judgement, para 391; *Limaj* Trial Judgement, para 517.

<sup>6414</sup> *Blagojević* Appeal Judgement, para 134.

principal crime has been perpetrated.<sup>6415</sup> No evidence of a plan or agreement between the aider and abettor and the physical perpetrator or intermediary perpetrator is required.<sup>6416</sup>

1875. An omission may, in the particular circumstances of a case, constitute the *actus reus* of aiding and abetting.<sup>6417</sup> The *actus reus* of aiding and abetting by omission will be fulfilled when it is established that a failure to discharge a legal duty assisted, encouraged or lent moral support to the perpetrator of the crime and had a substantial effect on the realisation of that crime.<sup>6418</sup> Aiding and abetting by omission implicitly requires that the accused had the ability to act, such that there were means available to him to fulfil his duty.<sup>6419</sup> It has also been found that the mere presence at the scene of a crime will not usually constitute aiding and abetting, however the presence of a superior, for example, may operate as an encouragement to the actual perpetrator and may bestow legitimacy on the crime.<sup>6420</sup> Such encouragement may consist of tacit approval of a person in a position of authority and physically present at the crime scene, even where he had no duty to act.<sup>6421</sup>

1876. The *mens rea* required is knowledge that, by his or her conduct, the aider and abettor is assisting or facilitating the commission of the offence,<sup>6422</sup> a knowledge which need not have been explicitly expressed and may be inferred from all the relevant circumstances.<sup>6423</sup> The aider and abettor need not share the *mens rea* of the principal; he must, however, be aware of the essential elements of the crime ultimately committed by the principal, including of his state of mind.<sup>6424</sup> It need not be shown that the aider and abettor was aware of the specific crime that was intended or committed, provided that he was aware that one of a number of crimes would probably be committed, and one of those crimes is in fact committed.<sup>6425</sup> Further, the Appeals Chamber has held that the aider and abettor need not to have intended to provide assistance, nor does he need to accept that such assistance would be a possible and foreseeable consequence of his conduct.<sup>6426</sup>

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<sup>6415</sup> *Mrkšić* Appeal Judgement, para 81; *Blaškić* Appeal Judgement, para 48; *Krnjelac* Trial Judgement, para 88; *Brdanin* Trial Judgement, para 271; *Limaj* Trial Judgement, para 517.

<sup>6416</sup> *Tadić* Appeal Judgement, para 229; *Brdanin* Appeal Judgement, para 263; *Simić* Trial Judgement, para 162.

<sup>6417</sup> *Mrkšić* Appeal Judgement, paras 81, 134-135 citing *Orić* Appeal Judgement, para 43; *Ntagerura* Appeal Judgement, para 370; *Blaškić* Appeal Judgement, para 47.

<sup>6418</sup> *Mrkšić* Appeal Judgement, para 49; *Orić* Appeal Judgement para 43.

<sup>6419</sup> *Mrkšić* Appeal Judgement, para 49.

<sup>6420</sup> *Brdanin* Appeal Judgement, paras 273, 277; *Bošković* Trial Judgement, para 402; *Limaj* Trial Judgement, para 517.

<sup>6421</sup> *Bošković* Trial Judgement, para 402; *Haradinaj* Trial Judgement, para 145. See also *Brdanin* Appeal Judgement, paras 273, 277.

<sup>6422</sup> *Furundžija* Trial Judgement, para 249; *Tadić* Appeal Judgement, para 229; *Blaškić* Appeal Judgement, para 49; *Vasiljević* Appeal Judgement, para 102; *Brdanin* Appeal Judgement, para 484; *Blagojević* Appeal Judgement, para 127.

<sup>6423</sup> *Čelebići* Trial Judgement, para 328; *Tadić* Trial Judgement, para 676; *Limaj* Trial Judgement, para 518.

<sup>6424</sup> *Aleksovski* Appeal Judgement, para 162; *Vasiljević* Appeal Judgement, para 102; *Tadić* Appeal Judgement, para 229; *Simić* Appeal Judgement, para 86;

<sup>6425</sup> *Mrkšić* Appeal Judgement, paras 49,159; *Simić* Appeal Judgement, para 86, citing *Blaškić* Appeal Judgement, para 50. See also *Nahimana* Appeal Judgement, para 482; *Ndindabahizi* Appeal Judgement, para 122.

<sup>6426</sup> *Mrkšić* Appeal Judgement, para 159; *Blaškić* Appeal Judgement, para 49.



## 2. Responsibility under Article 7(3) of the Statute

1877. The Indictment charges the Accused Vlastimir Đorđević with liability under both Article 7(1) and 7(3) of the Statute. With respect to his liability pursuant to Article 7(3) of the Statute, he is charged with individual criminal responsibility for the acts of his subordinates alleged in Counts 1-5 of the Indictment.<sup>6427</sup>

1878. Article 7(3) of the Statute provides:

The fact that any of the acts referred to in Article 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the reasonable and necessary measures to prevent such acts or to punish the perpetrators thereof.

The principle of individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates is an established principle of customary international law,<sup>6428</sup> applicable to both international and internal armed conflicts.<sup>6429</sup> This basis of criminal responsibility is usually referred to as superior or command responsibility. This encompasses all forms of criminal conduct by subordinates, not only the “committing” of crimes in the restricted sense of the term, but also any other modes of participation in crimes envisaged under Article 7(1) of the Statute.<sup>6430</sup> A superior’s criminal liability for crimes or underlying offences committed by subordinates also includes their commission by omission.<sup>6431</sup>

1879. To hold a superior responsible under Article 7(3) of the Statute, the following three elements must be satisfied:

1. there must be a superior-subordinate relationship;
2. the superior knew or had reason to know that the criminal act was about to be, was being, or had been committed; and
3. the superior failed to take the necessary and reasonable measures to prevent the subordinate or subordinates from committing the crime or underlying offence, and/or to punish them subsequent to such commission.<sup>6432</sup>

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<sup>6427</sup> Indictment, para 64, reference to paras 61-62.

<sup>6428</sup> *Čelebići* Appeal Judgement, para 195; *Mrkšić* Trial Judgement, para 557. For the failure to punish, see *Blaškić* Appeal Judgement, para 85; *Halilović* Trial Judgement, para 94.

<sup>6429</sup> For application of the principle of command responsibility to internal armed conflicts, see *Prosecutor v Hadžihasanović*, Case No. IT-01-47-AR72, Appeals Chamber Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003, para 31.

<sup>6430</sup> *Blagojević* Appeal Judgement, paras 280-282; *Orić* Appeal Judgement, para 21.

<sup>6431</sup> *Orić* Appeal Judgement, paras 21 and 43; *Milutinović* Trial Judgement, Volume 1, para 114.

<sup>6432</sup> *Kordić* Appeal Judgement, para 827, 839; *Blaškić* Appeal Judgement, para 484; *Milutinović* Trial Judgement, Volume 1, para 115; *Halilović* Trial Judgement, para 56; *Mrkšić* Trial Judgement, para 558.

(a) Superior-subordinate relationship

1880. The doctrine of command responsibility is ultimately predicated upon the position of command over and the power to control the acts of subordinates. It is this position which forms the legal basis for the superior's duty to act, and for his corollary liability for a failure to do so.<sup>6433</sup>

1881. A position of command may arise from a formal or *de jure* status of a superior, or from a superior's *de facto* powers of control.<sup>6434</sup> It derives essentially from the "actual possession or non-possession of powers of control over the actions of subordinates."<sup>6435</sup> In determining the degree of control exercised by the superior over the subordinate for both *de jure* and *de facto* superiors, the Appeals Chamber has endorsed the effective control standard, which it defined as the material ability to prevent or punish the alleged subordinate's criminal conduct.<sup>6436</sup> "Substantial influence" over subordinates which does not meet the threshold of effective control is not sufficient under customary law to serve as a means of exercising command responsibility.<sup>6437</sup> The existence of a superior-subordinate relationship does "not [...] import a requirement of *direct* or *formal* subordination" and may therefore include indirect relationships of subordination, with the proviso that effective control must always be established.<sup>6438</sup> Whether a subordinate is immediately answerable to a superior or more remotely under his command is not at issue once effective control has been established.<sup>6439</sup> The accused, rather, by virtue of his position, must be senior in some sort of informal or formal hierarchy.<sup>6440</sup> Likewise, the relationship of command and subordination does not need to be of a permanent nature.<sup>6441</sup> Further, the Chamber recalls that "the test of effective control [...] implies that more than one person may be held responsible for the same crime committed by a subordinate."<sup>6442</sup>

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<sup>6433</sup> *Aleksovski* Appeal Judgement, para 76; *Mrkšić* Trial Judgement, para 559; *Boškoski* Trial Judgement, para 407.

<sup>6434</sup> *Čelebići* Appeal Judgement, paras 192-193; *Limaj* Trial Judgement, para 522.

<sup>6435</sup> *Čelebići* Trial Judgement, para 370; *Mrkšić* Trial Judgement, para 560.

<sup>6436</sup> *Čelebići* Appeal Judgement, paras 256, 266; *Strugar* Trial Judgement, para 360, footnote 1067. See also *Halilović* Appeal Judgement, para 59: "concept of effective control over a subordinate [...] is the threshold to be reached in establishing a superior-subordinate relationship". See also *Bagilishema* Appeal Judgement, para 56.

<sup>6437</sup> *Čelebići* Appeal Judgement, para 266; *Halilović* Trial Judgement, para 59. See also *Brdanin* Trial Judgement, para 276.

<sup>6438</sup> *Čelebići* Appeal Judgement, paras 252, 303; *Blaškić* Appeal Judgement, para 67 citing *Blaškić* Trial Judgement, para 301; *Limaj* Trial Judgement, para 522; *Strugar* Trial Judgement, para 362. See also *Milutinović* Trial Judgement, Volume I, para 118, in which the Trial Chamber held that "[a]n important implication of the standard of effective control is that Article 7(3) liability may ensue on the basis of both direct and indirect relationships of subordination;...".

<sup>6439</sup> *Strugar* Trial Judgement, para 363; *Halilović* Trial Judgement, para 63 and footnote 149, discussing the ICRC Commentary to the Additional Protocols.

<sup>6440</sup> *Halilović* Appeal Judgement, para 59.

<sup>6441</sup> *Strugar* Trial Judgement, para 362; *Mrkšić* Trial Judgement, para 560. See also *Kunarac* Trial Judgement, para 399.

<sup>6442</sup> *Strugar* Trial Judgement, para 365; *Limaj* Trial Judgment, para 522; *Mrkšić* Trial Judgement, para 560; See also *Milutinović* Trial Judgement, Volume I, in which the Trial Chamber held that "...every person in the chain of command who exercises effective control over subordinates is responsible for the crimes or underlying offences of

1882. Jurisprudence has established that Article 7(3) is applicable to both civilian and military leaders, once it has been determined that they had the requisite effective control over their subordinates.<sup>6443</sup> In particular in armed conflict, civilian superiors may exercise a wide *de facto* authority alongside their *de jure* authority over subordinates. It is, therefore, necessary to carefully examine both the *de facto* and the *de jure* authority and the effective control exercised by the civilian superior in the particular circumstances of the case.<sup>6444</sup>

1883. Although the issue will always turn on the particular facts of the case,<sup>6445</sup> a number of factors have been identified, albeit not exhaustively, from which effective control may be inferred. These include the official position held by the accused, his capacity to issue orders whether *de jure* or *de facto*, the procedure for appointment, the position of the accused within the military or political structure and the actual tasks that he performed.<sup>6446</sup> Whether a superior's orders are in fact followed can also be indicative of his effective control over his subordinates.<sup>6447</sup> The possession of *de jure* power may not in itself suffice for a finding of effective control.<sup>6448</sup> While the possession of *de jure* powers may certainly suggest a material ability to prevent or punish criminal acts of subordinates, the Prosecution still bears the burden of proving beyond reasonable doubt that the accused had effective control over his subordinates.<sup>6449</sup>

(b) Mental element: the superior knew or had reason to know

1884. Strict liability does not attach to the principle of command responsibility; it must, therefore, be proven that the superior, whether military or civilian, knew or had reason to know that his subordinates were committing or were about to commit crimes.<sup>6450</sup> An assessment of the mental

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the subordinates – provided that the other requirements of Article 7(3) are met – no matter how far down the chain the subordinates happen to have been” (para 118).

<sup>6443</sup> *Čelebići* Appeal Judgement, para 195; *Aleksovski* Appeal Judgement, para 76; *Bagilishema* Appeal Judgement, para 50 holding that the: “[e]ffective control test applies to all superiors, whether *de jure* or *de facto*, military or civilian.” See also para 51; *Kajelijeli* Appeal Judgement, para 85; *Nahimana* Appeal Judgement, para 605; *Boškoski* Trial Judgement, para 409.

<sup>6444</sup> *Boškoski* Trial Judgement, para 410. See also *Kordić* Trial Judgement, paras 421-422; *Brdanin* Trial Judgement, para 281.

<sup>6445</sup> Whether the superior possessed effective control is a matter of evidence not of substantive law, *Orić* Appeal Judgement, para 20. See also *Blaškić* Appeal Judgement, para 69.

<sup>6446</sup> *Kordić* Trial Judgement, para 418; *Halilović* Trial Judgement, para 58. See also *Halilović* Appeal Judgement, para 204; *Blaškić* Appeal Judgement, para 485; *Brdanin* Trial Judgement, para 281.

<sup>6447</sup> *Strugar* Appeal Judgement, para 256. See also *Strugar* Trial Judgment, paras 394-397.

<sup>6448</sup> *Čelebići* Appeal Judgement, para 197; *Galić* Trial Judgement, para 173.

<sup>6449</sup> *Orić* Appeal Judgement, paras 91-92; *Hadžihasanović* Appeal Judgement, para 21.

<sup>6450</sup> *Čelebići* Appeal Judgement, para 239. The *mens rea* requirement for liability pursuant to Article 7(3) has been applied uniformly in cases before this Tribunal and the ICTR to both civilian and military superiors. See *Čelebići* Appeal Judgement, paras 223-226; *Brdanin* Trial Judgement, para 282; *Krnojelac* Trial Judgement, para 94.

element required by Article 7(3) of the Statute is determined on the specific circumstances of each case and the specific situation of the accused at the relevant time.<sup>6451</sup>

1885. A superior's actual knowledge that his subordinates were committing or were about to commit a crime cannot be presumed; it may, however, be established by circumstantial evidence,<sup>6452</sup> including the number, type and scope of illegal acts, the time during which the illegal acts occurred, number and type of troops and logistics involved, geographical location of the acts, whether the occurrence of the acts is widespread, the tactical tempo of operations, *modus operandi* of similar illegal acts, officers and staff involved, and the location of the commander at the time.<sup>6453</sup>

1886. In determining whether a superior "had reason to know" that his subordinates were committing or about to commit a crime, it must be shown that a superior had some general information in his possession, which would have provided notice of offences committed or about to be committed by his subordinates.<sup>6454</sup> For criminal liability to attach, it is not required that he actually acquainted himself with the information, it must only have been available to him.<sup>6455</sup> The superior may not be held liable for failing to acquire such information in the first place.<sup>6456</sup> The Appeals Chamber has recently recalled that "under the correct legal standard, sufficiently alarming information putting a superior on notice of the risk that crimes might subsequently be carried out by his subordinates and justifying further inquiry is sufficient to hold a superior liable under Article 7(3) of the Statute."<sup>6457</sup> In this respect, it has been held that if a commander has received information that some of his subordinates have a violent or unstable character, or had been drinking prior to being sent on mission, he may be considered as having the requisite knowledge.<sup>6458</sup> A superior's knowledge of and failure to punish his subordinates' past offences is insufficient, in itself, to conclude that the superior knew that similar future offences would be committed by the same group of subordinates, yet this may, depending on the circumstances of the case, nevertheless constitute sufficiently alarming information to justify further inquiry under the "had reason to

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<sup>6451</sup> *Čelebići* Appeal Judgement, para 239; *Halilović* Trial Judgement, para 70.

<sup>6452</sup> *Čelebići* Trial Judgement, para 386; *Strugar* Trial Judgement, para 368; *Mrkšić* Trial Judgement, para 563.

<sup>6453</sup> *Čelebići* Trial Judgement, para 386; *Blaškić* Trial Judgement, para 307; *Kordić* Trial Judgement, para 427; *Strugar* Trial Judgement, para 368; *Mrkšić* Trial Judgement, para 563.

<sup>6454</sup> *Strugar* Appeal Judgement, paras 297-298; *Hadžihasanović* Appeal Judgement, paras 27-28; *Čelebići* Appeal Judgement, para 238: "As to the form of the information available to him, it may be written or oral, and does not need to have the form of specific reports submitted pursuant to a monitoring system. This information does not need to provide specific information about unlawful acts committed or about to be committed".

<sup>6455</sup> *Čelebići* Appeal Judgement, para 239.

<sup>6456</sup> *Blaškić* Appeal Judgement, para 62; *Čelebići* Appeal Judgement, paras 226, 241.

<sup>6457</sup> *Strugar* Appeal Judgement, paras 298, 304. See also *Hadžihasanović* Appeal Judgement, para 27; *Čelebići* Trial Judgement, para 393.

<sup>6458</sup> *Čelebići* Appeal Judgement, para 238; *Krnjelac* Appeal Judgement, para 154; See also *Milutinović* Trial Judgement, Volume 1, para 120.

know” standard.<sup>6459</sup> If the superior *deliberately* refrains from obtaining further information, even though he had the means to do so, he may well be considered to have “had reason to know” of the crimes.<sup>6460</sup>

(c) Necessary and reasonable measures to prevent or punish

1887. A superior’s duty to take the necessary and reasonable measures to prevent the commission of a crime or punish the perpetrators thereof relates directly to his possession of effective control. A superior may be held liable for failing to take measures, even in the absence of explicit legal capacity to do so, if it is proven that it was within his material ability to take such measures.<sup>6461</sup> As held by the Appeals Chamber “‘necessary’ measures are the measures appropriate for the superior to discharge his obligation (showing that he genuinely tried to prevent or punish) and ‘reasonable’ measures are those reasonably falling within the material power of the superior.”<sup>6462</sup> Any measures taken by a superior should, however, be specific and closely linked to the acts that they are intended to prevent.<sup>6463</sup> Further, it is the degree of effective control that may guide a Chamber in its assessment of whether the measures an accused took were necessary and reasonable under the circumstances.<sup>6464</sup> Accordingly, what constitutes “necessary and reasonable measures” is not a matter of substantive law but of evidence<sup>6465</sup> and is to be determined on the basis of the particular circumstances of the case.<sup>6466</sup> The Prosecution must prove that the accused, having the material ability to do so, failed to take the necessary and reasonable measures to prevent his subordinates’ commission of crimes or underlying offences.

1888. Article 7(3) of the Statute contains two distinct legal obligations: to prevent the commission of the offence and to punish the perpetrators.<sup>6467</sup> These are not alternative obligations.<sup>6468</sup> The duty to prevent arises from the time a superior acquires knowledge, or has reason to know that a crime is being or is about to be committed, while the duty to punish arises after the superior acquires knowledge of the commission of the crime.<sup>6469</sup> A superior is required to act from the moment that

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<sup>6459</sup> *Strugar* Appeal Judgement, para 301; *see also Krnojelac* Appeal Judgement, para 169; *Hadžihasanović* Appeal Judgement, para 30, adding that “In making such an assessment, a Trial Chamber may take into account the failure by a superior to punish the crime in question”.

<sup>6460</sup> *Čelebići* Appeal Judgement, para 226; *Blaškić* Appeal Judgement, para 406; *Halilović* Trial Judgement, para 69.

<sup>6461</sup> *Čelebići* Trial Judgement, para 395; *Kordić* Trial Judgement, para 443; *Mrkšić* Trial Judgement, para 565. *See also Stakić* Trial Judgement para 461; *Brdanin* Trial Judgement, para 279; *Blagojević* Trial Judgement, para 793.

<sup>6462</sup> *Orić* Appeal Judgement, para 177. *See also Halilović* Appeal Judgement, para 63.

<sup>6463</sup> *Hadžihasanović* Trial Judgement, para 155; *Milutinović* Trial Judgement, Volume 1, para 122.

<sup>6464</sup> *Blaškić* Appeal Judgement, para 72 citing *Blaškić* Trial Judgement, para 335. *See also Milutinović* Trial Judgement, Volume 1, para 122; *Kayishema* Appeal Judgement, para 302; *Strugar* Trial Judgement, para 372.

<sup>6465</sup> *Orić* Appeal Judgement, para 177. *See also Hadžihasanović* Appeal Judgement, para 259.

<sup>6466</sup> *Hadžihasanović* Appeal Judgement, para 33. *See also Halilović* Appeal Judgement paras 63, 74.

<sup>6467</sup> *Blaškić* Appeal Judgement, para 83; *Hadžihasanović* Appeal Judgement, para 259.

<sup>6468</sup> *Blaškić* Appeal Judgement, para 83; *Mrkšić* Trial Judgement, para 566.

<sup>6469</sup> *Kordić* Trial Judgement, paras 445-446; *Hadžihasanović* Trial Judgement, paras 125, 126. *Orić* Trial Judgement, para 326; *See also Blaškić* Appeal Judgement, para 83.

he acquires such knowledge.<sup>6470</sup> If an accused's material ability to intervene merely allows that he report imminent or ongoing crimes or underlying offences of which he knows or has reason to know to the competent authorities, then such reporting may be sufficient to satisfy his duty to prevent.<sup>6471</sup>

1889. With regard to the scope of a superior's duty to punish, the Appeals Chamber held recently that whether the measures taken by a superior were solely of a disciplinary nature, criminal nature, or a combination of both, cannot in and of itself be determinative of whether a superior has discharged his duty.<sup>6472</sup> What is relevant is whether the superior took measures to punish which were "necessary and reasonable" in the circumstances, and not whether those measures were of a disciplinary or criminal nature.<sup>6473</sup> A superior need not dispense punishment personally and may discharge his duty to punish by reporting the matter to the competent authorities.<sup>6474</sup>

1890. A superior's duty to punish the perpetrators of a crime includes at least an obligation to conduct an effective investigation with a view to establishing the facts.<sup>6475</sup> The obligation to investigate translates into an obligation on the part of the superior to take active steps to ensure that the perpetrators will be punished. To that end, the superior may exercise his own powers of sanction, or if he lacks such powers, report the perpetrators to the competent authorities.<sup>6476</sup> It has been held in the jurisprudence of the Tribunal that civilian superiors, who may lack the disciplinary or sanctioning powers of military commanders, may discharge their obligation to punish by reporting to the competent authorities whenever a crime has been committed if these reports are likely to trigger an investigation or initiate disciplinary or criminal proceedings.<sup>6477</sup>

1891. Where both Article 7(1) and Article 7(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing.<sup>6478</sup>

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<sup>6470</sup> *Strugar* Trial Judgement, para 373; *Limaj* Trial Judgement, para 527; *Mrkšić* Trial Judgement, para 566.

<sup>6471</sup> *Milutinović* Trial Judgement, Volume 1, para 123 citing *Blagojević* Trial Judgement, para 793; *Stakić* Trial Judgement, para 461.

<sup>6472</sup> *Hadžihasanović* Appeal Judgement, para 33.

<sup>6473</sup> *Hadžihasanović* Appeal Judgement, para 142.

<sup>6474</sup> *Hadžihasanović* Appeal Judgement, para 154; *Boškoski* Trial Judgement, para 417.

<sup>6475</sup> *Strugar* Trial Judgement, para 376; *Limaj* Trial Judgement, para 529; *Mrkšić* Trial Judgement, para 568.

<sup>6476</sup> *Hadžihasanović* Appeal Judgement, para 154; *Blaškić* Appeal Judgement, para 72 citing *Blaškić* Trial Judgement, para 335; *Halilović* Appeal Judgement, para 182; *Kordić* Trial Judgement, para 446; *Strugar* Trial Judgement, para 376; *Halilović* Trial Judgement, paras 97, 100; *Limaj* Trial Judgement, para 529; *Mrkšić* Trial Judgement, para 568.

<sup>6477</sup> *Aleksovski* Trial Judgement, para 78; *Brdanin* Trial Judgement, para 281; *Kordić* Trial Judgement, para 446.

<sup>6478</sup> *Blaškić* Appeal Judgement, para 91; *Kordić* Appeal Judgement, para 34.

## B. Findings

### 1. Vlastimir Đorđević's role and knowledge

#### (a) Vlastimir Đorđević's effective control over MUP forces in Kosovo throughout the Indictment period

1892. The evidence discussed in Chapter IV of this Judgment has established that General Vlastimir Đorđević, as head of the RJB and as an Assistant Minister of the Interior, had *de jure* power over the organisational units of the RJB operating in Kosovo at all relevant times in 1998 and 1999, namely the regular police (including the crime police, border and traffic police), the PJP, the SAJ, and the reserve police. The Accused does not contest this.<sup>6479</sup>

1893. The Defence submits that the Accused did not have effective control over the use of MUP forces in Kosovo.<sup>6480</sup> It submits that from the moment of Minister Stojiljković's decision to establish the MUP Staff for the Suppression of Terrorism on 16 June 1998 and throughout the war in 1999, the engagement of MUP forces on the ground in anti-terrorist activities in Kosovo was managed exclusively by the MUP Staff in Priština/Prishtinë, headed by Sreten Lukić.<sup>6481</sup> The Accused, it is submitted, while retaining some responsibility for the RJB, therefore had no responsibility for anti-terrorist activities in Kosovo.<sup>6482</sup> The Defence submits, further, that MUP forces did not report on anti-terrorist activities in Kosovo to the RJB.<sup>6483</sup> It also submits that since the creation of the MUP Staff for the Suppression of Terrorism by decision of the Minister on 16 June 1998, Lukić ceased to report to the Accused, and reported only to the Minister;<sup>6484</sup> as such, the Defence argues that the Accused was excluded from the normal chain of command, resulting in a reduction of his competencies.<sup>6485</sup> It is the Accused's testimony that on the eve of the war, at a meeting at the Ministry in Belgrade, the Minister instructed the Accused that he would be in charge of regular public security work in relation to the SUPs outside of Kosovo, that the MUP Staff would

<sup>6479</sup> Vlastimir Đorđević, T 9788, 9817-9818; *see also* Exhibit P357, Article 54.

<sup>6480</sup> Closing Arguments, T 14492-14493; Defence Final Brief, paras 379, 382.

<sup>6481</sup> Defence Final Brief, paras 379-383, concerning all MUP forces; *see also* Defence Final Brief, paras 136-137 (concerning the PJP specifically), and paras 146-148 (concerning the SAJ specifically); *see also* Closing Arguments, T 14451-14452.

<sup>6482</sup> Closing Arguments, T 14449.

<sup>6483</sup> Defence Final Brief, paras 381, 401-408, concerning activities in 1998; *see also* Defence Final Brief, para 136 (concerning the PJP specifically), and para 147 (concerning the SAJ specifically).

<sup>6484</sup> Defence Final Brief, paras 195, 201, 406; Closing Arguments, T 14481.

<sup>6485</sup> The Chamber notes that the Defence has sought to argue that while the decision of 15 May 1998 issued by the Accused renewing the mandate of the MUP Staff for Kosovo (Exhibit D100)—which had been established by the Accused by decision of 11 June 1997 (Exhibit D402)—stipulated that the head of Staff, Sreten Lukić (Exhibit P760) was responsible to the Chief of the RJB, the decision issued by the Minister on 16 June 1998 establishing the MUP Staff for the Suppression of Terrorism (Exhibit P57) stipulated that the head of the Staff, Lukić, was responsible only to the Minister. On the basis of the wording of these decisions, the Defence contends that this excluded the Accused from the chain of command (Defence Final Brief, paras 195, 201-202, 204-205, 216).

continue its activities in Kosovo, and that Stevanović would be sent there to assist.<sup>6486</sup> Despite his *de jure* power over all organizational units of the RJB as its chief, it is his contention that he was, therefore, not responsible for a single policeman in Kosovo during the war.<sup>6487</sup>

1894. According to the Prosecution, the MUP Staff in Priština/Prishtinë coordinated and managed the work of MUP units engaged in Kosovo and served as an intermediate command level between the MUP Headquarters in Belgrade and the SUPs in Kosovo.<sup>6488</sup> It submits that the head of the MUP Staff Lukić implemented the plans and policies adopted in Belgrade and reported back to the Accused and the Minister.<sup>6489</sup> In the view of the Prosecution, the Minister's decision to establish the MUP Staff for the Suppression of Terrorism on 16 June 1998 did not remove the Accused from the chain of command; it submits that Lukić continued to report to the Accused as his role in the MUP Staff included the management of RJB units.<sup>6490</sup>

1895. In the finding of the Chamber, the evidence demonstrates that the Accused's powers with respect to the organisational units of the RJB operating in Kosovo, which included the PJP and SAJ, did not change as a result of the Minister's decision of 16 June 1998 to establish a MUP Staff for the Suppression of Terrorism in Kosovo. The Chamber recalls that pursuant to the decision on the composition of the MUP Staff issued by the Accused on the of 11 June 1998<sup>6491</sup> which followed on from his decision, on 15 May 1998, to renew the mandate of the MUP Staff which he had originally set up on 11 June 1997,<sup>6492</sup> the MUP Staff consisted of members of the RJB, and the appointed head, Sreten Lukić, was directly answerable to the Accused as chief of the RJB.<sup>6493</sup> The Accused was not legally in the position to issue orders to the RDB, the State Security Department of the MUP;<sup>6494</sup> the effect of the decision on the establishment of the MUP Staff for the Suppression of Terrorism issued by the Minister on 16 June 1998, therefore, was simply to unite under one leadership the branches of the RJB and the RDB, allowing coordination of their respective units on the ground in Kosovo and making it possible for the MUP Staff also to engage units of the RDB in Kosovo. Such a body could only be created by the Minister and hence the Minister's 16 June 1998 decision establishing the MUP Staff for the Suppression of Terrorism in Kosovo stipulated that Sreten Lukić, who continued as the head of this newly created MUP Staff in Priština/Prishtinë, was

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<sup>6486</sup> Vlastimir Đorđević, T 9687-9688.

<sup>6487</sup> Vlastimir Đorđević, T 10118.

<sup>6488</sup> Prosecution Final Brief, para 1077.

<sup>6489</sup> Prosecution Final Brief, para 1077.

<sup>6490</sup> Prosecution Final Brief, para 320; *see also supra*, paras 104-124.

<sup>6491</sup> Exhibit P760.

<sup>6492</sup> The original decision to set up the MUP Staff in Priština/Prishtinë was issued by the Accused on 11 June 1997 (Exhibit D402). On 15 May 1998, the Accused issued a decision renewing the mandate of the MUP Staff in Priština/Prishtinë (Exhibit D100). By a decision of 11 June 1998, he issued a decision on the composition of the MUP Staff in Priština/Prishtinë (Exhibit P760).

<sup>6493</sup> *See* Exhibit D100, p 2.

<sup>6494</sup> Vlastimir Đorđević, T 9474.



to report to the Minister.<sup>6495</sup> As discussed elsewhere, this did not have the effect, as submitted by the Defence, of cutting Đorđević out of the chain of authority with regard to the RJB units which participated in anti-terrorist activities.<sup>6496</sup>

1896. The Minister's decision of 16 June 1998 did not diminish the Accused's powers with respect to police forces in Kosovo. Similar to the first half of 1998, the Accused continued, in his capacity of chief of the RJB, to issue decisions and dispatches relating to the functioning of organizational units of the RJB and, specifically, their deployment to Kosovo. Neither the pattern of issuance, nor the nature of these decisions and dispatches deploying troops to Kosovo was altered as a result of the Minister's decision to create the MUP Staff for the Suppression of Terrorism mid-1998.<sup>6497</sup> The Accused's deployment orders continued to be implemented.<sup>6498</sup> Contrary to the position of the Defence, moreover, his command over SAJ forces remained intact despite the formation of the MUP Staff for the Suppression of Terrorism in mid-1998, as demonstrated, *inter alia*, by his involvement in their replenishment in March of 1999 with members of a reserve force, and his authorization of their deployment to Podujevo/Podujevë in late March of 1999, discussed in more detail elsewhere in the Judgement.<sup>6499</sup>

1897. The MUP Staff for the Suppression of Terrorism was a coordinating body between the Ministry in Belgrade and the SUPs in Kosovo.<sup>6500</sup> The Accused remained Lukić's superior despite the formation of this reconstituted Staff. The Chamber recalls that it was the Accused who

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<sup>6495</sup> See Exhibit P57, p 2.

<sup>6496</sup> See *supra*, paras 108-124.

<sup>6497</sup> By dispatch of 22 April 1998, he instructed the head of the MUP Staff and the chiefs of the SUPs in Serbia, including Kosovo, "bearing in mind the security situation," to "[u]pdate the lists and call-ups of reserve police officers" (see Exhibit P706). On 11 June 1998, he issued a decision concerning the composition of the MUP Staff (see Exhibit P760). By decision of 19 June 1998, he established the 124<sup>th</sup> Intervention Brigade of the PJP, operating in Kosovo (see Exhibit P132). A dispatch dated 1 July 1998 addressed to, *inter alia*, the chiefs of the SUPs in Kosovo and the border police administration, signed on the Accused's authority by Stevanović (see Vlastimir Đorđević, T 9559-9560), called for, *inter alia*, the need to "[r]aise the overall mobility and effectiveness levels of all members of the police (crime, traffic, border...)" Exhibit P707). On 15 and 28 July 1998, the Accused signed dispatches deploying PJP detachments to various locations in Kosovo, Exhibits P131, P133. On 18 September 1998, he issued a decision to tighten security measures and the control over public and religious institutions in Kosovo to prevent terrorist attacks, Exhibit P1202. For further dispatches issued by the Accused on matters relating to the preparation for war and the deployment of PJP units to Kosovo in 1998 and into 1999, see e.g., Exhibits P134, P136-P139, P356, P711, P712, P1181-1190, P1206; Đorđe Kerić, T 7768-7780; Žarko Braković, T 4115; Ljubinko Cvetić, T 6604.

<sup>6498</sup> See e.g., Exhibits P1191-P1200; see also Đorđe Kerić, T 7781-7791.

<sup>6499</sup> See *infra*, paras 1934-1945.

<sup>6500</sup> See e.g., Ljubinko Cvetić, T 6597. The Chamber notes, for example, that in the minutes of the MUP Staff meeting of 17 February 1999 (Exhibit P85), head of the MUP Staff Lukić is recorded as stating that the MUP Staff would carry out the plans for "mopping up" operations discussed at the meeting, in the context of a plan worked out by the RJB to "prevent and thwart" the entry of NATO troops into Serbia, "when it is ordered" (see Exhibit P85, p 1). The Chamber accepts that this truly reflects the position even though, in his own evidence, the Accused sought to suggest that he did not know what Lukić meant when he said "when it was ordered", contending that the MUP Staff at that time could only act upon plans already developed by the army, and not by the RJB, adding that he, as chief of the RJB, could not issue orders to the MUP Staff (see Vlastimir Đorđević, T 9677-9678, 9935-9936), a proposition that the Chamber does not accept.

proposed that Lukić, whom he considered one of his best subordinates, be appointed head of the MUP Staff.<sup>6501</sup> Evidence demonstrates that Lukić continued to report to the Accused after the Minister's decision on 16 June 1998.<sup>6502</sup> The Accused had contact with Lukić throughout the war.<sup>6503</sup> Moreover, there is no documentary evidence supporting a reduction or limitation of the Accused's role as chief of the RJB as a result of this decision. As discussed in more detail in a section below, Vlastimir Đorđević represented the MUP of Serbia in international negotiations on the role of the police forces in Kosovo and signed the concluding document for the Republic of Serbia. He was a member of the MUP Collegium from the time of its establishment by the Minister on 4 December 1998 and he attended weekly MUP Collegium meetings throughout the war.<sup>6504</sup> As discussed in more detail later, he was a member of the Joint Command and attended Joint Command meetings throughout the latter half of 1998 and into 1999, discussing, *inter alia*, the progress and results of anti-terrorist operations in Kosovo. Further, the Chamber considers that there is no reason why the Minister would have wanted to exclude or remove Vlastimir Đorđević from the chain of command in relation to the operations conducted by MUP forces in Kosovo.<sup>6505</sup> In the view of the Chamber, the SUPs in Kosovo as well as the head of the MUP Staff Sreten Lukić were subordinate to the Accused as head of the RJB and remained so throughout the latter half of

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<sup>6501</sup> The Accused issued a decision on the renewal of the MUP Staff on 15 May 1998 (Exhibit D100) as this had to be done on a yearly basis, and the original decision was dated 11 June 1997. Following his 15 May 1998 decision, the Accused proposed to the Minister that Sreten Lukić, at the time assistant head of the SUP in Belgrade, be appointed as head of the MUP Staff. He explained to the Minister that Lukić had completed the military academy, had participated in complex activities, and had experience in directing and managing units. The Minister accepted this proposal; Lukić's appointment is reflected by a decision signed by the Accused on 11 June 1998 (Exhibit P760), on the composition of the MUP Staff, Vlastimir Đorđević, T 9476-9477; 9552-9553, 9555, 10157-10158. In the decision of the Minister of 16 June 1998, Lukić continued as head of the reconstituted MUP Staff for the Suppression of Terrorism, Exhibit P57.

<sup>6502</sup> Shaun Byrnes testified that Lukić told him that during his weekly trips to Belgrade in the fall of 1998, he would report to both Stevanović and to Vlastimir Đorđević, Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12146; Shaun Byrnes, T 8175-8176, 8233, 8235-8236. The Chamber notes that Shaun Byrnes' testimony relates to the time period of 1998, in particular, with respect to the October Agreements. While Byrnes conceded that he did not have direct knowledge that Lukić reported to the Accused during this time, this could be inferred from the circumstances and in particular, from the role that the Accused played during the negotiations in October 1998, Shaun Byrnes, T 8235-8236. The Chamber notes, further, the testimony of Slobodan Borisavljević, the Accused's chef de cabinet, before the Belgrade War Crimes Chamber, of which a portion was put to the Accused, in which Borisavljević stated that the Accused received oral reports from the Chief of the MUP Staff Lukić, who contacted him directly over the phone. The Accused sought to deal with this by suggesting that Borisavljević was referring to reporting on activities of Albanian terrorists; and then, inconsistently, by suggesting that Borisavljević could not have known to whom and how many times the Accused was speaking on the phone since he did not share a phone or office with him, Vlastimir Đorđević, T 10062-10067. In the Chamber's view, the Accused's evidence that Lukić did not report to him was not consistently and convincingly maintained by the Accused.

<sup>6503</sup> Vlastimir Đorđević, T 10061.

<sup>6504</sup> Exhibit D208; Vlastimir Đorđević, T 9414-9416. *See supra*, paras 98-103.

<sup>6505</sup> The Chamber notes the position taken by the Defence that the Minister managed the MUP as he deemed appropriate, according to the powers vested in him by law, and that the Accused as head of the RJB had no influence on the issuance of tasks to the RJB chiefs by the Minister, and in some cases, had no knowledge of them, and was not consulted by the Minister (Defence Final Brief, para 284; *see also* Closing Arguments, T 14487-14488). The Chamber does not consider that these submissions provide a reason for the Minister's removal of the Accused from the chain of command with respect to the carrying out of anti-terrorist operations by organizational units of the RJB in Kosovo in 1998 and 1999.

1998 and in 1999, to the end of the Indictment period and beyond.<sup>6506</sup> As discussed in detail elsewhere in this Judgement, despite the fact that the Minister's decision of 16 June 1998 stipulated that the head of the MUP Staff for the Suppression of Terrorism report to the Minister, this merely reflected the usual provision and was not intended to, and did not alter the normal command structure of the MUP or the superior-subordinate relationship between the Accused and Lukić.<sup>6507</sup>

1898. The Accused was a member of the MUP Collegium<sup>6508</sup> and the Joint Command.<sup>6509</sup> He had the highest attainable rank, of Colonel-General, within the Ministry<sup>6510</sup> and was described (in the finding of the Chamber, accurately) by a witness as "the number two man" in the Ministry.<sup>6511</sup> Contrary to the Defence position, and the Accused's evidence,<sup>6512</sup> Aleksandar Vasiljević testified that in mid-May of 1999, Slobodan Milošević referred to Đorđević, Stojiljković and Stevanović as the persons bearing the highest responsibility for the use of the MUP forces in Kosovo.<sup>6513</sup> On 9 July 1999, Milošević issued a Decree awarding the Accused, Stevanović and Lukić with the "Order of the Yugoslav Flag, First Class" for, *inter alia*, "exceptional results achieved in commanding police units" with respect to the combat of terrorism in Kosovo.<sup>6514</sup> The Chamber has no doubt, on the basis of his position and the extent of his involvement in the events in Kosovo, that Vlastimir Đorđević exercised effective control, both *de jure* and *de facto*, over the MUP forces under the RJB in Kosovo throughout 1998 and 1999.

1899. In addition to the above, the Accused's effective control is further evidenced by his involvement in operations on the ground in 1998, his involvement in the arming of local Serbs and the disarming of Kosovo Albanians, his presence and activities in Kosovo at times in 1999, especially during the Indictment period, and finally, his involvement in the operations to conceal the bodies of Kosovo Albanians killed in Kosovo during the Indictment period, discussed separately and in more detail, in the sections below.<sup>6515</sup>

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<sup>6506</sup> See e.g. Ljubinko Cvetić, T 6598.

<sup>6507</sup> See *supra*, paras 112-116.

<sup>6508</sup> Exhibit D208.

<sup>6509</sup> See *supra*, paras 238-239.

<sup>6510</sup> See *supra*, para 43.

<sup>6511</sup> K87, T 14162; see also Aleksandar Vasiljević, T 5933.

<sup>6512</sup> Vlastimir Đorđević, T 9787.

<sup>6513</sup> Aleksandar Vasiljević, T 5688.

<sup>6514</sup> Exhibit P1506, p 2; Vlastimir Đorđević, T 9779, 10122. While the Accused conceded that the main criteria for awarding the people in this Decree was whether the people were involved in combating terrorism in Kosovo, when put to him that the Accused was given this award despite his evidence that he was not involved in anti-terrorist operations in Kosovo, he sought to provide the Chamber with the explanation that the Minister and Marković were also awarded, but that they weren't involved in Kosovo either (see Vlastimir Đorđević, T 9783-9784). The Chamber considers this answer ill-conceived, and accepts that the Accused was awarded by this decree for his role in Kosovo.

<sup>6515</sup> See *infra*, paras 1967-1982.

(b) Vlastimir Đorđević's involvement and participation in anti-terrorist operations in Kosovo in 1998

1900. As early as March of 1998, Vlastimir Đorđević was directly involved in anti-terrorist operations conducted in Kosovo. Together with Jovica Stanišić, at the time the chief of the RDB, the Accused was part of a special staff set up by the Minister to carry out an action against a terrorist formation headed by Adem Jashari, in Prekaze/Prekaz, Srbica/Skenderaj municipality.<sup>6516</sup> During the police attack on the Jashari compound, at least 54 persons, most of them members of the Jashari family, were killed.<sup>6517</sup> A Human Rights Watch report published in October of 1998 refers to this operation as one in which the MUP used an excessive amount of force resulting in the deaths of many of the persons killed in the compound, including 18 women and 10 children.<sup>6518</sup> The Accused sought to suggest that he had no detailed knowledge of the international media reaction to this event. He testified that it was possible that “some foreign” media reported on this incident, but that he did not know what was written about it, and that “...they probably wrote what suited them at the time, using the events”.<sup>6519</sup> The Accused conceded, however, that he was aware of UN Security Council Resolution 1160 issued on 31 March 1999<sup>6520</sup> condemning the use of excessive and indiscriminate force by police and VJ against Kosovo Albanian civilians.<sup>6521</sup>

1901. Following the introduction of the Plan for the Suppression of Terrorism in Kosovo, at a meeting held on 21 July 1998 attended by the MUP and VJ leadership, including the Accused, and chaired by President Milošević, Minister Stojiljković, on that same day,<sup>6522</sup> instructed Vlastimir Đorđević and Obrad Stevanović, *inter alios*, to go to Kosovo, be present on the ground when there were operations in order to “encourage those carrying out the task”, and liaise with the military structures on the ground to agree on the implementation of the plan.<sup>6523</sup> At a MUP Staff meeting on the following day, 22 July 1998, the Accused briefed those present on their future obligations in accordance with the Plan for the Suppression of Terrorism in Kosovo.<sup>6524</sup> Ljubinko Cvetić testified that the minutes of this meeting record the attendees in order of their seniority; the Accused's name is listed first.<sup>6525</sup> From July 1998 onwards, for a period of at least three months, the Accused was present in Kosovo, monitoring the implementation of the Plan for the Suppression of Terrorism in

<sup>6516</sup> Vlastimir Đorđević, T 9539-9540. *See supra*, para 271.

<sup>6517</sup> *See supra*, para 271.

<sup>6518</sup> *See* Exhibit P741, p 26; *see also* Vlastimir Đorđević, T 10089-10090.

<sup>6519</sup> Vlastimir Đorđević, T 10089-10090, 10092-10093.

<sup>6520</sup> Exhibit P1074.

<sup>6521</sup> Vlastimir Đorđević, T 10095.

<sup>6522</sup> After the meeting with Slobodan Milošević on 21 July 1998, the Minister called a meeting on that same day attended by Sreten Lukić, Obrad Stevanović and Đorđević to discuss the implementation of the plan, Vlastimir Đorđević, T 9567.

<sup>6523</sup> Vlastimir Đorđević, T 9563-9564, 9567-9569, 9576-9577, 9831.

<sup>6524</sup> Vlastimir Đorđević, T 9575, 10125; Exhibit P768.

<sup>6525</sup> Ljubinko Cvetić, T 6640; Exhibit P768.

Kosovo and actively participating in MUP Staff meetings.<sup>6526</sup> During this time, he had an office in the same building as the MUP Staff.<sup>6527</sup> Vlastimir Đorđević was present at roughly a third of all anti-terrorist operations in this period throughout Kosovo, in particular those operations considered to be more problematic.<sup>6528</sup> He toured the SUPs in Kosovo.<sup>6529</sup> He had knowledge of all other operations carried in this timeframe.<sup>6530</sup> Minutes of meetings of the Joint Command from July to October 1998 reflect that he had knowledge of, and actively contributed to, the discussions relating to anti-terrorist operations launched from July to October 1998 in various areas throughout Kosovo.<sup>6531</sup>

1902. At the end of July 1998, Vlastimir Đorđević was present in the field during a joint VJ and MUP anti-terrorist operation in Mališevo/Malishevë, to the north of Orahovac/Rahovec, a known KLA stronghold.<sup>6532</sup> He spoke of this action at Joint Command meetings held on 26, 27 and 28 of July 1998.<sup>6533</sup> On 28 July 1998, the Accused communicated by radio from Mališevo/Malishevë to, *inter alios*, the Minister and Lukić who were attending a MUP Staff meeting at this time, that the action had been completed and Mališevo/Malishevë was “free”.<sup>6534</sup> The Chamber recalls that diplomats visiting Mališevo/Malishevë at the end of July 1998 observed that it was an abandoned village and that policemen were looting shops. Unharvested fields in the area were burning.<sup>6535</sup> A British military report dated 30 July 1998, including observations made on 28 and 29 July 1998,

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<sup>6526</sup> Vlastimir Đorđević, T 9587, 9790-9791, 9588-9589; *see also* Ljubinko Cvetić, T 6621.

<sup>6527</sup> Vlastimir Đorđević, T 9585; Milan Čanković, T 13989.

<sup>6528</sup> Vlastimir Đorđević, T 9622, 9853-9854.

<sup>6529</sup> Milan Čanković, T 13989.

<sup>6530</sup> *See* Exhibit D432, a report of the MUP Staff concerning terrorist activities from January to July 1998, and reporting of approximately 35 anti-terrorist operations that took place throughout Kosovo since 25 July 1998. The Accused testified that he knew about the contents of this report because he was directly involved and knew all about the activities of the MUP Staff during this time (*see* Vlastimir Đorđević, T 9637).

<sup>6531</sup> At a meeting on 25 July 1998, the Accused is recorded as stating “[s]tage a show of force tomorrow from Orahovac and continue the attack from Banja village” (Exhibit P886, p 9); on 26 July 1998, he stated “finish off Priština – Kijevo tomorrow, approach Mališevo as soon as possible, put Crnojlevo, Suva Reka and Zbroce on hold and move on to Junik and Rudnik”, and “[w]e must finish off Kijevo tomorrow and regroup part of the units in the direction of Kijevo” (Exhibit P886, p 12); on 30 July 1998, the Accused informed those present that “Munja will tomorrow proceed to Vučak near Ovčarevo” (Exhibit P886, p 23). The Chamber recalls its earlier finding that the MUP forces acted accordingly, *see supra*, paras 317-322. The minutes of a Joint Command meeting on 1 August 1998 record Đorđević as stating that PJP detachments will attack Rastavica/Rastavicë and Prilep from the direction of Caraberg “tomorrow” (Exhibit P886, p 27); at the meeting of 2 August 1998, Lukić is recorded as stating that the Munja was met with stiff resistance in Rastavica/ Rastavicë and in Prilep. The entry of 2 August 1998 also records Lukić as stating that “Franki” is acting in support of the 4<sup>th</sup> (PJP) detachment around Lauša/Laushë, *see* Exhibit P886, p 28. At a meeting on 12 August 1998, the Accused stated “[e]ngage the 3<sup>rd</sup> and 4<sup>th</sup> detachments around Loda and have them work on Friday”, and “do Vokša and Slup and engage the army”, Exhibit P886, p 41. On 23 August 1998, the Accused is recorded as stating that the Prizren and Belgrade companies and the SAJ “proceed along the Dulje–Rance direction”, Exhibit P886, p 57. At a meeting on 4 September 1998, the Accused is recorded as stating “[c]arry out operations against terrorists”, Exhibit P886, p 73. Further such entries reflecting Vlastimir Đorđević’s participation at the Joint Command meetings and entries indicating his leadership position are to be found at Exhibit P886, pp 78-79, 83, 96, 101, 105, 108.

<sup>6532</sup> Vlastimir Đorđević, T 9595, 9597-9598; Ljubinko Cvetić, T 6621.

<sup>6533</sup> *See* Exhibit P886, pp 12, 13-14, 17.

<sup>6534</sup> Ljubinko Cvetić, T 6221, 6644.

<sup>6535</sup> *See supra*, para 318.

refers to the tens of thousands of civilians normally living in the area subject to anti-terrorist operations in this period as missing.<sup>6536</sup>

1903. Vlastimir Đorđević was also present during a joint VJ and MUP operation in the area of Čičavica/Qiqavica in September of 1998, during which armed Serb civilians were used.<sup>6537</sup> At the end of September 1998, he was on the ground in Istinić/Isnić village, Dečani/Deçan municipality, where he was involved in the disarming of Kosovo Albanians as discussed in the section below; at that time, 15,000-20,000 Kosovo Albanian refugees had gathered in Istinić/Isnić as a result of an action by Serbian forces in the Deçani/Decane and Đakovica/Gjakovë areas.<sup>6538</sup> The Chamber recalls that members of the 7<sup>th</sup> company of the 23<sup>rd</sup> PJP of the MUP had been deployed to the Đakovica/Gjakovë area by dispatch of 15 July 1998, signed by the Accused.<sup>6539</sup>

1904. Shaun Byrnes testified that in September 1998, police forces launched an operation against a number of villages believed to be harbouring KLA south-east of Peć/Pejë, bordering Dečani/Deçan municipality, drove out civilians, and then herded them back home when the international press focused on the large number of displaced Kosovo Albanian civilians.<sup>6540</sup> Entries in the Joint Command meetings of 4 and 6 September 1998 record the Accused as stating that inhabitants of villages where anti-terrorist operations had taken place should be forced back to their villages following operations.<sup>6541</sup> The Accused explained that the word “force” must have been Đaković’s “spin” on the actual word used, since what was in fact being done is that police would be sent to the area where the villagers were hiding to persuade them to return home once it was safe to do so.<sup>6542</sup> However, Đaković sought to suggest that the Accused did use this word but in the context of situations where the KLA were not permitting villagers to return to their homes even after operations had ceased.<sup>6543</sup> The Chamber was not persuaded by either of these attempts to avoid the ordinary meaning of the words. In the Chamber’s finding, the Accused directed the use of force to ensure the return of villagers as an attempt to counter international media reports of the large number of refugees resulting from joint VJ and MUP operations.

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<sup>6536</sup> Exhibit P1407. *See supra*, para 322.

<sup>6537</sup> Vlastimir Đorđević, T 9860-9863; *see also* Exhibit P886, p 103 and Exhibit P1422. *See supra*, para 366.

<sup>6538</sup> Vlastimir Đorđević, T 9621-9622, 9622-9625, 9632-9634, 9803-9804, 9808-9809; *see* Exhibits D429, D431, D921; *see also* Vukmir Mirčić, T 13263, 13266, 13268, 13282-13283.

<sup>6539</sup> K25, T 1590-1591; Exhibit P131.

<sup>6540</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12228). Byrnes did not personally witness this event. The US KDOM teams reported that a number of Kosovo Albanians did not return to their homes because they had nothing to return to, Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12228-12229. *See also supra*, para 341.

<sup>6541</sup> Exhibit P886, pp 73, 79.

<sup>6542</sup> Vlastimir Đorđević, T 9613-9616, 9809-9812, 9813-9815.

<sup>6543</sup> Milan Đaković, T 8043-8045.

1905. The completion of an anti-terrorist operation in Donje and Gornje Obrinje/Abri-e-Poshtme and Abri-e-Epërme in Glogovac/Gillogoc and Srbica/Skenderaj municipalities was discussed at a Joint Command meeting on 26 September 1998.<sup>6544</sup> The Chamber recalls its finding that 26 members of the Delijaj family were killed by Serbian forces in Gornje Obrinje/Abri-e-Epërme on this day.<sup>6545</sup> This incident was well publicized, in Serbia as well as internationally.<sup>6546</sup> The Chamber recalls that at a Joint Command Meeting on 4 October 1998, Šainović is recorded as stating that an investigation into the incident should be launched.<sup>6547</sup> The Chamber is satisfied that the Accused had knowledge of the operation in Gornje Obrinje/Abri-e-Epërme, and the killings that occurred there on 26 September 1998.

1906. The Accused conceded that, when out in the field in Kosovo during anti-terrorist operations, he saw cases of looting and torching of houses of Kosovo Albanians by police officers, adding that measures were taken against such individuals in the form of disciplinary or criminal proceedings.<sup>6548</sup> During this period, Shaun Byrnes reported almost daily incidents of looting, torching, and incidents where villagers were being driven from their villages by the police, to Lukić, requesting that this be stopped.<sup>6549</sup> The Chamber is satisfied that the Accused's own knowledge of such crimes through his presence on the ground during the operations, his superior position to Lukić who must have reported such crimes to him during this time, and his participation at Joint Command meetings where reference is made to the looting and torching of Kosovo Albanian homes as well as the excessive use of artillery,<sup>6550</sup> put the Accused on notice of crimes being committed by Serbian forces in 1998 and of the risk that such crimes would continue to be committed by MUP forces under similar circumstances.

1907. The evidence demonstrates that, following the implementation of the Plan for the Suppression of Terrorism in Kosovo, in October 1998 the Accused returned to Belgrade. On 5 November 1998, he returned to Kosovo to attend a MUP Staff meeting where Milan Milutinović, the President of Serbia, addressed those present on the political and security situation in Kosovo.<sup>6551</sup> The evidence demonstrates that he attended a further meeting on 27 November 1998 in Belgrade,

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<sup>6544</sup> Exhibit P886, p 112. The Chamber notes that the Accused is not recorded as contributing to this meeting. He is however not amongst those listed as absent, and the Chamber is therefore satisfied that he was present at this meeting.

<sup>6545</sup> *See supra*, para 339.

<sup>6546</sup> Frederick Abrahams, T 4021-4022.

<sup>6547</sup> Exhibit P886, p 119.

<sup>6548</sup> Vlastimir Đorđević, T 10094-10095.

<sup>6549</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12141-12142, T 12149-12150, 12151-12153.

<sup>6550</sup> *See e.g.*, Exhibit P886, pp 8, 11, 36, 42, 107. The Chamber notes that at the meeting of 7 September 1999, the Accused himself is recorded as stating "we must reduce the use of artillery", and "we must take measures against persons who torch houses subsequently" (*see* Exhibit P886, p 82). There is no evidence that any such measures were taken. *See infra*, paras 2086-2105.

<sup>6551</sup> Vlastimir Đorđević, T 9654; Ljubinko Cvetić, T 6621; *see* Exhibit P770.

chaired by the Minister and attended by the Assistant Ministers, the head of the RDB, head of the MUP Staff Lukić, as well as by Deputy Prime Minister Nikola Sainović, to discuss the prevailing security situation in Kosovo and the further engagement of members of the police for the execution of future anti-terrorist operations.<sup>6552</sup>

(c) Vlastimir Đorđević's role in arming local Serbs, and disarming Kosovo Albanians

1908. The Prosecution submits that Vlastimir Đorđević played a significant role in the process of arming non-Albanian civilians throughout Kosovo, and that he did so despite his awareness that criminal acts were likely to be perpetrated by these armed civilians.<sup>6553</sup> In this context, the Prosecution submits that despite his awareness of ethnic tensions in Kosovo and the obvious risk that arming one ethnic group while disarming the other entailed, the Accused, in 1998, furthermore participated in the disarming of predominantly Kosovo Albanian villages, as part of the plan for the suppression of terrorism.<sup>6554</sup>

1909. It is the position of the Defence that the RJB had nothing to do with disarming of Kosovo Albanians, which, it submits, was done with the intention of preventing an armed secession, or with the arming of members of the Serb population; this was dealt with by the MUP Staff.<sup>6555</sup>

1910. Evidence indicates that the disarmament of predominantly Albanian villages in Kosovo was an element of the Plan for the Suppression of Terrorism in 1998.<sup>6556</sup> The Joint Command tasked MUP units with disarming members of the Kosovo Albanian population in the interior of Kosovo,<sup>6557</sup> while the Priština Corps units disarmed villages located in the border belt.<sup>6558</sup> SUPs in Kosovo were responsible for such activity.<sup>6559</sup> The Accused was therefore *de jure* responsible for the disarming of Kosovo Albanian villages by such forces. He was also personally involved in the disarming of the village of Istinić/Isnîq in Dečani/Deçan municipality at the end of September 1998. The Accused and Defence witness Vukmir Mirčić, the chief of the Dečani/Deçan SUP at the time, sought to portray the actions of the MUP that had entered the village as seeking to prevent the escalation of the situation by requesting "terrorists" who were intermingled with the civilian

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<sup>6552</sup> Ljubinko Cvetić, T 6649; Exhibit P689.

<sup>6553</sup> Prosecution Final Brief, paras 1107-1108.

<sup>6554</sup> Prosecution Final Brief, paras 1120, 1122.

<sup>6555</sup> Closing Arguments, T 14490-14491. With respect to the arming of the Serb population, the Defence submits, likewise, that there are no RJB documents dealing with this process, or with the engagement of these civilians in operations in 1998 and 1999, nor did the RJB ever receive reports on such activities, Defence Final Brief, paras 611, 618.

<sup>6556</sup> Exhibit P87, p 4.

<sup>6557</sup> Exhibit P1220, pp 5, 8; Exhibit P1218, p 6; Exhibit P1399, p 8.

<sup>6558</sup> Exhibit D338, p 5; Exhibit P886, p 82.

<sup>6559</sup> Exhibit D244.



population to leave the area,<sup>6560</sup> and offering a peaceful settlement to the villagers.<sup>6561</sup> While the disarming of this village may have also had this objective, in light of the entirety of evidence establishing the role of SUPs in the disarming of Kosovo Albanian villages at this time, the Chamber is satisfied that the Accused was fully cognizant of these activities, participated in such processes, and did so in the knowledge that Serb civilians were being actively armed at the same time.

1911. With respect to the arming of local Serbs in Kosovo, the Chamber has found elsewhere in this Judgement that the VJ and MUP began this process by mid-1998.<sup>6562</sup> Local Serbs in Kosovo were organised into armed reserve police squads (RPOs) with the aim of defending Serbian villages. Members of the RPOs also participated in combat operations alongside the MUP and the VJ.<sup>6563</sup> The commanders of the RPOs took their orders from the commanders of local police station in their respective areas.<sup>6564</sup> By July of 1998, over 54,000 Serb civilians in Kosovo were armed; 12,170 were issued arms by the MUP, and 34,716 were issued arms by the VJ.<sup>6565</sup> By February of 1999, there were around 255 RPOs in Kosovo.<sup>6566</sup> With respect to the issuance of arms by the MUP, Ljubinko Cvetić testified that this process "...proceeded from the MUP down to the staff of the MUP and then the Secretariat of Internal Affairs".<sup>6567</sup> This evidence directly contradicts the defence submission that only the MUP Staff in Priština/Prishtinë was involved in this process.

1912. The Accused denied knowledge of the arming of the Serb population on a general level,<sup>6568</sup> and of the involvement of armed Serb civilians in joint VJ and MUP operations.<sup>6569</sup> It is his evidence that the role of the police in Kosovo with respect to the RPOs was limited to the obligation of local police stations to provide members of the RPOs with logistical support, training and equipment; he stressed that the RPOs were not organizational units of the MUP.<sup>6570</sup> Under cross-examination, he added that while it was "likely" that some of the active policemen from a village would have been in charge of the reserve police squads of a village in order to provide them with support, these policemen were not subordinate to him; this appears to have been in the context of

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<sup>6560</sup> Vlastimir Đorđević, T 9624-9625, 9804.

<sup>6561</sup> Vukmir Mirčić, T 13264-13267, 13336, 13340-13341.

<sup>6562</sup> *See supra*, para 92.

<sup>6563</sup> *See supra*, paras 94-95.

<sup>6564</sup> *See supra*, para 94.

<sup>6565</sup> Exhibit P688, p 7. *See supra*, para 92.

<sup>6566</sup> Ljubinko Cvetić, T 6718; Exhibit P1055, p 4. *See supra*, para 92.

<sup>6567</sup> Ljubinko Cvetić, T 6713.

<sup>6568</sup> Vlastimir Đorđević, T 9862, 9903.

<sup>6569</sup> Vlastimir Đorđević, T 9901-9902, 9862-9683.

<sup>6570</sup> Vlastimir Đorđević, T 9939-9940; *see also* Vlastimir Đorđević, T 9906-9907; Exhibit P1052, p 2.

his general position that in Kosovo he had no authority, a position which the Chamber does not accept to be correct.<sup>6571</sup>

1913. The Accused was present at meetings (in the Chamber's finding of the Joint Command)<sup>6572</sup> in July and August 1998 when the arming of the Serb population and their recruitment into RPO structures was discussed.<sup>6573</sup> He was present during a joint VJ and MUP operation in the area of Čičavica/Qiqavica in September of 1998 during which, as reflected in a Priština Corps order of 19 September 1998, armed Serb civilians participated; he denies knowledge of this, however, on the basis that during this action, he was "on the other side of the mountain".<sup>6574</sup> He was present at a meeting held in Beli Dvor, Belgrade, on 29 October 1998 attended by the VJ and MUP leadership and chaired by President Milošević, where the implementation of the Plan for the Suppression of Terrorism in Kosovo was discussed. This Plan involved, *inter alia*, the arming of the Serb population and organization into RPOs.<sup>6575</sup> He claims, nevertheless, not to recall whether the creation of RPOs consisting of Serb civilians in Kosovo had in fact been part of this plan.<sup>6576</sup> In relation to the direction provided to SUP chiefs and commanders of the PJP by Sreten Lukić at a meeting on 2 November 1998, *inter alios*, not to state the fact that Serbs were armed and to explain this to "members of the mission" (*i.e.*, the KVM), if they must, by using the excuse that "only members of the guard" were armed, the Accused sought to explain that Lukić was merely giving guidance that the use of weapons should be limited to guard duty.<sup>6577</sup> This information is not borne out by the full context in which Lukić spoke.

1914. The Accused's knowledge of arming of Serb civilians and their organisation into RPOs was not limited to 1998. Vlastimir Đorđević was present at a MUP Staff meeting on 17 February 1999 where Lukić informed those present that the RPOs in nearly all villages inhabited by Serbs were active and have increased its activities.<sup>6578</sup> Lukić also made reference to meetings held between the RPOs and Momčilo Stojanović, assistant chief of the RJB and MUP Staff member, as well as

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<sup>6571</sup> Vlastimir Đorđević, T 9903-9904. The Chamber notes that when asked whether the RPOs were commanded by members of the MUP that were ultimately "down the chain of command subordinate to you", the Accused answered "[n]obody was subordinate to me", adding that local policemen would only provide assistance to the RPOs in their defence against terrorists (Vlastimir Đorđević, T 9903-9904).

<sup>6572</sup> *See supra*, para 229.

<sup>6573</sup> Exhibit P886, pp 3, 16-18, 22, 55; *see also* Vlastimir Đorđević, T 9915, 9920-9922, 10143.

<sup>6574</sup> Vlastimir Đorđević, T 9860-9863; *see also* Exhibit P886, p 103 and Exhibit P1422.

<sup>6575</sup> Exhibit P87, p 4; *see also* Vlastimir Đorđević, T 9872-9873, 9875.

<sup>6576</sup> Vlastimir Đorđević, T 9875-9876.

<sup>6577</sup> Exhibit P690, p 3; Vlastimir Đorđević, 9928-9931. The Chamber notes that Lukić's guidance was made in the context of the agreements with the OSCE in October 1998. The specific instruction was to "...[m]ake sure that Serbs and members of the RPO/Reserve Police Squads/ do not misuse weapons, let off guns at weddings, celebrations of *slava*, farewell parties and so on, do not carry weapons or show them in public in the presence of members of the Mission. When on guard duty, use on weapon and prevent individuals from bringing in the weapon they have been issued. Tell them not to state the fact that Serbs are armed and to explain this fact, if they must, using the excuse that it is only members of the guard who are armed" (Exhibit P690, p 3).

<sup>6578</sup> Exhibit P85, pp 1-2; Vlastimir Đorđević, T 9936-9937.

Blagoje Pesić, likewise a member of the MUP Staff. A report dated 16 February 1999 recording the results of these meetings, held between 13 and 16 February 1999, describes Pesić as the “officer in charge of organisation and functioning of the RPOs in Kosovo”.<sup>6579</sup> The minutes of the MUP Staff meeting of 17 February 1999, moreover, records Minister Stojiljković as stating that the RPOs “and the people” should be told to avoid a civil war at all costs, but that should there be a conflict, to refrain from killing women and children.<sup>6580</sup> Despite this documentary evidence establishing the close ties between the MUP and the RPOs, the Accused maintained that the role of the MUP with respect to the RPOs was limited to providing support and preparing the RPOs for defensive actions against terrorists.<sup>6581</sup> He denied knowledge of the fact that by this time, as recorded in the 16 February 1999 report, 64,080 weapons had been distributed to the existing RPOs, stating that he did not receive this report, was not informed of this information by anyone, and did not know that Stojanović and Pesić would go to Kosovo to meet with RPO commanders.<sup>6582</sup>

1915. The Chamber does not consider that the Accused’s testimony, in particular with respect to the documentary evidence described above, is credible. The evidence concerning the close association between the MUP and the RPOs and the engagement of armed Serb civilians in joint VJ and MUP operations, as also discussed elsewhere in the Judgement,<sup>6583</sup> is clear. In the view of the Chamber, the Accused had knowledge of the arming of the Serb civilian population in Kosovo, their formation into RPOs, the involvement of the MUP in relation to logistical support,<sup>6584</sup> and the engagement of armed Serb civilians in joint VJ and MUP operations carried out in the latter half of 1998 and until the end of the Indictment period in 1999. The arming of the civilian population in Kosovo was not done in a non-discriminatory way, nor was it done with the limited aim of self-defence of the civilian population against the “enemy”.<sup>6585</sup> As the evidence discussed above reveals, the arming was of the civilian Serb population and was undertaken by the MUP and the VJ as part of the Plan for the Suppression of Terrorism in Kosovo which was approved by President Milošević.

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<sup>6579</sup> Exhibit P1055, p 3; *see also* *See* Exhibit P85, pp 1-2; Vlastimir Đorđević, T 9936-9940,

<sup>6580</sup> Exhibit P85, p 3. The Chamber notes that the risk of Serb civilians organising themselves and offering resistance on their own as a result of terrorist activities, which would potentially further complicate the situation in Kosovo and led to the increasing emergence of radical forces, was raised at a VJ Collegium meeting of 21 January 1999, and a VJ General Staff meeting on 1 February 1999, respectively (*see* Exhibits P902, p 16, D523, p 16).

<sup>6581</sup> Vlastimir Đorđević, T 9938-9940.

<sup>6582</sup> Vlastimir Đorđević, T 9940-9941. It was the Accused’s testimony, moreover, that he *never* saw any reports prepared by Pesić with respect to RPOs, adding that Pesić would draft such reports for the MUP Staff only, since they were the ones to analyze RPO activity (*see* Vlastimir Đorđević, T 9912, 9938, 10143-10144).

<sup>6583</sup> *See supra*, paras 92-96.

<sup>6584</sup> *See supra*, paras 92-96.

<sup>6585</sup> *See* Exhibit P44, Article 3.

(d) Vlastimir Đorđević's participation in international negotiations on the role of the police in Kosovo

1916. Also indicative of Vlastimir Đorđević's effective control over the police forces in Kosovo in late 1998 is the responsibility he exercised in international negotiations concerning the role of the Serbian security forces in Kosovo in October of that year. On 24 and 25 October 1998 meetings between international representatives and representatives of the FRY and Serbia<sup>6586</sup> took place in Belgrade, to agree on specific steps to be undertaken by FRY and Serbia to achieve full compliance with United Nations Security Council Resolution 1199. The discussions focused on the size, role and responsibilities of the VJ and the MUP in Kosovo.<sup>6587</sup> The Accused, Vlastimir Đorđević, led the Serbian delegation participating in the negotiations on the role of the police. Assistant Minister Obrad Stevanović, who was in charge of coordination of the police administration, the Head of the MUP Staff for Kosovo General Sreten Lukić, and Colonel Mijatović, Deputy Head of the MUP Staff for Kosovo, were also present as part of the Serbian delegation in these negotiations.<sup>6588</sup> The negotiations on the role of the police concluded with the signing of a document entitled "Understanding between the KDOM and Ministry of the Interior of the Republic of Serbia". The document was signed for the Republic of Serbia by Vlastimir Đorđević, expressly in his capacity as the Head of the RJB of the MUP, and for the KDOM by Shaun Byrnes, Chief of the US-KDOM. This agreement provided that all the existing police checkpoints in Kosovo were to be dismantled and instead, only 27 observation points were to be established. These observation points were not on roads. The agreement further determined the locations of these 27 "observation points" and determined all the locations in Kosovo from where the police were to be withdrawn.<sup>6589</sup> The final document of the negotiations in Belgrade, signed by Nikola Šainović for the FRY and by Vlastimir Đorđević for the Republic of Serbia, also provided for the withdrawal from Kosovo of the special police units deployed there after February 1998,<sup>6590</sup> these included the PJP and SAJ.

1917. It was Vlastimir Đorđević who was able to agree to the dismantling of all police checkpoints in Kosovo. He was able to make undertakings on behalf of the Republic of Serbia for the withdrawal of police forces from Kosovo, including special police units. He was able to negotiate on behalf of the Republic of Serbia and agree that only 27 "observation points" would be established, and to negotiate as to their specific locations. In the view of the Chamber, these facts

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<sup>6586</sup> As discussed earlier in this Judgement, Kosovo was part of the Republic of Serbia, one of the constituent republics of the FRY. The VJ was organised at federal level, whereas the police force was organised at republican level with the police force in Kosovo being part of the MUP of Serbia. Hence, negotiations about the role of the security forces in Kosovo, including both the VJ and the MUP would have involved both representatives of the FRY and of Serbia.

<sup>6587</sup> See *supra*, para 357.

<sup>6588</sup> See *supra*, para 357.

<sup>6589</sup> See *supra*, para 360.

clearly demonstrate that he had not only *de jure* power over the police forces in Kosovo but he also exercised effective control over these forces by being able to decide on their deployment, withdrawal, movement and operational functioning in Kosovo. These facts further reveal that the Accused had not been excluded from authority over MUP forces and their operations in Kosovo by the decision of Minister Stojiljković of 15 June 1998 by which the Ministerial Staff in Kosovo was to report to the Minister.

1918. In the Chamber's further finding, Vlastimir Đorđević's participation in the negotiations of the October Agreements demonstrates that he had detailed knowledge about the situation on the ground, of MUP forces in Kosovo in 1998, and the strategic needs and concerns of these forces. Representing the interests of the MUP in these international negotiations required a profound knowledge of the situation on the ground, including areas where KLA forces were active, or could be active, and the areas of present and potential strategic importance for the MUP forces. It was the evidence of Shaun Byrnes, the Chief of US-KDOM who led the opposing team of international negotiators in these talks, that Vlastimir Đorđević demonstrated clear knowledge of the facts on the ground in Kosovo, including the location and operational deployment of the Serbian police.<sup>6591</sup> In the Chamber's finding, Vlastimir Đorđević was fully informed about the activities of the MUP forces in Kosovo in 1998.

1919. Further, on 3 November 1998, it was the the Accused, who by telegram to, *inter alios*, the chiefs of SUPs and the RDB in Kosovo, informed them of an agreement that had been reached on 1 November with the OSCE Verification Mission for them to enter Kosovo and establish a monitoring mission.<sup>6592</sup>

(e) Vlastimir Đorđević's role in Račak/Raçak in January 1999

1920. Indicative of Vlastimir Đorđević's involvement in the JCE and his role as Head of the RJB is his role in the events that took place in Račak/Raçak in mid January 1999. On 15 January 1999 a joint MUP and VJ operation took place in the village of Račak/Raçak, which is located in the municipality of Štimlje/Shtime, central Kosovo. As found earlier in this Judgement, the operation was carried out in response to the killing of members of a police patrol by the KLA which occurred a few days earlier.<sup>6593</sup> The operation commenced in the early morning of 15 January, at about 0600 or 0700 hours, and continued until 1500 or 1600 hours in the afternoon of that day.<sup>6594</sup> Initially, VJ forces, which had been located on the hills overlooking the village for weeks prior to the incident,

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<sup>6590</sup> See *supra*, para 362.

<sup>6591</sup> See *supra*, para 359.

<sup>6592</sup> Exhibit P715; Vlastimir Đorđević, T 9653-9654.

<sup>6593</sup> See *supra*, para 397.

opened fire on the village and the surrounding hills using T-55 tanks and Pragas.<sup>6595</sup> Following this, perhaps after 0800 hours, MUP forces, comprising PJP and SAJ members, entered the village on foot and conducted a house by house search.<sup>6596</sup> In the course of the operation not less than 45 Kosovo Albanians were killed. Some 20 to 24 of the bodies had gunshot wounds to the head and appeared to have been shot from a close range.<sup>6597</sup> At least one of the bodies had been decapitated. Among the victims was a woman and a child.

1921. Vlastimir Đorđević arrived at the police station in Štimlje/Shtime, located about a kilometre away from Račak/Raçak at 0830 or 0900 hours, at about the beginning of the MUP part of the operation. He remained there, together with the chief of SUP Uroševac/Ferizaj, which SUP had responsibility for Račak/Raçak, and other senior police from the SUP for over one hour.<sup>6598</sup> During this time he had two telephone conversations with Nikola Šainović, the Deputy Prime Minister of the FRY responsible for Kosovo.<sup>6599</sup>

1922. In the finding of the Chamber, the operation in Račak/Raçak was carried out in close coordination between the VJ and the MUP. While there are suggestions in the evidence that the aim of this operation may have included arresting the persons responsible for the killing of the Serbian police officers a few days earlier, in the view of the Chamber, the extensive Serbian forces engaged, the size and force of the weapons used, the number and equipment of the forces involved and the casualties caused, especially the very high number of Kosovo Albanians killed, establish that the actual aim of this operation was not to carry out arrests but to retaliate against the earlier killing of police by the KLA, to punish the potential perpetrators and perceived supporters for the killing of the Serbian police officers, and to terrorize and punish the population in a village that was regarded as a KLA stronghold. Even if it were accepted that the operation in Račak/Raçak had a legitimate military or anti-terrorist purpose, in view of the type of weapons used by the VJ and the MUP in this operation, the lack of any suggestion in the evidence about any outgoing fire from Račak/Raçak, the high number of Kosovo Albanian casualties and the virtual absence of casualties on the side of the VJ and the MUP, suggest that the use of force in Račak/Raçak was grossly disproportionate to any such military or anti-terrorist objective.

1923. Vlastimir Đorđević was the most senior MUP official involved in the operation. As such he had full information about the events in Račak/Raçak and exercised control, or was in a position to exercise control, over the forces conducting the operation and those charged with conducting the

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<sup>6594</sup> See *supra*, paras 398-403.

<sup>6595</sup> See *supra*, para 401.

<sup>6596</sup> See *supra*, para 401.

<sup>6597</sup> See *supra*, para 416.

<sup>6598</sup> See *supra*, para 398.

operation. The Chamber must conclude from the known circumstances that as the most senior MUP official involved, and his two conversations with the Deputy Prime Minister of the FRY responsible for Kosovo, Vlastimir Đorđević was able to inform the senior political leadership of the FRY of the progress of the operation in Račak/Raçak and took an organising role regarding the actions of the police on the ground.

1924. The Chamber has found earlier that a judicial investigative team entered Račak/Raçak only three days after the incident. This happened on 18 January 1999, when, on the Accused's own evidence, he was in Štimlje/Shtimë police station to secure the location for an on-site investigation. The Chamber has found earlier that what was shown to the judicial investigative team in Račak/Raçak on 18 January 1999 did not accord with the observations of international observers on 15 and 16 January 1999 in the village. The judicial investigative team was not shown bodies that had been shot in the head, they were not shown the gully depicted in the film prepared by KVM representatives or a decapitated body. The Chamber has found earlier that on 18 January the judicial investigative team was shown a staged scene, set up by police, designed to give a false impression of the true events. The Chamber is satisfied that the Accused led the MUP efforts to conceal evidence of grossly excessive force used by the police and to present the operation in Račak/Raçak as a legitimate anti-terrorist operation.

(f) Vlastimir Đorđević's other visits to Kosovo in 1999

1925. In addition to being on the ground in Kosovo to monitor the implementation of the Plan for the Suppression of Terrorism in Kosovo, in particular between July and October 1998, and in addition to his commanding presence in Račak/Raçak in mid-January 1999, the evidence demonstrates that the Accused visited Kosovo on several more occasions in the period leading up to the start of the war, and throughout the Indictment period. He attended a MUP Staff meeting in Priština/Prishtinë on 17 February 1999 at which, *inter alia*, three "mopping up" operations in the Podujevë/Podujevo, Dragobilja/Dragobil and Drenica areas, and the allotment of police officers to these operations was discussed.<sup>6599</sup> Evidence demonstrates that he also attended a MUP Staff meeting in Priština/Prishtinë on 8 March 1999.<sup>6600</sup> On 16 April 1999, he went to Kosovo together

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<sup>6599</sup> See *supra*, para 398.

<sup>6600</sup> Exhibit P85; Vlastimir Đorđević, T 9676-9677; see also Žarko Braković, T 4215-4216. In his statement to the OTP in 2004, Braković stated that Vlastimir Đorđević and Obrad Stevanović visited Kosovo on a regular basis in 1999 (Žarko Braković, Exhibit P759, para 26). However, during cross-examination in the current trial, the witness minimized this by testifying that he only saw the Accused twice in Kosovo in 1999, once on 17 February 1999 and once on 10 June 1999 (Žarko Braković, T 4215-4216, 4193, 4296). Braković tried to suggest that this was not a change in his evidence; he did concede that his memory in 2004 would have been better (Žarko Braković, T 4296).

<sup>6601</sup> Ljubinko Cvetić, T 6682-6684, 6686, 6735. Vlastimir Đorđević testified that he does not remember being in Kosovo on 8 March 1999 (Vlastimir Đorđević, T 10019-10020).

with the Minister to boost the morale of the police force and Serb population.<sup>6602</sup> A meeting was held with the chiefs of the SUPs and the MUP Staff, as well as with a number of politicians.<sup>6603</sup> At this latter meeting, the Accused announced the termination of duties of the chiefs of the SUPs of Kosovska Mitrovica/Mitrovicë and Priština/Prishtinë upon the completion of their terms in Kosovo.<sup>6604</sup> The Accused returned to Kosovo two days later, on 18 April 1999, to see how the handover of duties of the two SUP chiefs to their successors was going; he visited the MUP Staff where he met with Sreten Lukić and Obrad Stevanović, toured the Priština/Prishtinë SUP and met with its chief, and met with the chief of the SUP of Uroševac/Ferizaj. Subsequently, on this same day, he attended a meeting, which was attended by key MUP and VJ leaders in Kosovo, *i.e.* Lukić, Stevanović, Pavković, Lazarević and Milan Đaković, where the subject of resubordination of the MUP to the VJ was discussed.<sup>6605</sup> While contested by the Accused, the Chamber, as mentioned in a previous section,<sup>6606</sup> is further satisfied that on 1 June 1999, he attended a Joint Command meeting in Priština/Prishtinë.<sup>6607</sup> Evidence also demonstrates that the Accused attended a meeting at the MUP Staff in Priština/Prishtinë on 10 June 1999 together with Minister Stojiljković, attended by members of the MUP Staff and the chiefs of the SUPs in Kosovo, to discuss the implementation of the Kumanovo Agreement, *i.e.*, the withdrawal of forces from Kosovo.<sup>6608</sup> Thus, in the finding of the Chamber, in 1999 and in particular during the NATO campaign, the Accused continued to maintain his involvement in Kosovo, and was active with the Minister in Kosovo on more than one occasion, conduct which was quite inconsistent with the Accused's evidence that he had no authority in Kosovo and was kept "out of the loop" about events in Kosovo by the Minister.

(g) Vlastimir Đorđević's role in deployment of paramilitaries or volunteers to Kosovo

1926. The Prosecution submits that Vlastimir Đorđević significantly contributed to the JCE by engaging paramilitary groups to serve in Kosovo in MUP and VJ operations against Kosovo Albanian civilians during which crimes as charged were committed by the paramilitary units, and that prior to the start of the NATO campaign, the Minister and the Accused prepared for the introduction of paramilitaries and volunteers into the MUP in order to engage them in operations.<sup>6609</sup> It is the Defence position that with the exception of what is contended to be members of a reserve force attached to the SAJ that were involved in the events in Podujevo/Podujevë town on 28 March 1999, discussed in more detail below, the RJB only deployed

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<sup>6602</sup> Vlastimir Đorđević, T 9735, 10010; Ljubinko Cvetić, T 6588, 6682.

<sup>6603</sup> Vlastimir Đorđević, T 9735.

<sup>6604</sup> Vlastimir Đorđević, T 9736; Ljubinko Cvetić, T 6685-6686.

<sup>6605</sup> Vlastimir Đorđević, T 9737-9739, 10019-10023; Milan Đaković, T 8049.

<sup>6606</sup> *See supra*, para 237.

<sup>6607</sup> Aleksandar Vasiljević, T 5691-5694, 5926, 5702.

<sup>6608</sup> Vlastimir Đorđević, T 9760-9761, 10022-10023; *see also* Žarko Braković, T 4193, 4215-4216.

<sup>6609</sup> Prosecution Final Brief, paras 1138-1140; Closing Arguments, T 14377-14380.



SAJ and PJP to Kosovo. The Defence submits that there is no evidence that the RJB, and thereby the Accused, dispatched any paramilitary or volunteer unit to Kosovo during the war.<sup>6610</sup>

1927. The Chamber has found elsewhere in this Judgement that there was a number of paramilitary groups present in the field in Kosovo in 1998-1999, working in concert mainly with MUP units in order to supplement the forces.<sup>6611</sup>

1928. The evidence demonstrates, in the Chamber's finding, that the Accused was personally and directly involved in the deployment of a paramilitary unit in March of 1999. This was the deployment of the paramilitary unit known as the Scorpions, which purportedly had been incorporated into the MUP as a unit assigned to serve with the SAJ for the purposes of assisting in an operation in Podujevo/Podujevë at the end of March 1999, although in these respects, in apparent disregard of the applicable law regulating these matters, discussed in more detail below.<sup>6612</sup> The Chamber is satisfied that the Accused also had knowledge that paramilitaries operated in Kosovo in both 1998 and in 1999.<sup>6613</sup> A dispatch issued by the Accused on 29 April 1998, for example, states that according to information available to the RJB and RDB, in several places in Serbia, preparations were under way to "insert Serbian volunteer groups" into Kosovo, adding that "these groups are as a rule a front for criminal or other interests".<sup>6614</sup> The arrival and use of volunteers, moreover, is mentioned at Joint Command meetings on 28 and 29 July 1998 at which the Accused was present.<sup>6615</sup>

1929. The Chamber is satisfied, moreover, that Vlastimir Đorđević had knowledge of, and shared in, an intention of the MUP to engage paramilitaries in anti-terrorist operations prior to the start of the war.<sup>6616</sup> His direct involvement, less than a week after a dispatch of the Minister calling for

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<sup>6610</sup> Defence Final Brief, paras 512-514.

<sup>6611</sup> See *supra*, para 194.

<sup>6612</sup> See *supra*, para 75; see *infra*, paras 1934-1945.

<sup>6613</sup> Exhibit P85, p 3; Exhibit P356, p 3; Exhibit P709; Vlastimir Đorđević T 9545, 9676-9677, 9680-9681, 9941-9942; see also *supra*, para 195.

<sup>6614</sup> Exhibit P709.

<sup>6615</sup> Exhibit P886, p 17 ("7000 volunteers /needed/ for the border not to be violated"), p 20 ("[t]he crisis in the MUP has been resolved in a satisfactory manner, the arrival of volunteers is encouraging, there is room to increase the reserve force from KiM").

<sup>6616</sup> Vlastimir Đorđević, T 9945-9946; Exhibit P702, dated 24 March 1999 was sent by the Minister and addressed, *inter alia*, to the chiefs of all SUPs, the MUP Staff, and to the Accused, containing information concerning the anticipated engagement of paramilitary units in Kosovo. The Accused testified that he did not know why the Minister would order such a thing (Vlastimir Đorđević, T 9946). The Chamber notes that the Minister's dispatch referred back to "our dispatch", referring to a dispatch issued by the Accused on 18 February 1999, calling for the need to "establish complete control over volunteer and paramilitary units and their members" (Exhibit P356). The Chamber notes the Defence position, reflected in paragraphs 102 to 106, that the Accused's dispatch on 18 February 1999 was intended to prevent the use of paramilitaries and volunteers operating in Kosovo, while the Minister's dispatch of 24 March 1999 sought to prescribe a method whereby individuals belonging to a former volunteer or paramilitary unit could be admitted if they met the requirements (Defence Final Brief, para 103). The Chamber rejects this interpretation of these dispatches, whose meaning the Chamber considers to be clear. It notes, in this respect, the evidence of Ljubinko Cvetić, who testified that the reference to establishing "complete control

such engagement, in the deployment of the Scorpions to Podujevo/Podujevë on 28 March 1999, described in detail below, clearly demonstrated the Accused's shared intention to engage paramilitaries during the Indictment period.

(h) Vlastimir Đorđević's role in the deployment of the Scorpions to Podujevo/Podujevë and follow-up actions in March of 1999

(i) Positions of the parties

1930. It is the Prosecution's submission that Vlastimir Đorđević played a key role in the incorporation of the Scorpions unit into the MUP, that he ordered the deployment of a unit of Scorpions comprised of some 120 men, who were to serve with the SAJ, to Kosovo in March of 1999, and that he then ordered their redeployment in April 1999, with the awareness that members of this unit had committed crimes in Podujevo/Podujevë town on 28 March 1999.<sup>6617</sup> The Prosecution submits that these redeployed members of the Scorpions subsequently participated in further criminal action together with the PJP in Suva Reka/Suharekë municipality in late April 1999.<sup>6618</sup> It is the position of the Prosecution, finally, that the Accused knew or had reason to know of, and failed to take necessary and reasonable measures to prevent, crimes committed by the members of the Scorpions unit which had served with the SAJ.<sup>6619</sup> The Prosecution submits that Vlastimir Đorđević should have ensured a background check was conducted of these men, in accordance with the law, and similarly should have ensured that checks were conducted to confirm they had received proper training.<sup>6620</sup> Finally, it is the position of the Prosecution that no proper investigation was conducted into the killings in Podujevo/Podujevë on 28 March 1999 and none of the perpetrators of the killings were punished during the remainder of the time of the Accused's tenure as the Chief of the RJB, which ended in 2001.<sup>6621</sup>

1931. The Defence takes the position that at the time of the admission and engagement of what it refers to as a MUP reserve force attached to the SAJ unit, the Accused had no knowledge of their

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over volunteer and paramilitary units and their members" in the Accused's dispatch of 18 February 1999 (Exhibit P356) required the SUPs and the RDB to use their connections, collaborators, and others to "keep an eye on all of those volunteers and members of the paramilitaries who had previously taken part in combat in the territory of Croatia and Bosnia and Herzegovina, and to go through their precise records, and to place them under control so that their movements are known" (Ljubinko Cvetić, T 6677-6679). It also rejects the Defence argument that the reason why the Minister, in Exhibit P702, referred to the Accused's dispatch (Exhibit P356) as "our dispatch" is that all the RJB instructions sent to the organizational units and SUPs in Serbia had been approved before they were sent by the Minister (Closing Arguments, T 14488). In view of the Chamber, the reference to "our dispatch" reveals that the intent to engage paramilitary units in Kosovo in 1999 was shared by Vlajko Stojiljković and Vlastimir Đorđević.

<sup>6617</sup> Prosecution Final Brief, paras 1141-1144, 1149, 1175-1181.

<sup>6618</sup> Prosecution Final Brief, paras 1182-1184.

<sup>6619</sup> Prosecution Final Brief, paras 1322 *et seq.*

<sup>6620</sup> Prosecution Final Brief, paras 1323-1324.

<sup>6621</sup> Prosecution Final Brief, paras 1327 *et seq.*

criminal background or their membership of the Scorpions unit.<sup>6622</sup> Moreover, the Defence argues that the Scorpions were never a paramilitary unit, and that the MUP reserve force which had been attached to the SAJ cannot be identified with the Scorpions unit.<sup>6623</sup> The Defence submits that it was not the Accused, but witness Živko Trajković who was in charge, and responsible, for the selection of personnel for the SAJ unit.<sup>6624</sup> It was also Trajković who proposed the redeployment of the members of the same unit, excluding those who had committed crimes, after they had been sent back following the killings in Podujevo/Podujevë town.<sup>6625</sup> The Defence argues that the Accused has no responsibility as only the Minister could issue a decision on the admission and engagement of MUP reserve forces. It further argues that the procedure of dispatching the members of the reserve force to the SAJ was carried out by the Police Administration which provided them with police insignia and uniforms; their engagement was dependent upon the approval of the MUP Staff and the SAJ commander Trajković.<sup>6626</sup> With respect to investigation of the incident and the punishment of the perpetrators of the killings, the Defence submits that the Podujevo/Podujevë OUP was immediately notified of the killings, that the court in Prokuplje performed an on-site investigation, and that a criminal report was filed with the competent prosecutor's office against the persons identified at that time as the perpetrators, followed by a request for their apprehension.<sup>6627</sup> The Defence adds that pursuant to the criminal legislation of the Republic of Serbia, the police was in no position to influence the course, duration, or outcome of any criminal proceedings, since these are elements to be decided upon by the competent court.<sup>6628</sup>

(ii) Preliminary notes on the evidence

1932. Several witnesses have dealt with the manner of recruitment, the initial deployment to Podujevë/Podujevo, the withdrawal, and the subsequent redeployment to Kosovo of a group of individuals, referred to variably as “volunteers”, “reserve forces”, a “combat group” or “the Scorpions”. These are Prosecution witnesses Živko Trajković, Goran Stoparić, and K92, and Defence witnesses Zoran Simović and Radislav Stalević, whose evidence pertaining to the specific allegation of murder in Podujevo/Podujevë town on 28 March 1999 has already been discussed elsewhere in this Judgement.<sup>6629</sup>

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<sup>6622</sup> Defence Final Brief, paras 481, 482.

<sup>6623</sup> Defence Final Brief, paras 508-509.

<sup>6624</sup> Defence Final Brief, paras 487-491.

<sup>6625</sup> Prosecution Final Brief, paras 498-499.

<sup>6626</sup> Defence Final Brief, para 497.

<sup>6627</sup> Defence Final Brief, paras 425, 486.

<sup>6628</sup> Defence Final Brief, para 486.

<sup>6629</sup> *See supra*, paras 1228-1229.

1933. While the Chamber considered the evidence of Živko Trajković reliable for the most part, and that of Goran Stoparić reliable to a more limited extent,<sup>6630</sup> it could not accept as truthful the evidence of K92, Simović or Stalević on some matters material to this trial. These witnesses provided a clearly fabricated and contrived version of events suited to protect both themselves and the Accused from any criminal culpability for the killing of 14 women and children which the Chamber has found took place in Podujevo/Podujevë town on 28 March 1999. Moreover, K92, who was closely affiliated with the Scorpions unit from the time it came into being, clearly sought to protect the integrity of this unit when providing his evidence. Nevertheless, despite deviations from previously provided evidence, in the case of K92, and the many internal inconsistencies during their testimony in this trial and in records of trials held before the Belgrade War Crimes Chamber, in the case of Simović and Stalević, these witnesses have been useful to the Chamber in acquiring a better understanding of the events leading up to the arrival of the Scorpions in Podujevo/Podujevë town on the day in question, and the events that ensued. It has, moreover, been able to rely on certain aspects of their evidence where this was confirmed by more reliable evidence, or proved otherwise uncontested or uncontroversial.

(iii) Findings

a. Incorporation of Scorpions into the SAJ and deployment to Kosovo

1934. Goran Stoparić, a former member of the Scorpions unit,<sup>6631</sup> was approached by Slobodan Medić a few days prior to the NATO air campaign;<sup>6632</sup> Slobodan Medić, aka “Boca”, was the commander of a paramilitary unit known as the “Scorpions”, whose members had participated in the wars in Croatia, and Bosnia and Herzegovina, until the remaining approximately 100-150 men of this unit were disbanded in 1996.<sup>6633</sup> Medić told Stoparić that because of intensified KLA activities and the forthcoming NATO campaign, the old Scorpions unit was being re-formed, and that this time they would be attached to the MUP as a reserve force of the SAJ.<sup>6634</sup> Many of the unit’s former members, as well as new volunteers willing to join this re-formed unit, answered

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<sup>6630</sup> The Chamber considers that while it had concerns with Stoparić’s evidence concerning the events in Podujevo/Podujevë town on 28 March 1999, as expressed in more detail in the section relating to this event (*see supra*, paras 1228-1229), much of his evidence pertaining to the recruitment, and attachment to the SAJ of individual subsequently deployed to Podujevo/Podujevë town, especially that provided in his statement to the OTP, appears reliable and it confirms the evidence of Živko Trajković on this matter.

<sup>6631</sup> *See supra*, paras 82-83.

<sup>6632</sup> Goran Stoparić, Exhibit P493, paras 34-35.

<sup>6633</sup> Goran Stoparić, Exhibit P493, paras 22-26; Goran Stoparić, T 2814-2815; K92, T 2721-2724, 2726.

<sup>6634</sup> Goran Stoparić, Exhibit P493, paras 34-35; Goran Stoparić, T 2815-2816, 2854; *see also* Goran Stoparić, Exhibit P495 (*Milutinović* transcript), T 692-693, 701.

Medić's recruitment call.<sup>6635</sup> Former Scorpions members Stoparić and Milovan Tomić were to head a reconnaissance unit of this re-formed Scorpions unit.<sup>6636</sup>

1935. The evidence demonstrated that shortly after the start of the NATO air campaign, Medić contacted K92. The two men knew each other from the fighting in 1992 in Slavonia, Baranja and the Western Srem.<sup>6637</sup> Medić told K92 that he wanted to be mobilized into the police and asked him to establish contact with someone from the MUP for this purpose.<sup>6638</sup> K92 communicated Medić's request to the Accused. While he testified in this trial that he did not remember whether he contacted the Accused or whether it was the Accused who had contacted him,<sup>6639</sup> the contents of a statement he made to the OTP on 29 June 2005 indicate that it was the Accused who contacted K92, a few days after Medić had called K92. K92's statement, of which portions were put to him in court, suggests that on this occasion, the Accused told him that they had problems in Kosovo, that they needed men, and that K92 should gather Slobodan Medić's men so that they could be sent to Kosovo. Upon this instruction, K92 called Medić and a few days later, K92 called the Accused and told him that he could "count on the Scorpions". When K92 gave evidence, he said he was not certain he had said this, but accepted that his memory of this was likely to have been better in 2005.<sup>6640</sup>

1936. The evidence demonstrates that Živko Trajković, commander of the SAJ unit, had several conversations with the Accused following a MUP Staff meeting on 17 February 1999 when the Minister called for the more efficient use of the SAJ. This was before both the Belgrade and Priština/Prishtinë SAJ units were sent to Kosovo on 23 March 1999 to take part in anti-terrorist actions in the "Malo Kosovo" area.<sup>6641</sup> At that time, the SAJ had been weakened; as a result of its participation in operations, and because of this the Minister had decided to abolish the Novi Sad SAJ unit in December of 1998 and attach it to a special operations unit of the RDB, it needed replenishment.<sup>6642</sup> The SAJ did not have its own reserve force; replenishment was effected through the Police Administration,<sup>6643</sup> which was an organisational unit of the RJB responsible for the status

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<sup>6635</sup> Goran Stoparić, Exhibit P493, paras 36-37.

<sup>6636</sup> Goran Stoparić, Exhibit P493, para 37

<sup>6637</sup> Živko Trajković, T 9111; K92, T 2714-2720, 2726.

<sup>6638</sup> K92, T 2767.

<sup>6639</sup> K92, T 2726-2736, 2759, 2795-2796, 2760.

<sup>6640</sup> K92, 2798, 2800-2802.

<sup>6641</sup> Živko Trajković, T 9085, 9088-9099; *see also* Zoran Simović, T 13575, 13609, 13712-13713. Radislav Stalević testified that his SAJ unit was relocated to Podujevo/Podujevë municipality on 23 March 1999 in readiness for their next assignment (Radislav Stalević, T 13780); *see also* Vlastimir Đorđević, T 9596-9597. *See supra*, paras 1223-1224.

<sup>6642</sup> Živko Trajković, T 9087-9088. Zoran Simović testified that with the abolishment of the Novi Sad SAJ unit, the operational capacity of the SAJ was reduced to about 30 per cent (Zoran Simović, T 13574, 13579-13581); *see also* Radislav Stalević, T 13774-13776; *see also* Vlastimir Đorđević, T 9465, 9694-9695.

<sup>6643</sup> Živko Trajković, T 9087-9089; *see also* Zoran Simović, T 13582; *see also* Radislav Stalević, T 13775.

and readiness of organisational units,<sup>6644</sup> of which the Accused, Vlastimir Đorđević, was the Chief.<sup>6645</sup> On 25 March 1999, Trajković received a phone call from the Accused who told him that a “combat group” was now part of the MUP reserve forces and was ready to join the SAJ.<sup>6646</sup>

1937. The Accused contacted K92 and told him that Medić was to take the recruited volunteers whom he had collected in Novi Sad to Kosovo, and that buses would be arranged for their transport.<sup>6647</sup> K92 passed this information to Medić, who gathered the men in Novi Sad where three buses were waiting; K92 and Stoparić were also present, and together with Medić, escorted the group of approximately 120 men towards Belgrade.<sup>6648</sup> Medić’s brother Dragan also joined the group.<sup>6649</sup> Just south of Belgrade, near Bubanj Potok, at a football stadium under the control of the MUP, policemen distributed camouflage, NATO style uniforms to the men on the buses, one uniform consisting of a jacket and trousers and the other of a one-piece overall with many pockets.<sup>6650</sup> They also received the SAJ insignia and a Scorpions patch, one for each arm,<sup>6651</sup> as well as a hat with the regular MUP badge, and a camouflage coloured baseball cap with MUP insignia.<sup>6652</sup> They were also provided with balaclavas – black woollen hats with eye-holes that could be pulled over the face like a mask,<sup>6653</sup> – as well as face paint and camouflage netting to cover the face.<sup>6654</sup> Following the provision of uniforms, the buses, escorted by Medić and K92, headed south towards Prolom Banja in Serbia proper, several kilometres north of Kosovo. A truck following the buses carried the weapons yet to be issued to the unit.<sup>6655</sup> They arrived in Prolom Banja on 26 March 1999, where they were provided with weapons and accommodated in a hotel used as the SAJ logistics base.<sup>6656</sup> Stoparić testified that around 50 per cent of the 120 men who had volunteered to join the re-formed Scorpions had no experience in combat and were

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<sup>6644</sup> Exhibit P357, para 15.

<sup>6645</sup> Ljubinko Cvetić, T 6591.

<sup>6646</sup> Živko Trajković, T 9087, 9089.

<sup>6647</sup> K92, T 2766-2767; *see also* Vlastimir Đorđević, T 10104-10105.

<sup>6648</sup> Goran Stoparić, Exhibit P493, paras 39-41; Goran Stoparić, T 2817; K92, T 2736-2738.

<sup>6649</sup> Goran Stoparić, Exhibit P493, para 40.

<sup>6650</sup> Goran Stoparić, Exhibit P493, paras 39-41; K92, T 2736-2738.

<sup>6651</sup> Goran Stoparić, Exhibit P493, para 41; *see also* K92, T 2736-2738, 2767-2768. The Chamber notes that the criminal report filed against two of the Scorpions members filed by the Podujevo/Podujevë OUP on 23 May 1999 records that these two individuals were reserve forces of the SAJ, who wore the Scorpions insignia, and that they were “part of a regular and organized unit under the command of the SAJ” (Exhibit P1593, p 2).

<sup>6652</sup> Goran Stoparić, Exhibit P493, para 41. During trial, Goran Stoparić testified that there were not enough SAJ badges to go around so that not all of the reserves wore this insignia (Goran Stoparić, T 2819-2820). K92 testified that the hats they were given had the word “policija” written on them (K92, T 2736-2738).

<sup>6653</sup> While Goran Stoparić, in his statement, did not specify who was provided with balaclavas, simply referring to “we” (Exhibit P493, para 42), during his testimony in the *Milutinović* trial, he stated that only the members of the Reconnaissance Platoon received balaclavas (Exhibit P495 (*Milutinović* transcript), T 768).

<sup>6654</sup> Goran Stoparić, Exhibit P493, para 42.

<sup>6655</sup> Goran Stoparić, Exhibit P493, paras 43-44; Goran Stoparić, Exhibit P495 (*Milutinović* transcript), T 764; Goran Stoparić, T 2862; *see also* K92, T 2768.

<sup>6656</sup> Goran Stoparić, Exhibit P493, para 44; Goran Stoparić, Exhibit P495 (*Milutinović* transcript), T 781-782; Goran Stoparić, T 2863.

untrained;<sup>6657</sup> for this reason, after the unit had arrived in Prolom Banja, Stoparić and some other men conducted a quick training on how to use an automatic rifle.<sup>6658</sup> No training on the treatment of civilians was provided.<sup>6659</sup>

1938. On 27 March 1999, Trajković and others were wounded when a convoy of vehicles he was travelling in drove over an anti-tank mine, killing his driver Radovan Aleksić.<sup>6660</sup> Trajković testified that while he was in hospital, the Accused, who was informed about the accident, agreed with Radislav Stalević, aka “Savo”, commander of the Belgrade SAJ, that the reserve forces quartered in Prolom Banja should be sent to Podujevo/Podujevë.<sup>6661</sup> On that same day, Simović went to Prolom Banja to make arrangements for escorting the reserve group to Podujevo/Podujevë the following day.<sup>6662</sup> Early in the morning of 28 March 1999, two buses carrying the Scorpions unit as well as witnesses Goran Stoparić and Scorpions commander Slobodan Medić, travelled from Prolom Banja to Podujevo/Podujevë town.<sup>6663</sup> En route, the men on the buses were instructed that their task was to “clear up” the half of Podujevo/Podujevë town not yet under Serbian control.<sup>6664</sup> The buses stopped outside the Podujevo/Podujevë town police station. The members of the Scorpions unit were further instructed to find accommodation for themselves in local unoccupied houses.<sup>6665</sup> Regular SAJ members, who had arrived in town the day before,<sup>6666</sup> with the assistance of the local MUP, told them in which part of the town Kosovo Albanians lived.<sup>6667</sup> The Chamber recalls that at the time, while many Kosovo Albanian civilians had sought refuge in town as a result of fighting between the KLA and Serbian forces in the surrounding villages, following the start of the NATO campaign, the numbers of Serbian forces in town increased. Rumours were spreading among the Kosovo Albanians of people being killed and men of fighting age had fled the town fearing what might happen to their families if they stayed.<sup>6668</sup> The Chamber accepts, therefore, that by 28 March 1999 many of the houses in town were unoccupied. The Chamber’s findings of the

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<sup>6657</sup> Goran Stoparić, Exhibit P493, paras 39, 45; Goran Stoparić, T 2821.

<sup>6658</sup> Goran Stoparić, T 2821.

<sup>6659</sup> Goran Stoparić, T 2822.

<sup>6660</sup> Živko Trajković, T 9090-9092; *see also* Zoran Simović, T 13582-13584, 13611; Radislav Stalević, T 13781-13782.

<sup>6661</sup> Živko Trajković, T 9092-9093; *see also* K92, who testified that the members of the reserve group were to report to Živko Trajković but as he had been wounded in an accident, they were instead greeted by “his deputies” at Prolom Banja (K92, T 2736-2738); *see also* Zoran Simović, T 13597; Vlastimir Đorđević, T 9669.

<sup>6662</sup> Živko Trajković, T 9089, 9092; Zoran Simović, T 13584-13586, 13737-13738, 13748; Radislav Stalević, T 13783.

<sup>6663</sup> Goran Stoparić, Exhibit P493, paras 45-46; Zoran Simović, T 13587, 13738-13739; *see also* Radislav Stalević, T 13859.

<sup>6664</sup> Goran Stoparić, Exhibit P493, para 46.

<sup>6665</sup> Goran Stoparić, Exhibit P493, para 47. The Chamber notes that Stoparić stated it was Medić who instructed the men in the buses, prior to their arrival, what their task in Podujevo/Podujevë would be, and that it was Medić who upon arrival told the men to find accommodation in unoccupied houses. While the Chamber accepts that Medić was the commander of the Scorpions unit of which members had been attached to the SAJ, it is not satisfied by the veracity of Stoparić’s account that all orders were given by Medić. Simović, who had clearly been put in charge of the men on the buses by Trajković, was superior to Medić.

<sup>6666</sup> Radislav Stalević, T 13917-13918.

<sup>6667</sup> Goran Stoparić, Exhibit P493, para 47.

<sup>6668</sup> *See supra*, para 1234.

events that ensued following the arrival of the SAJ units and the reserve forces attached to them are detailed in the section relating to Podujevo/Podujevë municipality.<sup>6669</sup>

1939. In his own evidence, the Accused challenged the evidence of Živko Trajković with respect to how the members of the Scorpions unit were recruited.<sup>6670</sup> He testified that it was Trajković who told him that he would try to come up with a number of men to be engaged as reserve forces into the MUP so that they could be attached to the SAJ for the purpose of securing the territory and accommodation of SAJ members.<sup>6671</sup> Trajković allegedly later came to see the Accused, and told him he had found some 100 men with combat experience, some of whom had been engaged in the territory of Slavonia, Baranja and Western Srem but most of whom had no previous combat experience, and that they could be used for the task envisioned, *i.e.* to secure the territory and accommodation of SAJ members.<sup>6672</sup> The Accused conceded that K92 contacted him because there was interest in involving “the men from reserve forces” in Kosovo, but by that time, the Accused had already spoken to Trajković; the Accused, therefore, told K92 to work together with Trajković, since the two knew each other from before, to make a selection of men to be involved.<sup>6673</sup> The Chamber notes here that Trajković was not cross-examined by the Defence about his knowledge of events in Podujevo/Podujevë town on 28 March 1999, nor, for that matter, about the deployment of the Scorpions and their engagement with the SAJ.

1940. Concerning the command of the members of the Scorpions unit, the testimony provided by witnesses Stalević and Simović would have the Chamber believe that the members of the re-formed Scorpions group who arrived in Podujevo/Podujevë town on 28 March 1999 had not yet been formally incorporated into the SAJ, and that for this reason, Stalević and Simović and other SAJ commanders on the ground were not responsible for their actions.<sup>6674</sup> The Chamber has found, however, and Simović and Stalević conceded, that these men were, at the time, reservists of the MUP.<sup>6675</sup> Simović continued to maintain, however, that while this “reserve group” were technically under the command of the MUP, they did not have an actual commander when in Podujevo/Podujevë town. Both he and Stalević refute that this may have been Medić, and refute that Medić was a member of the Scorpions, insisting that in accordance with the provisions of the law in this respect, he could only be a member of the reserve forces.<sup>6676</sup> Further, it was Simović’s testimony that as the attachment of this “reserve group” to the SAJ could not have been finalized

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<sup>6669</sup> See *supra*, paras 1239-1259.

<sup>6670</sup> Vlastimir Đorđević, T 10103, 10106-10107.

<sup>6671</sup> Vlastimir Đorđević, T 9696-9697.

<sup>6672</sup> Vlastimir Đorđević, T 9697, 9711.

<sup>6673</sup> Vlastimir Đorđević, T 9699.

<sup>6674</sup> Zoran Simović, T 13630, 13643, 13645-13646, 13718-13721, 13750-13752-13753; Radislav Stalević, T 13841-13842, 13910.

<sup>6675</sup> Zoran Simović, T 13718-13719, 13751; Radislav Stalević, T 13845-13846.



before accommodation was found for them, they were divided amongst the two SAJ units present in Podujevo/Podujevë to enable accommodation arrangements and formal attachment procedures to be undertaken, and that when this was completed, the MUP Staff as well as Trajković would have been informed.<sup>6677</sup> Simović testified that because the members of the reserve force left the buses before this process could be finalized, they were never properly under the command of the SAJ.<sup>6678</sup> Questioned by the Chamber further on the matter, Simović then stated that the process was not finalized because “there was a war going on” and “because of many other circumstances”; “[a]nother factor that came into it is that we had lost a member just before that”.<sup>6679</sup>

1941. The Chamber found this evidence of Stalević and Simović to be utterly unacceptable. In the Chamber’s finding, the group of Scorpions recruited by Medić had been incorporated into the MUP reserve forces as a unit, in disregard of the applicable law, and had their own leader, Medić aka “Boca”. The Scorpions acted and were kept together as a group rather than dispersed into detachments, and although engaged as reserve force attached to the SAJ, they remained identifiable as a paramilitary unit.<sup>6680</sup> On the ground in Podujevo/Podujevë town, as the evidence clearly demonstrates, this unit was under the command of the SAJ. Stalević and Simović’s evidence was a desperate attempt to avoid any liability of SAJ leadership for the conduct of Scorpions that had followed and was founded in part on a reading of the existing law which was clearly being ignored by the Accused and all others involved. The Chamber rejects their evidence. Moreover, Radislav Stalević, who likewise claimed that there was no one on the ground who was able to issue orders to the attached Scorpions, in fact testified that he had been informed by Trajković on 27 March 1999 – the day before the killings – that Trajković had received approval from the MUP Staff for the men quartered in Prolom Banja, *i.e.* the Scorpions, to be brought to Podujevo/Podujevë town.<sup>6681</sup> While on one possible view it could be thought that this evidence contradicts the accepted evidence of Trajković that he was informed of this approval by the Accused (rather than the MUP Staff), a view which does not impress the Chamber, it also points to a serious contradiction in Stalević’s evidence; it is inconceivable that after approval was given for the Scorpions unit to join the SAJ forces already in Podujevo/Podujevë town, that there was no one who had any authority to issue orders to them. Moreover, the testimony of the Accused indicates that this MUP reserve force consisting of

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<sup>6676</sup> Zoran Simović, T 13644-13648, 13667; Radislav Stalević, T 13871.

<sup>6677</sup> Zoran Simović, T 13744-13745, 13747.

<sup>6678</sup> Zoran Simović, T 13719-13722, 13742-13747, 13754. He concedes that despite the fact he could not reach Trajković at the time, it would have been sufficient had he informed the MUP Staff of the fact that the process was fulfilled, but reiterates that this was not done, in any case, because the men had already left the buses (Zoran Simović, T 13746).

<sup>6679</sup> Zoran Simović, T 13747.

<sup>6680</sup> Goran Stoparić, Exhibit P495 (*Milutinović* transcript), T 787. *See supra*, para 206.

<sup>6681</sup> Radislav Stalević, T 13782-13783; *see also* Zoran Simović, stating that Trajković had told both himself and Stalević on 26 March 1999 that the “reserve force of the MUP” which was supposed to be attached to the SAJ was in Prolom Banja (Zoran Simović, T 13582-13583).

Scorpions had been attached to the SAJ *before* the force was transported by bus to Prolom Banja.<sup>6682</sup> Finally, the criminal report filed by the Podujevo/Podujevë OUP on 23 May 1999 against two of the Scorpions members who were suspected of being amongst the perpetrators of the killings of women and children that followed, records that these two individuals, recorded as wearing Scorpions insignia, were “part of a regular and organized unit under the command of the SAJ”.<sup>6683</sup> This provides confirmation of the understanding of the status of the Scorpions unit at the time in Podujevo/Podujevë, rather than the position which Stalević and Simović attempted to shelter behind.

1942. The Accused confirmed, as is recorded in Trajković’s report of 13 May 1999, that he gave Trajković permission to engage the reservists with the SAJ, but testified that he did this only after the Minister approved, as he could not have provided this approval himself.<sup>6684</sup> It is his evidence, however, that he had nothing to do with the decision to attach these forces to the SAJ, and that they were sent to Kosovo at the order of the MUP Staff.<sup>6685</sup> Testimony provided by Defence witnesses Stalević and Simović support the Accused’s account in this regard.<sup>6686</sup> The Chamber has already commented on the lack of credibility it ascribes to these two Defence witnesses. The fact that they confirm the Accused’s account on any given matter does not, in the view of the Chamber, make the Accused’s account of the events more believable. The Chamber does not negate the possibility that the MUP Staff was involved in the process of engagement of these forces; however, based on the evidence of Trajković and his report to the Accused of 13 May 1999, as well as the evidence of K92 on this particular matter, the Chamber is satisfied that it was the Accused who informed Trajković about the men that Medić had assembled, and that it was the Accused who authorized that the Scorpions unit, which by that time had been incorporated into the MUP reserve forces, was formally attached to the SAJ, and then sent to Podujevo/Podujevë. The evidence reflects, moreover, that members of the Scorpions received salaries and expenses from the MUP.<sup>6687</sup>

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<sup>6682</sup> It was the Accused’s evidence that the Minister likewise made the decision to engage the newly created MUP reserve unit as an attachment to the SAJ, and this decision had been implemented by the Police Administration, which then informed the Accused that buses had been provided to transport the unit, as well as equipment and weapons (Vlastimir Đorđević, T 9700-9701). The attachment to the SAJ, in the view of the Chamber, was finalized before these forces arrived in Podujevo/Podujevë town.

<sup>6683</sup> See Exhibit 1593, p 2.

<sup>6684</sup> Vlastimir Đorđević, T 10114-10115; see also Vlastimir Đorđević, T 9697-9698, 9700.

<sup>6685</sup> Vlastimir Đorđević, T 9697-9698.

<sup>6686</sup> See e.g., Zoran Simović, T 13585; Radislav Stalević, T 13782-13883.

<sup>6687</sup> Goran Stoparić, Exhibit P493, para 13. Živko Trajković testified that “[e]ven in our lists for the payment of per diems and other expenses, due to Mr Slobodan Medić that group came to be known as the Scorpions” (Živko Trajković, T 9099). K92 heard from Slobodan Medić that he and his men received their salaries from the MUP (K92, T 2748, 2795). Radislav Stalević testified that the expenses of the SAJ were signed off by commander Trajković, who would send them to the Ministry for further processing. Stalević, however, denied that per diems were paid to “Scorpions” but were only paid on the basis of full name and surname, specific individuals, and not by nickname (Radislav Stalević, T 13869-13870). The Chamber accepts the evidence of Trajković.

1943. The Chamber accepts that the individuals who had volunteered to join the Scorpions unit – which included both experienced former Scorpions members as well as inexperienced volunteers – had their own leader, Slobodan Medić aka “Boca”, and that he, together with his unit of Scorpions, was under the SAJ command during the events charged in the Indictment in Podujevo/Podujevë town. Prior to the arrival of the Scorpions unit in Podujevo/Podujevë town, this unit (1) had been provided with SAJ uniforms and badges, (2) stationed at the SAJ logistics base in Prolom Banja, (3) had received some rudimentary training by a platoon commander of the Scorpions, (4) were issued weapons by the SAJ, and (5) were escorted to Podujevo/Podujevë town on 28 March 1999 by SAJ commander Zoran Simović, whom Trajković had authorized to take temporary command over the men, and who was clearly the overall commander of the SAJ in Podujevo/Podujevë town that day.<sup>6688</sup> Furthermore, it was Simović who made the decision to withdraw the Scorpions unit following the killings; he subsequently informed both the MUP Staff and the Accused of the events in town, and of his decision to withdraw the Scorpions.<sup>6689</sup> The Chamber is, therefore, satisfied, despite the evidence of Defence witnesses and the Accused suggesting otherwise, that the Scorpions unit which arrived in Podujevo/Podujevë town on 28 March 1999 had previously been incorporated into the MUP reserve forces at the approval of the Accused, and were, at the time of the relevant events charged in the Indictment, formally attached to the SAJ, and under the command of the SAJ.

1944. It is the evidence of SAJ officers Zoran Simović, Radislav Stalević and Goran Stoparić that the Scorpions attached to the SAJ which had been brought to Podujevo/Podujevë town on the morning of 28 March 1999 spent a total of only 30 minutes in town, and that almost immediately after the shooting incident, they were sent back to Prolom Banja.<sup>6690</sup> The Chamber is not prepared to accept this account for a number of reasons, the most important of which is that the events of that day, as reflected in particular by the evidence of witnesses Saranda and Fatos Bogujevci, portrays quite a different picture. The Scorpions unit arrived in Podujevo/Podujevë town with the aim of assisting SAJ forces already present there. By the time they arrived, VJ, PJP and local police were already milling around in the streets, searching compounds. The members of the Scorpions unit had been tasked with “clearing up” the part of town not yet under Serbian control, joined in the anti-Kosovo Albanian activities that were taking place. In the course of the actions in town, the

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<sup>6688</sup> Goran Stoparić stated that the overall SAJ commander present that day was Zoran Simović, aka “Tuta” or “Tutinac” (see Goran Stoparić, Exhibit P493, para 47; Goran Stoparić, T 2840-2841; Goran Stoparić, Exhibit P495 (*Milutinović* transcript), T 726; see also Zoran Simović, T 13752-13752; Radislav Stalević, T 13859, 13879, 13910. With respect to Simović’s nickname “Tutinac” see Ljubinko Cvetić, T 6617.

<sup>6689</sup> Živko Trajković, T 9094-9095; Zoran Simović, T 13588-13589, 13602, 13617-13618, 13654-13655. The Chamber rejects Simović’s testimony that he called the Accused on this occasion only because he could not get hold of Trajković (see Zoran Simović, T 13588-13599, 13602). As already found, it was the Accused who had made arrangements for the Scorpions unit to be deployed to Podujevo/Podujevë; the Accused would have been a logical point of contact for Simović. See also Vlastimir Đorđević, T 9703-9704, 9706, 10147.

<sup>6690</sup> Živko Trajković, T 9094-9095; Goran Stoparić, T 2839-2840; Zoran Simović, T 13588-13589, 13617-13618; Radislav Stalević, T 13842, 13887, 13904.

Scorpions and possibly others present in the courtyard of a compound shot 19 Kosovo Albanian women and children, killing 14 of them. These events occurred close to the police station.<sup>6691</sup>

1945. Following his treatment in Priština/Prishtinë hospital, Trajković returned to Belgrade where he met with the Accused and discussed what was to be done with the Scorpions unit. The Accused asked Trajković, whom he trusted, to send the unit from Prolom Banja back to Belgrade. K92 accompanied Trajković on this task because he knew Medić personally and was on good terms with him.<sup>6692</sup> Trajković and K92 subsequently went to the Prokuplje police station in Serbia proper to inform them of their intentions, before heading to Prolom Banja, where the members of the Scorpions unit were disarmed and sent home.<sup>6693</sup> The Accused confirms this evidence, yet adds that his decision for the “reservists” to be sent home was made on the order of the Minister.<sup>6694</sup> Vlastimir Đorđević further testified that the disarming of the “reservists” who had been in Podujevo/Podujevë town did not have the effect of ceasing their status as members of the MUP reserve force.<sup>6695</sup>

b. Re-deployment of the Scorpions to Kosovo in April of 1999

1946. Živko Trajković returned to Kosovo after finishing his medical treatment in Belgrade. Trajković’s SAJ units had been given tasks in rural areas which covered large amounts of territory. The SAJ units did not have enough people for these tasks. Trajković spoke to the K92 and the Accused about the return of the Scorpions unit to serve with his SAJ units in Kosovo on several occasions.<sup>6696</sup> It was his testimony that while all three considered the incident in Podujevo/Podujevë town to have been an excessive crime, they did not feel that it was correct for the entire “reserve combat unit” to suffer the consequences of what happened, since “after all, these people went there as reservists to defend the territory of Kosovo”.<sup>6697</sup> It was Trajković’s evidence that “somewhat later in Belgrade it was decided” to re-engage the men.<sup>6698</sup> Trajković does not know who actually issued the order for re-engagement of the Scorpions to assist the SAJ; he

<sup>6691</sup> See *supra*, paras 1231-1259.

<sup>6692</sup> Živko Trajković, T 9095, 9098, 9110-9113, 9098; see also K92, T 2772-2773.

<sup>6693</sup> Živko Trajković, T 9094-9096; K92, T 2739-2741, 2771. While the members of the unit returned their weapons, they retained their uniforms (see Goran Stoparić, T 2843-2844).

<sup>6694</sup> Vlastimir Đorđević, T 9707, 9709-9710, 10111-10113, 10148.

<sup>6695</sup> Vlastimir Đorđević, T 9708.

<sup>6696</sup> Živko Trajković, T 9101-9102, 9105-9106; see also Vlastimir Đorđević, T 9708, 9709, 10110-10113.

<sup>6697</sup> Živko Trajković, T 9101, 9109.

<sup>6698</sup> The Chamber notes Trajković’s testimony that “[g]iven that the staff in Priština was the only body with authority to issue such approval”, a report was sent to them explaining that the SAJ needed additional men and that “we would set up a new unit that would exclude those who had participated in the incident” (see Živko Trajković, T 9101-9103). He testified further that “[a]s for the decision made in Belgrade and the agreement with the staff in Priština about the engagement of reserve forces”, it is always the Minister who makes the decision but he can always “[d]elegate this decision to an officer of a lower rank to implement it” (Živko Trajković, T 9102-9103, 9105).

received the information about their re-engagement from the Accused sometime in mid-April 1999.<sup>6699</sup> As a result, save for those members of the Scorpions unit who had taken part in the incident in Podujevo/Podujevë town and those who did not want to join, 108 out of the 128 men of the Scorpions unit were re-engaged with the SAJ.<sup>6700</sup> A report authored by Trajković dated 13 May 1999, sent to the Accused, records this information; it is stated that these men were re-engaged with the SAJ, under the leadership of Slobodan Medić, yet under the command of the SAJ.<sup>6701</sup>

1947. K92 testified that sometime in April 1999, he received a call from Medić, who told him “[w]ish me luck, I am in Kosovo again”; Medić told K92 that he had been called by “people from the MUP”,<sup>6702</sup> and was told that his unit was needed in Kosovo. K92 testified that Medić’s unit could not have returned to Kosovo without the authorization of Vlastimir Đorđević, Trajković’s superior.<sup>6703</sup> The Chamber accepts, despite the evidence of Simović and Stalević who sought to tell the Chamber otherwise, that, as recorded in the report compiled by Trajković, this re-engagement was done with the approval of both the MUP Staff and the Chief of the RJB, Vlastimir Đorđević.<sup>6704</sup> The Accused, as was his evidence with respect to the initial engagement of this force with the SAJ, conceded that he gave his approval for this re-engagement, but added, once again, that he only did so after having received permission from the Minister.<sup>6705</sup>

1948. The evidence demonstrates that together with the SAJ, these 108 members of the Scorpions unit were re-deployed to Kosovo Polje/Fushë-e-Kosovë on 26 April 1999. About 2-3 days later, together with PJP units, they were transported south of Jezerce, Uroševac/Ferizaj municipality, to assist the SAJ in an ongoing joint VJ and MUP anti-terrorist operation in the Jezersko mountain

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<sup>6699</sup> Živko Trajković, T 9105-9016.

<sup>6700</sup> Živko Trajković, T 9101-9102.

<sup>6701</sup> Exhibit D442, p 2.

<sup>6702</sup> The Chamber notes that initially, K92, when asked what Medić told him when he called him, stated that Medić told him that either “Đorđević” or “someone from the MUP” had told him that his unit was needed, adding that he thinks Medić in fact mentioned “Đorđević” (K92, T 2744). After an interjection by the Defence, K92 added that Medić might have mentioned Trajković, and not “Đorđević” (K92, T 2745). During trial, the Chamber expressed its concern with this interjection by the Defence, and considers it likely that this influenced the “clarification” offered by the witness that followed this interjection. Despite this clarification, the Chamber finds that K92 was clear in his evidence that the Scorpions unit could not have been re-deployed to Kosovo without authorization by the Accused, as detailed in the text above (K92, T 2746-2748, 2750, 2756-2758).

<sup>6703</sup> K92, T 2749-2750, 2756-2758.

<sup>6704</sup> Exhibit D442, p 2. The Chamber notes that both Defence witnesses Zoran Simović and Radislav Stalević, despite being shown Exhibit D442, the report by Trajković which records that approval was sought from both the MUP Staff and the Chief of the RJB for re-engagement of the “reserve force” led by Medić into the SAJ, sought to suggest that it was only the Minister who could make such a decision. Simović testified that Trajković, who informed him about the re-engagement, said that the Minister approved this “through the chief of sector”, which the Chamber accepts to be a reference to the chief of the RJB, *i.e.* the Accused (Zoran Simović, T 13593). Radislav Stalević, likewise, stated that the Minister had made the decision to re-engage the “reserve unit”; he denied that the approval of the Accused, as chief of the RJB, was required (*see* Radislav Stalević, T 13889-13890, 13892-13893). His evidence appeared to suggest, finally, that the Accused would be informed of these decisions by the Minister after they were made (Radislav Stalević, T 13891). The Chamber considers this evidence as an example of these witnesses’ attempts to mislead the Chamber with respect to the role played by the Accused in the deployment of the Scorpions unit to Kosovo.

area, covering an area in both Uroševac/Ferizaj and Suva Reka/Suharekë municipalities, in which they took part until 9 May 1999, when they returned to Belgrade.<sup>6706</sup> Stoparić testified that during this operation, the Scorpions remained attached to the SAJ; they were not seconded to other MUP units and remained “under scrutiny” of the SAJ.<sup>6707</sup> The Scorpions were to assist in operations to drive out Albanian terrorists, and to seize villages and hamlets, a process he described as “cleaning”.<sup>6708</sup> During operations in the Jezerce area in which he was involved, Stoparić saw Kosovo Albanian civilians fleeing their villages as the forces approached.<sup>6709</sup> After a village or hamlet was “taken”, the Scorpions would withdraw and the PJP in the rear-guard would then enter to set fire to the houses and facilities in the village so as to ensure that Kosovo Albanian civilians would have no homes to return to.<sup>6710</sup> The evidence demonstrates, therefore, that the Scorpions, re-deployed to Kosovo upon the approval of Vlastimir Đorđević, did not, as suggested by the Accused, carry out their job “extremely professionally” during their second time around in Kosovo.<sup>6711</sup> Nonetheless, Stoparić testified he received commendations from Simović and Trajković for his unit’s participation in these operations, and was given a decoration on “Security Day”, 13 May.<sup>6712</sup>

c. Knowledge of the Accused of the criminal background and lack of training of members of the Scorpions unit attached to the SAJ

1949. It was Trajković’s evidence, which the Chamber accepts, that he had been informed by the Accused that the individuals who were being incorporated into the SAJ were experienced combatants.<sup>6713</sup> He testified that the Accused is likely to have believed this because the commander of the volunteers, Slobodan Medić, had been previously active in combat in the territory of Slavonia, Baranja and Western Srem.<sup>6714</sup> K92 testified in this trial that he had informed the Accused that the volunteers with which Medić wanted to join the MUP had previously fought in

<sup>6705</sup> Vlastimir Đorđević, T 10116-10117.

<sup>6706</sup> Exhibit D442, p 2; Žarko Braković, T 4149-4153, 4181-4182; Goran Stoparić, T 2844, 2873-2874, 2886; Goran Stoparić, Exhibit P493, paras 63-67; Goran Stoparić, Exhibit P494 (*Milutinović* transcript), T 704-705; K92, T 2775-2775; Radomir Mitić, T 12834-12835, 12847; Zoran Simović, T 13594-13595, 13708, 13708; Radislav Stalević, T 13788; *see also* Exhibit P767. Details of this operation are also referred to in the war diary of the 549<sup>th</sup> Motorized Brigade, in an entry for 26 April 1999, in which reference is made to the fact that MUP units on this day were augmented by, *inter alia*, the SAJ (Exhibit P1447, p 33). *See also* Exhibit P771, p 11.

<sup>6707</sup> Goran Stoparić, T 2886.

<sup>6708</sup> Goran Stoparić, Exhibit P493, para 67.

<sup>6709</sup> Goran Stoparić, Exhibit P493, para 67; Goran Stoparić, T 2875.

<sup>6710</sup> Goran Stoparić, Exhibit P493, para 68; Goran Stoparić, T 2889. The Chamber notes that Stoparić, during his testimony in this trial, testified that it was not always the PJP, but sometimes the army, who would enter and burn the houses (Goran Stoparić, T 2889).

<sup>6711</sup> Vlastimir Đorđević, T 10113. The Chamber notes that it was the evidence of K92 that when deployed to Kosovo the second time in April of 1999, there were no problems with their performance. Given K92’s close affiliation with these forces, the Chamber rejects this evidence, as it does the evidence of the Accused on this matter.

<sup>6712</sup> Goran Stoparić, T 2874. It is unclear whether this decoration was given to him in 1999 or later.

<sup>6713</sup> Živko Trajković, T 9090, 9113.

<sup>6714</sup> Živko Trajković, T 9086, 9099.

Slavonia, Baranja and the Western Srem, and that some were also from Serbia, but that he had not told the Accused that the volunteers Medić sought to incorporate included members of the former Scorpions unit.<sup>6715</sup> The Chamber rejects this evidence; it is contradicted by portions of K92's statement to the OTP in 2005, already discussed above, in which he stated that he told the Accused he could "count on the Scorpions".

1950. Several Defence witnesses have sought to suggest that it was in fact Trajković who played the leading role in the recruitment and engagement of the Scorpions, as opposed to the Accused. Defence witness Simović sought to suggest that at the meeting held in mid February 1999,<sup>6716</sup> at which the Minister had called for a greater involvement of the SAJ in Kosovo, Trajković was the one who raised the possibility of recruiting some men who had previously fought in Croatia into the MUP reserve forces, that he had discussed this with the Accused, and that the Accused told him he would have to discuss this with the Minister directly. It was Simović's testimony, moreover, that at that meeting, Trajković told the attendees that he knew that some of the men had served in Croatia in the MUP reserve forces and that he had met them in Slavonia, Baranja and Western Srem when he was a member of the Territorial Defence of that area; it was Trajković who said that some of the members of the reserve forces who were going to be attached to the SAJ were referred to as the Scorpions.<sup>6717</sup> The Chamber rejects Simović's evidence as it is contrary to the evidence of Trajković, who it considered to be a generally reliable witness; Simović's evidence in this regard was clearly suited to match the testimony of the Accused of these events.<sup>6718</sup> Moreover, the Chamber notes that the Defence did not cross-examine Trajković on the deployment of the Scorpions and their actions in Podujevo/Podujevë town on 28 March 1999.

1951. The Chamber, however, notes the evidence of Trajković that only 15 or 16 members of the 128 individuals incorporated into the SAJ were in fact previous Scorpions members who had fought with Medić in the early 1990's, while the majority of the remainder had no significant contacts with the former unit.<sup>6719</sup> This evidence confirms that of Stoparić, discussed above, that not all of the men had been former members of the Scorpions unit, or had prior combat experience. Stoparić testified that only between 30-50 per cent of these men in fact had prior combat experience.<sup>6720</sup> The Chamber considers, on the basis of this evidence, that while some of the members of the group that was incorporated into the SAJ were former Scorpions members with previous combat experience, there were also many individuals who had not been formerly associated with this unit, and who had

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<sup>6715</sup> K92, T 2726-2736, 2759, 2762, 2795-2796, 2760.

<sup>6716</sup> Exhibit P85.

<sup>6717</sup> Zoran Simović, T 13580-13582, 13705-13707, 13712-13713.

<sup>6718</sup> The Chamber has expressed its concerns with the evidence of Zoran Simović and Radislav Stalević elsewhere in this Judgement, in more detail. *See supra*, paras 1228-1229.

<sup>6719</sup> Živko Trajković, T 9086, 9099-9100, 9113.

simply volunteered to become members of the unit when it re-formed. The evidence of K92 that he had told the Accused the men had previous combat experience does not contradict this finding.

1952. The Chamber notes that in the report of Živko Trajković dated 13 May 1999 and addressed to the Accused, reference is made to General Nebošja Pavković's visit to the Scorpions unit after their retreat to Prolom Banja following the events in Podujevo/Podujevë town. Pavković spoke to the leader of the Scorpions, Medić aka "Boca", on this occasion.<sup>6721</sup> Aleksandar Vasiljević attended a meeting on 16 May 1999, attended by, *inter alios*, Dragolub Ojdanić and Nebošja Pavković, at which Pavković reported that he had learned that "Boca's group" had arrived in Kosovo following the orders of Vlastimir Đorđević, and that the MUP would send this group "to those areas where the situation was worst on the ground".<sup>6722</sup> At a meeting of the Supreme Command Staff held the following day attended by, *inter alios*, Slobodan Milošević and Rade Marković, as well as Aleksandar Vasiljević who took notes of the meeting, Marković reported on the whereabouts of "Boca", after which Milošević told Marković to convey to Stojiljković and the Accused that "their heads won't be chopped off" but "Boca must answer", and that Stojiljković, the Accused and Stevanović should not protect people like this.<sup>6723</sup> In the Chamber's view this was a clear reference to the Accused's involvement in the recruiting of the Scorpions and their deployment to Podujevo/Podujevë.

1953. Despite suggestions of the Accused to the contrary,<sup>6724</sup> the Chamber is satisfied that he knew that the men that were incorporated into the MUP reserve forces and whose attachment to the SAJ he authorized, included members of the former Scorpions paramilitary unit who had previously fought in the early to mid 1990s in Croatia, under the command of Slobodan Medić aka "Boca". The Chamber also finds, contrary to the position taken by the Defence,<sup>6725</sup> that the Scorpions, led by Medić, were widely known as a paramilitary formation that had participated in crimes during the fighting in Croatia in the early to mid 1990s. There is evidence before the Chamber that in addition, members of the Scorpions were involved in the execution of a number of Muslim men in Trnovo, Bosnia, in 1995.<sup>6726</sup> In the view of the Chamber, the Accused could not but have known of

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<sup>6720</sup> See *supra*, para 1937.

<sup>6721</sup> Exhibit D442, p 2.

<sup>6722</sup> Aleksandar Vasiljević, T 5673, 5681-5683.

<sup>6723</sup> Aleksandar Vasiljević, T 5681-5683; see also Exhibit P884, p 1.

<sup>6724</sup> Vlastimir Đorđević, T 9715, 10108-10109.

<sup>6725</sup> See Defence Final Brief, para 508; see also Radislav Stalević, T 13781, 13836-13837. The Chamber notes that the source quoted for the Defence position that the Scorpions were never a paramilitary unit is the testimony of former Scorpions member Goran Stoparić, who when asked whether the "unit who was guarding the Krajina oil field" was known as a paramilitary formation, stated "I'm someone who does not believe in paramilitary formations, and there was no way for us to be paramilitary" (Goran Stoparić, T 2861).

<sup>6726</sup> Slobodan Medić stood trial for these killings in 2003, and was ultimately sentenced to a term of imprisonment of 20 years for his participation in the executions in Trnovo (Radislav Stalević, T 13878; K92, T 2752-2753, 2765; Živko Trajković, T 9100-9101).



their existence, and in the least, the information that there were former Scorpions members amongst the group he approved to have incorporated into the MUP should have emphasised the need to screen their backgrounds as required by the law.<sup>6727</sup> Such a screening would have confirmed, or negated, any such previous unlawful conduct.<sup>6728</sup>

1954. Simović testified that in accordance with the provisions of the applicable law, in order to be eligible to join the MUP reserve force, a candidate could not have a criminal record, and that it was the MUP in Belgrade which was responsible for checking whether a candidate to join the MUP reserve forces had a criminal record. He testified that when the Scorpions unit was incorporated into the reserve forces and attached to the SAJ, he assumed that such a check had been conducted.<sup>6729</sup> Confronted with an indictment of 14 April 2008 against four members of the Scorpions unit for the killings in Podujevo/Podujevë town on 28 March 1999, in which it is recorded that one of the accused did not complete military service and two of them had criminal records, Simović appeared to suggest that because the prior convictions of two of the men were in the Republic of Croatia and not in Serbia, this did not count.<sup>6730</sup>

1955. The Accused, as chief of the RJB under whose command the MUP reserve forces as well as the SAJ functioned, had the duty to ensure that individuals joining the ranks of the MUP met the requirements under the law for admission.<sup>6731</sup> Such an inquiry, in addition to a finding that some of the men had criminal records, would have revealed that many of those sent to Podujevo/Podujevë town had not received the required training to join the MUP reserve forces. K92 was not aware of the Scorpions receiving training between the time they were disbanded in 1996 and the time some of them were incorporated into the SAJ.<sup>6732</sup> Stoparić and Simović both testified that according to the regulations in place at the time, persons sent to Kosovo as members of a MUP reserve force

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<sup>6727</sup> Exhibit P66, Article 34; *see also supra*, para 88.

<sup>6728</sup> The Chamber notes the evidence of Aleksandar Vasiljević, whom the Chamber considered a credible witness, that having had information about the actions of the Scorpions in Kosovo, at his request, a report was submitted to him on 12 May 1999 by Deputy Chief of Security for the Priština Corps, Đurović, in which it was recorded that, *inter alia*, the Scorpions unit had been active in operations in Croatia and Bosnia and Herzegovina, and that there were “criminal types in their ranks, problematic people” (Aleksandar Vasiljević, T 5666-5667).

<sup>6729</sup> Zoran Simović, T 13596, 13680-13681, 13695-13696; *see also* Radislav Stalević, T 13851-13852, 13858, 13863, 13870.

<sup>6730</sup> Zoran Simović, T 13713-13714; *see* Exhibit P1594.

<sup>6731</sup> With respect to the MUP: Exhibit P66, Articles 27, 29 and 34. Article 27 provides for the possibility of the MUP, in case of an imminent threat of war, to bring up to strength its reserve forces with conscripts; these conscripts must meet the requirements prescribed by law for work in the Ministry. Article 29 provides, *inter alia*, that persons in the reserve force “shall have the duty to learn skills and to train for the accomplishment of tasks in the Ministry of the Interior by attending various learning and training courses organized by the Ministry”. Article 34 stipulated a list of conditions that must be fulfilled for employment with the MUP, and provides that such persons may not have been convicted of a criminal offence against the constitutional order and security, the armed forces, economy or property or official duty, or criminal offences committed for personal gain or with dishonourable motives. It also provides that such a person may not be the subject of criminal proceedings for prosecutable criminal offences, and that no non-reviewable judgement may have been issued against him; *see also* Exhibit D101. With respect to the SAJ: Exhibit D401, para 2; *see also* Exhibit P357, Articles 6, 15, 27.

<sup>6732</sup> K92, T 2751.

should have previously completed their regular military service.<sup>6733</sup> Some of these men did not even know how to use an automatic rifle.<sup>6734</sup> Many witnesses have testified that the SAJ, to whom this reserve force was then attached, was a more elite unit of the MUP, typically involved in complex anti-terrorist operations.<sup>6735</sup> The Accused conceded that he was aware that some of the men to be attached to the SAJ had no previous combat experience.<sup>6736</sup> In this respect, the Chamber notes the Accused's contradictory and startling testimony that while it was important to him that the SAJ was replenished so that it could perform its duties, personnel acquisition was something "outside his field of interest", dealt with by "services at lower levels". He went on to testify that they had to make use of "any people available" in order for the SAJ to complete its task in light of the fact that the FRY was under attack,<sup>6737</sup> but added, in contradiction, that had he or the Minister known that members of the unit who were incorporated into the MUP reserve forces had criminal backgrounds, they would not have been incorporated.<sup>6738</sup> The Chamber considers that this argument is as contradictory as it is revealing of the Accused's attitude to this issue; in the context of an ethnically volatile armed conflict, while the Chamber accepts that the SAJ was in need of replenishment, the requirements that applied under the law should not have been waived. On the contrary, application of these laws should have been ensured. In fact, no checks were made of the criminal backgrounds of the members of the Scorpions unit attached to the SAJ; "any people available" thus clearly included members of paramilitary groups with criminal backgrounds. The testimony of several witnesses, including that of the Accused, that the men attached to the SAJ would only have been used to secure the quarters and accommodation of the SAJ members in the field for whom no previous training was required, is unconvincing.<sup>6739</sup> Trajković, who also made this claim, later on in his testimony appeared to suggest that these men were sent there for more than this, namely to help "defend the territory of Kosovo".<sup>6740</sup> Moreover, the evidence clearly demonstrates that they did in fact take part in anti-terrorist operations;<sup>6741</sup> whether this was intended

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<sup>6733</sup> Zoran Simović, T 13594, 13690-13693; Goran Stoparić, T 2854-2855. Stoparić, during cross-examination, testified that out of the group of volunteers that went to Podujevo/Podujevë town, he believed there were only one or two persons who "slipped through the net" and had not completed their regular military service; he does not provide a basis for this belief (Goran Stoparić, T 2854-2855). The Chamber notes that this evidence appears, on its face, to be in contradiction with his earlier evidence provided in a statement to the Prosecution in 2006, in which he stated that many of the volunteers that joined the Scorpions were untrained (Goran Stoparić, Exhibit P493, para 39). It notes, however, that the witness may have been distinguishing between the completion of regular military service and previous participation in combat.

<sup>6734</sup> See *supra*, para 1937.

<sup>6735</sup> See *supra*, paras 70, 74, 77.

<sup>6736</sup> Vlastimir Đorđević, T 9711.

<sup>6737</sup> Vlastimir Đorđević, T 9711-9712.

<sup>6738</sup> Vlastimir Đorđević, T 9710.

<sup>6739</sup> Živko Trajković, T 9090; Radislav Stalević, T 13860, 13907; see also Vlastimir Đorđević, T 9710-9712. Zoran Simović testified that members of the MUP reserve forces attached to the SAJ were employed only for guard duty and for holding lines during SAJ operations. He testified that they never work together with operative or technical teams of the SAJ (Zoran Simović, T 13594).

<sup>6740</sup> Živko Trajković, T 9101.

<sup>6741</sup> See *supra*, para 1948.

is not of any relevance— it should have been anticipated, especially as the SAJ and other MUP forces were severely over taxed by the operations to which they were assigned. Indeed the Chamber is not able to accept the genuineness of this evidence when it is the case that on the way to their very first operation in Podujevo/Podujevë the Scorpions were given their first operational orders which were to “clear up” the half of the town which was not yet under Serbian control.<sup>6742</sup>

d. Reporting and investigation

1956. The Chamber has found elsewhere in this Judgement that on 28 March 1999, 14 women and children of the Bogujevci, Lugaliju and Duriqi families were killed by members of the Scorpions attached to the SAJ in a courtyard of a compound in Podujevo/Podujevë town, near the police station.<sup>6743</sup> In addition, the Chamber has found that two elderly Kosovo Albanian men, Hamdi Duriqi and Selmon Gashi, were shot in a café on the road outside the compound, also near the police station.<sup>6744</sup>

1957. It is the position of the Defence that the investigations into the incident were timely, and adequate.<sup>6745</sup> Simović testified that immediately following the killings, he notified the Podujevo/Podujevë OUP of the incident, as well as the Accused, also informing the latter as well as the MUP Staff of his decision to send the men back to Prolom Banja.<sup>6746</sup> He then left Podujevo/Podujevë, escorting the Scorpions back to Prolom Banja, and headed to Belgrade to attend the funeral of Trajković’s driver, Radovan Aleksić.<sup>6747</sup> Simović sought to suggest that the Podujevo/Podujevë OUP took all necessary steps to investigate the killings, yet had no basis for making this claim; his further testimony in fact revealed that he was completely unaware of any concrete investigative steps taken by the Podujevo/Podujevë OUP.<sup>6748</sup> His attempts to justify leaving Podujevo/Podujevë town immediately after the killings, and his stated reasons for not acting to secure the crime-scene himself, were, in the view of the Chamber, plainly unconvincing.<sup>6749</sup>

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<sup>6742</sup> Goran Stoparić, Exhibit P493, para 46.

<sup>6743</sup> *See supra*, para 1256, 1259.

<sup>6744</sup> *See supra*, para 1246.

<sup>6745</sup> Defence Final Brief, para 486.

<sup>6746</sup> Zoran Simović, T 13588-13589, 13617-13618, 13654; Radislav Stalević, T 13785, 13880.

<sup>6747</sup> Zoran Simović, T 13590-13591, 13660.

<sup>6748</sup> Zoran Simović, T 13591, 13615, 13618, 13649, 13653-13654. Simović seeks to suggest that upon his return from Radovan Aleksić’s funeral in Belgrade, he learned that an on-site investigation had been carried out and that officials of the Poduejvo/Podujevë OUP has gone to Prolom Banja and “taken certain steps”, Zoran Simović, T 13590-13591, 13676-13677. This is directly contradicted by the evidence of Goran Stoparić that there were no official interviews about the event conducted with any of the men in Prolom Banja, Goran Stoparić, T 2843, 2869.

<sup>6749</sup> Zoran Simović, T 13649, 13652-13653. Simović testified that he did not feel it was proper to stay and secure the crime scene himself because he did not want to tamper with any evidence; he claimed that when he went to inform the Podujevo/Podujevë OUP of the incident, he left some of the members of his unit on the scene to secure it until the OUP staff took over. His evidence reflects, however, that he never returned to the scene before getting on a bus and leaving Podujevo/Podujevë town, Zoran Simović, T 13622-13623, 13627-13628, 13723-13726; *see also*

1958. The killings of the 14 women, children and two elderly men in Podujevo/Podujevë town on 28 March 1999 were not included under the heading “serious crimes” in the daily MUP Staff report covering the date in question.<sup>6750</sup> Neither the Accused nor the most senior SAJ commander on the ground at the time of the killings, Zoran Simović, could explain why this was the case.<sup>6751</sup> The Accused sought to suggest that the only possible explanation for this lack of inclusion is that the required subject matter of reporting only related to security related events, “but not events that have to do with anti-terrorist activities”.<sup>6752</sup> He does not recall receiving a report on the killings directly by the Priština/Prishtinë SUP either, under whose responsibility Podujevo/Podujevë municipality fell.<sup>6753</sup> Despite the fact that the Accused had been informed of the killings on the day they occurred by Simović, he did not take any disciplinary steps or other actions against either the Priština/Prishtinë SUP Chief or the Chief of the Podujevo/Podujevë OUP for failing to include the incident in reports to Belgrade, testifying that this was an event the MUP Staff was in charge of; at that time, “the entire Serbia was aflame”, and his attention was directed at the SUPs outside of Kosovo.<sup>6754</sup> According to the Accused, measures were taken at a later stage to find out who was responsible, adding that “there were lots of problems in uncovering the truth”.<sup>6755</sup>

1959. The evidence demonstrates that an on-site investigation was carried out by an investigative judge of the Prokuplje district court in Serbia proper, together with an official of the Poduejvo/Podujevë OUP, on 30 March 1999; by that time, the bodies of the victims had been laying in the courtyard for three days.<sup>6756</sup> Momir Stojanović, head of the Security Section of the Priština Corps Command, testified that the investigative judge was initially afraid to carry out an investigation, but that he did so after two days.<sup>6757</sup> The Chamber notes that Aleksandar Vasiljević

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Exhibit P1591, p 2. Radislav Stalević likewise testified that he never visited the crime scene, not even after the fact, Radislav Stalević, T 13880. Stalević, who testified directly after Simović, mirrors Simović’s evidence, stating that a few men were left behind at the crime scene in order to secure it until the arrival of the crime scene investigator, Radislav Stalević, T 13916, 13885. Given that there was no on-site investigation until two days later, the Chamber does not find this evidence credible.

<sup>6750</sup> Exhibit D296, p 3.

<sup>6751</sup> Zoran Simović, T 13674. The Accused testified that the “event” was known and he did not understand why it would not have been included in the relevant MUP Staff report, Vlastimir Đorđević, T 10050-10051, 10052.

<sup>6752</sup> Vlastimir Đorđević, T 10051. *See supra*, paras 129, 132. *See also* Exhibits P1041, P1057, D232.

<sup>6753</sup> Vlastimir Đorđević, T 10052.

<sup>6754</sup> Vlastimir Đorđević, T 10052-10053.

<sup>6755</sup> Vlastimir Đorđević, T 9705-9707.

<sup>6756</sup> The Chamber notes that the report of the on-site investigation details that it was carried out “upon notification” by the Podujevo/Podujevë OUP, at the request of the district prosecutor of Prokuplje, *see* Exhibit D441; *see also* Živko Trajković, T 9096-9097; Vlastimir Đorđević, T 9706; Momir Stojanović, T 11778.

<sup>6757</sup> The witness testified that he was informed by the Chief of the Security of the 211<sup>th</sup> Armoured Brigade of the Priština Corps, which was stationed in Podujevo/Podujevë town, that corpses were observed in town on 28 March 1999, upon which he ordered the incident to be investigated. The Chamber notes that the investigation he referred to was a VJ inquiry into what took place in town, and not an on-site investigation, which the witness testified was carried out by an investigative magistrate from Prokuplje, as confirmed by evidence before the Chamber (Momir Stojanović, T 11778). The findings of the VJ inquiry into the incident, as testified to by the witness, are contained in the section containing the description of events in Podujevo/Podujevë town on 28 March 1999 (*see supra*, para 1261).

testified, however, that he later learned that the bodies remained in the courtyard for three days, because it was not possible for an investigative judge to get to the scene because of the road condition.<sup>6758</sup>

1960. The Accused testified that he did not know why it took until 30 March 1999 before an on-site investigation took place.<sup>6759</sup> A report on this investigation includes a description of the bodies discovered and the location of their discovery. With the exception of Selmon Gashi, one of the elderly men killed in the café on the street of the police station and on whose body an identity card was found, none of the other victims are named. Their ethnicity is not mentioned, and there is no reference to the perpetrators.<sup>6760</sup> None of the witnesses closely involved in the incident and who testified about the fact that there was an investigation were able to tell the Chamber exactly what follow up action, if any, was taken subsequent to the on-site investigation.<sup>6761</sup>

1961. Trajković testified that the killings in Podujevo/Podujevë received a lot of publicity in Serbia, and that as a result, Slobodan Milošević had requested a report on the matter.<sup>6762</sup> Evidence demonstrates that the Minister requested the Accused for a report concerning the engagement of the reserve forces with the SAJ.<sup>6763</sup> The Accused subsequently instructed Trajković to prepare such a report, which was submitted to the Accused on 13 May 1999.<sup>6764</sup> The Accused forwarded this report to the Minister.<sup>6765</sup> The report did not deal with measures taken against the members of the unit, instead discussing their re-deployment to Kosovo a second time. The Chamber notes that on 13 May 1999, the Security Administration of the Supreme Command Staff also issued a report relating to the activities of a group they refer to as the “paramilitary formation” of Slobodan Medić.<sup>6766</sup> The testimony of Aleksandar Vasiljević, who the Chamber considered a generally reliable witness, places doubt in the Chamber’s mind as to the authenticity of this report.<sup>6767</sup> Much of the information in this report is contrary to, or is not confirmed by, other more reliable evidence

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<sup>6758</sup> Aleksandar Vasiljević, T 5736, 5916.

<sup>6759</sup> Vlastimir Đorđević, T 9706.

<sup>6760</sup> Exhibit D441.

<sup>6761</sup> Živko Trajković testified that he did not know whether the perpetrators of the shooting stood trial immediately given that there was still a state of war (Živko Trajković, T 9097); *see also* K92, T 2773-2774, 2794-2795; Zoran Simović, T 13591; Radislav Stalević, T 13881.

<sup>6762</sup> Živko Trajković, T 9101.

<sup>6763</sup> Vlastimir Đorđević, T 9713, 10113.

<sup>6764</sup> *See* Exhibit D442.

<sup>6765</sup> Vlastimir Đorđević, T 9713, 10113. The Accused testified that upon receiving the report from Trajković, he did not analyze its contents, and made no amendments before sending it to the Minister, Vlastimir Đorđević, T 10113-10114.

<sup>6766</sup> *See* Exhibit D210; *see also* Momir Stojanović, T 11177-11178.

<sup>6767</sup> When Exhibit D210 was shown to him in court, Aleksandar Vasiljević testified that he does not know the document and that the facts reported in the document are incorrect. He also testified that the date on which the document was issued was “security day” so no-one was likely to be working on that day. Vasiljević testified that he was doubtful on the document’s authenticity, Aleksandar Vasiljević, T 5909-5913.

before the Chamber. For this reason, the Chamber shall not rely on this report for the truth of its contents.

1962. On 23 May 1999, a criminal report, referring back to the investigative report of 30 March 1999, was filed against two members of the Scorpions unit, Saša Cvetan and Dejan Demirović.<sup>6768</sup> The report records that there were reasonable grounds to suspect that these two individuals “with several other [unidentified] perpetrators, as members of the reserve force of the SAJ” had participated in the killings of “a large number of civilians— women, children, and elderly people”.<sup>6769</sup> The following day, on 24 May 1999, a decision to conduct an investigation and to order the detention of the above named men was issued by the investigative judge of the district court in Prokuplje.<sup>6770</sup> The evidence reveals that the two men only remained in detention for a period of about 10 days before being released.<sup>6771</sup> During the entire period of the Accused’s tenure as Chief of the RJB, no person was prosecuted for the crimes committed in Podujevo/Podujevë. Goran Stoparić testified that Saša Cvetan eventually stood trial for the killings in Podujevo/Podujevë town. The trial commenced in Prokuplje District Court but was then transferred to the jurisdiction of the Belgrade District Court in 2003 as it became clear that there was pressure being put on those who were giving evidence.<sup>6772</sup> Demirović was tried in absentia.<sup>6773</sup> Another case followed in 2008 against four additional Scorpions members, Zeljko Đukić, Slobodan Medić’s brother Dragan Medić, Dragan Borojević, and Miodrag Solaja.<sup>6774</sup>

1963. The Chamber has earlier found that the Accused was informed by the SAJ commander on the ground, Zoran Simović, on 28 March 1999 that Kosovo Albanian civilians had been killed in Podujevo/Podujevë town that day. The Accused was aware that those involved in the killings included members of the Scorpions unit who, under his approval, had been incorporated into the MUP reserve forces, were attached to the SAJ prior to the events, and were under the command of the SAJ on the day in question. Following the killings, he was also informed of, and approved, Simović’s decision to immediately send the Scorpions unit back to Prolom Banja. The Accused then ordered Trajković to go to Prolom Banja, disarm the unit, and send them home. In the view of the Chamber, the actions by the Accused prevented a proper investigation into those responsible for

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<sup>6768</sup> Exhibit P1593; *see also* Goran Stoparić, T 2869; Exhibit D442.

<sup>6769</sup> Exhibit P1593.

<sup>6770</sup> Exhibit P1592, p 1.

<sup>6771</sup> Goran Stoparić, T 2870-2871.

<sup>6772</sup> Goran Stoparić, Exhibit P493, paras 83-88; *see also* Goran Stoparić, T 2845-2849, 2867-2868; Exhibits P40, P41. The Chamber notes, in this regard, that an OSCE report entitled “War Crimes Before Domestic Courts” refers to the “Podujevo case”, explaining that the decision of the Supreme Court of Serbia of 27 November 2002 to transfer the case to the Belgrade District Court was made on the basis that it was believed necessary to allow for undisturbed interrogation of witnesses of Albanian ethnicity, Exhibit P726, pp 10, 30.

<sup>6773</sup> Goran Stoparić, T 2846-2847.

<sup>6774</sup> Goran Stoparić, T 2867-2868.

the killings, and helped set the context for the prevailing attitude of authorities involved in the subsequent investigation into these killings. Moreover, the fact that Simović informed the Accused of the killings in Podujevo/Podujevë town almost immediately after they occurred reaffirms the Chamber's finding that the Accused played a central role in the deployment of these forces to the town on 28 March 1999. It also shows that the Accused was regarded as the significant authority to which to report about SAJ operations in Kosovo in 1999.

1964. The Chamber notes the evidence of several witnesses that the group of Scorpions that were re-deployed to Kosovo in April of 1999 did not include those members of the unit that had taken part in the killings in Podujevo/Podujevë on 28 March 1999.<sup>6775</sup> The Chamber is not able to understand on what basis any of these witnesses could have made such a claim, given that criminal reports, against only two perpetrators, were not filed until 23 May 1999, about a month after the re-deployment of the Scorpions, and additional perpetrators of the killings were not identified until years later. Several witnesses testified that they questioned the members of the unit in an (unsuccessful) effort to establish who the perpetrators of the killings were.<sup>6776</sup> The suggestion that this would have sufficed in order to make sure that those re-deployed to Kosovo would exclude the perpetrators of the killings in Podujevo/Podujevë town is not accepted. It is the testimony of Goran Stoparić that, save for Saša Cvetan, all members of the Scorpions unit were in fact re-deployed to Kosovo in April of 1999.<sup>6777</sup>

1965. Goran Stoparić testified, furthermore, that none of the men were questioned upon their return to Prolom Banja.<sup>6778</sup> Stoparić attempted to conduct an “unofficial investigation” to find out if any of the members of his reconnaissance platoon took part in the incident; he had the impression that Slobodan Medić obstructed this investigation by virtue of the fact that his brother Dragan had participated in the killing.<sup>6779</sup> Stalević sought to suggest that because the Prokuplje SUP had territorial jurisdiction over Prolom Banja, it was their task to hold and question the Scorpions about their conduct in Podujevo/Podujevë town.<sup>6780</sup>

1966. Živko Trajković conceded that later, after the war, he learned that the number of perpetrators of the killings was far greater than was initially thought, so that it was “possible” a

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<sup>6775</sup> Živko Trajković, T 9102; Zoran Simović, T 13593-13594, 13682-13683, 13728-13729.

<sup>6776</sup> Zoran Simović, T 13615-13618, 13732. Simović testified that he himself did not see who had shot at the civilians; he added that at the time of the shooting, the members of his unit, composed of about 70-80 men, were resting and that “only a certain number of them happened to be on the spot” (Zoran Simović, T 13588, 13721-13722). Radislav Stalević testified that the men of the “reserve force” were asked if they committed the crime, but that they were unable to establish who the perpetrators were on this basis (Zoran Simović, T 13883); *see* also Goran Stoparić, T 2843, 2869.

<sup>6777</sup> Goran Stoparić, T 2844-2845.

<sup>6778</sup> Goran Stoparić, T 2843.

<sup>6779</sup> Goran Stoparić, T 2869.

number of the perpetrators were in fact re-engaged with the SAJ in April of 1999.<sup>6781</sup> In the view of the Chamber, the evidence establishes that there was a total lack of any proper investigation into the murders in Podujevo/Podujevë on 28 March 1999 in the immediate aftermath of the events, that the Accused Đorđević was fully aware of the lack of investigation and, armed with that knowledge, he nonetheless authorised the re-deployment of members of the same unit to Kosovo to participate in further operations.

(i) Vlastimir Đorđević's involvement in the concealment of the bodies and preventing judicial proceedings

1967. The Chamber has found elsewhere in this Judgement that a plan to conceal the bodies of Kosovo Albanians killed in Kosovo during the Indictment period existed. It is satisfied of the involvement of the MUP, from the level of the leadership in Belgrade down to police on the ground in Kosovo and elsewhere in Serbia, who implemented this plan.

1968. The Prosecution submits that the Accused took a leading role in the body concealment operations,<sup>6782</sup> and that in doing so he possessed the relevant awareness and intent to further crimes being committed in Kosovo throughout this time frame.<sup>6783</sup> The general position taken by the Defence with respect to the body concealment operations, as already set out in Chapter VII of this Judgement, is that the Accused did no more than pass on instructions given to him by the Minister, and never acted on his own initiative.<sup>6784</sup> The Prosecution submits that the participation of the Minister does not negate the Accused's individual criminal responsibility, as the Indictment charges them with joint participation, together with other key political, military and MUP figures, in the commission of the crimes alleged.<sup>6785</sup>

1969. The evidence already set out in Chapter VII with respect to the discovery of the bodies in Tekija and in Lake Perucac, contrary to the Defence position that the Accused was merely a go-between conveying information to the Minister, and conveying the Minister's orders back to the people on the ground, clearly demonstrates that Vlastimir Đorđević was the initial, and primary, point of contact for both the respective SUP chiefs Časlav Golubović and Đorđe Kerić. The Minister, moreover, is not a witness in this trial; he committed suicide in 2002.<sup>6786</sup> The Chamber therefore does not have the assistance of his evidence. The Chamber considers, nevertheless, that it

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<sup>6780</sup> Radislav Stalević, T 13884.

<sup>6781</sup> Živko Trajković, T 9109.

<sup>6782</sup> Prosecution Final Brief, para 1185; Closing Arguments, T 14386-14387.

<sup>6783</sup> Closing Arguments, T 14387.

<sup>6784</sup> Defence Final Brief, paras 559, 561, 564; *see also* Closing Arguments, T 14499 *et seq.*

<sup>6785</sup> Prosecution Final Brief, para 1202.

<sup>6786</sup> K84, T 2019.



is in a position, on the basis of the available evidence, to reach findings about the role of the Accused and his criminal culpability with respect to the body concealment operations that have been established. In material respects, it is clear that the Accused gave orders with respect to the secret handling, transport and reburial of bodies. It may be the case that in some respects the Accused was able to report progress to the Minister or to discuss possible future steps with him. However, in the Chamber's findings, the Accused himself also made decisions and gave orders on his own initiative. He was not a mere conduit pipe for orders from the Minister. The Chamber is satisfied that the Accused was directly involved in the decision making process with respect to actions to be taken by the local police upon discovery of the bodies in Tekija and at Lake Perucac.

1970. None of the evidence adduced by the Defence has persuaded the Chamber that the Accused, furthermore, took any action to properly investigate the discovery of the bodies. The Chamber is not convinced by the Accused's testimony that immediately upon learning of the discovery of bodies in Tekija, he proposed to the Minister that a commission be set up to establish exactly what happened.<sup>6787</sup> While it must be left open that, as suggested by the Accused, the Minister instructed him to conceal the bodies in order to prevent NATO from using the discovery for "propaganda purposes" and told him that no further measures should be taken to establish the origin of the bodies and how they were killed, in the view of the Chamber, this did not absolve the Accused of his duty to investigate this incident.<sup>6788</sup> Indeed, even on his own account of events, the Accused accepted that it was his duty under the law to have the emergence of the bodies properly investigated, but he then sought to suggest that once the Minister did not accept the investigative steps he had proposed, he did not have the "legal or factual possibility to do anything".<sup>6789</sup> The Accused's orders to the SUP chief Golubović to bury the bodies at the scene, keep the media out of it, and for the destruction of the refrigerated truck after the bodies were removed from it,<sup>6790</sup> were the first steps in ensuring that no investigation into these bodies could take place. The role he played in coordinating the transport of the bodies, and his involvement in their clandestine burial in mass graves at the Batajnica SAJ Centre near Belgrade ensured that the bodies were not the subject of investigation at the time. It was not until 2001 that the mass graves were discovered. No investigative steps had been taken up to that time.

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<sup>6787</sup> Vlastimir Đorđević, T 9723; *see also* Closing Arguments, T 14500, 14506-14507. It was the Accused's evidence, further, that the Minister did not respond to this proposal, and so Đorđević proposed that he himself establish such a commission or group to investigate the matter, Vlastimir Đorđević, T 9723, 10002.

<sup>6788</sup> Vlastimir Đorđević, T 9723-9724, 9827; *see also* Defence Final Brief, para 557.

<sup>6789</sup> Vlastimir Đorđević, T 10002-10003, 10009.

<sup>6790</sup> The Chamber notes the Accused's concession that conveying the Minister's order to Golubović to destroy the refrigerated truck in which the bodies had been discovered, moreover, was unlawful, and that this order was a signal to him that events were not taking a "good turn" and he had to get himself out of them, Vlastimir Đorđević, T 10002.

1971. The Chamber recalls, moreover, that the Accused had already been informed on 6 April 1999 by Golubović that the bodies discovered in Tekija were likely to be of Kosovo Albanians, that the truck they were in came from Prizren, and that there were women and children amongst them.<sup>6791</sup> Strikingly, it is the Accused's own evidence that even after the Minister told him that "certain incidents had happened down there", and that something should be done to prevent the revelation of the finding of the bodies because of "the whole NATO campaign and the bombing", he, Đorđević was not aware of crimes taking place in Kosovo.<sup>6792</sup> It is the evidence of the Accused, furthermore, that when he told the Minister that he wanted nothing more to do with the situation of the bodies discovered in the Danube, the Minister warned him to be "careful" about what he was doing and that this was a serious matter. Đorđević sought to assert in his evidence that he understood the Minister's words to be a threat and furthermore that, because of the Minister's words, he feared that he would be killed if he tried to expose what was going on.<sup>6793</sup> He suggested that in addition to the fact that there was a war going on, this was the reason he did not inform President Milutinović of Serbia of Minister Stojiljković's actions.<sup>6794</sup> Neither did he ever ask Obrad Stevanović or Sreten Lukić, when he met them in April 1999, and later again in June 1999, whether they knew anything about the bodies. Again he suggests this was because the Minister had ordered him not to and he was forbidden from discussing the topic.<sup>6795</sup> The Chamber does not find this evidence credible. It is significant, in the Chamber's assessment, that the first time he mentioned any such threat was during cross-examination in this trial, even though he had several earlier opportunities to do so over the years.<sup>6796</sup> In assessing his credibility about this issue, it is also significant that the Accused first referred to this threat when pressed in cross-examination about his silence on this topic. He did not mention this threat in his statement provided pursuant to Rule 84bis following the Prosecution's Opening Statement on 27 January 2009, or in his examination-in-chief. Finally, there is no explanation why the Accused remained silent for such a long time after the Minister's suicide in 2002, if, as he now claims, the reason for him not taking action was the

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<sup>6791</sup> See *supra*, para 1301.

<sup>6792</sup> Vlastimir Đorđević, T 9723-9724, 9827-9828, 10004.

<sup>6793</sup> Vlastimir Đorđević, T 9975-9977, 10096-10097, 10012.

<sup>6794</sup> Vlastimir Đorđević, T 10012.

<sup>6795</sup> Vlastimir Đorđević, T 10023.

<sup>6796</sup> The Prosecution put to the Accused that he made no mention of this threat in either his letter to "Nedeljini Telegraf" in 2004, nor during his "opening statement" or examination-in-chief in this case. The Accused explained the omission in the 2004 letter because he wrote this letter "in a rage" and as a result made some elementary mistakes in it, Vlastimir Đorđević, T 10097-10099. The Chamber considers that the Accused's reasons for not mentioning this threat in his letter to the "Nedeljini Telegraf" in 2004 unconvincing. The stated purpose of this letter was to inform the Serbian public about, *inter alia*, his role in Kosovo. Among many issues discussed by Đorđević, he writes in the letter that all actions he undertook with respect to the discovery of bodies in Tekija were ordered by the Minister, Exhibit P1474. The supposed fact that the Minister, who at the time the letter was published was already long dead, had threatened Đorđević's life should he expose the discovery of the bodies, would have fitted very logically into the context of the letter. In view of the Chamber, omitting this piece of information from his 2004 letter is a compelling indication that this is a fabrication.

Minister's threats. The Chamber is not persuaded that the Minister threatened the Accused's life, or that it was for this reason that the Accused did not expose what had gone on.

1972. With respect to the clandestine re-burial operation at the Batajnica SAJ Centre, the Chamber is satisfied on the evidence that the Accused, if not the main orchestrator, played a leading and crucial role in effectuating this operation. He was, at the least, responsible for coordinating the arrival of the trucks with the personnel at the Centre to whom he had given orders to bury the bodies at this location. He selected and identified the location of the burial site of the first grave. He coordinated machinery and personnel to effect the burials and the movement of the trucks that had been used. The influential and instrumental role of the Accused in this process is further reflected by his apparent ability to stop the bringing of truckloads of bodies to the Centre, when requested to do so by K87.

1973. The Chamber notes that the Accused accepted that the burial of bodies at the Batajnica SAJ Centre as well as on the banks of Lake Perucac was in complete defiance of the operative law and was in grave dereliction of the Accused's own duties and responsibilities. He accepted that he was aware that accepting the Minister's orders without opposing them was a "big mistake".<sup>6797</sup> Despite this, the Accused nonetheless maintained throughout his testimony that while he suspected that those who were buried in these locations "came to harm" during the activities in Kosovo, he did not know how they were killed.<sup>6798</sup> The Chamber does not accept this evidence.

1974. With respect to the burial of bodies at the Petrovo Selo PJP Centre, the Prosecution submits that the Accused had knowledge of the burial of bodies at this location, and that, moreover, the burials at Petrovo Selo and Batajnica were components of the same plan to conceal the evidence of large scale crimes.<sup>6799</sup> The Defence opposes the suggestion that the burial of bodies at these two Centres were part of the same operations,<sup>6800</sup> and submits that the Accused had no knowledge of bodies being buried in Petrovo Selo at the time this was taking place.<sup>6801</sup>

1975. As has been discussed, there is evidence of a direct involvement of the Accused, Vlastimir Đorđević, in the clandestine movement of bodies from Kosovo and their burial in mass graves at Batajnica and Lake Perucac. There is no equivalent direct evidence, however, of any involvement of the Accused in the clandestine burial of bodies at the Petrovo Selo PJP Centre.

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<sup>6797</sup> Vlastimir Đorđević, T 10002, 10006-10007.

<sup>6798</sup> Vlastimir Đorđević, T 10006-10011.

<sup>6799</sup> Prosecution Final Brief, paras 1230-1231; *see also* Closing Arguments, T 14414-14415.

<sup>6800</sup> Closing Arguments, T 14519.

<sup>6801</sup> Defence Final Brief, paras 585-586, 597.

1976. Nevertheless, several factors indicate that these three episodes are closely related. As the Chamber has found elsewhere in this Judgement, the bodies buried at the Batajnica SAJ Centre, Lake Perucac and the Petrovo Selo PJP Centre had come from Kosovo. The dead people were of Albanian ethnicity. In many cases the bodies had been interred previously for a short time in Kosovo before being disinterred under MUP supervision and transported to Serbia to be reburied in mass graves. Among the bodies in Batajnica and Petrovo Selo were many which had been identified as the remains of persons killed by Serbian forces in Kosovo. The Chamber recalls the evidence of one of the MUP drivers with respect to the delivery of bodies to both of these locations to the effect that one of the trucks used to transport bodies from Kosovo to the Petrovo Selo PJP Centre was subsequently brought to the Batajnica SAJ Centre, in order to “bring earth” and “spread sand”,<sup>6802</sup> which in the view of the Chamber, was done in the course of disguising the location of the mass graves. The person who ordered K93 to participate in the collection of bodies from Kosovo and to transport them to both the Batajnica and Petrovo Selo Centres, Petar Zeković, was a member of the MUP Collegium as well as the Assistant Minister appointed as head of the Administration of Joint Affairs,<sup>6803</sup> an administration which, *inter alia*, was responsible for the use of MUP vehicles.<sup>6804</sup> The Chamber has found elsewhere in this Judgement that the other Assistant Ministers were subordinate to the Accused, as chief of the RJB.<sup>6805</sup>

1977. With respect to bodies buried at Batajnica and Lake Perucac, a refrigerated truck, or truck compartment, containing bodies, was found floating and abandoned in the Danube river and Lake Perucac respectively. The refrigerated truck found floating in the Danube river was later destroyed by MUP personnel at the Petrovo Selo PJP Centre. The Accused ordered Časlav Golubović on 6 or 7 April 1999 to have this truck destroyed, although the evidence does not establish that the Accused instructed where this was to take place, ultimately, it was in fact destroyed at the Petrovo Selo PJP Centre.<sup>6806</sup> As the Chamber has found elsewhere in the Judgement, one of the mass graves at Petrovo Selo PJP Centre was lined with plastic sheeting similar to that unearthed in one of the mass graves at Batajnica.<sup>6807</sup>

1978. Both the SAJ training ground in Batajnica and the PJP training ground in Petrovo Selo fell under the responsibility of the Accused, as chief of the RJB; the SAJ and PJP were organizational units of the RJB. The individuals present at these training grounds when the bodies arrived, taking part in the digging of graves and in the burial operations, were subordinates of the Accused, as were

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<sup>6802</sup> See *supra*, para 1354.

<sup>6803</sup> Exhibits P263; P1063, p 3.

<sup>6804</sup> Exhibit P357, Articles 23 and 35.

<sup>6805</sup> See *supra*, paras 42-43.

<sup>6806</sup> See *supra*, para 1313.

<sup>6807</sup> See *supra*, paras 1496, 1509.

all individuals assisting in the recovery and concealment operation on the ground in Tekija and Perucac Lake. In addition, the Chamber notes the Accused's testimony before the War Crimes Chamber of the Belgrade District Court on 26 June 2009 that he visited the Petrovo Selo PJP Centre together with the Minister sometime before July of 1999.<sup>6808</sup> In his testimony, the Accused spoke of his instruction, in July of 1999, to policeman Sreten Popović attached to the Petrovo Selo PJP Centre at the time, to transport three arrested persons, brothers with the last name Bytqi,<sup>6809</sup> from Prokuplje where they had been imprisoned for a misdemeanour, to the Petrovo Selo PJP Centre.<sup>6810</sup> The Accused concedes having heard from the press at a later stage, sometime after he had left Serbia in May 2001, that the bodies of the Bytqi brothers were exhumed from one of the mass graves at the Petrovo Selo PJP Centre in 2001.<sup>6811</sup> He testified at the trial against Sreten Popović, and another, before the War Crimes Chamber of the Belgrade District Court on 26 June 2009, that these men were transferred to the Petrovo Selo PJP Centre for the purpose of further investigation, since the extent of their involvement with the KLA was not yet clear.<sup>6812</sup> The involvement of the Accused in the arrest of these three men and their detention at the Petrovo Selo PJP Centre demonstrates his effective command over the MUP personnel at the Centre; as the Accused confirmed to the War Crimes Chamber in Belgrade, moreover, Sreten Popović, the duty officer at the Petrovo Selo PJP Centre whom he spoke to in July 1999, was "most certainly" obliged to carry out the task which the Accused had entrusted to him.<sup>6813</sup> There is a general contemporaneity of timing of the disinterment, transportation and reburial of bodies at these two Centres.

1979. The actions discussed above leading to the clandestine reburials in mass graves, some hundreds of kilometres from Kosovo, is consistent in timing, execution and purpose with the direction given by President Milošević of the FRY in Belgrade in March 1999, to the Minister of the Interior of Serbia, Vlado Stojiljković, to "clear the terrain" and remove the traces of evidence of crimes in Kosovo, which direction caused the Minister, in the Chamber's finding, to pass responsibility for its implementation to the Accused, a member of the MUP Collegium, and one of his subordinates, Dragan Ilić, also a member of the MUP Collegium. Petar Zeković, also a subordinate of the Accused in the MUP and Assistant Minister, is identified in the evidence as the

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<sup>6808</sup> Exhibit P1508, p 16.

<sup>6809</sup> The Chamber notes that the OMPF list of missing persons includes the names of three individuals, Agron Ahmet Bytqi, Mehmet Ahmet Bytqi and Ylli Ahmet Bytqi, who are recorded as last being seen in Prokuplje on 8 July 1999. (Exhibit P477, cell 830, 843 and 857, pp 39-40; *see also* Exhibit P815, pp 31-35).

<sup>6810</sup> The Accused testified that the decision of the transferal of these three brothers to the Petrovo Selo PJP Centre was made by the Minister. The Accused contacted Goran Radosavljević, at the time the head of the Petrovo Selo PJP Centre to pass on this instruction; it is his testimony that as he could not reach Radosavljević, he conveyed the instruction to Sreten Popović instead. This was his last involvement with respect to the Bytqi brothers (Vlastimir Đorđević, T 9973-9975; Exhibit P1508, pp 4-7).

<sup>6811</sup> Vlastimir Đorđević, T 9975, 10016-10017; *see also* Exhibit P1508, pp 3-7, 10-11; Exhibit P815, pp 31-35. *See supra*, para 1509.

<sup>6812</sup> Exhibit P1508, pp 3-4, 8-9, 12-13.

<sup>6813</sup> Exhibit P1508, p 10.

person who gave instructions for the collection of bodies from Kosovo and their transportation to the Batajnica and Petrovo Selo Centres. Zeković had responsibility within the MUP Command in Belgrade for the use of MUP vehicles.

1980. The combination of circumstances as reviewed by the Chamber satisfies it that the transportation of bodies from Kosovo, to Batajnica and Petrovo Selo for clandestine burial in mass graves, as well as the burial of bodies, on-site, found in a refrigerated truck freight compartment in Lake Perucac, was undertaken as part of a coordinated operation to clear the terrain in Kosovo of evidence of crimes by Serbian forces against Kosovo Albanians during the Indictment period. This operation was conducted, in the Chamber's view, under the direction of the Accused, with Dragan Ilić, on the direction of Minister Stojiljković, and pursuant to an order of President Milošević of the FRY.

1981. The Chamber is satisfied that the Accused had knowledge of bodies being transported from Kosovo to the Petrovo Selo PJP Centre in April 1999, as well as the transport at about the same time, of other bodies from Kosovo, to the Batajnica SAJ Centre, and the burial of bodies at Lake Perucac. This was done, in the knowledge of the Accused, as part of the same plan to conceal crimes committed by Serbian forces against Kosovo Albanians during the Indictment period. The Accused, through his actions, intended to further that plan.

1982. In May 1999, shortly after being approached by a member of the Working Group for an initial informal conversation about the refrigerated truck containing bodies in the Danube river, the Accused fled Serbia.<sup>6814</sup> The Chamber notes also that on 20 April 2001, a criminal report had been filed against Minister Stojiljković, the Accused Đorđević, and Zoran Milić, assistant chief of the police administration.<sup>6815</sup> Đorđević had been charged with abuse of office for improper use of budget funds of an athletic club, called "Milicionar".<sup>6816</sup> It is the evidence of the Accused that he fled because he had an indication that he would soon be arrested pursuant to the proceedings on this criminal report.<sup>6817</sup> In his letter to "Nedeljni Telegraf", in an apparent but unconvincing effort to explain his disappearance, the Accused submitted that the authorities were trying to find ways in which they could charge him in order to arrest him so that he could be a witness against Slobodan Milošević before the Tribunal.<sup>6818</sup> This contention is not accepted. Despite the Accused's attempts to convince the Chamber otherwise, the Chamber is satisfied that his knowledge that his role in the body concealment operations and the crimes that lay behind them would be exposed was a, if not

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<sup>6814</sup> K84, T 2021; *see also* Defence Final Brief, para 276.

<sup>6815</sup> Vlastimir Đorđević, T 9763, 10017-10018; Exhibit D453.

<sup>6816</sup> Vlastimir Đorđević, T 9763-9764, 10017.

<sup>6817</sup> Vlastimir Đorđević, T 10017-10018.

<sup>6818</sup> Exhibit P1474, p 10.

the, dominant consideration. An Indictment against the Accused Vlastimir Đorđević and others was issued in October 2003. Đorđević remained a fugitive until his arrest in 2007, in the midst by then of the trial of other members of the political, VJ and MUP leadership who were also charged with responsibility for the crimes committed in Kosovo.<sup>6819</sup>

(j) Vlastimir Đorđević's knowledge and intent

1983. In the submission of the Prosecution, Vlastimir Đorđević had knowledge of the crimes committed by Serbian forces during anti-terrorist operations in 1998, and was thereby put on notice that if similar forces were deployed in the same theatre of operations, they would continue to commit similar crimes in 1999.<sup>6820</sup>

1984. The Defence submits that Vlastimir Đorđević had no knowledge of anti-terrorist operations conducted in Kosovo in 1999 as this was not reported to him.<sup>6821</sup> It also submits that he had no knowledge of crimes being committed in Kosovo and did not share the intent to further the joint criminal enterprise alleged in the Indictment.

1985. There was a detailed and extensive functioning reporting system in place in the MUP in 1998 and 1999, whereby both the SUPs in Kosovo and the MUP Staff in Priština/Prishtinë continually informed the Ministry in Belgrade of events on the ground in Kosovo. However, the Chamber also recalls its finding that serious crimes committed against Kosovo Albanian civilians by MUP forces were not included in such reports during the course of 1998 and 1999, contrary to the obligations of the police under the relevant regulations and laws. Although this might be taken as evidence that the Accused would not have had knowledge that such crimes were committed by MUP forces, other evidence, discussed below, demonstrates that crimes were reported to Đorđević through other means. Far from constituting evidence of a lack of knowledge of crimes committed

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<sup>6819</sup> On 24 May 1999, an indictment was confirmed against Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, and Vljako Stojiljković charging them with crimes committed in Kosovo in 1999. The trial against Slobodan Milošević started in February 2002. As stated earlier in this Judgement, Minister Stojiljković committed suicide later that year. On 2 October 2003, an indictment was confirmed against Neboša Pavković, Vladimir Lazarević, Vlastimir Đorđević and Sreten Lukić. A joint indictment was filed in August 2005 against Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Neboša Pavković, Vladimir Lazarević, and Sreten Lukić, having severed Vlastimir Đorđević, who at the time remained a fugitive. The trial against his co-accused commenced on 10 July 2006 and lasted until August 2008. See also *infra*, paras 2234-2239.

<sup>6820</sup> Prosecution Final Brief, paras 1240-1241.

<sup>6821</sup> Defence Final Brief, see e.g., paras 400-403, 407. The Chamber notes in this regard the Accused's testimony that while the SUPs in Kosovo were obliged to report to the MUP Staff on, *inter alia*, the movement of the police and police operations, the information received by the Ministry in Belgrade covered only terrorist activities (see Vlastimir Đorđević, T 9505-9507, 9515, 9719; see also Exhibit P1041). See also Exhibit D232 (MUP Instruction on Information and Reporting). The Accused sought to suggest in his evidence that reference in this Exhibit to "operative actions and measures in which a large number of employees and material and equipment are engaged", does not include anti-terrorist operations, but relates to incidents "for example", when "some gang commits a crime and a search is organized" (Vlastimir Đorđević, T 10048-10050). The Chamber does not accept this testimony as truthful.

in Kosovo on the part of Đorđević, the systematic lack of reporting of serious crimes committed against Kosovo Albanian civilians in MUP reports in 1998 and during the Indictment period is consistent with the pattern established in the evidence of a cover-up or concealment of such crimes within the MUP.

1986. Reports were relayed orally to Đorđević by telephone by his subordinates. Đorđević testified that on 28 March 1999, Zoran Simović, the SAJ Commander, called him to inform him about the crimes committed against Kosovo Albanian civilians by the Scorpions unit attached to the SAJ in Podujevo/Podujevë that day.<sup>6822</sup> Notably, these crimes were not reported in the SUP report or the MUP Staff report. However, Đorđević was immediately given an oral report about the crimes committed. Đorđević gave testimony to the Belgrade Court on 26 June 2009 that “Everything that was happening the organs of the interior was for the most part brought to my attention through regular channels or in some other way”,<sup>6823</sup> which he explained in proceedings before this Chamber to mean “by telephone or somebody coming personally and conveying whatever it is they had to say”.<sup>6824</sup> Ljubinko Cvetić confirmed that reports from the SUPs were sometimes given orally to the MUP headquarters in Belgrade by telephone. Everything that happened in the territory of a SUP in the past 24 hours was reported to the Ministry and to the MUP Staff in Prishtinë/Priština.<sup>6825</sup>

1987. Another important means by which Đorđević knew of what was occurring in Kosovo was by personal contact. The evidence shows that the Accused had direct and immediate contact with a number of SUP chiefs in Kosovo as well as with the head of the MUP Staff, Sreten Lukić. In 1999, he was present in Kosovo on several occasions, attending MUP Staff meetings and visiting SUP Chiefs. In particular, in February 1999, the Accused attended a MUP Staff meeting during which Lukić discussed the RJB “mopping-up” operations to be conducted in the area of Podujevo/Podujevë, Dragobilje/Dragobil and Drenica.<sup>6826</sup> In March 1999, at the time where MUP and VJ forces were conducting the so-called “mopping-up” operations in the municipalities of Kačanik/Kaçanik and Vučitrn/Vushitri, the Accused took part in discussions with the MUP Staff on the overall security situation in Kosovo and the implementation of a defence plan.<sup>6827</sup> In April 1999, the Accused travelled twice to Kosovo. The first visit occurred on 16 April 1999 when he accompanied the Minister on a brief visit which involved meeting the chiefs of the SUPs, the

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<sup>6822</sup> Vlastimir Đorđević, T 9703. See also Zoran Simović, T 13588-13589, 13654.

<sup>6823</sup> Exhibit P1508, p 5.

<sup>6824</sup> Vlastimir Đorđević, T 10087.

<sup>6825</sup> Ljubinko Cvetić, T 6723, 6726.

<sup>6826</sup> Exhibit P85, p 1.

<sup>6827</sup> Ljubinko Cvetić, T 6682-6684; *see supra*, para 1925.



MUP Staff, and some politicians as well as a press conference.<sup>6828</sup> At this time, Đorđević took the opportunity to deliver decisions on the dismissal of the SUP chiefs of Priština/Prishtinë (Boško Petrić) and Kosovska Mitrovica/Mitrovicë (Ljubinko Cvetic) and the appointment of new chiefs.<sup>6829</sup> Two days later, on 18 April 1999, Đorđević returned to Kosovo to oversee the handover of duties in these SUPs.<sup>6830</sup> On this visit, he first met with the head of the MUP Staff, Lukić, then Petrić at the Priština/Prishtinë SUP, then the chief of the Uroševac/Ferizaj SUP, who was also being replaced.<sup>6831</sup> Following these meetings, Đorđević attended a meeting at the location of the evacuated Priština Corps between the MUP Staff and members of the Priština Corps, namely, Pavković, Lazarević, and Đaković.<sup>6832</sup>

1988. The Accused also had detailed knowledge of the events on the ground in Kosovo, in particular, the participation of MUP forces in anti-terrorist operations, through his attendance at, and active contribution to, Joint Command meetings where such operations, as well as the looting, burning and destruction by these forces of Kosovo Albanian houses, were discussed.<sup>6833</sup> He himself noted at the meeting of 7 September 1998 that “We must take measures against persons who torch houses subsequently”.<sup>6834</sup> However, no such measures were ever taken, despite the Accused being in the prime position to effect such measures. The minutes of a Joint Command Meeting of 26 September 1998 refer to the completion of operations in Donje and Gornje Obrinje/Abri-e-Epërme,<sup>6835</sup> where 21 members of the Delijaj family were killed. The killings provoked an international outcry. Human Rights Watch published a report on the killings in Gornje Obrinje/Abri-e-Epërme,<sup>6836</sup> and the *New York Times* subsequently ran the story on its front page.<sup>6837</sup> The Serbian state-run media refuted the claims made by Human Rights Watch.<sup>6838</sup> On 4 October 1998, the minutes of the Joint Command record Šainović stating that an investigation “into Obrinje” should be launched.<sup>6839</sup> It is inconceivable on the evidence that Đorđević would not have been aware of the allegations of crimes committed in Gornje Obrinje/Abri-e-Epërme, yet he took no measures to follow-up on calls for an investigation.

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<sup>6828</sup> Vlastimir Đorđević, T 9735.

<sup>6829</sup> Vlastimir Đorđević, T 9736-9739.

<sup>6830</sup> Vlastimir Đorđević, T 9737.

<sup>6831</sup> Vlastimir Đorđević, T 9737-9738.

<sup>6832</sup> Vlastimir Đorđević, T 9738-9739, 10020.

<sup>6833</sup> *See supra*, paras 244-252, 1901; Exhibit P886, *see e.g.*, pp 13, 14, 19, 23, 27, 29, 41, 57, 73, 82, 108.

<sup>6834</sup> Exhibit P886, p 82.

<sup>6835</sup> Exhibit P886, p 112.

<sup>6836</sup> Frederick Abrahams, T 3660-3661, 4021-4022; Exhibit P753. *See supra*, para 1905.

<sup>6837</sup> Frederick Abrahams, T 3960.

<sup>6838</sup> Frederick Abrahams, T 4021-4022.

<sup>6839</sup> Exhibit P886, p 119.

1989. The Accused also participated in weekly MUP Collegium meetings<sup>6840</sup> during which the overall security situation in Kosovo and the police units present in the field were discussed.<sup>6841</sup> The Chamber recalls its rejection of the Defence contention that anti-terrorist operations were not discussed at these meetings. Given that the Kosovo situation was the single most pressing security issue at the time, and that the MUP Collegium was used as the forum to receive requests for and approve of additional units being sent to Kosovo, the Chamber is satisfied that the only reasonable inference is that such operations were discussed in detail. Moreover, throughout 1998 and into 1999, Đorđević issued orders deploying MUP forces to Kosovo; these orders were implemented.<sup>6842</sup>

1990. There is ample evidence that the Accused knew of crimes committed against Kosovo Albanian civilians by Serbian forces during the summer offensive in 1998. He personally participated in the siege of the Jashari compound in Prekaz/Prekaze in March of 1998, an operation that resulted in the loss of many civilian lives, including 18 women and 10 children, and was denounced in the international media. He was aware of Security Council Resolution 1160 of 31 March 1998 condemning, *inter alia*, the use of excessive force by Serbian police forces against civilians.<sup>6843</sup> Đorđević was present on the ground in Kosovo monitoring the implementation of the Plan for the Suppression of Terrorism in Kosovo from July to October 1998. He was aware of the massive displacement of thousands of civilians as a result of these operations and personally observed 15,000-20,000 displaced persons gathered in Istinić/Isnqi, Dečani/Deçan municipality, acknowledging that these persons had gathered there as a result of operations by Serbian forces. He conceded that there were incidents of “torching” committed by police on the ground during these operations. He was aware of the presence of paramilitary forces in Kosovo, and of the use of armed Serb civilians in joint VJ and MUP operations during this time.

1991. Through his role in negotiations with international bodies and representatives of the FRY and Serbia in October 1998, he was aware of complaints by the international community concerning large scale crimes being committed by Serbian forces in Kosovo. His subordinate, Lukić, was directly informed by Shaun Byrnes about the forced expulsion of Kosovo Albanians from their villages in August and September 1998.<sup>6844</sup> In the Chamber’s finding, Lukić reported to Đorđević, and therefore he would have known about such expulsions. He was also aware of UN Security Council Resolution 1199 of 23 September 1998 expressing its concern for, *inter alia*, the excessive

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<sup>6840</sup> See *supra*, para 98; Exhibit D208; Vlastimir Đorđević, T 9413.

<sup>6841</sup> See *supra*, paras 101-103; Vlastimir Đorđević, T 9419-9420.

<sup>6842</sup> Exhibits P136; P711; P1182; P1185; P1189; see also Exhibits P1193; P1195; P1487; P1196; P1488.

<sup>6843</sup> Vlastimir Đorđević, T 10095; Exhibit P1074.

<sup>6844</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12141-12142; Shaun Byrnes, T 8172-8173.

and indiscriminate use of force by Serbian security forces and the VJ in Kosovo resulting in civilian casualties and the displacement of over 230,000 persons from their homes in Kosovo.<sup>6845</sup>

1992. In January 1999, Vlastimir Đorđević was present, and exercised a commanding function, in Račak/Račak in mid-January 1999, where an operation directed against the KLA involved the deaths of many civilians, leading to outrage by the international community. He personally reported to Šainović during the operation.

1993. Shortly following these events, in March of 1999, Vlastimir Đorđević was directly involved in deploying members of a known paramilitary unit to Podujevo/Podujevë to assist SAJ forces during anti-terrorist operations in the general area. As noted above, the commander of the SAJ forces on the ground, Simović, directly informed the Accused that members of the group had killed 14 women and children the day this occurred. After a request was made by President Milošević to Minister Stojiljković to have a report on the matter, Đorđević asked Trajković to prepare a report on the incident. No further measures were taken to investigate the crimes. In fact, he authorized re-deployment of the members of this unit to Kosovo.

1994. Another compelling showing of the Accused's knowledge of crimes committed by Serbian forces in Kosovo in 1999 is his direct and active involvement in operations to conceal the bodies of Kosovo Albanians killed throughout Kosovo during the Indictment period, as described in detail in Chapter VII of this Judgement and in the sections above. The Chamber would stress here that the operations to disinter the bodies from the original site of burial were mostly conducted at night, clandestinely; with respect to the bodies discovered in refrigerated trucks in Tekija and Lake Perucac, the Accused gave direct orders to keep the judicial authorities and the public away. As already established by the Chamber, not less than 300 bodies of Kosovo Albanians who have been identified and are the subject of the Indictment against the Accused were discovered in 2001 at the Batajnica SAJ Centre near Belgrade; the Accused directed and oversaw the burial of the bodies that arrived at the Centre throughout April and into May of 1999. He was aware that these were bodies of Kosovo Albanians as he had been informed of their origin by the SUP Chiefs who contacted him about their discovery.

1995. Đorđević was present in Kosovo on 16 April, and again on 18 April 1999, touring various SUPs and meeting with SUP chiefs as well as members of the VJ leadership. These visits to Kosovo occurred in the midst of operations that led to the charges contained in the Indictment, and in the midst of the process of burial of bodies at the Batajnica SAJ Centre and elsewhere. In the

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<sup>6845</sup> Vlastimir Đorđević, T 10095; Exhibit D160.

Chamber's finding, the Accused was aware of the crimes committed by MUP forces during these operations.

1996. Another source of knowledge of the Accused of such crimes was through the media. The Accused accepts that he read local newspapers on a daily basis during the war.<sup>6846</sup> Although crimes committed by MUP forces in Kosovo would not likely have been reported on by Serbian media, evidence suggests that the state-run media did deny claims of crimes committed by Serbian forces in Kosovo. For example, as noted above, the Serbian state-run media refuted the claims made by Human Rights Watch as to the killing of civilians in Gornje Obrinje/Abri-e-Epërme in September 1998.<sup>6847</sup> Therefore, had Đorđević merely confined his reading or media exposure to Serbian sources in 1999, he would at the least have been aware of accusations of this nature reported in the media. His argument that there was a media office attached to the Minister that followed and monitored both domestic as well as foreign press, but did not provide the Accused with such information lacks credibility and is not persuasive.<sup>6848</sup> The Chamber is satisfied that as Chief of the RJB, the Accused was not only aware of these crimes through personal observations and chains of reporting, but also had knowledge of killings of Kosovo Albanians by Serbian forces in Kosovo during the Indictment period through the media,<sup>6849</sup> and also of the expulsion of hundreds of thousands of Kosovo Albanians from Kosovo by Serbian forces,<sup>6850</sup> and of the extensive destruction of the houses and property of Kosovo Albanians by Serbian forces.

1997. In addition, the Chamber is unable to accept as true the Accused's assertion that he knew nothing of accusations against the MUP by Human Rights Watch in 1998 and 1999. The Accused was effectively the head of the police forces the subject of these allegations yet he seeks to assert that such grave allegations never came to his attention. It is especially difficult to accept his denial of knowledge in light of the evidence that Human Rights Watch sent its main accusations to the

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<sup>6846</sup> Vlastimir Đorđević, T 9981, 10078.

<sup>6847</sup> Frederick Abrahams, T 4021-4022.

<sup>6848</sup> Vlastimir Đorđević sought to explain that while the media office attached to the Minister informed the Minister of events in both the domestic and the foreign press, his office did not have such a service, and was limited to a chef de cabinet and an administrative secretary. He added that the media office only had a duty to the Minister, and the Accused could not request anything from them (*see* Vlastimir Đorđević, T 9981-9982).

<sup>6849</sup> The Chamber notes that the murders of the Berisha family members in Suva Reka/Suharekë town on 26 March 1999, and the killing of over 100 men in a barn in the village of Mala Kruša/Krushë e Vogël, Orahovac/Rahovec municipality, on the same day, were published by the *New York Times* on 5 and 7 April 1999 respectively (Exhibits P1514, P1515). The Accused submitted that he had no knowledge of the killings of the Berisha family members and that he had never, before this trial, seen the article of the *New York Times* of 5 April 1999. He heard about the incident for the first time when criminal proceedings were instituted against some of the perpetrators in Serbia, as revealed in a local newspaper (*see* Vlastimir Đorđević, T 10079-10081). With respect to the killings in Mala Kruša/Krushë e Vogël on 26 March 1999, he submits that he heard of them for the first time when he read the Indictment (Vlastimir Đorđević, T 10081-10082). For the reasons discussed extensively above, the Chamber does not accept the truth of this evidence.

<sup>6850</sup> Vlastimir Đorđević, T 10087-10089; Exhibits P694, p 8, P701, p 5. The Accused emphasized that the reports received by him of Albanians leaving Kosovo did not include the reasons for their departure (Vlastimir Đorđević, T 10089).

Ministry of the Interior. The Chamber received in evidence a number of published reports based on investigations by Human Right Watch researchers in the field about crimes committed against Kosovo Albanian civilians in 1998 that were sent by email by Human Rights Watch, *inter alia*, to the Ministry of the Interior.<sup>6851</sup> During the period of the NATO bombing when the bulk of crimes found to be established in this Judgement were committed, Human Rights Watch issued brief reports and statements called “Kosovo Flashes”, which were disseminated by email, *inter alia*, to the Serbian Ministry of the Interior.<sup>6852</sup> 51 “Flashes” were issued between March and July 1999.<sup>6853</sup> The work of Human Rights Watch in its interviews with Kosovo Albanian refugees in Northern Albania formed the basis for a 15 minute news piece on CNN in April 1999.<sup>6854</sup> In the Chamber’s finding the Accused’s denial of knowledge of these allegations cannot be sustained.

1998. Human Rights Watch also published in depth reports about crimes committed in 1999: one on the killings in Cuška/Qyshk on 14 May 1999 called *A Village Destroyed* published in the latter stages of 1999 and disseminated to the usual authorities, including the MUP.<sup>6855</sup>

1999. Despite his awareness of crimes committed in Kosovo, the Accused at no point in time set up a commission or body specifically charged with the responsibility to investigate allegations of crimes committed by the police in Kosovo and he took no action to ensure that other appropriate investigative authorities gave due attention to these allegations. As Chief of the RJB, he had the material ability, and indeed an obligation, to do these things. As will be discussed below, his failure to do so is compelling evidence that he shared the intent with the other members of the joint criminal enterprise that the crimes be perpetrated, and that they remained without investigation.

## 2. Joint criminal enterprise

### (a) Existence of a common plan and its objective

#### (i) Positions of the parties

2000. The Prosecution alleges that the Accused Vlastimir Đorđević participated in a joint criminal enterprise (JCE), which came into existence no later than October 1998 and continued until 20 June 1999.<sup>6856</sup> It submits that the purpose of the JCE was the modification of the ethnic balance in Kosovo in order to ensure continued Serbian control over the province through criminal means

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<sup>6851</sup> Frederick Abrahams, T 3938-3939, 4079.

<sup>6852</sup> Frederick Abrahams, Exhibit P740 (*Milutinović* transcript), T 819-820; Frederick Abrahams, T 3993-3994.

<sup>6853</sup> Frederick Abrahams, Exhibit P738, Statement of 30 May 2002, p 6; Frederick Abrahams, Exhibit P740 (*Milutinović* transcript), T 820.

<sup>6854</sup> Frederick Abrahams, Exhibit P738, Statement of 24 January 2002, p 4.

<sup>6855</sup> Frederick Abrahams, T 3985-3986.

<sup>6856</sup> Indictment, para 20.

consisting of a widespread or systematic campaign of terror and violence that included deportations, murders, forcible transfers and persecutions directed at the Kosovo Albanian population during the Indictment period.<sup>6857</sup> More specifically, it alleges that on or about 24 March 1999, the members of the JCE launched a large-scale and highly coordinated operation in pursuit of the goal of the JCE, and that the MUP and VJ units acted together in a closely-coordinated fashion to achieve this end.<sup>6858</sup>

2001. The Prosecution submits that the Accused shared the common criminal purpose and intended the crimes charged.<sup>6859</sup> Alternatively, it alleges that murder and persecutions were outside the common purpose, but were natural and foreseeable consequences of its execution and that in deciding to participate in the JCE, the Accused willingly accepted that risk.<sup>6860</sup>

2002. The Defence submits that there was no common plan.<sup>6861</sup> It argues that none of the “piles of documents, orders and meeting notes” admitted as evidence show that a plan existed; neither, it contends, does any evidence of witnesses who were involved in the Serbian forces at the time.<sup>6862</sup> It contends that it would be impossible for a large, orchestrated, widespread and systematic plan to expel a population to exist without leaving any written order or document implementing the plan;<sup>6863</sup> in other words, a campaign to expel an ethnic group from a territory “could not be fulfilled through winks, nods, and whispers in the corridor”.<sup>6864</sup> It argues that there are no orders, dispatches or directions outlining the goal of the common criminal plan; such documents in evidence show the contrary, *i.e.* that there were efforts to protect the civilian population.<sup>6865</sup> The Defence submits that where crimes were committed, these were the result of isolated incidents perpetrated by random individuals.<sup>6866</sup> It contends that coordinated actions by the VJ and MUP in 1998 and 1999 were directed only at “terrorist forces” and were legitimate under customary international law, and constituted military objectives.<sup>6867</sup> In short, the Defence submission is that “the activity undertaken by the FRY forces was anti-terrorist activity in defence of the country”; the objective was “to free roads, neutralise actions of the terrorists, find and set free citizens who had been kidnapped, to

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<sup>6857</sup> Indictment, para 19; Prosecution Final Brief, paras 7 and 10; Closing Arguments, T 14364-14365.

<sup>6858</sup> Prosecution Final Brief, para 27.

<sup>6859</sup> Prosecution Final Brief, para 11.

<sup>6860</sup> Indictment, para 21; Prosecution Final Brief, para 11.

<sup>6861</sup> Defence Final Brief, para 304.

<sup>6862</sup> Defence Final Brief, para 305. *See also* para 306.

<sup>6863</sup> Defence Final Brief, paras 308-309.

<sup>6864</sup> Defence Final Brief, para 310.

<sup>6865</sup> Defence Final Brief, paras 315, 321.

<sup>6866</sup> Defence Final Brief, paras 311.

<sup>6867</sup> Defence Final Brief, para 328, 330-331.

establish public law and order, and ensure the personal and property-related safety of all citizens of the KiM”.<sup>6868</sup>

(ii) The common plan

2003. The Chamber must first establish if a JCE existed. The Chamber recalls that the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required.<sup>6869</sup> It notes that the overall purpose of the alleged JCE – the demographic modification of Kosovo to ensure continued Serbian control over the province – is not in itself a crime provided for in the Statute. It is only if, and once, this purpose amounted to or involved the commission of a Statute crime that a JCE would exist. The Chamber therefore focuses, in its analysis of the evidence, on the existence of a common purpose, and on whether such a plan existed and at which point any such common purpose involved or amounted to a crime provided for in the Statute.

2004. Demographically, the Kosovo Albanian population had been the largest ethnic group in Kosovo since at least 1948 (68.5 per cent) and had increased each year at a comparatively high growth rate, since 1961, whereas the growth rate of the Serbs (23.6 per cent of the population in Kosovo in 1948) has been declining since 1971.<sup>6870</sup> In early 1998, the vast majority of the population of Kosovo – 83 per cent – were Kosovo Albanians, while just 10 per cent were ethnic Serbs and about seven per cent were persons of other ethnic groups.<sup>6871</sup>

2005. The evidence of the political context and legislative enactments leading up to the events relevant to the crimes charged in the Indictment reveals that these developments had become matters of political controversy, and had led to the view of many Kosovo Albanians that Kosovo should secede from Serbia. At the same time, the KLA had brought a new armed and violent element to the tensions and was increasingly gaining territorial footholds. It was the desire to regain control over the territory of Kosovo that led the elements of the Serbian and FRY leadership to seek to do this by altering the demographic reality of Kosovo in order that Kosovo Albanians were no longer a majority and ethnic Serbs became the majority group. The Chamber finds that economic, social and political pressures were put upon Kosovo Albanians to move out of Kosovo while Serbs were encouraged to move into Kosovo in order to modify the ethnic balance in favour of Serbs.

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<sup>6868</sup> Defence Final Brief, para 334.

<sup>6869</sup> *Vasiljević* Appeal Judgement, para 100; *Kvočka* Appeal Judgement, para 96.

<sup>6870</sup> Helge Brunborg, T 6117; Exhibit P983, p 10, Figure 1 and Table 3.

<sup>6871</sup> *See supra*, para 20. Helge Brunborg, T 6113; Exhibit P983, p 1.

2006. The Prosecution submits that by 1997, it became evident to the Serbian leadership that discriminatory measures against Kosovo Albanians were insufficient to dramatically change Kosovo's demographics and that a "more drastic response was required."<sup>6872</sup> Therefore, the Prosecution contends, "having failed to resolve the issue of non-violent and violent separatism on the part of the majority Kosovo Albanians in Kosovo and as conditions for continued Serbian rule deteriorated in Kosovo, the leadership of the FRY and Serbia, including politicians, military figures, and the police leadership embarked on a plan to modify the ethnic balance in Kosovo in order to ensure Serbian control over that province."<sup>6873</sup> It contends that this objective was impossible to achieve without resorting to criminal means, to wit, the forcible expulsion of a substantial part of the Kosovo Albanian population, which was carried out by means of a "widespread and systematic campaign of terror and violence directed at the Kosovo Albanian population."<sup>6874</sup>

2007. The Chamber has carefully analysed the evidence tendered by the parties relevant to establishing whether there existed a common plan that amounted to or involved crimes under the Statute in 1998 and/or 1999. It accepts the Defence submission that there is no single written order, meeting minutes, dispatch or other document of the Serbian forces or political leadership in evidence that explicitly calls for the expulsion, abuse, killing, or destruction of property of Kosovo Albanians. However, the Chamber does not accept that this is determinative. A common plan need not be set out in any military order or directive. The Chamber recalls that there is no necessity for the common purpose even to have been previously arranged or formulated; it may materialise extemporaneously and be inferred from the facts.<sup>6875</sup> The way in which the crime or underlying offence is committed may support an inference that it must have been pursuant to a common plan.<sup>6876</sup> The Defence rely on the testimony of many MUP and VJ witnesses in this trial that they had no knowledge of such a plan.<sup>6877</sup> The Chamber has reviewed the evidence of these witnesses. As expressed earlier in this Judgement, the Chamber has reason for concern about the credibility of the majority of the witnesses on which the Defence seeks to rely for this purpose. Even taking into account the evidence of those VJ and MUP witnesses who testified to never having heard of such a plan, to conclude from military and State security documents that there was no common plan to deport and forcibly transfer a significant proportion of Kosovo Albanians from the territory of

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<sup>6872</sup> Prosecution Final Brief, para 54.

<sup>6873</sup> Closing Arguments, T 14364-14365.

<sup>6874</sup> Closing Arguments, T 14365.

<sup>6875</sup> *Tadić* Appeal Judgement, para 227; *Krnjelac* Appeal Judgement, para 97, *Vasiljević* Appeal Judgement, paras 100, 109; *Brdanin* Appeal Judgement, paras 415, 418.

<sup>6876</sup> *Vasiljević* Appeal Judgement, paras 100, 109; *Furundžija* Appeal Judgement, para 119; *Tadić* Appeal Judgement, para 227; *Ntakirutimana* Appeal Judgement, para 466; *Blagojević* Trial Judgement, para 699; *Brdanin* Trial Judgement, para 262; *Simić* Trial Judgement, para 158; *Krnjelac* Trial Judgement, para 80; *Krstić* Trial Judgement, para 611; *Milutinović* Trial Judgement, Volume I, para 102.

<sup>6877</sup> Defence Final Brief, para 306.



Kosovo in 1999, would not only be to ignore oral evidence of VJ witnesses who testified to having been given orders to expel Kosovo Albanians, or to burn villages,<sup>6878</sup> but it would also be to flagrantly ignore a most compelling and consistent body of evidence amassed in this case. This body of evidence, the findings on which are set out in Section VI of the Judgement, reveals a number of characteristics about the way that crimes were committed against Kosovo Albanians that, in the Chamber's view, are persuasive evidence of a common plan by the leadership of the FRY and Serbia, including politicians, military figures, and the police leadership (as identified in more detail below) to modify the ethnic balance in Kosovo by waging a campaign of terror against the Kosovo Albanian civilian population. This plan included deportations, forcible transfers, murders and the destruction of culturally significant property. The evidence related to the way the crimes were committed against the Kosovo Albanian civilian population also establishes that other objectives of the common plan evolved, especially throughout the armed conflict that commenced on 24 March 1999, including revenge for the killing of MUP and VJ members, retaliation for the NATO bombing campaign, and fighting and destroying the KLA once and for all, including through the use of executions and disproportionate force.

2008. The critical elements identified by the Chamber as evidence of such a plan are (1) demographic indications; (2) the build up and use of Serbian forces and the arming of the non-Kosovo Albanian civilian population in violation of the 1998 October Agreements and ongoing peace talks in early 1999; (3) the pattern of crimes; (4) the coordinated use of the MUP and VJ; (5) the disproportionate use of force in "anti-terrorist" actions; (6) the systematic collection of Kosovo Albanian identification documents and vehicle licence plates; and (7) efforts to conceal the crimes against Kosovo Albanian civilians. The Chamber now turns to each of these elements.

a. Demographic indications

2009. The Chamber notes that prior to the armed conflict in 1999, the population in Kosovo was around 2.1 million, approximately 1.7 million (or 83 per cent) of whom were ethnic Albanian.<sup>6879</sup> As estimated by UNHCR, from 24 March 1999 to 10 June 1999, some 800,000 Kosovo Albanians left Kosovo,<sup>6880</sup> constituting almost 40 per cent of the population, or around 46 per cent of the Kosovo Albanian population. The Chamber is of the view that the emergence of such an enormous proportion of Kosovo Albanians as refugees, in less than three months, is, in itself and in the

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<sup>6878</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9124-9126; K89, T 8442-8443, 8475, 8476-8478; K90, Exhibit P321, para 41; K73, Exhibit P330, para 40; K73, T 1524; K73, Exhibit P332 (*Milutinović* transcript), T 3323-3324, 3326, 3380.

<sup>6879</sup> Exhibit P983, p 1; Helge Brunborg, T 6113.

<sup>6880</sup> Exhibit P734, p 4. *See also infra*, para 2030. The Chamber recalls its finding that the evidence establishes that at least 200,000 Kosovo Albanians were deported during the Indictment period.

circumstances indicative of the existence and effective implementation of a plan to modify the ethnic composition of Kosovo through mass expulsion.

b. The build up and use of Serbian and FRY forces and the arming of the non-Albanian civilian population in violation of the 1998 October Agreements and ongoing peace talks in early 1999

2010. As the KLA grew in strength in 1997 and 1998, the Serbian authorities attempted to diminish the strength of this violent element in 1998 by operations implementing the “Plan for the Suppression of Terrorism” in June 1998.<sup>6881</sup> Frequent uses of excessive force in Kosovo Albanian villages by Serbian and FRY forces in the course of these operations resulted in over 200,000 people being internally displaced by the end of the year and precipitated international intervention.<sup>6882</sup>

2011. The 1998 October Agreements required the VJ and MUP forces to scale back their numbers and weaponry and to abide by a ceasefire in a bid to resolve the Kosovo issue politically and allow displaced people to return home before the onset of winter.<sup>6883</sup> The Defence contends that the FRY and Serbia showed good faith in political negotiations by complying with the October Agreements and by working with the OSCE/KVM.<sup>6884</sup> The Chamber accepts that there were some ostensible efforts on the part of the Serbian governments to implement the Agreements, such as the establishment of the FRY Commission on Cooperation with the OSCE and the VJ team for liaison with the OSCE and NATO,<sup>6885</sup> as well as the initial return of most VJ weaponry and equipment,<sup>6886</sup> and the withdrawal of one part of the police forces from Kosovo.<sup>6887</sup> Other evidence shows, however, that the Serbian and FRY leadership had little interest in respecting the Agreements even at the time they were signed.

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<sup>6881</sup> Exhibits P682 and P1361. *See supra*, para 1701.

<sup>6882</sup> *See supra*, paras 345-347. According to the minutes of a meeting of the “Operations Inter-Departmental Staff for the Suppression of Terrorism in KiM”, chaired by Slobodan Milošević in Belgrade on 29 October 1998, during “combat operations”, some 3,500 “terrorists” were killed, 5,000 to 6,000 “terrorists” were wounded, 8,900 to 9,500 “terrorists were put out of action”, 4,000 to 5,000 “fled KiM”, 6,000 to 6,500 put down their weapons or were disarmed and 560 were “liquidated” by the RDB. In addition, in operations conducted on the State border from 25 July to 25 September 1998, some 1,344 “terrorists” were “put out of action”, meaning 666 were “liquidated”, 856 were wounded and 822 were captured. In operations conducted by police and the RDB, 2407 “terrorists” were taken into custody and 283 were detained. 22 VJ soldiers and 57 MUP officers were killed in the operations. Exhibit P87, pp 5-6.

<sup>6883</sup> *See supra*, paras 357-363.

<sup>6884</sup> Defence Final Brief, paras 346-347.

<sup>6885</sup> *See supra*, paras 367-369.

<sup>6886</sup> Richard Ciaglini, T 5266-5267.

<sup>6887</sup> Ljubinko Cvetić, T 6813.

2012. At a meeting of the “Operations Inter-Departmental Staff for the Suppression of Terrorism in KiM”, chaired by President Slobodan Milošević in Belgrade on 29 October 1998, attended by Milutinović, Minić, Šainović, Matković, Stojiljković, Anđelković, Perišić, Dimitrijević, Samardžić, Pavković, the Accused Đorđević, Marković, Stevanović and Lukić, the task of assisting the OSCE KVM was listed as the number one priority in the forthcoming period and Lukić informed the attendees that pursuant to the October Agreements, the number of MUP forces active in Kosovo had been reduced from 14,000 to 10,000 and the 27 checkpoints in Kosovo had been made accessible to the KVM.<sup>6888</sup> However, such evidence of good faith in abiding by the October Agreements and cooperating with the KVM is undermined by other interventions in the meeting that expressed the attitude of many of the senior officials present. The minutes reveal that many attendees believed the KVM (representing the “international community”) was biased in favour of the KLA, and both Perišić and Milutinović<sup>6889</sup> described the international community as an enemy of the FRY and Serbia, along with the KLA.<sup>6890</sup> Milošević suggested that the reason the international community had activated the “KiM time bomb” was because of the “exceptional geo-strategic importance” of the FRY and the desire of certain foreign powers to gain a foothold in the region.<sup>6891</sup> Pavković informed the members that there were some 21,360 armed men in Kosovo, 11,300 of whom were VJ and 10,000 of whom were MUP, and when 48,000 guns were also distributed to the “local population”, there would be some 60,000 armed men (*i.e.* 60,000 armed supporters of the Serbian cause) “as envisaged in the Plan”.<sup>6892</sup> He further emphasised the need to deploy troops in all planned sectors and to establish combat control over the territory and roads,<sup>6893</sup> in spite of the fact that this activity was in apparent contradiction to the October Agreements. Milošević underlined that while the KVM would be able to “monitor the situation unimpeded” they would not be able to “run checks on the Army and police on our sovereign territory”.<sup>6894</sup> In fact this was precisely what the October Agreements were supposed to allow.

2013. This negative attitude towards the role of the KVM was even more pronounced at a meeting of the MUP Staff for Kosovo held in Priština/Prishtinë a few days later on 2 November 1998. It was chaired by Sreten Lukić and attended by all the chiefs of the SUPs and PJP detachments in Kosovo. The October Agreements were discussed. At the meeting, various ways to avoid proper monitoring by the KVM were advocated, including ensuring that members of the RPO kept from

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<sup>6888</sup> Exhibit P87, pp 7 and 10.

<sup>6889</sup> Exhibit P87, pp 12-13. The Chamber notes that Milutinović conceded that the OSCE Mission consisted of representatives of 53 States of Europe and the United States, and was “certain that not all of them are against us”. Exhibit P87, p 12. Šainović alone put forward the view that “we can expect the representatives of the international community to have an objective attitude towards us”. Exhibit P87, p 13.

<sup>6890</sup> Exhibit P87, pp 11-12.

<sup>6891</sup> Exhibit P87, p 13.

<sup>6892</sup> Exhibit P87, p 10.

<sup>6893</sup> Exhibit P87, p 10.

the KVM knowledge that local Serbs were armed.<sup>6895</sup> The Chamber notes that by distributing weapons to the non-Kosovo Albanian civilian population, this allowed the appearance to be created that the MUP and VJ were complying with the October Agreements when in fact these armed civilian groups, organised through the RPOs, would provide readily armed Serbian forces available for use, quite contrary to the spirit of the October Agreements. Lukić also advised the SUPs to request the KVM to disarm villages, with the message that if they did not do so, “the police will have to do it, but they will not take responsibility for the consequences”.<sup>6896</sup> Although Lukić did not specifically state that this only applied to armed Kosovo Albanian villages, the context of the remark in the meeting, in which the surreptitious arming of Serb villagers was discussed, makes clear that his reference to “armed villages” only applied to Kosovo Albanian villages. As found earlier, a few days later, on 5 November 1998, a meeting was held at the MUP Staff in Priština/Prishtinë, attended by Milutinović, Stojiljković, the Accused Đorđević, Marković, Lukić, Šainović, Anđelković, Pavković, and all the chiefs of the SUPs, OUPs and police stations and all the PJP detachments in Kosovo, RDB commanders from Kosovo and 13 VJ representatives from the Priština Corps,<sup>6897</sup> at which Lukić stated that police units would continue to carry out their duties and tasks<sup>6898</sup> and Milutinović conveyed President Milošević’s view, expressed at the meeting of 29 October 1998 mentioned above, that everything would stay the same with regard to the VJ and the police, *i.e.* that a Joint Command would continue to function, VJ units would not withdraw and that police forces had only been reduced to the number that had already been withdrawn.<sup>6899</sup> Moreover, the KVM verifiers would not be given access to VJ and police facilities.<sup>6900</sup> Milutinović advised that the FRY and Serbia needed “to play the role of victim in this period”,<sup>6901</sup> and stated that they would not recognise “the Hague Tribunal in the case of Kosovo and the Federal Republic of Yugoslavia, because this is our country’s internal affair”.<sup>6902</sup>

2014. The Chamber views the minutes of these meetings as clear evidence of an intention on the part of the Serbian leadership and those present to deceive the KVM, and thereby the international community, into thinking that the FRY and Serbian governments were abiding by the October Agreements, when they were actually planning to pursue a policy of direct violations of the Agreements, including further VJ and MUP coordinated operations.

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<sup>6894</sup> Exhibit P87, p 14.

<sup>6895</sup> Exhibit P690, item 8; Žarko Braković, T 4168.

<sup>6896</sup> Exhibit P690, item 5.

<sup>6897</sup> Exhibit P770; Žarko Braković, T 4170.

<sup>6898</sup> Exhibit P770, p 3.

<sup>6899</sup> Exhibit P770, pp 3-4; Žarko Braković, T 4172.

<sup>6900</sup> Exhibit P770, p 4.

<sup>6901</sup> Exhibit P770, p 4.

<sup>6902</sup> Exhibit P770, p 5.

2015. The lack of cooperation with the KVM by police and VJ forces by, *inter alia*, failing to include baseline figures or other details on manpower and weapons in the meetings held with the KVM,<sup>6903</sup> not providing detailed weekly reports or notifications on deployment as required by the Agreements,<sup>6904</sup> preventing KVM access to areas where VJ or MUP “training exercises” were taking place in Kosovo,<sup>6905</sup> or to military barracks,<sup>6906</sup> despite the provision in the Agreements ensuring that the KVM’s access to areas and facilities in Kosovo was unrestricted,<sup>6907</sup> over the course of the next few months as testified to by international observers, bears testimony to the fact that the orders to deceive the KVM and prevent it from properly monitoring the activities of the VJ and MUP in Kosovo were effectively carried out.

2016. Other evidence indicates that the KLA used the opportunity of the partial withdrawal of VJ and MUP units following the October Agreements to regroup, regain control over, and launch attacks in, some areas in Kosovo,<sup>6908</sup> particularly in the regions of Mališevo/Malishevë, Glogovac/Gllogoc and Podujevo/Podujevë.<sup>6909</sup> The response of the VJ and MUP forces was swift, disproportionate and heavy-handed.<sup>6910</sup> A company-sized battle group of VJ soldiers and PJP members was deployed to an area east of Podujevo/Podujevë on 18 December 1998,<sup>6911</sup> in violation of the October Agreements,<sup>6912</sup> and actual operations of the MUP and VJ commenced in the area, using tanks and mortars. The KVM was falsely told that the armoured unit was there for the purpose of tank driver training.<sup>6913</sup> Despite General Drewienkiewicz informing Sreten Lukić on 24 December 1998 that the ongoing VJ and MUP operations around Podujevo/Podujevë constituted a serious breach of the ceasefire and that any casualties would be attributed directly to the FRY

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<sup>6903</sup> Karol John Drewienkiewicz, T 6340-6341; Exhibit P1001; Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11841, 11843-11846, 11946; Michael Phillips, T 8687-8691; Joseph Maisonnewe, T 5457-5458.

<sup>6904</sup> Karol John Drewienkiewicz, T 6320; Exhibit P837.

<sup>6905</sup> Richard Ciaglinski, T 5255; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6818-6819.

<sup>6906</sup> Richard Ciaglinski, T 5255.

<sup>6907</sup> *See supra*, paras 350, 357, 360.

<sup>6908</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12209-12210, 12242-12243; Shaun Byrnes, T 8248-8249. *See also* Ljubinko Cvetić, T 6813, 6816; 6D2, T 12265; Radomir Mitić, T 12657; Momir Stojanović, T 11722.

<sup>6909</sup> Exhibit P689; Žarko Braković, T 4266-4267. *See also* Danica Marinković, T 12939; Exhibit D853, p 4, testifying to an attack against the MUP in Glogovac/Gllogoc on 11 November 1998; Exhibit D888, p 632, item 295; 6D2, T12317-12318; Danica Marinković, T 12936-12937; Exhibit D853, p 4 (in relation to an armed attack that was carried out by the KLA on the police station in Mališevo/Malishevë on 8 November 1998).

<sup>6910</sup> At a meeting of the MUP Staff with Staff members, Chiefs of SUPs from Kosovo and PJP Commanders held on 2 December 1998 in Priština/Prishtinë, Lukić reported that a decision was taken at a meeting on 27 November 1998 in Belgrade, chaired by Stoljiljkovic, and attended by the Chiefs of the RJB and RDB, the Head of the MUP Staff in Priština/Prishtinë and Nikola Šainović, that “the police will be more offensive in taking measures in the newly-arisen situation”, Exhibit P689, p 3.

<sup>6911</sup> Shaun Byrnes, Exhibit P1214 (*Milutinović* transcript), T 12165-12169, 12235; Shaun Byrnes, T 8189, 8191-8193; Karol John Drewienkiewicz, Exhibit P996, para 95; Karol John Drewienkiewicz, T 6349; Exhibits P1246; P1247; John Crosland, Exhibit P1400, para 66. KVM maintained observer posts in proximity to the garrisons and monitored the movement in and out the garrisons. Later US-KDOM placed a vehicle close the battle group’s encampment, Shaun Byrnes, T 8189, 8191-8193. John Crosland testified that this battle group was equipped with 15 T-55 tanks, six Pragas and associated vehicles, John Crosland, Exhibit P1400, para 65.

<sup>6912</sup> *See supra*, para 388.

<sup>6913</sup> *See supra*, para 388.

government,<sup>6914</sup> further incidents involving the MUP and VJ forces in the area ensued in the following days.<sup>6915</sup> In a meeting of the Collegium of the Chief of the General Staff of the VJ on 30 December 1998, Colonel Aleksandar Dimitrijević recognised that the situation in Podujevo/Podujevë had been caused by the “so-called pretend or real planned exercises” and openly stated that “the explanation that this was a planned exercise, that is not true. It was planned that the unit would provoke the terrorists so that the MUP would then have to do whatever it had to do”.<sup>6916</sup> By mid-January 1999, all pretext by the VJ and MUP forces of abiding by the October Agreements appears to have been dropped. The Račak/Raçak incident of 15 January 1999, discussed in detail elsewhere in this Judgement,<sup>6917</sup> essentially signalled the end of the ceasefire agreement. It also set the scene for the increasingly acrimonious relationship between the Serbian and FRY governments and the international community, as represented by the OSCE.<sup>6918</sup>

2017. The international negotiations in Rambouillet and Paris that followed in February and March 1999, respectively, were marred by difficulty and ultimately failed, with neither side signing the draft agreement.<sup>6919</sup> The KVM was evacuated from Kosovo on 20 March 1999,<sup>6920</sup> and NATO commencing bombing on 24 March 1999. The build up of MUP and VJ forces in March 1999 were, the Defence submits, a self-defensive action in anticipation of NATO intervention.<sup>6921</sup> The Chamber does not accept that the build up of Serbian forces, which in the Chamber’s finding was undertaken from January 1999, was solely for this purpose. During the period from mid-January 1999 to the start of the NATO airstrikes, a series of meetings were held by the VJ and MUP command bodies, discussed below, in which plans for dealing with the possible entry of NATO onto the territory of Kosovo were devised. What is striking about the notes of these meetings and the orders that followed is that they occurred while peace negotiations through shuttle diplomacy were proceeding, the purpose of which was to avoid precisely the situation in which a military

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<sup>6914</sup> Karol John Drewienkiewicz, T 6358; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7786; Exhibit P1005.

<sup>6915</sup> See *supra*, paras 389-393.

<sup>6916</sup> Exhibit P1330, p 14.

<sup>6917</sup> See *supra*, paras 396-418.

<sup>6918</sup> The Chamber recalls that the head of the OSCE KVM Ambassador Walker was declared *persona non grata* after he publicly condemned the FRY government for the events in Račak/Raçak, and Slobodan Milošević made clear his view in a meeting with the Chairman of the OSCE, Knut Vollebaek, on 20 or 21 January 1999, that Ambassador Walker’s report on Račak/Raçak was a fabrication, and that the KLA had likely provoked the incident, Karol John Drewienkiewicz, Exhibit P996, para 154; Knut Vollebaek, Exhibit P1073, p 5; Knut Vollebaek, T 7214, 7254-7255; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7724-7730. See also *supra*, para 417. Notably, Milutinović had highlighted the possibility of declaring KVM members who failed to “behave in accordance with the Vienna Convention on diplomatic and consular offices” as *personae non gratae* at a meeting of the “Operations Inter-Departmental Staff for the Suppression of Terrorism in Kosovo and Metohija” in Belgrade on 29 October 1998, just days after the signing of the October Agreements. Exhibit P87, p 15.

<sup>6919</sup> Knut Vollebaek, T 7220-7221, 7223, 7269; Knut Vollebaek, Exhibit P1071 (*Milutinović* transcript), T 9520-9521; Knut Vollebaek, Exhibit P1072 (*Milošević* transcript), T 7710. See also *supra*, paras 432-440.

<sup>6920</sup> Karol John Drewienkiewicz, Exhibit P996, para 171; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7813.

<sup>6921</sup> Defence Final Brief, paras 348-349.

intervention by NATO might occur. In other words, the governments of Serbia and the FRY, rather than concentrating on employing all possible means to achieve a political solution to the Kosovo issue by, amongst other things, abiding by the October Agreements, were actually preparing for a war – ostensibly a war with NATO and against the KLA. However, the Chamber finds that these preparations for the use of VJ and MUP and other associated forces in Kosovo, were in fact also preparations to use these forces to perpetrate the crimes established in this Judgement.

2018. On 16 January 1999, the VJ General Staff sent a “Directive to engage the VJ to prevent forced introduction of a multinational NATO brigade in KiM” to the Commands of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Army, RV and PVO (Air Force and Anti-Aircraft Defence) and Special Units Corps, code-named *Grom-3*, which tasked the VJ, *inter alia* with, first, blocking “*Šiptar* terrorist forces” in general sectors in a coordinated action with the MUP, and second, destroying “*Šiptar* terrorist forces” in a coordinated action with the MUP.<sup>6922</sup> In addition, the VJ 63<sup>rd</sup> Parachute Brigade and 72<sup>nd</sup> Special Brigade were to be mobilised and brought to combat readiness.<sup>6923</sup> An order of the 3<sup>rd</sup> Army Command followed on 27 January 1999 “for the use of the 3<sup>rd</sup> Army in preventing the forceful introduction of a NATO Brigade, its routing and the destruction of *Šiptar* terrorist forces in Kosovo and Metohija”.<sup>6924</sup> The order noted that among the “probable” goals of the NATO operation would be the “defence of the *Šiptar* civilian population from massacre”, along with supporting the “*Šiptar* terrorist forces” to begin an armed rebellion,<sup>6925</sup> while NATO’s “reason for the engagement of the brigade would be a purported ‘threat to members of the OSCE Mission and verifiers’”.<sup>6926</sup> The order engaged not only the forces of the regular VJ, but also the “armed non-*Šiptar* population”.<sup>6927</sup> The VJ Priština Corps was ordered to engage the regular forces and the “armed non-*Šiptar* population” in its work, and in particular to secure military features and communication routes as well as for the defence of populated sites “with non-*Šiptar* population”.<sup>6928</sup> The forces were repeatedly ordered to “break up and destroy the NATO Brigade and *Šiptar* terrorist forces in Kosovo and Metohija”.<sup>6929</sup> In view of what the Chamber has found occurred on the ground in Kosovo, the Chamber considers that due to the ethnic relationship between the Kosovo Albanian population and the KLA, and the assistance and support that the Kosovo Albanian population as a whole were thought by the Serbian forces to be giving to the KLA, the entire Kosovo Albanian population became viewed as the enemy, so that in the circumstances prevailing in Kosovo in early 1999, an order to “break up and destroy *Šiptar* terrorist

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<sup>6922</sup> Exhibit D179, pp 7-9.

<sup>6923</sup> Exhibit D179, p 11.

<sup>6924</sup> Exhibit D343.

<sup>6925</sup> Exhibit D343, p 3.

<sup>6926</sup> Exhibit D343, p 3.

<sup>6927</sup> Exhibit D343, p 5.

<sup>6928</sup> Exhibit D343, p 6.

forces” entailed or would result in the displacement of the Kosovo Albanian population who lived in the area, or even graver consequences.<sup>6930</sup>

2019. The Chamber notes that the above order also required that forces “[d]uly respect the international laws of war and humanitarian behaviour”.<sup>6931</sup> The Defence relies on occasional statements of this type in VJ meeting notes and orders to contend that the Serbian forces and the government were actually engaged in measures to protect and assist the civilian population during anti-terrorist operations and work towards a peaceful solution.<sup>6932</sup> It submits that such evidence of a concern for the civilian population is “antithetical to any plan to expel” and “incompatible with tacit permission of crimes and/or any unspoken plan to expel an ethnic population”.<sup>6933</sup> It further argues that actions taken by the FRY and Serbia to encourage the population to stay in their villages and not leave are “even more incompatible” with a plan of deportations or forcible transfer,<sup>6934</sup> and at the least raise a reasonable doubt whether a plan or intent to expel Kosovar Albanians existed.<sup>6935</sup> Such notes in VJ meeting notes and orders to abide by international humanitarian law and to encourage the population to stay in their villages do not, in the Chamber’s view, raise a reasonable doubt about the existence of a common plan. Rather, the frequent violations of international humanitarian law by the VJ, the lack of enforcement of the rules of international humanitarian law in this period and the overwhelming amount of consistent evidence of VJ involvement in the mass killing and expulsion of Kosovo Albanian villagers from their homes is tellingly to the contrary.

2020. The RJB of the MUP also had a plan to “prevent and thwart the entry of NATO troops into our territory,” which involved three mopping up operations in the Podujevo/Podujevë, Dragobilja/Dragobil and Drenica areas, with the use of some 4,000 policemen, 70 OPG members and around 900 police reservists.<sup>6936</sup> At a meeting of MUP Staff in Priština/Prishtinë on 17 February 1999, attended by Stojiljković, the Accused Đorđević, Marković, Stevanović, all members of the MUP Staff in Priština/Prishtinë, the RDB Coordinator for Kosovo Miloslav Vilotić, all SUP chiefs in Kosovo, PJP and SAJ commanders and the RDB Centre chiefs in Kosovo, Minister Stojiljković stated that “Kosovo will be multi-ethnic and a part of the existing constitutional and legal system of Serbia and the FRY. Solutions other than these will not be permitted, and if this fails, Kosovo will be defended by all means” and declared that “[t]here can

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<sup>6929</sup> Exhibit D343, pp 6-7.

<sup>6930</sup> See Karol John Drewienkiewicz, T 6378.

<sup>6931</sup> Exhibit D343, p 12.

<sup>6932</sup> Defence Final Brief, paras 342-343. The Defence cites Exhibit P1331, pp 18-19.

<sup>6933</sup> Defence Final Brief, para 343.

<sup>6934</sup> Defence Final Brief, para 344, citing Exhibits D180, D540, p 2, D543; Branko Krga, T 10603.

<sup>6935</sup> Defence Final Brief, para 344.

<sup>6936</sup> Exhibit P85, p 1.



be no surrender of Kosovo”.<sup>6937</sup> He explained the threat of NATO intervention was due to the fact that “America wants a base in Kosovo to use as a stepping stone”.<sup>6938</sup> Stojiljković then informed the group that “[w]ithin two or three days of an attack [by NATO], we have to put our plans in motion and *use the time to clear the territory of terrorists*”.<sup>6939</sup> As noted earlier, since the entire Kosovo Albanian civilian population came to be viewed in large part as associated with, or at least supportive of, the KLA by at least early 1999, a plan to “clear the territory of terrorists” was likely to entail or result in the displacement of the Kosovo Albanian population in the area being “cleared” by any means available. The Chamber views the statement of Stojiljković as clear evidence that the MUP intended to use the period of NATO bombing to implement its plans to forcibly expel a significant number of ethnic Albanians from Kosovo. Significantly, this statement was uttered more than a month before NATO intervened and at a time of ongoing international diplomatic negotiations to find a political solution to the Kosovo problem.

2021. In order to implement this plan, the MUP forces required bolstering. To this end, not only was the non-Kosovo Albanian civilian population made use of through the RPOs but, in addition, “volunteers”, including members of paramilitary groups that had fought in previous conflicts in the former Yugoslavia, were recruited and attached to MUP forces. In the 17 February 1999 meeting mentioned above, Minister Stojiljković told those present of the need to “[a]pproach and engage volunteers carefully, linking their engagement through the reserve police force when assessed as necessary”.<sup>6940</sup> The following day, the Accused, Vlastimir Đorđević, sent a dispatch to all the SUPs in Serbia and to the RDB requesting them to “establish complete control over volunteer and paramilitary units and their members.”<sup>6941</sup> As discussed elsewhere, the Chamber rejects the Defence position that the Accused’s dispatch was intended to prevent the use of paramilitaries and volunteers operating in Kosovo.<sup>6942</sup> The dispatch was quite clearly an instruction to implement the Minister’s order to “engage volunteers” of the previous day.<sup>6943</sup> The Minister sent a further dispatch a little over a month later on 24 March 1999, which referred back to the 18 February dispatch as “our dispatch” and tasked all the SUPs, the MUP Staff in Priština/Prishtinë and all the traffic police stations to “...register all volunteers and paramilitary units and their members and keep them under control in case that you might need to engage them”.<sup>6944</sup> The Chamber finds unconvincing the Defence argument that the reference by the Minister to “our dispatch” is that all

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<sup>6937</sup> Exhibit P85, p 2.

<sup>6938</sup> Exhibit P85, p 3.

<sup>6939</sup> Exhibit P85, p 3 (emphasis added).

<sup>6940</sup> Exhibit P85, p 3.

<sup>6941</sup> Exhibit P356, p 3.

<sup>6942</sup> See *supra*, para 1929.

<sup>6943</sup> See Ljubinko Cvetić, T 6677-6679.

<sup>6944</sup> Exhibit P702.

the RJB instructions sent to the organizational units and SUPs in Serbia had been approved before they were sent by the Minister.<sup>6945</sup> In the view of the Chamber, the reference to the 18 February dispatch as “our dispatch” strongly indicates that the decision to engage paramilitaries was made jointly by Minister Stojiljković and the Accused Đorđević. The joint decision to use paramilitaries together with MUP forces in Kosovo not only signifies the existence of a common plan which involved the commission of crimes, but also indicates clearly the partnership of Stojiljković and Đorđević in regard to the use of the MUP and associated forces in the plan.

2022. The events on the ground showed that the above plans were being implemented. By February 1999, the police had re-occupied the 27 observation posts in Kosovo and set up additional ones, in violation of the October Agreements.<sup>6946</sup> There was a massive build up of VJ and MUP units, quite contrary to the October Agreements.<sup>6947</sup> By mid-March 1999, the border zone was enlarged from five to 10 kilometres,<sup>6948</sup> the number of VJ and MUP personnel increased by several thousand,<sup>6949</sup> newer, more modern and larger, more powerful military and police equipment was being brought into Kosovo,<sup>6950</sup> KVM monitors were frequently stopped and harassed in the border zone,<sup>6951</sup> SUPs mobilized all the members of the reserve force,<sup>6952</sup> and Serb civilians were armed and encouraged to participate in operations against Kosovo Albanians.<sup>6953</sup> The observations of the KVM at this time led the head of KVM Regional Centre 2, Leif Windmar, to write in a letter to General Drewienkiewicz that it was “very obvious” that the MUP and VJ units were “performing a planned operation against the *Albanian population*” unlike the previous “single responses to KLA attacks or winter exercises”.<sup>6954</sup>

2023. The attitude of senior political figures in the FRY and Serbia towards the fate of the Kosovo Albanians expressed in March 1999 is another indication of the full and true purpose underlying the actions of the VJ and MUP on the ground. When told by Knut Vollebaek of his observations of people fleeing their homes and nearby villages being destroyed in Podujevo/Podujevë on 15 March 1999,<sup>6955</sup> President Slobodan Milošević’s response was to laugh and to reply that the displaced people were “people on picnic” and the burning of homes was “hay burning”.<sup>6956</sup> In the view of the Chamber, the attitude of Milošević expressed to Vollebaek in response to the latter’s

<sup>6945</sup> See Closing Arguments, T 14488.

<sup>6946</sup> Richard Ciaglinski, T 5263, 5341-5342; Exhibit P844, entry for 5 January 1999.

<sup>6947</sup> See *supra*, paras 430, 435-439, 444.

<sup>6948</sup> See *supra*, para 438.

<sup>6949</sup> See *supra*, para 438.

<sup>6950</sup> See *supra*, para 438.

<sup>6951</sup> See *supra*, para 438.

<sup>6952</sup> See *supra*, para 439.

<sup>6953</sup> See *supra*, para 436.

<sup>6954</sup> Karol John Drewienkiewicz, T 6378-6379; Exhibit P1009. Emphasis added.

<sup>6955</sup> Knut Vollebaek, T 7215-7216, 7217-7218.

<sup>6956</sup> Knut Vollebaek, T 7217-7218.

observations of the forced displacement of Kosovo Albanian civilians and the destruction of their villages indicates not only that Milošević was aware that such crimes were being committed, but that he intended that they be committed. Milošević's cynical dismissal of Vollebaek's concerns is clear evidence that crimes against Kosovo Albanian civilians were being carried out with the full connivance, endorsement and encouragement of the most senior political leaders who were members of the JCE.

2024. Soon after the Rambouillet peace talks had collapsed, in March 1999, Vojislav Šešelj, a deputy Prime Minister of Serbia, stated at a Serbian Radical Party (SRS) rally in Zemun, "If NATO bombs us, we Serbs will suffer casualties [...] but there will be no Albanians left in Kosovo".<sup>6957</sup> When asked about this speech, the video of which was shown in court, Vlastimir Đorđević claimed not to have ever heard it before, although he stated that Šešelj had not been speaking in his capacity as a deputy Prime Minister.<sup>6958</sup> In his view, the speech amounted only to "words, words that committed nobody".<sup>6959</sup> He further stated that Šešelj had no connection with the issue in Kosovo, that he had never set foot there, and claimed not to be aware that Šešelj was the leader of a paramilitary group, the White Eagles, which operated in Kosovo alongside the police during the war.<sup>6960</sup> In view of what the Chamber has found actually occurred in Kosovo from the start of the NATO bombing campaign on 24 March 1999 with regard to the mass expulsion of the Kosovo Albanian population, and the participation of the White Eagles in Kosovo in this period, the Chamber is not able to accept Đorđević's explanation for Šešelj's speech as merely being a political ruse for his personal advancement.<sup>6961</sup> This speech by one of the most senior Serbian political figures expressed the goal of the JCE vis-à-vis the demographic modification of Kosovo just prior to the goal being implemented. The Chamber is persuaded that the speech therefore represented the view held by a number of senior political leaders and thus constitutes evidence of a common plan among JCE members to change the demographic constitution of Kosovo by criminal means.

2025. That the senior leadership were aware that crimes would be committed by VJ and MUP forces during these operations against Kosovo Albanian civilians is evidenced by a meeting held in March 1999 in the office of President Slobodan Milošević, and attended by Minister Vlastimir Stojiljković, the Accused Vlastimir Đorđević, Radomir Marković, and others.<sup>6962</sup> During this meeting, Đorđević raised the issue of "clearing the terrain", language which the Chamber finds to mean the removal of bodies of Kosovo Albanians killed by VJ and MUP forces. As mentioned in

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<sup>6957</sup> Exhibit P1510.

<sup>6958</sup> Vlastimir Đorđević, T 10046.

<sup>6959</sup> Vlastimir Đorđević, T 10046.

<sup>6960</sup> Vlastimir Đorđević, T 10046.

<sup>6961</sup> Vlastimir Đorđević, T 10046.

<sup>6962</sup> Exhibit P387, p 3.

the report of the Working Group, Milošević ordered Stojiljković to take measures to remove “all traces which could indicate the existence of evidence of the crimes committed”.<sup>6963</sup> Subsequently, the issue was raised at the MUP Collegium and Stojiljković ordered Đorđević and Ilić to remove civilian victims who could potentially become the subject of investigations by this Tribunal.<sup>6964</sup> Although the evidence of these meetings derives from the report of the MUP Working Group set up to investigate what was called the “refrigerator truck” case in 2001, which contains no references to primary sources,<sup>6965</sup> the Chamber finds, as discussed elsewhere, that both Đorđević and Ilić were involved in planning and organising the removal of bodies of Kosovo Albanian civilians who had been killed by VJ, MUP or associated forces.<sup>6966</sup> In view of the concordance of established facts in regard to the concealment of bodies with the orders reported in the Working Group’s report, the Chamber accepts the reliability of the Working Group’s report in this respect. The planning for the concealment of hundreds of bodies of Kosovo Albanian civilians killed during joint VJ-MUP actions is strong evidence that killings were part of the common plan to terrorise a significant part of the Kosovo Albanian population into leaving Kosovo. It is further evidence of the collusion and shared purpose held by Milošević, Stojiljković, the Accused Đorđević and Marković to use, *inter alia*, the forces of the MUP to commit crimes and to conceal the evidence of such. In the Chamber’s view, by ordering the co-ordinated operations of the MUP and VJ and associated forces from January 1999, the JCE members intended to implement the common plan by way of the crimes of deportation, forcible transfer, murder, and persecution through such acts, as well as the wanton destruction of Kosovo Albanian religious and cultural sites.

2026. Therefore, the Chamber considers that evidence of the build-up and use of VJ and MUP and associated forces and the arming of the non-Albanian civilian population in Kosovo from early 1999 in violation of the October Agreements and contrary to stated intentions to pursue a political solution to the Kosovo problem, together with the series of meetings from the end of October 1998 involving senior political, military and MUP leaders at which plans to thwart the proper monitoring by the KVM of VJ and MUP activities in Kosovo were discussed, indicates that a common plan had formed among senior Serbian and FRY political, military and police leaders. This was a plan to solve the issue of Kosovo by changing its ethnic composition by forcing a significant percentage of the Kosovo Albanian population to leave Kosovo and by crushing the KLA through criminal means, to be implemented by the forces of the VJ and MUP and associated forces, during the period of the war with NATO. The context of the war with NATO and the KLA would allow the

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<sup>6963</sup> Exhibit P387, p 3.

<sup>6964</sup> Exhibit P387, p 3.

<sup>6965</sup> The report states that the Working Group based its conclusions on interviews with over 30 unidentified persons “in Belgrade, Bor, Negotin, Kladovo and other places regarding the circumstances of the ‘refrigerator truck’ case”, as well as “appropriate official documentation” and an inspection of the scene of the event. Exhibit P387, p 1.

governments to have a ready justification as to the use of VJ and MUP forces in combat operations, and provide cover, in particular, for the killing of Kosovo Albanian men of fighting age. By March 1999, the attitude expressed even publicly or to international representatives by senior political leaders of the FRY and Serbia towards the fate of the ethnic Albanian population in Kosovo was one of disregard of the crimes being committed against them by VJ and MUP forces or open threats of violent hostility in the event of NATO action. This was not, therefore, as put by the Defence, a plan “fulfilled through winks, nods, and whispers in the corridors”;<sup>6967</sup> this was a plan that was “very obvious” even to international observers on the ground at the relevant time.<sup>6968</sup> Not only were crimes intended as a means to implement the common purpose, but the concealment of evidence of such crimes - the bodies of hundreds of Kosovo Albanian civilians - was also planned and carried out by JCE members and forces used by them.

c. The pattern of crimes

2027. The Chamber has found in Chapter VI of this Judgement that beginning essentially on 24 March 1999 a consistent pattern of events occurred in a number of towns and villages throughout Kosovo. These events could be summarized as follows: In the early morning hours, VJ and MUP forces would approach a village or a town with tanks and armoured vehicles. The VJ would shell the area of the village or fire at houses in the village causing the population to flee to a nearby locations such as forest or a valley. In most cases, Serbian forces, in most cases MUP forces, would then enter the village on foot, typically setting houses on fire and looting valuables. The Chamber has found that this occurred in the following towns and villages: on 24 March 1999 in the village of Kotlina/Kotlinë,<sup>6969</sup> Kačanik/Kaçanik municipality, on 25 March in the villages of Bela Crkva/Bellacërkë,<sup>6970</sup> Mala Kruša/Krushë-e-Vogël<sup>6971</sup> and Celina/Celinë<sup>6972</sup> in Orahovac/Rahovec municipality, in the village of Pirane/Piranë,<sup>6973</sup> Prizren municipality, in Leocina/Leçinë and the nearby village of Izbica/Izbiçë,<sup>6974</sup> Srbica/Skenderaj municipality and in the town of Đakovica/Gjakovë.<sup>6975</sup> The same pattern continued in the following days, on 26 March 1999, in Landovica/Landovicë,<sup>6976</sup> Prizren municipality and Turicevac/Turiqec,<sup>6977</sup>

<sup>6966</sup> See *infra*, paras 1969-1982.

<sup>6967</sup> Defence Closing Brief, para 310.

<sup>6968</sup> Exhibit P1009.

<sup>6969</sup> See *supra*, paras 1113-1114.

<sup>6970</sup> See *supra*, paras 459-461.

<sup>6971</sup> See *supra*, paras 480-483.

<sup>6972</sup> See *supra*, paras 517-522.

<sup>6973</sup> See *supra*, paras 582-584.

<sup>6974</sup> See *supra*, paras 607, 609-612.

<sup>6975</sup> See *supra*, para 872.

<sup>6976</sup> See *supra*, paras 589-591.

<sup>6977</sup> See *supra*, para 636.

Srbica/Skenderaj municipality, on 27 March 1999 in the town of Peć/Pejë,<sup>6978</sup> on 28 March 1999 in the village of Beleg,<sup>6979</sup> Dečani/Dečan municipality, on 31 March 1999 in Pusto Selo/Pastasellë,<sup>6980</sup> Orahovac/Rahovec municipality, on 1 April in Belanica/Bellanicë,<sup>6981</sup> Suva Reka/Suharekë municipality, on 6 April in Sojevo/Sojevë,<sup>6982</sup> Uroševac/Ferizaj municipality, on 8 April 1999 in Nosalje/Nosalë,<sup>6983</sup> Gnjilane/Gjilan municipality and Miroslavlje/Mirosalë,<sup>6984</sup> Uroševac/Ferizaj municipality, on 12 April in Kladernica/Klladërnice,<sup>6985</sup> Srbica Skenderaj municipality, on 14 May 1999 in Cuška/Qyshk,<sup>6986</sup> Peć/Pejë municipality, on 15 or 16 May, in Dobra Luka/Dobërllukë,<sup>6987</sup> Vuçitër/Vushtrri municipality.

2028. In some of these villages, after initial shelling and firing by the VJ, Serbian forces, in several cases specifically identified as forces of the MUP, then approached the population, typically would separate the men from the women and children, would order the women and children to leave to go to Albania, and would then kill the men, typically having first divided them in smaller groups and taken them to isolated locations. The Chamber has found that this occurred on 25 March in Bela Crkva/Bellacërkë,<sup>6988</sup> Orahovac/Rahovec, on 26 March 1999 in Mala Kruša/Krushë-e-Vogël,<sup>6989</sup> Orahovac/Rahovec, on 28 March in Izbica/Izbicë,<sup>6990</sup> Srbica/Skenderaj municipality, on 31 March in Pusto Selo/Pastasellë,<sup>6991</sup> and on 14 May in the village of Cuška/Qyshk,<sup>6992</sup> Peć/Pejë municipality. Forensic reports accepted by the Chamber reveal that in 2001, 744 bodies were exhumed in Serbia from mass grave sites at the Batajnica SAJ Centre near Belgrade, 61 from Petrovo Selo SAJ Centre, and 84 from Lake Perucac.<sup>6993</sup> Forensic evidence, which the Chamber has accepted, establishes that gunshot wounds were the cause of death in 531 of the 535 exhumed remains for which the cause of death could be established from the Batajnica SAJ Centre and Lake Perucac and for all of the 53 remains for which the cause of death could be established out of 61 from Petrovo Selo SAJ Centre.<sup>6994</sup> The bodies found in these mass grave sites in Serbia were bodies of Kosovo Albanians killed in Kosovo in 1999. Even so, less than a half of these bodies

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<sup>6978</sup> See *supra*, paras 731-740.

<sup>6979</sup> See *supra*, paras 1145-1148.

<sup>6980</sup> See *supra*, para 538.

<sup>6981</sup> See *supra*, paras 714-715.

<sup>6982</sup> See *supra*, paras 1067-1070.

<sup>6983</sup> See *supra*, para 1162.

<sup>6984</sup> See *supra*, para 1090.

<sup>6985</sup> See *supra*, paras 646-647.

<sup>6986</sup> See *supra*, paras 751-755.

<sup>6987</sup> See *supra*, para 1215.

<sup>6988</sup> See *supra*, paras 467-469.

<sup>6989</sup> See *supra*, para 488.

<sup>6990</sup> See *supra*, paras 618-619, 621-633.

<sup>6991</sup> See *supra*, paras 538-541.

<sup>6992</sup> See *supra*, paras 755-760.

<sup>6993</sup> See *supra*, paras 1460, 1512, 1519; see also Exhibit P455.

<sup>6994</sup> See *supra*, para 1465.

were the subject of specific charges of murder under Counts 3 and 4 in the present Indictment.<sup>6995</sup> While this finding has no bearing on the specific charges of murder in the Indictment, the Chamber observes that the large number of bodies of Kosovo Albanians found in mass graves in Serbia, including large numbers of bodies not the subject of the charges of murder in the present Indictment, indicates that events of the same nature as those referred to in this and the previous paragraph were not limited to the locations alleged in the Indictment.

2029. In other towns and villages VJ and MUP forces typically would arrive in the morning hours, enter the village or town and order the population to leave, sometimes also physically harassing specific individuals and looting people's valuables. In the Chamber's finding this occurred on 27 March in the town of Peć/Pejë,<sup>6996</sup> on 28 March in Celina/Celinë,<sup>6997</sup> Orhanovac/Rahovec municipality, in Kosovska Mitrovica/Mitrovicë<sup>6998</sup> and in Dušanovo/Dushanovë suburb of Prizren,<sup>6999</sup> during the last week of March in Priština/Prishtinë,<sup>7000</sup> on 30 March in Beleg, Dečan/Deçani municipality,<sup>7001</sup> on 6 and 13-14 April in Prilepnica/Prilepnicë,<sup>7002</sup> Gnjilane/Gjilan municipality, and on 30 March 1999 in Prizren town.<sup>7003</sup>

2030. Evidence, which the Chamber has accepted, establishes that such events were not limited to locations specifically alleged in the present Indictment. KVM representatives at the border with FYROM confirmed that some 6,000-8,000 displaced person entered FYROM from Kosovo on or about 1 April 1999 alone, and that up to 50,000 displaced persons were waiting to cross into the immediate border area.<sup>7004</sup> Thousands of them crossed the border on foot.<sup>7005</sup> The queue of cars waiting to cross the border was 25 kilometres long and reached north to Uroševac/Ferizaj.<sup>7006</sup> Some 25,000 refugees had gathered in a field in FYROM right by the border with Kosovo where temporary shelters were made.<sup>7007</sup> The refugees told KVM representatives that police had rounded them up from their homes, told them to pack a bag and go to the train station where they were made to board trains towards FYROM. A few kilometres before the border they were told to walk down

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<sup>6995</sup> The Chamber notes here that 295 bodies of persons killed in Meja/Mejë, Đakovica/Gjakovë municipality on 27 and 28 April 1999 and the bodies of 24 members of the Berisha family killed on Raštanski Put in Suva Reka/Suharekë on 26 March 1999 were exhumed from the mass graves at Batajnica SAJ Centre and that 31 bodies of persons killed in Izbica/Izbičë on 28 March 1999 were exhumed from the mass graves at the Petrovo Selo SAJ Centre.

<sup>6996</sup> See *supra*, paras 731-740.

<sup>6997</sup> See *supra*, paras 517-522.

<sup>6998</sup> See *supra*, paras 774-775.

<sup>6999</sup> See *supra*, paras 568-571.

<sup>7000</sup> See *supra*, paras 819-831.

<sup>7001</sup> See *supra*, paras 1145-1146.

<sup>7002</sup> See *supra*, paras 1016-1046.

<sup>7003</sup> See *supra*, paras 559-561.

<sup>7004</sup> Karol John Drewienkiewicz, T 6392; Exhibit P1011, p 4; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7816.

<sup>7005</sup> Karol John Drewienkiewicz, T 6386; Exhibit P1011, p 3.

<sup>7006</sup> Exhibit P1011, p 3.

the train tracks and cross the border into FYROM. At the border their personal documents were taken from them.<sup>7008</sup> The UNHCR estimated that from 24 March until 10 June 1999, approximately 860,000 people from Kosovo left the province, of whom an estimated 444,600 people fled to Albania, some 345,500 to FYROM, and some 69,000 to Montenegro. Some 800,000 of them were Kosovo Albanians. Almost half of these people left Kosovo between 24 March 1999 and 6 April 1999.<sup>7009</sup> These as well as the large number of murdered Kosovo Albanians confirm, in the Chamber's finding, that conduct of the type alleged was much more widespread than the particular cases specified in the Indictment.

2031. In the finding of the Chamber, in large numbers, residents and displaced persons who witnessed such heavy property destruction and damage, as well as killings, by Serbian forces in their towns or villages, left the town or village out of fear for their lives and welfare. Serbian forces were coordinating the process by directing the mass movements of the people away from the towns and villages where they had been, often organising road or rail transport, and in most cases ensuring that the people reached and crossed the border. The Chamber is satisfied that this occurred on 29 March in Žegra/Zhegër, Gnjilane/Gjilan municipality,<sup>7010</sup> on 6 April 1999 in Sojevo/Sojevë,<sup>7011</sup> Uroševac/Ferizaj municipality, on 8 April in Miroslavlje/Mirosalë,<sup>7012</sup> Uroševac/Ferizaj municipality, on 14 April in Staro Selo/Fshati-i-Vjeter,<sup>7013</sup> Uroševac/Ferizaj municipality, on 13 to 15 April in the village of Vata/Vataj,<sup>7014</sup> Kačanik/Kaçanik municipality, and on 15 April and the following days in Zabare/Zhabar,<sup>7015</sup> Kosovska Mitrovica/Mitrovicë municipality. On 25 March all houses in Pirane/Piranë, Prizren municipality were destroyed by fire which caused the villagers to leave.<sup>7016</sup> The Chamber has found that massive columns or convoys of Kosovo Albanian people moving to Albania or FYROM formed throughout Kosovo, and eventually crossed the border out of Kosovo.<sup>7017</sup>

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<sup>7007</sup> Richard Ciaglinski, T 5289; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3216; Exhibit P840; Karol John Drewienkiewicz, T 6395-6396.

<sup>7008</sup> Richard Ciaglinski, T 5289; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3215; Karol John Drewienkiewicz, T 6396-6297.

<sup>7009</sup> Neill Wright, Exhibit P734, p 4.

<sup>7010</sup> *See supra*, paras 1039-1040.

<sup>7011</sup> *See supra*, para 1070.

<sup>7012</sup> *See supra*, paras 1090-1094.

<sup>7013</sup> *See supra*, para 1083.

<sup>7014</sup> *See supra*, paras 1135-1140.

<sup>7015</sup> *See supra*, paras 782-786, 789, 790.

<sup>7016</sup> *See supra*, paras 583-584.

<sup>7017</sup> For example, on 2 May 1999 a convoy of some 30,000 people was formed in Slakovca/Sllakoc, Vuçitern/Vushtrri municipality, *see supra* paras 1179-1195. In May 1999 a convoy of tractors and cars was formed from Zahac/Zahaq, Peć/Pejë municipality; the convoy was stopped at every checkpoint as it headed towards the border with Albania. Money was asked of the displaced persons traveling in this convoy. At the border, the identification documents of those traveling in the convoy were collected by Serbian police, Sadie Sadiku, Exhibit P502, paras 34-36, 38; Sadie Sadiku, T 2975; Sadie Sadiku, Exhibit P503 (*Milutinović* transcript), T 1903.



2032. Two important cases should be mentioned. On 26 March 1999, at least 45 members of the Berisha family, including women, children and elderly, were killed on or nearby to Raštanski Put and in the pizzeria of the shopping centre in the town of Suva Reka/Suharekë. In the night of 1/2 April 1999, 20 members of the Vejsa and Caka families were killed in the basement of the house of Lulzim Vejsa on Miloš Gilić/Millosh Giliq Street in the town of Đakovica/Gjakovë. The house was then set on fire as were other houses on this street. The Berishas were a prominent family in the town of Suva Reka/Suharekë, well known in the community. Lulzim Vejsa was the owner of a pool bar where many people used to gather. People knew him and his family well. In the Chamber's finding, the effect of these killings of prominent Kosovo Albanian civilians was to arouse fear and cause many others to leave. Indeed, as the Chamber has found, in the days following the killings in Suva Reka/Suharekë town and the killings on Miloš Gilić/Millosh Giliq Street, large numbers of Kosovo Albanians left the towns of Suva Reka/Suharekë and Đakovica/Gjakovë, respectively, as displaced persons.

2033. Further, mosques and other Kosovo Albanian cultural and religious sites were targeted by the Serbian forces. The Chamber has found that mosques in the following towns and villages were destroyed: the mosque in Celina/Celinë, the mosque in Bela Crkva/Bellacërkë, the mosque in Landovica/Landovicë, Xhamia-e-Bardhe (White Mosque) in Suva Reka/Suharekë town, Hadum Mosque in Đakovica/Gjakovë, the mosque in Rogovo/Rogovë, the mosque in Vlačica/Llashticë, and the market mosque (Charshi Mosque) in Vuçitrn/Vushtrri town.

2034. In the finding of the Chamber, the events established above demonstrate that what occurred in Kosovo in March, April, and May 1999 were not isolated acts of rogue elements of the Serbian forces, acting on the spur of the moment or on their own volition, as has been submitted by the Defence, but were pre-planned, involving the coordination of large numbers and types of Serbian forces and resources. The number of incidents that occurred, especially within a short time of the commencement of the NATO bombing campaign on 24 March 1999, the geographic spread of these incidents, the general consistency of the events occurring in village after village, and in towns, persuade the Chamber that these actions and their effect were deliberate and intended and that they were the result of carefully devised and coordinated planning.

2035. As considered elsewhere in this Judgement, the publically declared objective of the Serbian security forces in Kosovo throughout 1998 and until June 1999 was to fight terrorism. As noted above, in January 1999 a directive to the VJ to prevent the introduction of a multinational NATO brigade in Kosovo known as Operation Grom was prepared by the VJ General Staff and approved

by President Milošević at a meeting with the top VJ and MUP leadership.<sup>7018</sup> While the directive envisaged action by the VJ in coordination with MUP and other Serbian forces, including “block[ing] [Kosovo Albanian] terrorist forces in general sectors and on the axes of introduction and prevent[ing] their coordinated action with NATO forces”,<sup>7019</sup> the very large number of civilians killed in the months of March to May 1999 in Kosovo, the large scale of destruction of civilian property, and especially of the homes of Kosovo Albanians, and the specific orders given to the Kosovo Albanian residents of towns and villages, or actions against them, to make them leave their town or village, together with the coordinated actions of Serbian forces to ensure that Kosovo Albanians left Kosovo, demonstrate, and the Chamber finds, that the Serbian forces acted not only against terrorist forces and in anticipation of a NATO ground invasion, but consciously and determinedly against the whole Kosovo Albanian population of Kosovo. In the Chamber’s finding, the actions of the Serbian forces in Kosovo in the period between March and June 1999 were directed to terrorizing the Kosovo Albanian population, killing large numbers of them and making the remainder leave Kosovo, so that ultimately the whole, or a substantial proportion of the population of Albanian ethnicity would no longer live in Kosovo.

d. The coordinated use of the MUP and VJ

2036. The Chamber recalls that the way in which the crime or underlying offence is committed may support an inference that it must have been pursuant to a common plan.<sup>7020</sup> As detailed earlier in a separate section of the Judgement, the Chamber has found that the vast majority of crimes established were the result of joint, coordinated activities of the MUP and VJ, with associated forces, as briefly summarised below.

2037. The MUP and VJ had already had good practice in working in coordination during the “Plan for the Suppression of Terrorism” from June to October 1998. The effectiveness of these operations in reducing the strength of the KLA by October 1998 was attributed by the FRY and Serbian leadership partly to the “well-organised coordinated action and cooperation between MUP and VJ units and other factors and organs of authority during the conduct of combat operations”.<sup>7021</sup> Further coordinated action between the VJ and police was evident in December 1998. During the Podujevo/Podujevë action, the VJ and MUP worked closely together, with the “army providing

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<sup>7018</sup> Exhibit D179.

<sup>7019</sup> Exhibit D179, p 7.

<sup>7020</sup> *Vasiljević* Appeal Judgement, paras 100, 109; *Furundžija* Appeal Judgement, para 119; *Tadić* Appeal Judgement, para 227; *Ntakirutimana* Appeal Judgement, para 466; *Blagojević* Trial Judgement, para 699; *Brdanin* Trial Judgement, para 262; *Simić* Trial Judgement, para 158; *Krnjelac* Trial Judgement, para 80; *Krstić* Trial Judgement, para 611; *Milutinović* Trial Judgement, Volume I, para 102.

<sup>7021</sup> Exhibit P87, p 7.

covering fire from its armour, and the police engaging in an infantry assault”.<sup>7022</sup> Similarly, in Račak/Raçak in mid-January 1999, the VJ provided covering fire before the assault by the MUP on the ground began.<sup>7023</sup> This appeared to be the primary *modus operandi* for much of the VJ-MUP coordinated action. An order of the 3<sup>rd</sup> Army Command of 27 January 1999 stated that VJ artillery support would focus on “neutralising grouped, observed, non-protected targets”.<sup>7024</sup> It was the view of the KVM that during the operations in March 1999, the VJ and MUP cooperated together in a practised fashion: the VJ would secure the perimeter of a village or area and offered artillery support if required, while the MUP entered the village or area.<sup>7025</sup> The evidence summarized below with regard to the commission of crimes established in this Judgement discloses that this type of coordinated approach was employed with great effectiveness to achieve the goal of the JCE from 24 March 1999.

2038. In Orahovac/Rahovec municipality, the crimes committed in the villages of Bela Crkva/Bellacërkë, Mala Kruša/Krushë-e-Vogël and Celina/Celinë on 25-26 March 1999 were the result of joint actions of the VJ and MUP forces.<sup>7026</sup> In particular, VJ tanks and forces were used to surround the villages and to shell them, after which MUP forces entered and set fire to the villages and were principally responsible for the displacement and murders of villagers perpetrated in the ensuing events.<sup>7027</sup> Similarly, the Chamber found that MUP and VJ forces were jointly engaged in the events that occurred in the village of Pusto Selo/Pastasellë on 31 March 1999, in which mass killings were committed.<sup>7028</sup> In Prizren municipality, on 25 March 1999, VJ shelled the village of Pirane/Piranë, while police forces entered the village and set fire to Kosovo Albanian owned houses, leading to a mass displacement of the Kosovo Albanian population. On 26 March 1999, VJ shelled the village of Landovica/Landovice after which VJ troops and police entered the village, searched the houses, and set them on fire, causing villagers to leave.<sup>7029</sup> Two days later, Serbian police and army forces surrounded the predominantly Kosovo Albanian suburb of Dusanovo/Dushanovë, and Kosovo Albanian inhabitants were ordered to leave to go to Albania. Police and soldiers beat and looted valuables from Kosovo Albanians as they were travelling out of Dusanovo/Dushanovë in a convoy.<sup>7030</sup>

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<sup>7022</sup> Shaun Byrnes, T 8200; Michael Phillips, Exhibit P1303 (*Milutinović* transcript) T 11847-11848. *See also* Exhibit P85, p 1.

<sup>7023</sup> Shaun Byrnes, T 8205; Joseph Maisonneuve, T 5466.

<sup>7024</sup> Exhibit D343, p 9.

<sup>7025</sup> Karol John DREWIEKIEWICZ, Exhibit P996, para 197.

<sup>7026</sup> *See supra*, paras 458-478, 480-495, 517-534.

<sup>7027</sup> *See supra*, paras 458-478, 480-495, 517-534.

<sup>7028</sup> *See supra*, paras 537-547.

<sup>7029</sup> *See supra*, paras 583, 589-595.

<sup>7030</sup> *See supra*, paras 566-579.

2039. In Srbica/Skenderaj municipality, on 28 March 1999, VJ and police, including PJP forces, arrived in a field in Izbica/Izbicë where people were gathered, separated the men from the women and children, and proceeded to shoot the men. At least 132 men were murdered. The women, children and elderly were expelled from the village and directed towards Albania.<sup>7031</sup> In March and early April 1999, PJP and VJ units working together shelled and burnt the villages of Brocna/Burojë, Leocina/Leçine, Vocnjak/Vajnikë, Turicevac/Turiquec, Tušilje/Tushilë and Kladernica/Klladërnice, and forced the civilian population in these villages to cross the border into Albania.<sup>7032</sup>

2040. In the municipality of Suva Reka/Suharekë, the Chamber has found that it was police that were involved in the killings of members of the Berisha family on Restanski Put and the killings in the pizzeria in the town of Suva Reka/Suharekë on 26 March 1999, leading to the population of the town leaving en masse by 27 and 28 March 1999, and that it was police that ordered the population to leave the town on other occasions in April and May 1999. However, the Chamber takes into account the fact that, first, both army and police members were in Suva Reka/Suharekë town at the time of the killings, secondly, a VJ order dated 27 March 1999 specified an operation to be conducted in the town, in coordination with the MUP, to “protect the Serbian population in the town of Suva Reka/Suharekë”,<sup>7033</sup> and thirdly, a VJ tank provided direct cover for the police who went to the Berisha family compound. Its canon was pointed at the Berisha homes. Other VJ tanks were actively shelling other targets from a location well behind the Berisha compound, as the police attacked the Berisha compound.<sup>7034</sup> A Gazik army vehicle was involved in the destruction of the mosque.<sup>7035</sup> Further, in April 1999, on route to the border, people in the convoy were shot at by both army and police forces driving by.<sup>7036</sup> The Chamber therefore considers that the VJ at the least failed to protect the Kosovo Albanian population of Suva Reka/Suharekë from the actions of the police, knew of the mass displacement of people, and participated in acts of violence towards the displaced people.

2041. The Chamber has also found that a joint VJ and MUP operation took place in Trnje/Tërnje village on or about 24-29 March 1999.<sup>7037</sup> Orders were given to VJ soldiers to enter the village and to make sure no one was left alive.<sup>7038</sup> A significant number of Kosovo Albanian civilians were killed during the operation. On 1 April 1999, VJ shelled the periphery of the village of

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<sup>7031</sup> See *supra*, paras 609-625, 633.

<sup>7032</sup> See *supra*, paras 636-644.

<sup>7033</sup> Exhibit P896, p 5.

<sup>7034</sup> See *supra*, paras 606, 660.

<sup>7035</sup> See *supra*, para 690.

<sup>7036</sup> See *supra*, para 694.

<sup>7037</sup> See *supra*, paras 708-709.

Belanica/Bellanicë, following which members of the MUP as well as Serbian paramilitaries entered the village, burning and looting homes.<sup>7039</sup> Civilians were ordered to get on their tractors and to leave town. The VJ positioned at the outskirts of the village waved good bye to those leaving in the convoy. Both army and police were involved in directing groups of displaced persons towards and across the Albanian border.<sup>7040</sup>

2042. In the municipality of Peć/Pejë, on 27 March 1999, VJ forces shelled the town of Peć/Pejë following which MUP forces moved through the town ordering its residents to leave.<sup>7041</sup> On 27 and 28 March 1999 VJ and MUP forces expelled a large number of residents of Peć/Pejë through Đakovica/Gjakovë to Albania.<sup>7042</sup> On 14 May 1999, VJ and MUP forces entered the village of Cuška/Qyshk and separated the men from the women. The men were divided into three groups, each of which was taken to a different house in the village where the men were shot, after which the three houses were set on fire.<sup>7043</sup> The women were ordered by VJ and MUP forces to leave and go to the town of Peć/Pejë.<sup>7044</sup>

2043. In Kosovska Mitrovica/Mitrovicë municipality, on 28 March 1999, police, VJ, and Serbian paramilitary forces expelled Kosovo Albanians from their homes in Kosovska Mitrovica/Mitrovicë town and on 3 April 1999, Serbian forces arranged for buses to transport Kosovo Albanians from Kosovska Mitrovica/Mitrovicë town to Montenegro.<sup>7045</sup>

2044. In the municipality of Priština/Prishtinë, checkpoints manned by Serbian police, army and Serbian paramilitary soldiers were set up all over Priština/Prishtinë town and on the roads leading in and out of Priština/Prishtinë.<sup>7046</sup> On 24 March 1999, VJ forces located on the outskirts of town began shelling neighbourhoods in Priština/Prishtinë. During the following week, police and military forces expelled thousands of Kosovo Albanians from the town who were directed by police and soldiers with the support of paramilitary forces to railway stations where they were forced to board buses or trains to the FYROM border.<sup>7047</sup>

2045. In the municipality of Đakovica/Gjakovë, on the night of 24 March and early morning of 25 March 1999, VJ and Serbian police forces set houses and other residential buildings belonging to

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<sup>7038</sup> K54, Exhibit P782, p 5; K54, Exhibit D114 (*Milutinović* transcript), T 10508-10509; K54, T 4380-4381, 4415-4416; K82, Exhibit P1314, para 11; K82, T 8864, 8899-8900.

<sup>7039</sup> *See supra*, paras 710-725.

<sup>7040</sup> *See supra*, paras 724-725.

<sup>7041</sup> *See supra*, paras 731-739.

<sup>7042</sup> *See supra*, paras 735-739.

<sup>7043</sup> *See supra*, paras 751-761.

<sup>7044</sup> *See supra*, para 761.

<sup>7045</sup> *See supra*, paras 774-777.

<sup>7046</sup> *See supra*, paras 796-797.

<sup>7047</sup> *See supra*, paras 805-831.

Kosovo Albanians on fire in the city of Đakovica/Gjakovë. In the course of these operations civilians were killed and many residents of Đakovica/Gjakovë were forced to flee their houses.<sup>7048</sup> Both VJ and police escorted the convoy of thousands of Kosovo Albanians leaving the city on 1-2 April 1999.<sup>7049</sup> The convoy passed by several police checkpoints where identification papers were demanded, while VJ escorted the convoy to the border with Albania.<sup>7050</sup> On 27-28 April 1999, during the course of Operation Reka, a joint action of the VJ and MUP in and around Meja/Mejë and Korenica/Korenicë, at least 300 Kosovo Albanians, almost all men, were murdered.<sup>7051</sup> The Chamber received detailed evidence as to how the VJ units, including the 63<sup>rd</sup> Parachute Brigade of the 52<sup>nd</sup> Military Police Battalion, worked with PJP brigades to push down the valley, burning houses and displacing civilians towards the police and paramilitary groups near Meja/Mejë, where the men were separated from the women and children, taken to nearby compounds and shot.<sup>7052</sup> Women and children were ordered to leave their villages and were directed to Albania by VJ and police forces, and passed mixed VJ and police checkpoints along the way.<sup>7053</sup>

2046. In the municipality of Gnjilane/Gjilan, VJ soldiers and MUP, as well as, at least in some cases, Serbian paramilitary forces, took part in operations that displaced Kosovo Albanian residents from the villages of Prilepnica/Përlepnicë, Nosalje/Nosaljë, Žegra/Zhegër, Vladovo/Lladovë and Vlastica/Llashticë in the period from mid March 1999 until early May 1999. Many Kosovo Albanian persons were killed by these Serbian forces.<sup>7054</sup>

2047. In Uroševac/Ferizaj municipality, on 6 April 1999, soldiers and police set fire to houses in Sojevo/Sojevë, killing two persons, and causing the villagers to flee and many to cross the border to FYROM.<sup>7055</sup>

2048. In Kačanik/Kaçanik municipality, on 9 March 1999, the VJ 243<sup>rd</sup> Mechanised Brigade, in coordination with MUP forces, including PJP units, shelled and partially burnt the villages of Ivaja/Ivajë and Kotlina/Kotlinë, including the Ivaja/Ivajë mosque.<sup>7056</sup> On 24 March 1999, the same forces shelled Kotlina/Kotlinë for a second time, killed a number of Kosovo Albanian men and

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<sup>7048</sup> See *supra*, paras 863-864, 873-880.

<sup>7049</sup> See *supra*, paras 903-914.

<sup>7050</sup> See *supra*, paras 905, 908-909.

<sup>7051</sup> See *supra*, paras 950-992.

<sup>7052</sup> Nike Peraj, Exhibit P313, para 65; Nike Peraj, T 1203; K73, Exhibit P330, para 41; K73, Exhibit P332 (*Milutinović* transcript), T 3327-3328.

<sup>7053</sup> See *supra*, paras 981-983.

<sup>7054</sup> See *supra*, paras 1016-1060.

<sup>7055</sup> See *supra*, paras 1066-1070.

<sup>7056</sup> See *supra*, para 1102, 1107-1108, 1112, 1132.

forced the women, children and elderly to leave to Kačanik/Kaçanik.<sup>7057</sup> Between 24 and 28 March 1999, VJ and MUP forces, including PJP units, launched an attack on the town of Kačanik/Kaçanik, killing and injuring a number of people and causing some of the town's population to leave to FYROM.<sup>7058</sup> Between 24 March and 13 April, VJ and MUP troops attacked the villages of Vata/Vataj, Dubrava/Dubravë, and Slatina/Sllatinë and killed a number of men, causing some of the residents of these villages to flee to FYROM.<sup>7059</sup>

2049. In Decani/Deçan municipality, on 29 March 1999, VJ and MUP forces gathered villagers in Beleg together in a house where they were searched and their documents were taken away.<sup>7060</sup> On 30 March 1999, several hundred Kosovo Albanian villagers in Beleg were ordered by these forces to leave and go to Albania.<sup>7061</sup>

2050. In the municipality of Vuçitrn/Vushtrri, between 24 March 1999 and 2 May 1999, VJ and MUP forces arrived in Vuçitrn/Vushtrri town and in the villages of Slakovce/Sllakofc, Cecelija/Ceceli, Gornja Sudimlja/Studime-e-Eperm and Donji Svracak/Sfaraçak-i-Poshtëm, burnt the houses and the mosque in Vuçitrn/Vushtrri town and forced people to leave.<sup>7062</sup> On 22 May 1999, VJ and police killed 74 Kosovo Albanians in Vuçitrn/Vushtrri town.<sup>7063</sup>

2051. The Chamber considers that the coordination between VJ and MUP and associated forces in the commission of the crimes established is strong evidence of a common plan. In order to achieve the coordination of these forces in these operations, the senior political, military and police leadership had to have agreed upon a plan of action, divided and assigned tasks and worked towards a common goal. As found elsewhere in this Judgement, the Joint Command was the overarching body composed of senior political, military and police officials, that coordinated the actions of the VJ, MUP and associated forces in Kosovo before and during the Indictment period.<sup>7064</sup> The command bodies of both the VJ, *i.e.* the Supreme Defence Council, the VJ Collegium, and the leadership of the 3<sup>rd</sup> Army and the Priština Corps in particular, and of the MUP, *i.e.* the MUP Staff in Priština/Prishtinë, the MUP Collegium, the chiefs of the RDB and RJB, and within the RJB, the heads of the Police Administration and Crime Police Administration, who continued to exercise their powers of authority and control over the forces under their command, including PJP and SAJ units, were responsible for implementing the plan for the use of the forces in an operational

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<sup>7057</sup> See *supra*, para 1112.

<sup>7058</sup> See *supra*, paras 1127-1130.

<sup>7059</sup> See *supra*, paras 1127-1135.

<sup>7060</sup> See *supra*, paras 1145-1149.

<sup>7061</sup> See *supra*, paras 1153-1154.

<sup>7062</sup> See *supra*, paras 1163-1167, 1172, 1173, 1176.

<sup>7063</sup> See *supra*, para 1218.

<sup>7064</sup> See *supra*, paras 226-252, 264.

sense.<sup>7065</sup> Thus, for example, as discussed elsewhere, the chief of the RJB, the Accused, authorised the deployment of PJP units used in joint VJ and MUP operations, the head of the Police Administration, Obrad Stevanović, was responsible for organising their call-up and training by the SUPs, and the head of the Crime Police Administration, Dragan Ilić, ensured that any evidence of crimes committed against Kosovo Albanian civilians was concealed. The Chamber thus finds, not only that the coordinated use of the VJ and MUP evidenced the existence of a common plan, but also that the VJ, MUP and associated Serbian forces were used by JCE members, in coordination, to implement the common plan.

e. The disproportionate use of force in “anti-terrorist” actions

2052. A further factor indicative of a common plan is the way and the extent that force was used during Serbian operations. A consistent usage of force that is excessive in relation to the stated goal of operations and which produces dire humanitarian consequences unrelated to the stated goal strongly suggests that the motivation behind the operations lies elsewhere. The essence of the Defence case is that the FRY and Serbia were attempting to protect its citizens “in an ongoing battle with massive terrorist forces who were driven by want of secession”.<sup>7066</sup> The Defence submits that the KLA were of “disquieting size”, with some 17,000-18,000 fighters in Kosovo alone<sup>7067</sup> and controlled at least 50 per cent of the territory.<sup>7068</sup> The Defence argues that the reduction of KLA activity resulting from the 1998 summer offensive of the VJ and MUP was short-lived since in January 1999 the KLA took up positions previously held by the Serbian forces and which they had left in accordance with the October Agreements. As a result, it contends, there was a renewed need for anti-terrorist actions in response to the KLA’s “Spring Offensive”.<sup>7069</sup>

2053. The Defence relies on Article 51 of the Charter of the United Nations which recognises a State’s “inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations” to argue that States have a right to respond to terrorist acts in exercise of their right to self defence.<sup>7070</sup> The Chamber takes the view that the question of the legitimacy of the decision to resort to force is irrelevant to the determination of individual criminal responsibility for violations of international humanitarian law; it recalls that “whether an attack was ordered as preemptive, defensive or offensive is from a legal point of view irrelevant [...]. The issue at hand is whether the way the military action was carried out [during an armed conflict] was

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<sup>7065</sup> See *supra*, paras 240-252.

<sup>7066</sup> Defence Final Brief, paras 334; Closing Arguments, T 14439.

<sup>7067</sup> Defence Final Brief, para 335, citing Bislim Zyrapi, T 2467.

<sup>7068</sup> Defence Final Brief, para 335, citing Vlastimir Đorđević, T 9557-9558.

<sup>7069</sup> Defence Final Brief, para 337.

<sup>7070</sup> Defence Final Brief, para 329.



criminal or not”.<sup>7071</sup> Therefore the circumstance that the FRY and Serbia were conducting anti-terrorist activities is irrelevant to, and not determinative of, the question whether violations of international humanitarian law were carried out.<sup>7072</sup>

2054. The Defence contends, correctly, that since members of the armed forces of a party to a conflict are legitimate military objectives, they may be targeted even when not actively participating in hostilities.<sup>7073</sup> With regard to civilians, the Defence argues that where civilians have joined a terrorist organisation, they lose their immunity from attack for the period they are committing the “chain of acts” of hostility.<sup>7074</sup> The Appeals Chamber has held that

As the temporal scope of an individual’s participation in hostilities can be intermittent and discontinuous, whether a victim was actively participating in the hostilities at the time of the offence depends on the nexus between the victim’s activities at the time of the offence and any acts of war which by their nature or purpose are intended to cause actual harm to the personnel or equipment of the adverse party. If a reasonable doubt subsists as to the existence of such a nexus, then a Trial Chamber cannot convict an accused for an offence committed against such a victim under Article 3 of the Statute.<sup>7075</sup>

The Chamber acknowledges, nonetheless, that there is some recent support from authoritative bodies that “[i]n non-international armed conflict, organized armed groups constitute the armed forces of a non-State party to the conflict and consist only of individuals whose continuous function it is to take a direct part in hostilities (‘continuous combat function’).<sup>7076</sup> While such considerations might be relevant to determining the legality of targeting a particular individual in certain circumstances, this does not apply to persons in detention who are not taking an active part in hostilities who are protected from attack under international humanitarian law<sup>7077</sup> and is also a distinct and separate question from the issue of whether an anti-terrorist operation was proportionate.<sup>7078</sup> The Chamber notes that the Israeli Supreme Court, whose Judgement is cited in support by the Defence, stressed that “combatants and terrorists are not to be harmed if the damage expected to be caused to nearby innocent civilians is not proportional to the military advantage in harming the combatants and terrorists”.<sup>7079</sup> As submitted by the Defence, the anti-terrorist actions

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<sup>7071</sup> *Boškoski* Appeal Judgement, para 31, citing *Martić* Appeal Judgement, para 268; *Kordić* Appeal Judgement, para 812; *Kordić* Trial Judgement, para 452.

<sup>7072</sup> See *Boškoski* Appeal Judgement, para 44.

<sup>7073</sup> Defence Final Brief, para 330.

<sup>7074</sup> Defence Final Brief, para 331.

<sup>7075</sup> *Strugar* Appeal Judgement, para 178 (footnotes omitted); see also *Dragomir Milošević* Appeal Judgement, para 57.

<sup>7076</sup> *Interpretive Guidance on the Notion of Direct Participation in Hostilities* (Geneva, ICRC, 2009), p 27. See also *Public Committee against Torture v Israel* H CJ 769/02 (14 December 2006) para 39.

<sup>7077</sup> Article 3 common to the 1949 Geneva Conventions.

<sup>7078</sup> The test for proportionality is provided in Article 51(5)(b) Additional Protocol I: “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

<sup>7079</sup> *Public Committee against Torture v Israel* H CJ 769/02 (14 December 2006) para 46.

must be proportionate and militarily necessary.<sup>7080</sup> This is in line with the jurisprudence of the Appeals Chamber that

if the victim of an offence was a combatant or if the injury or death of such a victim was the incidental result of an attack which was proportionate in relation to the anticipated concrete and direct military advantage, his injury or death would not amount to a violation of international humanitarian law even if he was not actively participating in hostilities at the time of the alleged offence.<sup>7081</sup>

2055. The overwhelming body of evidence demonstrates, however, that the purportedly “anti-terrorist” operations of the Serbian forces during the Indictment period routinely involved the use of force against Kosovo Albanian towns and villages throughout the majority of the municipalities of Kosovo in a way that produced grossly excessive civilian casualties, including women and children, destroyed homes, crops and livestock, entire villages, and religiously and culturally significant property, and forced the displacement of hundreds of thousands of Kosovo Albanians over a period of less than three months. The evidence weighs convincingly against a finding that these attacks were either proportionate or militarily necessary, even in those areas where there was a KLA presence. In short, the conduct of Serbian forces revealed an objective beyond policing terrorists.

2056. Such objectives are also demonstrated by evidence that VJ units were given orders that appeared to be directed against civilians rather than the KLA. There is evidence that a VJ unit deployed to Orahovac/Rahovec around 24 March 1999 received an order that “not a single Albanian ear” was to remain in Kosovo and that their identification papers were to be torn to prevent them from returning to Kosovo.<sup>7082</sup> The language used indicates to the Chamber to apply to all Kosovo Albanians including “civilians”. Another VJ unit deployed in Đakovica/Gjakovë municipality in early April 1999 was given an order to expel Kosovo Albanian villagers from their homes.<sup>7083</sup> On 26 April 1999, the anti-terrorist platoon of the 52<sup>nd</sup> Battalion of the VJ Military Police, stationed in Junik, Đakovica/Gjakovë municipality, received an order from Major Stevo Kopianja to “clean the area from Albanians” and send Kosovo Albanian civilians towards Korenica/Korenicë where the MUP had lists of names of “terrorists”.<sup>7084</sup> “Clean villages” were villages without members of the Kosovo Albanian ethnic community.<sup>7085</sup>

2057. The Defence makes reference to the ICRC Commentary to Additional Protocol I that notes that “a state of war always gives rise to some degree of terror among the population and sometimes also among the armed forces [...] This was not the sort of terror envisaged by the drafters of

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<sup>7080</sup> Defence Final Brief, para 333.

<sup>7081</sup> *Strugar* Appeal Judgement, para 179 (footnotes omitted).

<sup>7082</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9124-9126; K89, T 8476-8478.

<sup>7083</sup> K90, Exhibit P321, para 41.

<sup>7084</sup> K73, Exhibit P330, para 40; K73, T 1524; K73, Exhibit P332 (*Milutinović* transcript), T 3326, 3380.

<sup>7085</sup> K73, Exhibit P332 (*Milutinović* transcript), T 3323-3324.

Additional Protocol I in their prohibition of ‘[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population’”.<sup>7086</sup> The inference of the Defence’s point seems to be that it would be expected that the Kosovo Albanian population was somewhat terrorised by the circumstances of the armed conflict prevailing in 1999 but that this did not amount to or involve the war crime of terror, since there was no intent on the part of the FRY or Serbian forces to spread terror; they were merely conducting anti-terrorist operations. The war crime of terror is not charged in the Indictment and the Chamber need not consider whether or not the Serbian forces perpetrated acts or threats of violence the primary purpose of which was to spread terror among the civilian population. By the same token, the Chamber is required to consider whether the consistent use of excessive force by VJ and MUP, at times with associated forces, in their operations in 1999 demonstrated a common purpose to wage a campaign of terror involving crimes under the Statute to effectuate the goal of modifying the ethnic composition of Kosovo.

2058. The Chamber notes that in terms of manpower of the KLA, the numbers appeared to fluctuate dramatically over the course of 1998 and 1999. However, as found earlier, it accepts as reasonably reliable the evidence of Richard Ciaglinski, chief liaison person for the KVM with the VJ,<sup>7087</sup> that there were around 10,000 people “associated with” the KLA by the end of March 1999.<sup>7088</sup>

2059. In terms of territorial control by the KLA over Kosovo, this also changed over the course of 1998 and 1999. As discussed earlier in this Judgment, the KLA regained partial control over certain areas in Kosovo after the 1998 October Agreements, however the evidence shows that the VJ and MUP were able to enter vast areas of Kosovo even where there was a KLA presence suggesting that the extent and degree of this territorial control does not appear to have been as significant in 1999 as it had been in July 1998.<sup>7089</sup>

2060. The Chamber accepts that there were some 14,571 MUP personnel in Kosovo in March 1999<sup>7090</sup> and 15,779 in April 1999.<sup>7091</sup> While the number of Priština Corps soldiers was 17,971 as at 31 March 1999,<sup>7092</sup> the total manpower of the Priština Corps including re-subordinated

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<sup>7086</sup> Defence Final Brief, para 332, citing ICRC Commentary to Additional Protocol I, para 1940.

<sup>7087</sup> Richard Ciaglinski, T 5251.

<sup>7088</sup> Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3336. *See supra*, paras 1539-1540.

<sup>7089</sup> *See supra*, paras 400-402, 426-431, 435-439.

<sup>7090</sup> Ljubinko Cvetić, T 6609-6610.

<sup>7091</sup> *See supra*, para 269.

<sup>7092</sup> Exhibit P1441, p 3.

units and volunteers stood at 61,892 according to a combat report dated 13 April 1999 from the Priština Corps to the 3<sup>rd</sup> Army Command and Supreme Command Staff.<sup>7093</sup>

2061. The Chamber notes that the MUP and VJ forces combined outnumbered the KLA by more than 7:1. The mobilisation of the civil protection and civil defence units, all the military territorial detachments and reserve units, as well as the incorporation and use of paramilitary units, and the use of the armed Serb population, demonstrate the extent of force used in operations which were supposed to be fighting a force of just some 10,000 KLA fighters on the ground and defending the territory from NATO airstrikes and possibly anticipated land invasion. The Chamber considers these figures to be a further indication of a purpose to the operations going way beyond counter-terrorism.

2062. The use of excessive force against the Kosovo Albanian civilian population during anti-terrorist activities by the forces of the MUP and VJ was reported by international observers from 1998. On 3 October 1998, John Crosland raised the issue of what he believed to be a misuse by the VJ of anti-aircraft artillery weapons to shell villages with General Dimitrijević, the Chief for VJ Counterintelligence, since he considered the use of these weapons was excessive and in violation of the Geneva Conventions.<sup>7094</sup> KVM representatives repeatedly raised the issue of excessive use of force by the Serbian forces in response to activities of the KLA during the regular meetings with Serbian officials, namely, Šainović, General Lončar and Sreten Lukić. A common observation of the KVM verifiers was that the KLA were using small calibre weapons, to which the Serbian security forces were responding with heavy weapons such as artillery.<sup>7095</sup> The issue of disproportionate use of force was raised by John Crosland in conversations with Generals Perišić and Dimitrijević throughout 1998 and in early 1999.<sup>7096</sup> General Drewienkiewicz confirmed that the use of disproportionate force by the MUP and VJ in response to KLA activity “was observed by (KVM) on many occasions”.<sup>7097</sup> This involved the use of tanks, heavy artillery, and machine-guns, often resulting in civilian casualties.<sup>7098</sup> On 28 January 1999, Drewienkiewicz had a meeting with Lončar and Mijatović in which the situation in Podujevo/Podujevë was discussed; he told them that in the KVM’s view, the violence used by the security forces was disproportionate to the

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<sup>7093</sup> Exhibit P948, p 2.

<sup>7094</sup> John Crosland, Exhibit P1400, para 53. The witness believed that the weapons in question were 20, 30, and possibly 40 millimetre cannons which are used against aircraft or armoured vehicles but not against personnel. John Crosland saw empty casings of this type of weapons outside Mališevo/Malishevë, around Ponoševac/Ponoshec, although he was not certain whether there had been 40 mm cannons, John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9935-9936.

<sup>7095</sup> Michael Phillips, Exhibit P1303 (*Milutinović* transcript), T 11845-11846.

<sup>7096</sup> John Crosland, Exhibit P1402 (*Milutinović* transcript), T 9851-9852.

<sup>7097</sup> Karol Drewienkiewicz, T 6322.

<sup>7098</sup> Karol Drewienkiewicz, T 6321-6322.

provocation.<sup>7099</sup> In fact Drewienkiewicz testified that in his conversations with the senior liaison people, and almost at every meeting he attended, he would specifically use the word disproportionate when describing the force used by FRY forces, and that he explained to them many times what this word meant.<sup>7100</sup>

2063. Despite the repeated protestations of the KVM about the disproportionate use of force in anti-terrorist actions since early October 1998, the VJ and MUP forces continued to respond to purported “terrorist” provocations with deadly and excessive force in 1999. At Račak/Raçak, there was a dramatic use of disproportionate force. Defence witness Radomir Mitić claimed that the MUP was merely planning to “arrest” terrorists.<sup>7101</sup> Yet the result was the killing of at least 45 people, many of whom were shot at close range, at least some of whom were civilians, including a woman and a 12 year old boy. The operation also had the consequence that the ceasefire agreement collapsed. Just two weeks later, on 29 January 1999, MUP forces, supported by the VJ,<sup>7102</sup> engaged in an action against KLA members in the village of Rogovo/Rogovë, Đakovica/Gjakovë municipality, resulting in 25 Kosovo Albanians being killed in a farmhouse, most of them KLA members.<sup>7103</sup> The KVM concluded that the amount of force employed by the Serbian security forces was not proportional, that not all persons killed were members of the KLA, and that there was little evidence of fighting back by the KLA.<sup>7104</sup> Even isolated incidents involving violence to ethnic Serbs were responded to with overwhelming force. For instance, on or about 22 March 1999, in response to the killing of a Serb civilian in Suva Reka/Suharekë town,<sup>7105</sup> the police killed 11 Kosovo Albanians who were unconnected to the murder in retaliation.<sup>7106</sup>

2064. The Defence submits that the actions of the FRY and Serbia were a response to an armed group that disregarded international laws of war by repeated attacks on police stations, military barracks and the civilian population.<sup>7107</sup> As a result, the Defence contends, it was “unimaginably difficult” for MUP and VJ forces to distinguish between civilians and KLA fighters since the latter would “masquerade as civilians as a tactic to remain unseen”, and wore civilian clothing only or

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<sup>7099</sup> Karol Drewienkiewicz, Exhibit P996, para 164.

<sup>7100</sup> Karol Drewienkiewicz, T 6323-6324; Karol Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7953.

<sup>7101</sup> Radomir Mitić, T 12676.

<sup>7102</sup> Joseph Maisonneuve, Exhibit P851, para 43; Exhibit P1008; Karol John Drewienkiewicz, T 6370-6371.

<sup>7103</sup> Joseph Maisonneuve, T 5489; Joseph Maisonneuve, Exhibit P852 (*Milošević* transcript), T 5892, 5895; Joseph Maisonneuve, Exhibit P853 (*Milutinović* transcript), T 11059, 11170.

<sup>7104</sup> *See supra*, para 428.

<sup>7105</sup> Velibor Veljković, T 7115-7116; 6D2, 12270; Exhibit D17; Halit Berisha, T 3389.

<sup>7106</sup> Halit Berisha, T 3390.

<sup>7107</sup> Defence Final Brief, para 336.

civilian clothing underneath their green camouflage uniforms to allow them to shed the uniforms easily during combat in order to blend into the civilian population.<sup>7108</sup>

2065. The Chamber accepts that there may well have been circumstances during the armed conflict in 1999 when VJ or MUP forces were confronted with individuals whom they suspected as being KLA fighters although they were dressed in civilian clothing. However, the Chamber's findings in relation to the crimes committed in Kosovo in 1999 demonstrate that the vast majority occurred in situations in which there was little or no KLA activity. The vast majority of victims of murder were either unarmed civilians or people in the detention of the VJ or police forces.<sup>7109</sup> In such circumstances, the fact that a person might be a KLA fighter is immaterial to the protection they are afforded under international humanitarian law as a person no longer taking an active part in hostilities. In such circumstances, the Chamber cannot but conclude that the use of force by VJ, MUP and associated forces in these operations was patently disproportionate. Indeed, in many cases, it would appear as though there was no military objective at all that could offer any legal justification for the actions of the VJ, MUP and associated forces.

2066. The Chamber also recalls the principle of international humanitarian law that in case of doubt whether a person is a civilian, that person shall be presumed to be a civilian.<sup>7110</sup> This rule entails, at a minimum, that an assessment be made based on the information available to the decision-maker and the contingencies of the situation whether a doubt as to status may be said to exist.<sup>7111</sup> The level of excessive force used by VJ and police forces in purported anti-terrorist operations in Kosovo in 1999 indicates that in practice if this principle was applied in any way by Serbian forces, it was applied in reverse and that no assessments were made as to the status of the persons targeted in disregard of this principle. The Chamber considers that the failure of Serbian

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<sup>7108</sup> Defence Final Brief, para 340.

<sup>7109</sup> See *supra*, paras 1710-1751.

<sup>7110</sup> In international armed conflicts, the rule is codified in Additional Protocol I, Article 50(1). While Article 13 of Additional Protocol II does not contain the same text, the Chamber is of the view that the principle also applies in non-international armed conflicts. The ICRC *Commentary* to Article 13 of Additional Protocol II notes that "in case of doubt regarding the status of an individual, he is presumed to be a civilian". *ICRC Commentary to Additional Protocol II*, para 4789. More recently, the ICRC's *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* states that "The presumption of civilian status protection applies, *a fortiori*, in case of doubt as to whether a person has become a member of an organized armed group belonging to a party to the conflict". *Interpretive Guidance on the Notion of Direct Participation in Hostilities* (Geneva, ICRC, 2009), pp 75-76. While the ICRC's Customary International Humanitarian Law Study stopped short of finding this to be a customary rule of international humanitarian law given the lack of relevant State practice in regard to non-international armed conflicts, the Study noted that "the same balanced approach [...] with respect to international armed conflicts seems justified in non-international armed conflicts". Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (Cambridge, Cambridge University Press, 2009), p 24.

<sup>7111</sup> The *Interpretive Guidance* points out that the determination of status should take into account, *inter alia*, the intelligence available to the decision-maker, the urgency of the situation, and the harm likely to result to the operating forces or to persons and objects protected against direct attack from an erroneous decision. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra*, p 76.

forces to differentiate between possible KLA fighters and civilians is further confirmation that the common plan was directed against the Kosovo Albanian civilian population.

2067. In addition, the difficulties possibly experienced by VJ or MUP forces in distinguishing between suspected KLA members and civilians hardly explains the forced transfer and deportation of entire villages of Kosovo Albanians; there is no evidence that any effort was made by VJ or MUP forces to assess whether individual villagers were KLA members prior to ordering them to leave.

2068. The Chamber notes that there is in evidence an instruction by a senior VJ official to counter terrorist actions proportionately. The minutes of a meeting of the “Operations Inter-Departmental Staff for the Suppression of Terrorism in KiM”, chaired by President Slobodan Milošević in Belgrade on 29 October 1998, record Pavković as advising that “In the event of an attack by terrorist forces against organs of authority, VJ and MUP units or OSCE Verification Mission members anywhere in KiM, pursuant to the agreement reached and as a final recourse in self-defence, make use of adequate forces proportionate to the attack to protect the lives of citizens, VJ and MUP members and members of the OSCE Mission”.<sup>7112</sup> While this statement might be construed to indicate that there was genuine intent on the part of the VJ to ensure no breach of international humanitarian law by its troops, in fact the extent of the failure of the VJ units in Kosovo to adhere to this instruction and the widespread conduct of contrary behaviour already by December 1998 and throughout the first half of 1999 reveals that there was no genuine intent behind the statement, and that it was merely an attempt at “window dressing” some three days after the signing of the October Agreements when international attention on the Kosovo issue was very intense.

2069. The Chamber considers that the repeated use of disproportionate force by VJ and MUP, and when they were involved, associated forces, in operations in almost all the municipalities of Kosovo in the same period of time commencing from the start of the NATO bombing campaign on 24 March 1999 is a further indication that the purpose of the operations was to perpetuate the crimes established, rather than, or in addition to, fighting the KLA.

f. The systematic collection of Kosovo Albanian identification documents and vehicle licence plates

2070. The Prosecution submits that “FRY and Serb forces” took deliberate measures to prevent the Kosovo Albanian refugees from returning by systematically seizing and destroying the personal

identity documents and licence plates of vehicles belonging to Kosovo Albanian civilians.<sup>7113</sup> It alleges that Kosovo Albanians who had been forced from their homes and directed to Kosovo's borders were subjected to demands to surrender identity documents at selected points *en route* to border crossings and at border crossings into Albania and FYROM.<sup>7114</sup> Such actions were undertaken, the Prosecution contends, "in order to erase any record of the deported Kosovo Albanians' presence in Kosovo and to deny them the right to return to their homes".<sup>7115</sup>

2071. The Defence submits that the evidence does not demonstrate any systematic process for collecting and destroying identification documents or licence plates of Kosovo Albanians.<sup>7116</sup> It argues that merely losing a passport or identity card does not entail that a person's identity is lost, noting that official registers were kept in Kosovo at the relevant time and "it is a matter of course to re-issue missing ID cards".<sup>7117</sup> The Defence also submits that there is evidence that the KLA confiscated Yugoslavian identification documents and replaced them with Kosovo identification documents, which were illegal and could be legitimately confiscated, which could explain why some identification documents were confiscated and others not.<sup>7118</sup> It further submits that the majority of witnesses called to testify did not have their own legitimate identifications taken.<sup>7119</sup>

2072. The Chamber received a substantial amount of evidence on the collection of identification documents. It recalls its findings that in late March 1999, identification documents and, in some cases, vehicle licence plates, were seized by MUP forces from people who had been expelled from the following towns or villages in Kosovo: Suva Reka/Suharekë town, Suva Reka/Suharekë municipality,<sup>7120</sup> Bela Crkva/Bellacërkë, Orahovac/Rahovec municipality,<sup>7121</sup> Mala Kruša/Krushë-e-Vogël, Orahovac/Rahovec municipality,<sup>7122</sup> Celina/Celinë, Orahovac/Rahovec municipality,<sup>7123</sup> Dusanovo/Dushanovë, Prizren municipality<sup>7124</sup> and Peć/Pejë town, Peć/Pejë municipality,<sup>7125</sup> Once seized, the documents were often burnt.<sup>7126</sup>

2073. The seizure and destruction of identification documents continued in April 1999. The Chamber recalls its findings that throughout April 1999, identification documents and, in some

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<sup>7112</sup> Exhibit P87, p 10.

<sup>7113</sup> Prosecution Final Brief, para 497; Indictment, para 31.

<sup>7114</sup> Indictment, para 31.

<sup>7115</sup> Indictment, para 31.

<sup>7116</sup> Defence Final Brief, para 351.

<sup>7117</sup> Defence Final Brief, para 352.

<sup>7118</sup> Defence Final Brief, para 355.

<sup>7119</sup> Defence Final Brief, para 358.

<sup>7120</sup> *See supra*, paras 700, 702.

<sup>7121</sup> *See supra*, para 467.

<sup>7122</sup> *See supra*, para 488.

<sup>7123</sup> *See supra*, paras 530-531.

<sup>7124</sup> *See supra*, paras 575, 578.

<sup>7125</sup> *See supra*, para 739.



cases, vehicle licences and licence plates, were seized from people who had been expelled from the following villages or towns: Belanica/Bellanicë, Suva Reka/Suharekë municipality,<sup>7127</sup> Nogavac/Nagavac, Orahovac/Rahovec municipality,<sup>7128</sup> Đakovica/Gjakovë town, Đakovica/Gjakovë municipality,<sup>7129</sup> Srbica/Sërbica, Prizren municipality,<sup>7130</sup> Vladovo/Lladovë and Vlačica/Llashticë, Gnjilane/Gjilann municipality,<sup>7131</sup> Kladernica/Klladërnice, Prizren municipality,<sup>7132</sup> Zabare/Zhabar, Kosovska Mitrovica/Mitrovicë municipality,<sup>7133</sup> villages in the area of Meja/Mejë and Korenica/Korenicë, Đakovica/Gjakovë municipality<sup>7134</sup> and Prizren town, Prizren municipality.<sup>7135</sup>

2074. Richard Ciaglinski, a Lieutenant-Colonel with the OSCE KVM, spoke to refugees, coming across the border from Albania into FYROM at the Đeneral Janković/Han-i-Elezit border crossing shortly after the KVM withdrew from Kosovo, who told him that their identification documents had been taken from them by Serbian police.<sup>7136</sup> When asked by Ciaglinski why the police would take their identification papers, the refugees responded “because we were never to return to Kosovo. This was to ensure that there was no evidence of us ever having lived or been citizens of Pristina and Kosovo”.<sup>7137</sup> This same account was told to Ciaglinski “on many occasions by many different people”.<sup>7138</sup>

2075. As discussed elsewhere in this Judgement,<sup>7139</sup> on or about 12 or 13 June 1999, Karol Drewienkiewicz and Richard Ciaglinski, who had re-entered Kosovo to assist KFOR, the NATO force deployed in Kosovo, saw a bonfire of Kosovo Albanian identity documents of about a metre high in a courtyard adjacent the main police headquarters in Priština/Prishtinë.<sup>7140</sup> The documents

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<sup>7126</sup> See *supra*, para 474.

<sup>7127</sup> See *supra*, para 719.

<sup>7128</sup> Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4157; Ali Hoti, Exhibit P628 (*Milutinović* transcript), T 4156-4157; Mehmet Krasniqi, T 994, 1060-1061.

<sup>7129</sup> See *supra*, paras 905, 908.

<sup>7130</sup> See *supra*, para 600.

<sup>7131</sup> K81, T 4545.

<sup>7132</sup> Sadik Januzi, Exhibit P281, p 4.

<sup>7133</sup> Mahmut Halimi, Exhibit P499 (*Milutinović* transcript), T 4458-4459, 4484.

<sup>7134</sup> Lizane Malaj, T 827-828.

<sup>7135</sup> See *supra*, para 562.

<sup>7136</sup> Richard Ciaglinski, Exhibit P833 (*Milošević* transcript) T 3214-3215.

<sup>7137</sup> Richard Ciaglinski, Exhibit P833 (*Milošević* transcript) T 3215.

<sup>7138</sup> Richard Ciaglinski, Exhibit P833 (*Milošević* transcript) T 3215.

<sup>7139</sup> See *supra*, para 1687.

<sup>7140</sup> Karol John Drewienkiewicz, T 6399; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7816, 7822, 7994; Richard Ciaglinski, Exhibit P832, p 10; Richard Ciaglinski, T 5290; Richard Ciaglinski, Exhibit P834 (*Milutinović* transcript), T 6848-6849; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript), T 3210-3211.

being burnt consisted of identity documents, passports, and applications for passports.<sup>7141</sup> The names on the samples he removed were all Albanian names.<sup>7142</sup>

2076. The Defence submits that Ciaglini did not know which authority issued the documents or why they were being burned: “for all he knows these are old, invalid documents”.<sup>7143</sup> The Chamber rejects this argument. This event occurred in June 1999 as the MUP were leaving Kosovo. The identification documents that were examined by Ciaglini and Drewienkiewicz were all of people “of an age where they would still be alive”, indicating that they were not old documents.<sup>7144</sup> The documents Drewienkiewicz looked at were in Cyrillic,<sup>7145</sup> *i.e.* they were FRY or Serbian issued documents, and not “invalid” Albanian parallel identification documents, as suggested by the Defence. The Chamber is satisfied that MUP officers deliberately burned a large number of identification documents, including passports and applications for passports, of Kosovo Albanians, in June 1999.

2077. The Defence contends that no witness from the VJ or MUP, including Rade Čučak, who was in charge of the borders, knew of any policy or orders to remove identification documents.<sup>7146</sup> Rade Čučak, chief of the department for border affairs within the VJ General Staff,<sup>7147</sup> gave evidence that he was not aware of any practice or policy of the Serbian forces taking away identification documents from Kosovo Albanians.<sup>7148</sup> The Chamber has serious reservations about the credibility and reliability of the evidence of Rade Čučak. In view of the large amount of evidence of Kosovo Albanians having their identification documents taken from them at or near the border area, it cannot believe that Čučak was not aware of this occurring. It notes that Čučak also claimed not to have been aware of the hundreds of thousands of Kosovo Albanians who left Kosovo through the border crossings<sup>7149</sup> even though he toured the border from one end to the other, from March to June 1999.<sup>7150</sup> Čučak’s explanation that he only learned that there had been some 800,000 refugees who left Kosovo though media reports is – in view of his position at the time – equally implausible.<sup>7151</sup> The Chamber is unable to rely on the evidence given by Čučak. Another Defence witness, Miloš Došan, also denied that the identity papers of Kosovo Albanians were taken away by

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<sup>7141</sup> Richard Ciaglini, Exhibit P832, p 10; Richard Ciaglini, Exhibit P833 (*Milošević* transcript) T 3211. See also Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7994-7995.

<sup>7142</sup> Richard Ciaglini, T 5291; Richard Ciaglini, Exhibit P833 (*Milošević* transcript) T 3211; Richard Ciaglini, Exhibit P832, p 10. See also Karol John Drewienkiewicz, T 6399.

<sup>7143</sup> Defence Final Brief, para 356.

<sup>7144</sup> Karol John Drewienkiewicz, T 6399; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7995.

<sup>7145</sup> Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7996.

<sup>7146</sup> Defence Final Brief, para 353.

<sup>7147</sup> Rade Čučak, Exhibit D570 (*Milutinović* transcript), T 14813; Rade Čučak, T 10874.

<sup>7148</sup> Rade Čučak, T 10977.

<sup>7149</sup> Rade Čučak, T 10971-10973.

<sup>7150</sup> Rade Čučak, Exhibit D570 (*Milutinović* transcript), T 14854-14855.

<sup>7151</sup> Rade Čučak, T 10984-10985.

MUP and VJ personnel.<sup>7152</sup> As expressed elsewhere in this Judgement, the Chamber has serious doubts as to the reliability and honesty of the evidence given by Miloš Došan.<sup>7153</sup> It also notes the evidence of Nike Peraj, a soldier in the VJ 52<sup>nd</sup> Rocket Artillery Brigade commanded by Miloš Došan in 1999, that he observed a pile of torn identification documents in Meja/Mejë on 27 April 1999.<sup>7154</sup> At the very least, Došan would have been informed of this occurrence. The Chamber rejects his denial of knowledge in this regard.

2078. Although there are no written MUP or VJ orders to take away identification and licence documents of Kosovo Albanians in evidence, K54 gave evidence that it was “common knowledge [...] that there were orders for police and VJ to take all the identification documents from Albanians, at the borders, and burn them to prevent them from claiming they were from Kosovo”.<sup>7155</sup> He was told by a soldier about policemen taking documents away from Kosovo Albanians at the border at Vrbnica/Vërbnica (Morina), and setting them on fire.<sup>7156</sup> K89, a VJ soldier deployed as part of a VJ unit to Orahovac/Rahovec around 24 March 1999, testified to receiving an order that identification papers of Kosovo Albanian civilians were to be torn to prevent them from returning to Kosovo.<sup>7157</sup> He also saw identification documents of people in a column from the direction of Đakovica/Gjakovë, mainly women, children, elderly and the infirm, being torn up by members of the VJ near Žub/Zhub in late March 1999.<sup>7158</sup> Further, in very many cases vehicle registration plates or documents were confiscated, as well as personal identification documents. This indicates that all means of identification were being seized, and offers confirmation for the view that the objective was to deny Kosovo Albanians the means of later establishing that they had been citizens of Kosovo.

2079. The Chamber is entirely unpersuaded by the Defence argument that the identity papers of Kosovo Albanians could never really be properly said to be lost since such papers could be re-applied for through the official registers.<sup>7159</sup> It notes that the government of Serbia issued a “Decree on the permanent and temporary residence of citizens during a state of war” and a “Decree on identity cards in a state of war” on 7 April 1999.<sup>7160</sup> A dispatch issued by Assistant Minister Stojan Mišić to all 33 SUPs in Serbia on 19 April 1999 instructed the SUPs, *inter alia*, “to *postpone* the designation of personal identification numbers *until further notice*”.<sup>7161</sup> Therefore, even if those

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<sup>7152</sup> Miloš Došan, Exhibit D685 (*Milošević* transcript), T 43597.

<sup>7153</sup> See *supra*, paras 865, 901, 943, 1012, 1685-1686.

<sup>7154</sup> Nike Peraj, Exhibit D34, para 8.

<sup>7155</sup> K54, Exhibit P784, p 2.

<sup>7156</sup> K54, Exhibit D114 (*Milutinović* transcript), T 10520.

<sup>7157</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9124-9126; K89, T 8476-8478.

<sup>7158</sup> K89, Exhibit P1274 (*Milutinović* transcript), T 9154-9155, 9186.

<sup>7159</sup> Defence Final Brief, para 352.

<sup>7160</sup> Exhibit D261.

<sup>7161</sup> Exhibit D261, p 1. Emphasis added.

persons who had lost their personal identification documents had tried to apply for replacement copies, they would not have been issued with personal identification numbers during this period despite the existence of official registers. Moreover, as the evidence above establishes, the forces of the MUP were heavily involved in the collection and destruction of Kosovo Albanian identification documents. In such circumstances, it makes little sense to argue that those who lost their identity papers could have applied for replacement copies to those very same forces which took the identification documents in the first place.

2080. The evidence discussed above demonstrates, in the finding of the Chamber, that the seizure of identification documents and vehicle licences and plates, from Kosovo Albanians in March and April 1999 was widespread, occurring in almost all the municipalities of Kosovo. Border police, regular police and VJ soldiers were involved in the seizure. Displaced persons travelling in convoys directed to the border crossings by MUP and VJ personnel were asked for identification documents multiple times, at designated checkpoints, and again at the border crossing, just prior to leaving Kosovo for Albania or FYROM. The Chamber is persuaded that MUP and VJ personnel were ordered to collect and destroy Kosovo Albanian identification documents and vehicle licences and plates. It finds that this was a widespread and systematic policy. The only reasonable inference as to the intent behind this policy is an attempt by the FRY and Serbian governments to prevent the Kosovo Albanians from proving their identities as citizens with the right to return.<sup>7162</sup> The Chamber is satisfied that this constitutes strong evidence of a criminal plan to expel the Kosovo Albanian population from Kosovo.

g. Efforts to conceal the crimes against Kosovo Albanian civilians

2081. The Prosecution has submitted that there were “very few investigations and prosecutions” by Serbian authorities for crimes against Kosovo Albanian civilians during the Indictment period; investigations were obstructed and, instead, crimes were concealed.<sup>7163</sup> The few investigations that were conducted against police for serious crimes against Kosovo Albanian civilians, it is submitted, were initiated only when information about these crimes became public.<sup>7164</sup> By contrast the Defence puts forward the position that when such crimes resulted in the loss of civilian lives, or even of “potential civilians”, these crimes were reported and followed up by an investigation.<sup>7165</sup> It

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<sup>7162</sup> The right to return to one’s own country is enshrined in international law instruments. Article 12(4) of the International Covenant on Civil and Political Rights provides that “No one shall be arbitrarily deprived of the right to enter his own country.” Article 13(2) of the Universal Declaration of Human Rights states, “Everyone has the right to leave any country, including his own, and to return to his country”.

<sup>7163</sup> Prosecution Final Brief, paras 520, 525-526.

<sup>7164</sup> Prosecution Final Brief, para 521.

<sup>7165</sup> Defence Final Brief, *see e.g.*, para 736 (concerning Orahovac/Rahovec municipality) and para 751 (concerning Prizren municipality).

submits, further, that the allegations set out in the Indictment, “even if shown to exist”, are the results of isolated incidents perpetrated by unknown individuals.<sup>7166</sup>

2082. The Chamber has set out its findings in Chapter VI of this Judgement concerning the crimes of deportation and murder of Kosovo Albanian people which were committed by Serbian forces throughout Kosovo during the Indictment period. It turns now to the evidence concerning the reporting of these crimes to the relevant authorities, the investigation into these crimes, and the prosecution of the perpetrators of these crimes.

i. Pattern of excessive use of force and lack of investigations of crimes against Kosovo Albanians in 1998 and early 1999

2083. The evidence discussed in the section relating to events in 1998 and the first half of 1999 demonstrates a pattern of excessive use of force by the Serbian forces in Kosovo and an absence of action to investigate and sanction the perpetrators of crimes committed against Kosovo Albanians. In early March 1998, a combination of RDB and RJB forces raided the compound of a known KLA leader in the village of Prekaz/Prekaze, Srbica/Skenderaj municipality, killing at least 54 members of the Jashari family in the process, including many women and children.<sup>7167</sup> The reaction by the Ministry of the Interior was to portray the event as an operation against terrorists; a public statement on the event issued on 5 March 1999 makes no mention of any civilian casualties.<sup>7168</sup> Following the adoption of a Plan for the Suppression of Terrorism in Kosovo in July of 1998, MUP forces took part in anti-terrorist operations throughout Kosovo, resulting in the large-scale destruction of villages, crops and animals, in an attempt to drive Kosovo Albanians out of their villages. These observations were reported by representatives of the US and EU KDOM present in Kosovo in August and September 1998 to the head of the MUP Staff for Kosovo, General Sreten Lukić. Despite this, no action was taken to stop these activities, or indeed, to investigate any allegations of the disproportionate use of force by MUP forces during these operations.<sup>7169</sup> The killing of 21 members of the Delijaj family in the village of Gornje Obrinje/Abri-e-Epërme in Glogovac/Gllogoc municipality on 26 September 1998 likewise went uninvestigated until the issue was raised by international observers in December 1998. The minutes of a Joint Command Meeting of 26 September 1998 refer to the completion of operations in Donje and Gornje Obrinje/Abri-e-Epërme;<sup>7170</sup> the minutes of the Joint Command meeting of 4 October 1998 record Šainović stating

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<sup>7166</sup> Defence Final Brief, para 311.

<sup>7167</sup> See *supra*, para 271.

<sup>7168</sup> See Exhibit D424.

<sup>7169</sup> See *supra*, para 331.

<sup>7170</sup> Exhibit P866, p 112.

that an investigation “into Obrinje” should be launched.<sup>7171</sup> The Chamber notes the evidence of Frederick Abrahams that Human Rights Watch published a report in February 1999 which referred to the killings in Gornje Obrinje/Abri-e-Epërme.<sup>7172</sup> He also testified that in a news report on the incident televised by the state-run media, allegations made by Human Rights Watch were supposedly refuted; a doll was held up with the suggestion that this doll had been portrayed as the body of an 18 month old baby whom Human Rights Watch claimed had been killed in the incident.<sup>7173</sup>

2084. The pattern of disproportionate use of force and the lack of efforts to investigate crimes against Kosovo Albanians continued into 1999. Following a joint VJ and MUP operation in Račak/Raçak, in Štimlje/Shtime municipality, on 15 January 1999, the bodies of not less than 45 Kosovo Albanian civilians, including an 18 year old woman and a 12 year old boy and at least one decapitated body, were observed in the village. When a Serbian investigative team entered the village three days after the killings,<sup>7174</sup> it was shown a staged scene, set up by police, designed to give a false impression of the true events and to conceal evidence of grossly disproportionate use of force by the police during the operation.<sup>7175</sup>

2085. A similar disingenuous investigation took place following an operation by Serbian forces against members of the KLA in Rogovo/Rogovë, Đakovica/Gjakovë municipality, at the end of January 1999. The entire investigation took only two hours, while the crime-scene was an area of about 100 by 200 metres and approximately 25 corpses were involved. It was the view of General Drewienkiewicz that an investigation of this nature should have taken at least four days.<sup>7176</sup> Drewienkiewicz, who as a member of the KVM visited several crime sites in Kosovo at the end of 1998 and early 1999, held the view, which the Chamber accepts, that the investigations carried out in Kosovo during this period were not genuine or adequate, and that, within a very short time, it was often wrongly concluded in official Serbian reports that the many dead Kosovo Albanians who lost their lives died in the course of legitimate actions against terrorists by Serbian forces.<sup>7177</sup>

ii. MUP efforts to conceal crimes in the period of March to June 1999

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<sup>7171</sup> Exhibit P866, p 119.

<sup>7172</sup> Frederick Abrahams, T 4021-4022; Exhibit P753.

<sup>7173</sup> Frederick Abrahams, T 4021-4022.

<sup>7174</sup> *See supra*, para 412.

<sup>7175</sup> *See supra*, para 415.

<sup>7176</sup> Karol John Drewienkiewicz, T 6477-6480; *see also* Karol John Drewienkiewicz, Exhibit P996, paras 165-167; Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7801-7802.

<sup>7177</sup> Karol John Drewienkiewicz, T 6480.

2086. The evidence discussed in Chapter VI of this Judgement and discussed in more detail below reveals that by the end of March 1999, a pattern of non-investigation of incidents involving the killings of Kosovo Albanian civilians had already been established. As evidenced below, this pattern continued until the end of the Indictment period and thereafter.

2087. The Chamber has already found elsewhere in this Judgement that, on 26 March 1999, at least 45 members of the Berisha family, most being women and children, were killed by MUP forces in Suva Reka/Suharekë town.<sup>7178</sup> The majority of these killings took place in a pizzeria in the town's shopping centre. Immediately following the killings on this day, policemen picked up the bodies in front of a house where the attack commenced and from the pizzeria, and loaded the bodies onto two trucks, one of which was driven by a local policeman.<sup>7179</sup> There was no investigation into the deaths nor were these killings included, as they should have been, in the MUP Staff report covering security related events for 26 March 1999; the section headed "serious crimes" referred only to some cases of aggravated theft.<sup>7180</sup>

2088. There is no suggestion in the evidence of any investigation into this mass killing of civilian Kosovo Albanians by MUP officers, or of any prosecution action against the direct perpetrators of the killings.<sup>7181</sup> The Defence submission is that there is "not a single shred of evidence" to indicate that the Accused had knowledge of, *inter alia*, these specific killings.<sup>7182</sup> Defence witness 6D2 sought to suggest that the Berisha killings were not included in the MUP Staff report because the killings were not registered by the Prizren SUP,<sup>7183</sup> which was responsible for the Suva Reka/Suharekë municipality. It was his explanation that the Prizren SUP covered a large territory, and it was difficult to cover the entire area with the amount of staff available.<sup>7184</sup> The Chamber finds this attempted explanation to be entirely unconvincing.<sup>7185</sup> This was a mass killing of civilians, a major incident, committed in broad daylight. A large force of police from the locality and from elsewhere, including the PJP, with VJ armour support, was involved in the operation that

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<sup>7178</sup> See *supra*, para 683.

<sup>7179</sup> See *supra*, para 769.

<sup>7180</sup> Exhibit P1059, p 5; The Chamber notes that while the heading of Exhibit P1059 indicates that the time frame for security related events in the report is from 0600 hours on 27 March 1999 to 0600 on 28 March 1999, the cases of aggravated theft that are included under the "Serious Crimes" section relate to 26 March 1999, the date of the Berisha killings in Suva Reka/Suharekë town (see Exhibit P1059, pp 1, 5).

<sup>7181</sup> See Defence Final Brief, paras 769-773 relating to Suva Reka/Suharekë municipality.

<sup>7182</sup> Closing Arguments, T 14497.

<sup>7183</sup> 6D2, T 12277-12278, 12421, 12432; see also Exhibit D312.

<sup>7184</sup> 6D2, T 12422.

<sup>7185</sup> 6D2 sought to suggest that he had no knowledge of the Berisha family killings during the war, and that he did not visit Suva Reka/Suharekë during the war; he claims that the first time he heard of the killings was through the media in relation to the Tribunal's indictment against Slobodan Milošević (6D2, T 12779). He further claimed not to have known the Berisha family before the war; he was unaware that they were a prominent family in Suva Reka/Suharekë town (6D2, T 12358-12359). While aware of the location of the police station as well as having known its commander, Repanović, he claimed not to know who was involved in these killings until the judgement by the Belgrade district court was issued in 2009 (see 6D2, T 12401-12405; see also Exhibit P1549).

day in the town. The bodies of the dead were collected in two trucks shortly after the killings, one truck driven by a driver employed by the local police, photographs of the bodies were taken by a police crime technician, and the bodies were removed from the scene and transported to Prizren where they were immediately buried.<sup>7186</sup> The Chamber is entirely satisfied that the Prizren SUP, in whose jurisdiction these killings occurred, and through whose territory the bodies of the victims were transported and buried, was fully aware of these killings. The absence of these killings from the MUP Staff report indicates that they were deliberately omitted to conceal the crimes.

2089. Not only was there an intentional lack of reporting of these killings, there was no official investigation. Photographs were taken by crime technician Todor Jovanović of the bodies at the pizzeria on 26 March 1999 and, on the following day, of other bodies of killed Berisha family members on Restanski Put.<sup>7187</sup> But this remains the extent of the evidence concerning any sort of investigation.<sup>7188</sup>

2090. The Chamber has no doubt that there was never an intention to investigate the killing of the Berisha family members on 26 March 1999. As a result of this failure to officially report and investigate these killings, the direct perpetrators of the events went unpunished and many of those involved in the killings continued in their positions.<sup>7189</sup>

2091. During the last week of March 1999, as found elsewhere in this Judgement, a joint VJ and MUP operation took place in the village of Trnje/Tërrnje, in Suva Reka/Suharekë municipality. During this operation, a large number of Kosovo Albanian civilians were killed. The evidence demonstrated that immediately after the operation, the bodies of approximately 10 women and children were loaded onto a truck and transported by members of the VJ to a village near the border with Albania, where they were buried in a shallow grave.<sup>7190</sup> An on-site investigation was conducted in Trnje/Tërrnje on 2 April 1999 by the Prizren SUP.<sup>7191</sup> The investigation team

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<sup>7186</sup> See *supra*, paras 679-681.

<sup>7187</sup> K83, T 400-405.

<sup>7188</sup> A report by the Prizren SUP of 20 May 1999 addressed to the Prizren public prosecutor reveals that a number of days after the Berisha killings, on 30 March 1999, a team including crime technician Todor Jovanović who had been present at the police station on 26 March 1999 and knew of the killings of the Berisha family members, carried out an “on-site investigation” at a location on Miladina Popovića street (Exhibit D802); see also 6D2, T 12272-12273. At this location, the bodies of eight Kosovo Albanians were discovered, some of them at a carpenter’s shop about 250 metres away from the police station. It was the evidence of local policeman Velibor Veljković that before he picked up the bodies of the Berisha family members killed on Restanski Put and at the pizzeria on 26 March 1999, he collected a number of bodies at the carpenter’s shop at Miladina Popovića street, leaving some of them behind, Velibor Veljković, T 7183. On the basis of the description of these bodies in the Prizren SUP report, and the description provided by Veljković of the bodies he collected at Miladina Popovića street, the Chamber is satisfied that these are the same bodies. The “on-site investigation” on 30 March 1999, therefore, was limited to the number of bodies at the Miladina Popovića street location that had been deliberately “left behind” on 26 March 1999. Even this investigation was, therefore, a sham.

<sup>7189</sup> K83, T 405-406.

<sup>7190</sup> See *supra*, para 708.

<sup>7191</sup> See *supra*, para 709.



consisted of, *inter alios*, Dr Vuksanović of the Suva Reka/Suharekë health care centre, and Todor Jovanović, the crime technician attached to the Suva Reka/Suharekë OUP. Both of these men were present at the pizzeria on the day of the Berisha killings on 26 March 1999.<sup>7192</sup> The investigation report records only finding four bodies of Kosovo Albanian men in civilian clothes,<sup>7193</sup> yet implies that these were members of the KLA killed in combat.<sup>7194</sup> The Chamber has found elsewhere in this Judgement, on the basis of the evidence of two VJ members, that at the time these four men were killed, they were not taking an active part in hostilities.<sup>7195</sup> Moreover, the removal of the bodies of women and children from the village following the operation demonstrates, in the Chamber's finding, that it was intended to falsely portray the operation as a legitimate action against members of the KLA. The report of the Prizren SUP was prepared to confirm this false position.

2092. As recorded elsewhere in this Judgement, on 31 March 1999 and 1 April 1999, at least 132 Kosovo Albanian people from the village of Izbica/Izbičë, Srbica/Skenderaj municipality were buried by villagers following their killings by members of the VJ and the MUP on 28 March 1999.<sup>7196</sup> Radomir Gojović, at the relevant time Chief of the Legal Department of the Ministry of Defence of the VJ,<sup>7197</sup> testified that an investigation had been initiated on 29 May 1999 into the discovery of 144 freshly dug graves in Izbica/Izbičë, Srbica/Skenderaj municipality, on this same day.<sup>7198</sup> Gojović testified that the military prosecutor received information about these graves from a military officer, and that he registered it as a case of murder.<sup>7199</sup> Questioned as to the outcome of these investigations, Gojović stated that the proceedings were never completed and that the case was still pending today, because the perpetrators had not yet been identified.<sup>7200</sup> Despite the fact that it was put to him that bodies of the Izbica/Izbičë killings were found in a mass grave in Serbia over two years later, he maintained that the investigative judge performed his duties pursuant to law.<sup>7201</sup> On the contrary, the evidence accepted by the Chamber demonstrates that on 28 May 1999, Serbian forces returned to Izbica/Izbičë village and that over four to five days, VJ and police

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<sup>7192</sup> Exhibit D806, p 2.

<sup>7193</sup> The Chamber is satisfied, on the basis of the description in the report (Exhibit D806) of the location where these men were discovered, that these are the same individuals described by K82 as hiding in a creek and being shot by forces moving from Trnje/Tërmje to Mamuša/Mamushë village during the joint VJ and MUP operation, described in further detail in the section concerning events in Suva Reka/Suharekë municipality. *See supra*, paras 708-709.

<sup>7194</sup> The investigation report (Exhibit D806) suggests that these bodies were discovered during a search of the terrain of known KLA activities; it ends with a note, as do many of such similar reports, that since the beginning of "NATO aggression", a known leader of terrorist groups, Hašim Tači, called for armed terrorist attacks against police and civilians, resulting in anti-terrorist activities by the police (*see* Exhibit D806, p 2; *see also, e.g.*, Exhibits D803 and D804).

<sup>7195</sup> *See supra*, para 708.

<sup>7196</sup> *See supra*, paras 621-623, 629.

<sup>7197</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16642-16643; Radomir Gojović, T 10334-10336.

<sup>7198</sup> *See supra*, para 631.

<sup>7199</sup> Radomir Gojović, T 10458-10459.

<sup>7200</sup> Radomir Gojović, T 10460-10461.

disinterred the bodies of over 120 Kosovo Albanian victims that had been buried by villagers on 28 March 1999.<sup>7202</sup> The remains of 31 identified victims of these Izbica/Izbicë killings<sup>7203</sup> were among those discovered in a mass grave at the Petrovo Selo PJP Centre in Serbia in 2001.<sup>7204</sup> Whatever may have been the understanding of Radomir Gojović, the evidence demonstrates that there was a deliberate disinterment of the bodies of Kosovo Albanian victims of killings by VJ and MUP forces and that these disinterred bodies were removed from Izbica/Izbicë by VJ and police, at least 31 of whom are known to have been then buried in a mass grave at the Petrovo Selo PJP Centre. By this means investigation at the time of these deaths was prevented.

2093. As established elsewhere in this Judgement, a large number of Kosovo Albanian civilians were murdered in Đakovica/Gjakovë town from 24 March 1999 onwards. In particular on the night of 1-2 April 1999, MUP forces shot and killed 20 Kosovo Albanian civilians, 12 of whom were children, in a house located on 157 Miloš Gilić/Millosh Giliq street in Đakovica/Gjakovë town.<sup>7205</sup> A significant number of houses on the street were then set on fire. Up to 60 civilians living in houses on this street were killed that night.<sup>7206</sup> These killings were not included in the MUP Staff report covering security related events for these days.<sup>7207</sup> There is no indication in the evidence of any investigation into these events in Đakovica/Gjakovë town on 1-2 April 1999. The Defence have submitted that the reason there was no investigation into these killings was because none of the witnesses made an official report of the incident to the SUP.<sup>7208</sup> The Chamber reiterates its dismissal of this submission, for reasons stated elsewhere.<sup>7209</sup> The notion that the killings of a large number of civilians and the burning of houses in the centre of Đakovica/Gjakovë town, during an operation involving a large number of police, would go un-investigated if not formally reported by Kosovo Albanian eye witnesses to the event, cannot be taken seriously. The compound, including the building in which the civilians were shot, was burnt to the ground immediately after the killings.<sup>7210</sup> Remains of the victims were discovered both inside the burnt house as well as in a cemetery just north of town, by an American Medical Legal Investigation team at the end of May of 1999. There is evidence that a member of the Đakovica/Gjakovë city public works removed some of the burnt remains of the victims from the scene shortly after the killings and buried them at this

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<sup>7201</sup> Radomir Gojović, T 10458-10462.

<sup>7202</sup> *See supra*, para 632.

<sup>7203</sup> *See supra*, para 632.

<sup>7204</sup> *See supra*, para 1727.

<sup>7205</sup> *See supra*, para 889.

<sup>7206</sup> *See supra*, para 900.

<sup>7207</sup> *See Exhibits P697 and P718.*

<sup>7208</sup> Defence Final Brief, para 842.

<sup>7209</sup> *See supra*, para 921.

<sup>7210</sup> *See supra*, para 887, 895.

cemetery.<sup>7211</sup> The Chamber is satisfied that efforts were undertaken to eradicate the traces of the crimes, committed there by MUP forces, and prevent or hinder any future investigation.

2094. Elsewhere in this Judgement, the Chamber has found that over 100 Kosovo Albanian men were executed by Serbian forces in the village of Pusto Selo/Pastasellë on 31 March 1999 by Serbian forces. A few days later, villagers who had returned after the attack on the village buried the bodies of the dead in the village. Soon after, a photograph of Pusto Selo/Pastasellë posted on the internet appeared to depict locations of two alleged mass graves. This photograph was sent by the MUP Staff to the Prizren SUP for report.<sup>7212</sup> An exhumation of the bodies discovered in this location was subsequently ordered, and carried out on 24 April 1999.<sup>7213</sup> Witness 6D2 participated in these exhumations. Approximately 95 bodies were exhumed from this location.<sup>7214</sup> Ali Gjogaj was ordered by the police to take part in these exhumations, and participated in transporting these bodies to the morgue in Priština/Prishtinë, after which these bodies were reburied in cemeteries in Orahovac/Rahovec town, Zrze/Xërxë, Dušanovo/Dushanovë, and Prizren.<sup>7215</sup> As opposed to the other occasions when, as ordered by the police, Ali Gjogaj removed bodies from graves in several locations in Kosovo, the exhumation and removal from Pusto Selo/Pastasellë to a morgue indicated a more legitimate action.<sup>7216</sup>

2095. 6D2, however, was only asked in September of 2001 to draft a report of this exhumation. This was at the request of his superiors at the Administration of the Crime Police in Belgrade where he was working at the time. This request appeared to come that late because the prosecuting authorities were only then actively processing the Pusto Selo/Pastasellë incident.<sup>7217</sup> The Chamber is conscious of a number of difficulties about the report prepared by 6D2, in addition to the fundamental concern that it was not prepared until some two and a half years after the event. His report suggests that there was no evidence of a mass execution, which is in stark contrast to what has been established by the evidence in this case and considered elsewhere in this Judgement.<sup>7218</sup> Nor did the report identify where the bodies had originated from, or their cause of death.<sup>7219</sup>

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<sup>7211</sup> See *supra*, para 898.

<sup>7212</sup> 6D2, T 12288.

<sup>7213</sup> 6D2, T 12290-12291, 12438-12439; see also Exhibit D811, p 13.

<sup>7214</sup> See *supra*, para 545.

<sup>7215</sup> See *supra*, para 545. As opposed to 6D2, Ali Gjogaj testified, and the Chamber accepts, that these exhumations were of bodies that were buried in individual graves, and not “mass graves”. Ali Gjogaj, T 564-565, 580. The report of the exhumations compiled by the Crime Police Administration of the MUP in Belgrade on 18 September 2001 also refers to the exhumation of individual grave sites at this location (see Exhibit P1548). The Chamber accepts that the exhumations in Pusto Selo/ Pastasellë described by Ali Gjogaj were the same as discussed by 6D2.

<sup>7216</sup> See *supra*, para 1274.

<sup>7217</sup> 6D2, T 12376-12377. See *supra*, para 546.

<sup>7218</sup> See *supra*, paras 539-542.

<sup>7219</sup> Exhibit P1548, p 2. The Chamber notes that in the report forwarded by the Prizren SUP to the district prosecutor of Prizren on 6 May 1999, reference is made to the origin of these bodies when explaining why it was decided to

Further, the tenor of 6D2's report was to suggest that the individuals killed had in fact been active in combat, and, surprisingly, that the "wider area" where the bodies were discovered was under the control of VJ units.<sup>7220</sup> However, none of the supporting documents referred to in the report, such as the on-site investigation report or the reports of the autopsies conducted on the exhumed bodies, have been submitted in evidence. The Chamber is of the view that the long delayed report created by 6D2 was not directed to a genuine investigation of the killings that took place in the village, but was part of an orchestrated attempt to present a false and incomplete account of the events in which over 100 Kosovo Albanian men were executed by Serbian forces, including MUP forces.

2096. On 9 March 1999, Serbian forces shelled Kotlina/Kotlinë and killed Milaim Loku and Emrlah Kuci in the vicinity of the village.<sup>7221</sup> On 24 March 1999, Serbian forces attacked Kotlina/Kotlinë for a second time and killed not less than 23 Kosovo Albanian men<sup>7222</sup> who were clearly not capable of taking any active part in hostilities at the time. These men were taken as prisoners by armed Serbian forces to two wells to the north of the village, where they were beaten. Some were shot. All were thrown into the wells and those who were not already dead were killed by explosives detonated inside the wells by the Serbian forces.<sup>7223</sup> In the autumn of 1999, the bodies of the men killed on 9 and 24 March were recovered and examined by a forensic team before being reburied.<sup>7224</sup> The Chamber notes that an "on-site investigation" in Kotlina/Kotlinë had been carried out by the forensic department of the Uroševac/Ferizaj SUP on 24 March 1999. The report of this investigation refers to the discovery of a large amount of weapons and equipment believed to have belonged to the KLA. Descriptions of photographs taken as part of this investigation purport to reveal that bodies were discovered "in the vicinity of a shelter in a well" and "in the vicinity of another shelter in a well".<sup>7225</sup> Contrary to Defence submissions,<sup>7226</sup> and as dealt with by the Chamber elsewhere in this Judgement,<sup>7227</sup> there is no evidence that the men who were taken by Serbian forces to the two wells and killed there were members of the KLA. In the Chamber's finding, even if it were the case that these men were KLA, they clearly were unarmed, prisoners of Serbian forces and not taking an active part in hostilities at the time they were killed.<sup>7228</sup> The bodies recovered from the wells were in civilian clothes.<sup>7229</sup> The forensic report by the

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rebury the bodies in the cemeteries of Prizren, Orahovac/Rahovec, Suva Reka/Suharekë and Zrze/Xërxë (see Exhibit D811, p 13).

<sup>7220</sup> Exhibit P1548, p 2. The Chamber notes that reference is made to "traces of high intensity armed conflict" in the general area of the location where the bodies were buried.

<sup>7221</sup> See *supra*, para 1111.

<sup>7222</sup> See *supra*, para 1112-1116.

<sup>7223</sup> See *supra*, para 1116.

<sup>7224</sup> See *supra*, paras 1118, 1428-1430.

<sup>7225</sup> Exhibit D846, p 2.

<sup>7226</sup> Defence Final Brief, para 872.

<sup>7227</sup> See *supra*, para 1126.

<sup>7228</sup> See *supra*, paras 1115, 1126.

<sup>7229</sup> See *supra*, para 1431.

Uroševac/Ferizaj SUP focuses almost entirely on the discovery of weapons and equipment of the KLA in a room of a house in the village, and only deals briefly with the the bodies discovered in the wells. The killings in Kotlina/Kotlinë on 24 March 1999 were not included under the “serious crime” section in the MUP Staff report covering security related events for the date in question.<sup>7230</sup> The forensic report of the “on-site investigation” was, in the Chamber’s finding, deliberately framed to create a misleading impression that bodies were found of KLA fighters. No further investigation was undertaken by Serbian authorities at the time of the killings.

2097. Approximately 60 Kosovo Albanian civilians were killed in Bela Crkva/Bellacërkë, Orahovac/Rahovec municipality on 25 March 1999 by MUP forces. The bodies of the victims were buried by villagers and were exhumed by a British forensic team in June 1999.<sup>7231</sup> On 26 March 1999, just south of Bela Crkva/Bellacërkë in the village of Mala Kruša/Krushë-e-Vogël, over 110 men, some being teenage boys, were herded into a barn and shot by MUP forces; following the shooting, fire was set to the barn and the bodies of the men, and explosives were then used to destroy the barn and its contents. The killings in Bela Crkva/Bellacërkë and Mala Kruša/Krushë-e-Vogël are not included in the serious crimes section in the MUP Staff reports covering security related events for these dates.<sup>7232</sup> There is no indication in the evidence of any attempts by the Serbian authorities to investigate these killings.

2098. On 13 April 1999, VJ and MUP forces conducted an anti-terrorist operation in the village of Slatina/Sllatinë and the hamlet of Vata/Vataj, Kačanik/Kaçanik municipality. During this operation, at least four Kosovo Albanians not taking active part in hostilities<sup>7233</sup> were killed; there is evidence that some of them were mutilated.<sup>7234</sup> The bodies were buried in the village by villagers, and exhumed by KFOR in 1999. The “serious crimes” section of the MUP Staff report covering security related events for 13 April 1999 does not refer to any killings in this area on 13 April 1999.<sup>7235</sup> There is no evidence of any actions taken to investigate these killings.

2099. A joint VJ and MUP action took place in the Carragojs, Erenik and Trava Valleys in Đakovica/Gjakovë municipality on 27-28 April 1999, code-named “Operation Reka”. As established elsewhere in this Judgement, at least 296 Kosovo Albanians not taking any active part

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<sup>7230</sup> See Exhibit D294; see also Exhibit D295.

<sup>7231</sup> See *supra*, para 465.

<sup>7232</sup> See Exhibit D295; Exhibit P1059. The Chamber notes that while the heading of Exhibit P1059 indicates that the time frame for security related events in the report is from 0600 hours on 27 March 1999 to 0600 on 28 March 1999, the incidents referred to in the section “Serious Crimes” relate to 26 March 1999 (see Exhibit P1059, pp 1, 5).

<sup>7233</sup> See *supra*, para 1138.

<sup>7234</sup> See *supra*, para 1138.

<sup>7235</sup> Exhibit D301.

in hostilities were killed by Serbian forces during this operation.<sup>7236</sup> There is no suggestion in the evidence of any investigation by the responsible Serbian authority, the Đakovica/Gjakovë SUP, into the events in area of Operation Reka on 27-28 April 1999. Neither is there evidence of any effort by the VJ to carry out an investigation into these events.<sup>7237</sup> Other evidence indicates that rather than any investigation, there were deliberate efforts to prevent investigation of these killings. Several witnesses observed bodies being removed by Serbian forces at several locations within the area of Operation Reka. Bodies of the dead were loaded onto trucks and transported elsewhere. K72, under orders from the police, participated in the clandestine disinterment of bodies during the night in several locations in the area of Operation Reka in April and May of 1999 and testified that these bodies were loaded onto trucks and transported elsewhere.<sup>7238</sup> While the evidence does not identify to where the bodies were transported, the remains of 295 victims of this operation were exhumed from mass graves in Serbia at the Batajnica SAJ Centre near Belgrade in 2001.<sup>7239</sup>

2100. Four Kosovo Albanian civilians travelling in a convoy on 2 May 1999 in Vučitrn/Vushtrri municipality were killed by Serbian forces that day.<sup>7240</sup> These and other killings reported to the police throughout the month of May were never investigated by the police.<sup>7241</sup> No reports of the MUP Staff covering security related events for the above mentioned dates in evidence record these events. Further, there is no suggestion in the evidence of any action taken to investigate the killings that occurred in Vučitrn/Vushtrri municipality in the month of May 1999, as mentioned above.

2101. The details of the investigation and criminal proceedings relating to the killings in Podujevo/Podujevë on 28 March 1999 have been discussed earlier in this Judgement in the section relating to the Accused's role and knowledge.<sup>7242</sup>

2102. The Chamber's findings set out above demonstrate a pattern in Kosovo involving generally a lack of reporting and investigation of crimes committed by Serbian forces against Kosovo Albanian civilians, from 1998 until at least the end of the NATO campaign in June of 1999. The evidence presented by the Defence of on-site investigations of killings of Kosovo Albanians conducted by the MUP during this period reveal that for the most part, these investigations were manipulated to present the false view that the victims concerned were members of the KLA who

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<sup>7236</sup> See *supra*, para 995.

<sup>7237</sup> See *supra*, paras 996-1000.

<sup>7238</sup> See *supra*, paras 985-991, 1275-1285.

<sup>7239</sup> See *supra*, paras 1492-1493, 1498-1500, 1505-1506.

<sup>7240</sup> See *supra*, paras 1184-1191.

<sup>7241</sup> Other crimes had been reported to the police, such as six civilians reported to be killed on 14 May 1999, and the killing of eight Albanian girls on 23 May 1999 (Shukri Gerxhaliu, T 3104; Shukri Gerxhaliu, Exhibit P513, T 2519-2520).

<sup>7242</sup> See *supra*, paras 1957-1966.

were killed in combat.<sup>7243</sup> While evidence was led, for the most part by the Defence, to demonstrate that criminal or disciplinary measures were taken against members of the MUP who were alleged to have committed criminal offences in Kosovo in 1998 to June 1999, this does not demonstrate that serious incidents such as those in which large numbers of Kosovo Albanian civilians were killed, established by the evidence in this trial, were ever investigated. Instead, reports of “serious crimes committed” contained in MUP reports during the Indictment period relate mainly to incidents of aggravated theft.<sup>7244</sup> A report on “recorded criminal offences and measures taken in the territory of Kosovo from 1<sup>st</sup> July 1998 to 20<sup>th</sup> June 1999” reveals just two instances of murder charges being brought against police officers or reserve police officers in respect of three apparently Kosovo Albanian victims during the Indictment period.<sup>7245</sup> With regard to the other cases of murder recorded in the report, the perpetrators were unknown.<sup>7246</sup> Rather than criminal proceedings against members of the MUP, the evidence indicates that more attention was given to Kosovo Albanians suspected of committing the crime of terrorism.<sup>7247</sup> Moreover, evidence of Aleksandar Vasiljević of a meeting of VJ leadership on 16 May 1999 discloses tension between VJ and MUP over criminal conduct by members of the MUP and indicates that the MUP had no intention of investigating crimes committed in Kosovo by Serbian forces.<sup>7248</sup> Indeed, at another meeting on 10 July 1999, attended by senior members of the MUP including the Accused, Minister Stojiljković made clear the official position of the MUP, saying that there were only 13 MUP members who committed crimes in Kosovo, and that procedures had been initiated accordingly in each case.<sup>7249</sup> The cases dealt with in this Judgement do not appear to be among the

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<sup>7243</sup> See e.g., Exhibits D803, D804, D806, D807. The Chamber notes that these reports are all concluded with a paragraph referring to the “call by the self-styled leader of the terrorist gangs, Hašim Taçi/ Hashim Taçi/ for armed assaults on the police and civilian population on 1 April 1999” and that since this “call” there have been “ever-present terrorist actions” by these terrorist gangs, “and consequently, anti-terrorist actions by members of the police”. In several reports, emphasis is made that the bodies were found in areas of KLA activities.

<sup>7244</sup> See e.g. Exhibits P1058, p 5; P1059, p 5; P696, p 5.

<sup>7245</sup> Exhibit D888, p 10.

<sup>7246</sup> Exhibit D888, pp 84, 101, 103, 107.

<sup>7247</sup> See e.g., Exhibits D808, D809, D810.

<sup>7248</sup> Aleksandar Vasiljević testified that he attended a meeting on 16 May 1999 where VJ General Nebojša Pavković informed members of the VJ leadership that he had suggested to Sreten Lukić, chief of the MUP Staff, that the VJ and MUP set up a joint commission to determine the responsibility for crimes in Kosovo (Aleksandar Vasiljević, T 5674). According to Vasiljević, Pavković complained of a degree of obstruction on the part of the MUP organs in Kosovo to attempts to deal with these problems. Pavković told those present at the meeting that in response to this proposal, the MUP only sent a letter to the Priština Corps in which they stated that the VJ was responsible for the corpses of approximately 800 persons “in terms of committing crimes”. It was the evidence of Vasiljević that according to Pavković, Lukić did not accept the proposal to establish a joint commission (Aleksandar Vasiljević, T 5674-5675). As a result, Pavković set up his own commission which established that there were 271 corpses in the areas where the army was active, and that there were 326 corpses in the area where MUP units were active, which amounted to a total of 597 persons, Aleksandar Vasiljević, T 5675. While stating that, with respect to the bodies found in the area where the VJ was active, it was concluded that these persons “were not victims of crimes, but they were killed as a consequence of operations”, either by the VJ or by NATO forces, he conceded that Pavković did not provide any details about their cause of death at the 16 May 1999 meeting (Aleksandar Vasiljević, T 5775-5677).

<sup>7249</sup> Aleksandar Vasiljević, T 5725-5726; see also Vlastimir Đorđević, T 10101.

13 contemplated by the Minister. Indeed, the facts found by the Chamber demonstrate that the official MUP position was gravely misleading.

2103. As the evidence in this case has confirmed it was not merely a matter of a consistent failure by the MUP to ensure it fulfilled its duty of duly investigating and reporting to appropriate authorities apparent or possible cases involving killings and other grave crimes by MUP personnel and at times VJ personnel. The evidence discloses a consistent pattern of conduct involving MUP personnel, and at times VJ, by which complex efforts were made to prevent the discovery of killings, and to frustrate their investigation. Typically, bodies of Kosovo Albanians killed by Serbian forces were removed from the crime scenes and, in most cases, buried in temporary graves in other locations, before being disinterred and clandestinely transported hundreds of kilometres to isolated locations in Serbia where they were reburied in unmarked mass graves, or, in a few cases, clandestinely transported directly to isolated locations in Serbia for burial in unmarked mass graves. Those buried in Serbia remained undiscovered for over two years until the bodies were located as a result of an investigation triggered by reports of the discovery of bodies of Kosovo Albanians in a refrigerated truck in the Danube, near the village of Tekija.

2104. The incidences of burning of the homes and villages of Kosovo Albanian civilians and their forced expulsion or deportation from Kosovo were similarly not subject to any investigation or prosecution.

2105. As a result of the pattern of non-reporting, non-investigation, and the operations to remove bodies from the scene of the crimes, for the most part the killings and other serious crimes established in this Judgement were not investigated at the time and the perpetrators were not prosecuted.

### iii. VJ efforts to conceal crimes

2106. The evidence demonstrates that the legal system provided the jurisdiction and the effective means to investigate and prosecute members of the VJ for the types of crimes charged in the Indictment.<sup>7250</sup> However, military authorities did not have jurisdiction over members of the

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<sup>7250</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), 16651-16653, 16714; Radomir Gojović, T 10399-10401, 10453; *see* Exhibit P1370. The Chamber notes the Criminal Code of Serbia (Exhibit P50) constituted federal law that applied to all citizens, regardless whether they were civilians or members of the army (*see* Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16653; Radomir Gojović, T 10399-10400). With respect to the crime of murder, the military prosecutor could proceed under Article 47 of the Criminal Code of Serbia (Exhibit P50), or under Article 142 of the Criminal Code of the SFRY (Exhibit P1370). Gojović testified that fewer cases were processed as war crimes under Article 142 of the Criminal Code of the SFRY. Proceedings under Article 142 were mostly cases where a superior officer ordered a subordinate to commit a crime. Murders committed by members of the VJ were usually dealt with as ordinary or multiple murders pursuant to the Criminal Code of Serbia



MUP.<sup>7251</sup> The evidence of Radomir Gojović, who until 16 April 1999 was President of the military court in Belgrade, and thereafter, was the Chief of the Legal Department of the Ministry of Defence,<sup>7252</sup> revealed that the vast majority of cases dealt with by the military legal system concerned the failure of men in Serbia to respond to mobilization call-ups, especially after 24 March 1999, and incidents of desertion, as well as theft and robbery. The evidence adduced at trial suggests that there were very few cases relating to serious crimes by members of the VJ such as murder, rape and property destruction against members of the Kosovo Albanian civilian population.<sup>7253</sup> With respect to the crimes of deportation and forcible transfer, Gojović sought to explain the lack of cases on the basis that the prosecutor formed the view that there was no intention on the part of VJ forces to expel Kosovo Albanians across the border since it was illegal under the law in Yugoslavia to expel one's own citizens.<sup>7254</sup> The idea that a crime could not have been intended by the VJ because it was against the law is completely untenable in the view of the Chamber. Under such reasoning, no crime allegedly perpetrated by a VJ member would ever be prosecuted. Gojović also advanced the view that the only relevant movement of civilians in Kosovo was when people left their homes because of combat activity<sup>7255</sup> and that no investigation was conducted for this reason. This view is contradicted by the overwhelming strength of evidence to the contrary in this case and is not accepted by the Chamber. The statistics in the charts discussed by the witness cannot be reconciled with the large body of evidence before the Chamber of mass executions, property destruction and expulsions of Kosovo Albanian civilians in so many villages throughout Kosovo during the Indictment period, in the course of operations in which the VJ participated.

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(Exhibit P50) because the sentencing for this crime was much higher than for a war crime pursuant to Article 142 of the SFRY Criminal Code (*see* Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16652-166533, 16688; Radomir Gojović, T 10399-10401).

<sup>7251</sup> Radomir Gojović, T 10378-10379.

<sup>7252</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16642-16643; Radomir Gojović, T 10334-10336.

<sup>7253</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16680-16687; Radomir Gojović, T 10406-10411, 10413-10415, 10434-10435; *see also* Exhibits D507-D511. A summary overview of criminal proceedings instituted by military courts against members of the VJ who committed crimes against the Kosovo Albanian ethnic civilian population in Kosovo between 24 March 1999 and 10 June 1999 reflects that a total of 382 of such proceedings were initiated against members of the VJ. Of these 382 proceedings, only eight related to war crimes against civilians, 11 were recorded multiple murders committed by the VJ, nine were murder and complicity in murder, one case of voluntary manslaughter, and eight cases of involuntary manslaughter. Only one indictment was filed against a member/members of the VJ for the crime of rape, but no victim was reported. The total number of victims for the proceedings relating to war crimes, murder and manslaughter comprised 37 persons. 364 proceedings related to incidents of robbery, aggravated theft and theft, and the seizing of vehicles. (Exhibit D510, pp 2-3; *see also* Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16687-16688; Radomir Gojović, T 10440-10441). Explaining the low level of victims recorded in the overview, Gojović testified that there was an atmosphere of fear and a reluctance to report crimes, adding that the perpetrators of crimes were often not found (Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16685-16687). In the Chamber's finding, the very limited number of crimes committed by VJ members recorded in the overview, in the face of the evidence of the very large number of crimes committed by Serbian forces including the VJ during the Indictment period, reflects an attempt by the VJ to minimize its role in the commission of serious crimes against Kosovo Albanians.

<sup>7254</sup> Radomir Gojović, T10455.

<sup>7255</sup> Radomir Gojović, T 10455.

2107. One matter which significantly contributed to the absence from the statistics discussed by the witness of almost all cases of serious crimes of the nature of those established in the Judgement was, no doubt, in the view of the Chamber, the lack of official reports of such crimes by army officers who had the duty to report such crimes committed by subordinates.<sup>7256</sup> The Chamber notes Gojović's evidence that a VJ officer likewise had a duty to report crimes committed by members of the MUP.<sup>7257</sup> The Chamber therefore finds that, as in the case with a lack of reporting by the MUP of serious crimes, a reasonable inference from the failure to include such information in official VJ reports is that there was an intention to conceal the commission of crimes by members of the VJ. Evidence indicates that some VJ daily operations reports completely omitted reference to operations in which the VJ was involved in Kosovo during which crimes were committed.<sup>7258</sup> Moreover, military courts lost their jurisdiction to try cases involving offences by the VJ at the end of the war, unless a case was at the investigative stage or an indictment had been confirmed; hence almost all of the few recorded cases of offences by VJ against Kosovo Albanians were transferred at the end of hostilities to the civilian district courts in Serbia proper, pursuant to the law on criminal procedure.<sup>7259</sup> The evidence does not suggest that there was any effective follow up mechanism in such cases or that the VJ had any effective basis on which it could or did maintain any interest in any cases concerning its personnel which were transferred to the civilian courts. Indeed, Radomir Gojović was not able to give any information about the cases which the military authorities transferred to the civilian courts.<sup>7260</sup>

#### iv. Conclusion on efforts to conceal crimes

2108. The Chamber concludes that there was a conspiracy of silence at all levels of the MUP and the VJ, as is evidenced from the almost complete absence of any reports, records or minutes of meetings, whether at the highest political, MUP or VJ levels, or of the Joint Command or operative

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<sup>7256</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16706, 16761; Radomir Gojović, T 10330-10331, 10375.

<sup>7257</sup> Radomir Gojović, T 10453.

<sup>7258</sup> See e.g. Exhibit P902, p 9, the minutes of Collegium of the Chief of the General Staff of the VJ of 21 January 1999, in which Colonel General Dimitrijević noted that the VJ's involved in the Račak/Raçak operation on 15 January 1999 was omitted from the daily operations report of the Priština Corps; the report of 16 January 1999 merely stated that the MUP had conducted a mopping operation in Račak/Raçak village and that "there were about sixty-something killed".

<sup>7259</sup> Radomir Gojović, Exhibit D496 (*Milutinović* transcript), T 16689, 16723, 16728-16730; Radomir Gojović, T 10380, 10384, 10402-10404. Gojović testified that the reason why there were not many completed cases in a list detailing the number of convictions for serious crimes between 24 March and 15 May 1999 (Exhibit D507) is that investigative procedures for such offences took time, and the cases were thus handed over to civilian courts when the war ended (Radomir Gojović, T 10402-10403, 10407). The Chamber also notes Gojović's evidence that two of eight cases of war crimes against civilians recorded in Exhibit D510, an overview of criminal proceedings against members of the VJ against ethnic Kosovo Albanians in Kosovo from 24 March 1999 to 10 June 1999, were transferred to the civilian courts after the war, but he had no knowledge of means of knowledge about the eventual outcome of those cases (Radomir Gojović, T 10440-10442).

<sup>7260</sup> Radomir Gojović, T 10442.

elements of the MUP or VJ, of any information about the progress, success or failure of the efforts of Serbian forces to deal with the KLA, the Kosovo Albanian population, and to ensure there would be no support for a NATO ground force. In the view of the Chamber, it is not feasible to accept that these subjects, which were critical to the very survival of the Serbian government and nation, and were the central focus of the primary effort of the government and Serbian forces, went unreported to, and unknown by, the highest levels of government, MUP, and VJ. In the Chamber's finding, either all written records have been destroyed, or there was a very determined effort at all levels to avoid written records so that there could be nothing on which international investigations could proceed, or both. This leads to the finding that there was reporting, oral and/or written, and knowledge at all top levels, political, VJ and MUP, of the actual activities on the ground in Kosovo, and the progress of operations. This inference is further supported by the few written records that have been found, and conduct which evidences knowledge at the most senior Serbian levels; these records include minutes of meetings, the posting of all available combat ready police to Kosovo (including paramilitaries), and conduct such as the removal and concealment of bodies.

h. Was there a plan to conceal the killings of Kosovo Albanian civilians during the Indictment period?

2109. The Prosecution has argued that the MUP's systematic efforts to conceal the bodies of Kosovo Albanians killed by Serbian forces throughout the Indictment period, by transporting them away from the site where they were killed, often burying them in temporary local mass graves, and subsequently disinterring these bodies to be transported to larger mass graves in Serbia, was carried out in furtherance of the charged JCE and provides proof of the existence of the JCE in this case.<sup>7261</sup>

2110. The Defence argues that there is no link between the acts committed on the ground attributable to "irresponsible individuals" and any JCE as alleged in the Indictment.<sup>7262</sup>

2111. While the Chamber is of the view that the lack of reporting and investigations into the commission of crimes by members of the MUP and VJ against Kosovo Albanian civilians alone is indicative of a plan to conceal these killings, as is the manner in which the bodies of victims were dealt with, it now turns to consider other available evidence suggesting the existence of such a plan, in particular, amongst the alleged co-perpetrators of the JCE.

2112. As discussed earlier, in March 1999, a working meeting took place in President Slobodan Milošević's office, attended by, *inter alios*, the President himself, Minister Vlado Stojiljković, the

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<sup>7261</sup> Prosecution Final Brief, paras 525, 526.

<sup>7262</sup> Closing Arguments, T 14462.

Accused Vlastimir Đorđević, and Radomir Marković, the then Chief of the RDB. This is contained in a report dated 25 May 2001 by the MUP Working Group.<sup>7263</sup> This Working Group had been set up in May of 2001 to investigate the discovery of bodies in a refrigerated truck in the Danube in 1999. The report notes that at the meeting, the Accused raised the issue of “clearing up the terrain” in Kosovo, and that in this regard, President Slobodan Milošević ordered Minister Stojiljković to take measures to remove all traces which could indicate the existence of evidence of “the crimes committed” there.<sup>7264</sup> This report also suggested that there was information to the effect that at a subsequent MUP Collegium meeting, also held in March 1999, Minister Stojiljković issued an order to the Accused Vlastimir Đorđević and Dragan Ilić to carry out the task of “clearing up the terrain” in Kosovo with the aim of removing evidence of civilian victims who could potentially become the subject of investigations by the Tribunal.<sup>7265</sup> The information concerning these two meetings was provided by the chief of the RDB, Radomir Marković, in a statement he gave to members of the RDB while he was in prison.<sup>7266</sup> The Working Group did not have this statement, but notes were made of the contents of the statement when it was seen by a member of the Working Group during a briefing with then Minister of the Interior Dusan Mihajlović in May 2001.<sup>7267</sup>

2113. Other evidence confirms the order issued by Stojiljković to Đorđević at the instruction of Slobodan Milošević regarding the concealment of bodies of Kosovo Albanian civilians at the meeting in March 1999. According to this evidence, a truck containing bodies arrived at the 13 *Maj* Batajnica Centre in April 1999. The Accused Vlastimir Đorđević was phoned by a witness to ask for instructions or information about the truck, who told him that the territory in Kosovo was being mopped up, “that the [truck] was to be put away on our premises”, that it was a “number one secret”, and that he [Vlastimir Đorđević] was to inform President Milošević about this.<sup>7268</sup>

2114. A written statement by Slobodan Borisavljević, the Accused’s Chef de Cabinet at the relevant time, provided to Deputy Chief of the Crime Investigation Police Administration, Dragan Karleuša, records that a meeting was held in April 1999 at which the Accused informed Dragan Ilić, Head of the Crime Police Administration in Belgrade and member of the MUP Collegium,<sup>7269</sup> of whom the Accused was the immediate superior,<sup>7270</sup> that a decision had been reached to clear up the

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<sup>7263</sup> See Exhibit P387, p 3.

<sup>7264</sup> See Exhibit P387, p 3.

<sup>7265</sup> See Exhibit P387, p 3; *see supra*, paras 1289, 1387-1394.

<sup>7266</sup> K84, T 2007-2009.

<sup>7267</sup> K84, T 2148-2160.

<sup>7268</sup> See Confidential Annex.

<sup>7269</sup> Exhibit D208, dated 23 May 2001.

<sup>7270</sup> Ljubinko Cvetić, T 6667. The Chamber notes the evidence of Defence witness Milos Pantelić that Dragan Ilić received his instructions directly from the Minister; he appears to have based this conclusion, however, solely on his conversations with Dragan Ilić (*see* Milos Pantelić, T 12099, 12124; *see also* 6D2, 12227-12228). For this

battlefields in Kosovo and that it was necessary to send professional assistance to the field.<sup>7271</sup> Borisavljević is recorded as having stated that for this purpose, it was decided to send Vladimir Aleksić, Chief of the Crime Investigation Department, and Desimir Radić, Chief of the Department of Economy of the MUP, to the “Priština Headquarters” of the MUP as “professional assistance”.<sup>7272</sup>

2115. Živko Trajković, when testifying about his conversation with the Accused in early June 1999 concerning the burial of bodies at the Batajnica SAJ Centre, recalled that Vlastimir Đorđević said it was a decision by people more important than they were. Trajković, moreover, understood that the decision to bury bodies at the Batajnica SAJ Centre was taken in the context of sanitation and the clearing of the terrain in Kosovo; this he saw as under the responsibility of Dragan Ilić, who was assigned as “team leader” for the clearing of the battle-fields in Kosovo.<sup>7273</sup> Trajković had seen Dragan Ilić at the MUP Staff in Priština/Prishtinë sometime between March and June of 1999.<sup>7274</sup> As he said, nothing happened in the territory of Kosovo without the knowledge of the MUP Staff in Priština/Prishtinë.<sup>7275</sup>

2116. In his evidence, the Accused agreed that Ilić visited Kosovo twice during the Indictment period, “on [the] minister’s orders, that is to say the minister of interior”.<sup>7276</sup> However, it was the evidence of the Accused that Ilić told him on 2 June 1999 that he had gone to Kosovo to provide SUPs with instructions on how to improve the work of on-site investigations during war time conditions.<sup>7277</sup> Contrary to this, however, at a Joint Command meeting on 1 June 1999 in Priština/Prishtinë, the Accused told those present that General Ilić could not attend the meeting because he was busy “attending some tasks that had to do with sanitation and hygiene measures in the field”.<sup>7278</sup> The Chamber is aware the Defence submits there is no evidence of a Joint Command meeting on 1 June 1999, and that the Accused did not attend such a meeting.<sup>7279</sup> The Chamber, however, considers the evidence of Vasiljević on this matter reliable.<sup>7280</sup> Further, it does not accept

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reason, and because the Chamber considered Ljubinko Cvetic a credible witness, it has relied on his evidence in this respect.

<sup>7271</sup> See Exhibit P390.

<sup>7272</sup> See Exhibit P390; see also K84, T 2024-2025, 2172.

<sup>7273</sup> Živko Trajković, T 9126-9127, 9129.

<sup>7274</sup> Živko Trajković, T 9129.

<sup>7275</sup> Živko Trajković, T 9130, 9138.

<sup>7276</sup> Vlastimir Đorđević, T 9746-9747, 9987.

<sup>7277</sup> Vlastimir Đorđević, 9747, 9987.

<sup>7278</sup> Aleksandar Vasiljević, T 5694; see also Exhibit P885. Vasiljević testified that in his notes of this meeting, he only recorded the names of those who made contributions at the meeting. Đorđević only interjected to state that Dragan Ilić could not be present, which the witness did not record in his notes (Aleksandar Vasiljević, T 5702; see Exhibit P885).

<sup>7279</sup> Closing Arguments, T 14477-14478.

<sup>7280</sup> The Chamber notes that in support of its submission, the Defence relies on the evidence of the Accused himself as well as on that of Defence witness Momir Stojanović (see Closing Arguments, T 14477-14478; see also Defence Final Brief, paras 455, 458, 460-461). The Chamber, however, accepts the evidence of Vasiljević on this matter as

the Accused's evidence that Ilić had been sent to Kosovo to improve the work of on-site investigations during conditions of war. The evidence satisfies the Chamber that Ilić was sent to Kosovo to coordinate "clearing the terrain". While operations to "clear the terrain" may be legitimate, the evidence discussed above satisfies the Chamber that in this context this term refers to the concealment of bodies of persons, killed by Serbian forces during anti-terrorist operations, including persons taking no active part in hostilities. Clearing the terrain was directed, in the finding of the Chamber, to "removing" all traces indicating evidence of crimes committed by Serbian forces in Kosovo, as ordered by President Milošević when the Accused raised this issue in March of 1999.<sup>7281</sup>

2117. While it is well aware that the evidence of the meetings in March of 1999 is not first hand, the Chamber is also aware that there are a number of pieces of evidence which tend, in combination, to confirm their underlying truth. The Chamber considers, on the basis of the entirety of the evidence viewed together, that it is established that at one or more meetings in March 1999 and thereafter the "clearing of the terrain" in the context of concealing the bodies of victims killed by Serbian forces in Kosovo was discussed, as dealt with above.

i. MUP officials involved in the concealment of bodies

2118. The evidence discussed above, in the context of the events, persuades the Chamber; and it finds, that the only reasonable inference to be drawn is that the operations to remove bodies directly from original crime scenes, or from graves in cemeteries where they had been buried by family or co-villagers, in many, but not all cases, to bury them in temporary graves in Kosovo and then subsequently disinter them and clandestinely rebury them in mass graves in isolated locations in Serbia, or in some cases to bury them directly in those mass graves, was planned and coordinated at the highest levels in Belgrade, with supporting implementation in Kosovo. The Accused was the one person in charge of all MUP personnel involved. The findings by the Chamber in Chapter VI reveal that the body concealment operation was planned from the very beginning of the operations by Serbian forces in Kosovo on 24 March 1999, and that this planning could not have been sustained at a local level. In the finding of the Chamber, political figures, including Slobodan Milošević and Vlastimir Đokić, and high ranking MUP officials, including the Accused, were involved in the concealment of bodies or at least had knowledge of this activity.

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credible and therefore rejects the Defence submission that there was no meeting on 1 June 1999 held by the Joint Command, and that the Accused was not present at this meeting.  
<sup>7281</sup> See *supra*, para 2025.

2119. The Chamber will not make more specific findings about the involvement in or knowledge of other specific senior political, MUP and VJ officials in the concealment of the bodies of Kosovo Albanians killed in Kosovo during the Indictment period, as they have not been specifically charged in this Indictment. There is, however, clear reason from the evidence to consider it likely that a number of persons had direct involvement in, or at least knowledge of, the concealment of bodies. Some of these gave evidence in this trial and for this reason the Chamber has found it necessary, in particular, to look with considerable care at the evidence of witnesses such as SUP Chief Časlav Golubović. The Chamber notes in this context that both President Slobodan Milošević and Minister Vljako Stojiljković had died before the trial commenced.

2120. The Chamber will not make more specific findings about the involvement or knowledge of General Sreten Lukić in the concealment of bodies. Lukić has stood trial before the Tribunal on a directly related Indictment and, subject to a pending appeal, he has been sentenced to serve a term of imprisonment of 22 years in respect of his responsibility for crimes committed in Kosovo. It is noted that Sreten Lukić was head of the RJB in 2001 and following, when the issue of the concealment of bodies from Kosovo came to public attention and was the subject of investigation in Serbia by the Working Group.

j. VJ involvement in concealment of bodies

2121. Concerning the involvement of the VJ in the body concealment operation, the Chamber finds that save for occasions on which members of the VJ, acting either on their own or together with members of the MUP, participated in the collection of bodies in areas where operations by Serbian forces had been carried out,<sup>7282</sup> the evidence does not establish that the VJ or its leadership was directly involved in the body concealment operations which have been discussed above.

(iii) Plurality of persons

2122. The Prosecution submits that, in addition to the Accused, the members of the joint criminal enterprise included Slobodan Milošević, Nikola Šainović, Vljako Stojiljković, Sreten Lukić, Radomir Marković, Obrad Stevanović, Dragan Ilić, Dragolub Ojdanić, Nebojša Pavković and Vladimir Lazarević.<sup>7283</sup> Although the Indictment also alleged that Milan Milutinović was a member of the JCE,<sup>7284</sup> the Prosecution stated in its Final Trial Brief that it had not led sufficient evidence of

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<sup>7282</sup> The Chamber has established, elsewhere in this Judgement, that on some occasions, members of the VJ were directly involved in transporting some of the bodies collected from the scenes of operations to locations where they were then buried in improvised graves. *See supra*, paras 553, 985, 988.

<sup>7283</sup> Indictment, para 20; Prosecution Final Brief, paras 8 and 14.

<sup>7284</sup> Indictment, para 20.

his participation in the JCE to establish this beyond reasonable doubt.<sup>7285</sup> The Chamber will thus proceed on the basis that the allegation that Milan Milutinović was a member of the JCE has been withdrawn. The Prosecution further submits that other members of the JCE included members of command and coordinating bodies and members of the “forces of the FRY and Serbia”<sup>7286</sup> who shared the intent to fulfil the purpose of the JCE.<sup>7287</sup> Insofar as crimes in the Indictment were committed by non-members of the JCE (who were members of the “forces of the FRY and Serbia”), the Prosecution alleges that liability still attaches to the Accused because the physical perpetrators of the crimes were used by participants in the JCE.<sup>7288</sup>

2123. The Defence denies that a plurality of persons existed.<sup>7289</sup> It submits that the Prosecution only “very generally lists several groups” that it alleges were “operating collaboratively”.<sup>7290</sup> It argues that what the Prosecution alleges is a plurality of persons is actually the “unnamed, undefined members of an entire country’s governmental system”.<sup>7291</sup> The Defence further argues that the Prosecution has “abandoned” its theory posited in the Indictment that the Supreme Defence Council exercised control over the MUP and its subordinate units, noting that the Prosecution has used the word “coordination” rather than “resubordination” in relation to the VJ activities with the MUP.<sup>7292</sup> The Chamber need not make findings on whether the Defence’s interpretation of the Prosecution’s allegations is correct; it need merely to assess whether such allegations have been proved.

2124. The Defence contends that the Joint Command amounted to series of meetings held to allow the VJ and MUP to share information about the situation in the field in Kosovo; that these meetings did not continue to be held after October 1998, and that there was never a plan to expel a population or commit crimes expressed in these meetings.<sup>7293</sup> The Chamber has rejected these arguments in another part of the Judgement.<sup>7294</sup> The Defence further argues that, since the attendees of the Joint Command meetings differed from meeting to meeting, this indicates, that there was no “defined

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<sup>7285</sup> Prosecution Final Brief, para 15.

<sup>7286</sup> “Forces of the FRY and Serbia” in the Indictment encompasses the VJ, including the Third Army, in particular the Priština Corps, and other units temporarily or permanently deployed to Kosovo or otherwise participating in the conflict; and the MUP, including: PJP units, the SAJ, police reservists, SUP personnel, the JSO, RDB operatives, the Priština Military District and military-territorial units within it, civil defence units, civil protection units, civilian groups armed by the VJ and/or MUP and formed into village defence units acting under the control and authority of the VJ and/or the MUP and volunteers incorporated into units of the VJ and/or the MUP. Indictment, para 20.

<sup>7287</sup> Indictment, para 20; Prosecution Final Brief, para 8.

<sup>7288</sup> Prosecution Final Brief, para 9.

<sup>7289</sup> Defence Final Brief, para 294.

<sup>7290</sup> Defence Final Brief, para 295.

<sup>7291</sup> Defence Final Brief, para 302.

<sup>7292</sup> Defence Final Brief, para 297.

<sup>7293</sup> Defence Final Brief, para 298.

<sup>7294</sup> *See supra*, paras 240-252.



plurality”.<sup>7295</sup> The Chamber is not convinced by this reasoning, which seems to equate the membership of the Joint Command with the membership of the JCE. While the Joint Command may have facilitated the implementation of the common plan, this does not entail that all members of the Joint Command were necessarily members of the JCE or intended the crimes committed pursuant to it.

2125. The Defence states that the “countless meetings” between officials of the VJ and MUP in 1998 and 1999 were to address the situation caused by the terrorist actions in Kosovo and protect the citizens of Serbia from such acts of violence.<sup>7296</sup> It submits that since the 1998 October Agreements set the scene for a peaceful resolution of the Kosovo issue, there was subsequently no continued need for Joint Command meetings, and that the FRY instead focused its attention on humanitarian efforts, such as the “Temporary Executive Council”.<sup>7297</sup> The Chamber has considered the evidence of the meetings of the VJ and MUP post the 1998 October Agreements, and found, to the contrary, that Joint Command meetings did continue and further, that such meetings demonstrated an intention on the part of the leaders of those bodies to deceive the KVM into thinking that they were abiding by the October Agreements when they were, in fact, planning on further operations, in furtherance of the JCE.

2126. The Chamber has found that a common plan existed among the senior political, military and police leadership to modify the ethnic balance of Kosovo by waging a campaign of terror against the Kosovo Albanian civilian population, a plan which included murders, deportations, forcible transfers and the destruction of religious and culturally significant property. The common plan required the agreement and participation of political leaders of the FRY and Serbia, the leadership of the VJ, including the relevant Corps in Kosovo, and the MUP and the leadership of the relevant administrations of which it was comprised and its Staff in Kosovo. The evidence that persons in these roles acted in unison to effect the JCE has been described in detail in the Judgement, and includes the establishment and functioning of the Joint Command to plan and coordinate operations of the MUP and VJ from June 1998 until at least June 1999, minutes of meetings of the VJ Collegium, the Supreme Defence Council, the VJ General Staff, the MUP Collegium, the MUP Staff for Kosovo, where joint operations were planned and ordered, orders effectuating such plans, and evidence that such plans were implemented on the ground, and monitored and reported on by these same persons. In addition, as described at length in this Judgement, there is evidence that at least some JCE members were directly involved in the concealment of crimes committed pursuant to the common plan.

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<sup>7295</sup> Defence Final Brief, para 299.

<sup>7296</sup> Defence Final Brief, para 300.

<sup>7297</sup> Defence Final Brief, para 301.

2127. In regard to the political component of the membership of the JCE, the Chamber is satisfied that the evidence has established that Slobodan Milošević, President of the FRY and Nikola Šainović, Deputy Prime Minister of the FRY responsible for Kosovo, were members of the JCE. In respect of the MUP membership of the JCE, the Chamber is satisfied that Vljako Stojiljković, Minister of the Interior, the Accused Vlastimir Đorđević, Chief of the RJB, Radomir Marković, Chief of the RDB, Sreten Lukić, head of the MUP Staff for Kosovo, Obrad Stevanović, chief of the RJB Police Administration and Dragan Ilić, chief of the RJB Crime Police Administration, were members of the JCE. With regard to the VJ component of the JCE, the Chamber accepts that Dragolub Ojdanić, Chief of the VJ General Staff/Supreme Command Staff, Nebojša Pavković, Commander of the VJ 3<sup>rd</sup> Army and Vladimir Lazarević, Commander of the Priština Corps, were members of the JCE.

2128. There is abundant evidence that the campaign of terror orchestrated against the Kosovo Albanian civilian population in 1999 was a coordinated effort reaching from the senior political leadership, through the Supreme Defence Council and the Joint Command, to the 3<sup>rd</sup> Army and the Priština Corps, the MUP and through the use of the SUPs and local and border police, as well the special police units (PJPs) and special anti-terrorist units. While the Chamber is unable to make an exact determination as to who were the participants and who were perpetrators, it is clear that certain members of such units worked together in the implementation of the common purpose. The forces of the MUP and the VJ worked in a highly coordinated manner, and units and individual members were drawn into the plan as participants and perpetrators, while the overall common plan was directed by at least the core members of the JCE identified above. The scale of the operations across Kosovo, the pattern of crimes committed against Kosovo Albanian civilians, and the multitude of different units of the VJ and MUP involved in such actions persuade the Chamber that there was a plan, involving a plurality of persons, to modify the demographic balance of Kosovo by a campaign of terror and violence, and that these persons participated in the common purpose and shared the intent to commit such crimes.

(iv) Conclusions on existence of the common plan

2129. While the Chamber accepts that the operations leading to the deaths of the Kosovo Albanian victims the subject of the murder charges in the Indictment may have been conducted under the guise of anti-terrorist operations, and that may have been among the objectives, it is starkly clear from the evidence that these operations were not limited to members of the KLA. The nature of the crimes that have been established clearly demonstrates that the target of this campaign was the Kosovo Albanian population. In the finding of the Chamber, the operations were typically aimed at terrorising the Kosovo Albanian civilian population in cities, towns and villages. This was

achieved by a variety of means. Populated areas were shelled by Serbian forces using heavy weapons. Armed troops invaded populated areas and terrorized the people there by threats, violence and killings. Houses and other premises of Kosovo Albanian people were set on fire often with the effect that they were no longer able to be used. Whole villages were destroyed by shelling and fire. In many cases, the Kosovo Albanian men were separated from the women and children before they were killed. Other incidents demonstrate a different *modus operandi* by the Serbian forces, in that men, women and children alike were killed together, as a group. The killing of individual Kosovo Albanians or smaller groups together, in view of the Chamber, was often aimed at setting an example, and warning others that they would undergo the same fate if they did not leave their homes, and indeed, Kosovo. The civilian population, or those of it who were not killed, in many cases were forced to leave their homes, villages or towns, in most cases to join others to be transported across a nearby border or to join columns of displaced persons directed by Serbian forces across borders. The effect of the actions of Serbian forces to terrorise Kosovo Albanians was so grave that many fled from their homes, villages or towns to escape from Serbian forces without actually being ordered to do so. In these circumstances it is clear their decision to leave was not a matter of choice but was driven by fear of the consequences of staying.

2130. The Chamber is satisfied, therefore, on the basis of the evidence set out in previous Chapters of this Judgement, and in particular Chapter VI, that Serbian forces implemented a campaign of terror and extreme violence in Kosovo directed against Kosovo Albanian people starting in 1998 and continuing throughout the war. The deportations, murders, forcible transfers and persecutions were typical features of the campaign of terror and violence. The Chamber notes, however, that the ordinary MUP or VJ member engaged in this campaign may have had only a limited appreciation of the scale and full nature of the plan, but that scale and nature and the structure of the coordinated forces which implemented it demonstrates, in the finding of the Chamber, the existence of a leadership reaching across the political, military and police arms of governments of the FRY and Serbia who were directing and coordinating the events on the ground. The existence of the common plan as alleged in the Indictment is therefore established.

(b) Were the crimes established in this Judgement part of the common plan?

2131. The Chamber has found there was a JCE consisting of a campaign of terror and violence by Serbian forces against Kosovo Albanians with the purpose of changing the demographic composition of Kosovo as described in the previous section. It has also already found elsewhere in this Judgement that crimes of deportation, other inhumane acts (forcible transfer), murder and

persecutions as alleged in the Indictment took place.<sup>7298</sup> It now turns to the question of whether these crimes were within the object of this JCE (JCE I), or whether, in the alternative, the crimes of murder and persecutions as alleged in the Indictment were the natural and foreseeable consequences of the JCE (JCE III).<sup>7299</sup>

2132. The Defence has sought to argue that the acts charged in the Indictment were “isolated incidents perpetrated by unknown individuals” and as such not part of any sort of plan.<sup>7300</sup> The evidence discussed in Chapter VI of this Judgement, however, discloses the contrary. The crimes were committed in the course of pre-planned and coordinated actions by Serbian forces. As noted earlier, the orders and directives pertaining to such operations did not explicitly order the commission of crimes. The written language of such orders and directives was almost always vague, and deliberately so, in the finding of the Chamber, so that VJ and MUP commanders and the units in the field were able to implement them as they saw fit. For example, orders referred to the need to “clear the terrain”,<sup>7301</sup> to establish “combat control” over certain territorial axes,<sup>7302</sup> to “provide support in smashing and destroying the ŠTŠ”,<sup>7303</sup> or to “break up and destroy” KLA forces.<sup>7304</sup> The calculated imprecision of these orders allowed, indeed encouraged, an interpretation that included the execution of KLA fighters, suspected KLA fighters and people perceived as KLA supporters and the “clearing” of entire swathes of territory of Kosovo Albanian residents, across the borders, by all means available.

2133. In the finding of the Chamber it is significant to understanding the true meaning of these orders and directives that the VJ and MUP forces implemented them in the majority of cases in a manner that encompassed the forced expulsion of Kosovo Albanian civilians from their homes, the burning of Albanian houses, villages and property, the killing of Kosovo Albanian civilians, particularly men and boys of fighting age, and the execution of captured KLA fighters. This was not a new or surprising development. Conduct of this nature, especially the killing of Kosovo Albanian civilians, in particular men and boys of fighting age, was already apparent from what had occurred in anti-terrorist operations during the Serbian offensive of 1998. The most glaring crimes committed in the course of such operations included the killings of entire families of Kosovo Albanians in the case of the Jashari family in March 1998 and the Delilaj family in September 1998. By the end of 1998 there was already an established pattern of conduct by VJ and MUP

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<sup>7298</sup> See *supra*, paras 1701-1703, 1753, 1854-1855.

<sup>7299</sup> Para 21 of the Indictment does not allege JCE III in respect of deportation and forcible transfer.

<sup>7300</sup> See *e.g.*, Defence Final Brief, paras 311, 664.

<sup>7301</sup> See *e.g.*, Exhibit P957, p 3; Goran Stoparić, Exhibit P493, paras 7, 45-46; K54, Exhibit P782, p 2; K54, T 4367.

<sup>7302</sup> See *e.g.*, Exhibit P896, p 4, item 6.4.

<sup>7303</sup> See *e.g.*, Exhibit P1235, item 5.1.

<sup>7304</sup> See *e.g.*, Exhibit P969, p 1; Exhibit P970, p 2; Exhibit P1382, p 2; Exhibit P766, p 2; Exhibit P767, p 2; Exhibit P350, p 2; Exhibit P961, p 2; Exhibit D104, p 2.

forces engaged in purported anti-terrorist activities by which, routinely, VJ and MUP went far beyond mere policing and arresting terrorists and terrorist suspects or establishing control over a certain part of Kosovo territory.

2134. Nevertheless, the Račak/Raçak operation on 15 January 1999, another purportedly anti-terrorist operation, which resulted in the killing of not less than 45,<sup>7305</sup> possibly as many as 60,<sup>7306</sup> Kosovo Albanian people, including one woman and one child by Serbian forces, was an early example of a new intensified approach to “anti-terrorist” operations by VJ and MUP forces acting in coordination. The minutes of a meeting of the VJ General Staff of 21 January 1999 indicate that the involvement of the Priština Corps in the Račak/Raçak operation was initially not known by all the senior VJ members since it was omitted from the daily operations reports.<sup>7307</sup> In response to questions from his colleagues about the VJ’s role in the operation, Ojdanić noted that the operation in Račak/Raçak had been decided by the Joint Command and President Milošević.<sup>7308</sup> The meetings of the VJ General Staff and orders of the 3<sup>rd</sup> Army that followed in January 1999 reveal the implementation of a new plan to regain territorial control using the coordinated forces of the VJ and MUP as well as the armed non-Albanian population to take place of March 1999.<sup>7309</sup> In the Chamber’s finding, this evidence further discloses that the JCE had already been formed by mid-January 1999. It may well be that it existed before this time, indeed from the time of the international political negotiations in October 1998, but, by mid-January 1999, the evidence confirms that it had become apparent to the Serbian political, VJ and MUP leadership that if it was to achieve its long term objectives for assured ongoing Serbian control of Kosovo it was necessary to achieve changes to the Kosovan society, and to do so quickly, otherwise the prospect of doing so would be taken out of their hands by the intervention of NATO. This was to be achieved by a more intensified cooperation between the VJ and the MUP and other Serbian forces in joint operations. A directive of VJ General Staff, entitled “Grom-3” of 16 January 1999 called for “coordinated action with the MUP forces of the Republic of Serbia” in order to “block” and “destroy” “Šiptar [*i.e.* Kosovo Albanian] terrorist forces in the area of KiM”.<sup>7310</sup> Aleksandar Vasiljević stated that pursuant to this directive a VJ unit would be issued with orders to deploy<sup>7311</sup> and that the VJ would issue tasks to the MUP “in support of the army”.<sup>7312</sup>

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<sup>7305</sup> See *supra*, para 416.

<sup>7306</sup> Exhibit P902, p 9.

<sup>7307</sup> Exhibit P902, p 9.

<sup>7308</sup> Exhibit P902, p 11.

<sup>7309</sup> See Exhibit P902, p 29.

<sup>7310</sup> Exhibit D179, pp 7-9.

<sup>7311</sup> Aleksandar Vasiljević, T 5844.

<sup>7312</sup> Aleksandar Vasiljević, T 5954-5955.

2135. These joint operations involved eradicating the KLA by killing its members, clearing areas of KLA or NATO support systems in anticipation of a NATO ground invasion, and killing or removing the Kosovo Albanian civilian population from areas, in many cases moving them across the border so that they were no longer part of the population of Kosovo. In order to achieve these goals, forcible transfer, deportation, murder and the destruction of homes and villages, as well as religious or culturally significant property of the Kosovo Albanian civilian population were intended as a means to implement the plan.

2136. In regard to the crimes of deportation and other inhumane acts – forcible transfer (as a crime against humanity), the Chamber is satisfied that in the vast majority of the instances that it has found these crimes were committed, they were part of the common design. The members of the JCE intended that Kosovo Albanian civilians would be forcibly transferred or deported as a means of changing the demographic composition of Kosovo so that Kosovo Albanians no longer represented the ethnic majority and thereby to ensure continued Serb control over the territory. Simultaneously, the forced expulsion of Kosovo Albanians from key areas of security concern was intended to remove sources of support and logistical provision to the KLA and also to any NATO troops who might be part of a future ground invasion. By 24 March 1999, the VJ, MUP and associated forces were in place and the plan to execute these crimes was for the most part implemented across the municipalities of Kosovo covered in the Indictment. The evidence indicates that as orders came to be implemented, there was initially some inconsistency and confusion. Sometimes women and children were forced from their village, but were able to return after a time, although some of these were again forced to leave. Some men were moved across the border rather than killed. However, as time went on, the practice of Serbian forces of expelling and/or deporting Kosovo Albanian villagers, accompanied by executions of the male villagers of fighting age, became typical.

2137. With respect to the crime of murder (both as a violation of the laws and customs of war and as a crime against humanity), the Chamber is satisfied that large-scale killing of men and boys of Albanian ethnicity was intended in the common plan. This was a central element of the campaign of terror. Additionally, by this means, any KLA fighters among the civilian men were also killed. In some cases women and children were also killed as an element of the campaign of terror to cause Kosovo Albanians to leave Kosovo. In some cases, entire families, including women and children, were killed to set an example for the local Kosovo Albanian population by showing what would happen if they did not leave their villages, towns or cities, or simply to create an atmosphere of terror to induce the Kosovo Albanians to leave. Such cases were more rare, so the Chamber discusses these in more detail.

2138. The Defence has submitted that the murder of Berisha family members in Suva Reka/Suharekë town on 26 March 1999 was committed by “individuals acting for personal reasons”.<sup>7313</sup> It relies, in support, on the involvement of civilians in this attack, as well as policemen who had consumed alcohol.<sup>7314</sup> The Chamber has found that armed persons dressed in civilian clothes, who may have been police or civilians, were acting in concert with the MUP forces involved in the events at the Berisha family compound on Restanski Put. It also accepted that the policemen who killed members of the Berisha family at the pizzeria had just previously drunk alcohol.<sup>7315</sup> In view of the Chamber, however, neither of these circumstances negates the fact that the killings of members of the Berisha family in Suva Reka/Suharekë town on 26 March 1999 was in the course of a coordinated, pre-planned, MUP (including PJP) action in the immediate area, which was carried out with VJ support, as discussed in more detail elsewhere in this Judgement.<sup>7316</sup> The Serbian forces who approached the houses of the Berisha compound on Restanski Put on 26 March 1999 consisted of men from a PJP unit that had arrived in the town for the purpose of the action just before it commenced, local policemen, both regular and reserve, and one or more armed persons not in uniform. These may well have been police in plain clothes but, if they were civilians, they were working in concert with the MUP forces.<sup>7317</sup> The consumption of alcohol was apparently very limited and was not a material factor. Evidence that these killings were pre-planned, moreover, is supported by the coordinated efforts to remove these bodies immediately after the killings, bury them in a temporary mass grave in Prizren, disinter them days later, and transport them to the Batajnica SAJ Centre near Belgrade, where they were reburied clandestinely in a mass grave. Significantly, no investigation of the murders was ordered or carried out. The Chamber is satisfied that an ultimate goal of the murders of the members of this prominent Kosovo Albanian family was to create an atmosphere of terror to induce the remaining Kosovo Albanian population of Suva Reka/Suharekë town to leave their homes and the town; the evidence demonstrates that this occurred.<sup>7318</sup>

2139. In the finding of the Chamber, the murders of the Berisha family members were committed pursuant to the JCE, they were in furtherance of the common plan. Alternatively, even if, contrary to the Chamber’s finding, the killings had not been intended by the common plan, the Chamber is convinced that such crimes were a natural and foreseeable consequence of the common plan. The evidence satisfies the Chamber that the members of the JCE knew that the killing of Kosovo Albanian civilians, including women and children, might be perpetrated by members of the MUP

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<sup>7313</sup> Defence Final Brief, para 773.

<sup>7314</sup> Defence Final Brief, para 773.

<sup>7315</sup> See *supra*, para 674.

<sup>7316</sup> See *supra*, paras 668-676.

<sup>7317</sup> See *supra*, para 669.

and associated forces in the course of implementing orders to clear the town of Suva Reka/Suharekë of Kosovo Albanian civilians and willingly took that risk. As noted above, the established pattern of the commission of crimes against Kosovo Albanian civilians - including the murder of entire Kosovo Albanian families - during purported anti-terrorist operations by Serbian forces was already well known by January 1999. The Chamber is in no doubt that JCE members were aware of the possibility that Kosovo Albanian civilians, including women and children, would be murdered by Serbian forces in operations in 1999 such as that undertaken in the town of Suva Reka/Suharekë in March 1999, and took that risk willingly.

2140. Another example where women and children were deliberately targeted by MUP forces was the murder of 20 Kosovo Albanian civilians, 12 of whom were children, on the night of 1 April 1999 in a house at 157 Miloš Gilić/Millosh Giliq street in the Ćerim/Qerim district of Đakovica/Gjakovë town. As was the case with the killings of the Berisha family members, these killings occurred in the course of an action by Serbian forces in the town. Many houses on Miloš Gilić/Millosh Giliq street belonging to Kosovo Albanians were set on fire that night by Serbian forces. In addition to the murder of the 20 civilians at no. 157, a further 40 civilians living in these other houses were killed.<sup>7319</sup> The day following these killings and the destruction of houses, there was a massive movement of thousands of Kosovo Albanian civilians from the town.<sup>7320</sup> The existence of a plan to deport and/or forcibly transfer the Kosovo Albanian population from Đakovica/Gjakovë town is further confirmed by documentary evidence discussed in detail elsewhere in this Judgement.<sup>7321</sup> The Chamber finds that the killings of Kosovo Albanians at 157 Miloš Gilić/Millosh Giliq street were part of the common plan to create conditions of terror so as to force Kosovo Albanian civilians from the town of Đakovica/Gjakovë.

2141. Alternatively, the Chamber notes that even if, contrary to the finding of the Chamber, killings had not been intended by the common plan, the Chamber is persuaded that such crimes were a natural and foreseeable consequence of the common plan. As noted above, the evidence establishes that JCE members knew that the killing of Kosovo Albanian civilians, including women and children, might well be perpetrated by members of the MUP and associated forces in the course of implementing the orders to clear the town of Đakovica/Gjakovë of Kosovo Albanian civilians and willingly took that risk. The killings on 1-2 April 1999 by MUP forces were clearly foreseeable in the case of Đakovica/Gjakovë since, in particular, in the Chamber's finding, Kosovo

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<sup>7318</sup> See *supra*, paras 687-691

<sup>7319</sup> See *supra*, paras 892, 894, 899, 900, 902.

<sup>7320</sup> See *supra*, para 904.

<sup>7321</sup> See *supra*, para 914.



Albanian civilians, including women, had been killed in operations by these forces from 24 March 1999.

2142. The killings of 14 women and children by members of the Scorpions attached to the SAJ in Podujevo/Podujevë town on 28 March 1999 is a further example where murders were committed in the course of a purported anti-terrorist action. The Defence submits that these killings were “not ordered nor permitted or accepted” and therefore not part of any plan to attack or expel the Kosovo Albanian population.<sup>7322</sup> The Chamber is satisfied, however, that the operation in Podujevo/Podujevë took place in the context of a pre-planned anti-terrorist action in the wider “Malo Kosovo” area. Serbian forces had been present in the town in the days leading up to the killings alleged in the Indictment; as a result of their presence and activities, at the time of the killings, many Kosovo Albanians had already left town. The evidence reveals that the Scorpions unit, having been attached to the SAJ, were intentionally deployed to the town as an additional force and tasked with “clearing up” the part of the town not yet under Serbian control.

2143. A core element of the common plan was the creation of an atmosphere of violence and fear or terror among the Kosovo Albanian population such that they would be driven, by their fear, to leave the town and Kosovo. The Scorpions were an ill-disciplined paramilitary force. What was encountered by members of this force were the women and children of a large, extended family of Kosovo Albanians. They had not left town and were staying in a compound close to the police building. Other Serbian forces in the town had just killed two unarmed Kosovo Albanian civilian men outside the compound. One woman from the family was apparently subjected to sexual advances by members of the Scorpions in a place off the compound. The atmosphere was heavy with violence and fear. In the presence of men from other Serbian police or military units, the 19 women and children were shot in the courtyard of the compound by members of the Scorpions, 14 of them fatally, some were shot many times. Orders were then given by radio to the Scorpions to cease the killings, which were obeyed.

2144. The vague generality of the order for clearing up a part of town not yet under Serbian control was applied by members of this paramilitary force to include the killing of Kosovo Albanians just as other male Kosovo Albanians had been killed nearby by other Serbian forces shortly before the shooting of the women and children. The actions of the Serbian forces in that area at that time, including the actions of these Scorpions, were certainly advancing the common plan for a campaign of violence and fear directed against the Kosovo Albanian population. The perpetrators were not out of control, as is evident from their obedience to the order to cease killing.

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<sup>7322</sup> Closing Arguments, T 14470; *see* also Defence Final Brief, paras 923-924.

They were pursuing what they understood was their function. The Chamber is not persuaded, for these reasons, that the killings of the women and children were an isolated act. In the Chamber's finding, they were clearly within the object of the JCE as described above, aimed at terrorizing the Kosovo Albanian population in Podujevo/Podujevë town with the ultimate aim of ensuring that, with or without a direct order, this population would leave the town.<sup>7323</sup>

2145. The Chamber further, and alternatively, notes that if (contrary to its finding) these crimes were not within the scope of the JCE, such murders were undoubtedly a natural and foreseeable consequence of the common plan. In addition to the general circumstances which have been discussed above which, in the Chamber's view are sufficient in themselves for this purpose, the Chamber further observes that particularly in this case, the Scorpions, attached to the SAJ, were part of a rather notorious paramilitary group well known for having committed grave crimes in prior armed conflicts in the former Yugoslavia, including crimes against civilians, that no checks had been done into their criminal backgrounds and that many of them had not received any or proper training and yet, pursuant to the direct intervention of the Accused, they had been armed by the MUP and sent with the highly trained SAJ into a situational context of fear and violence, with only vague orders to clear a part of the town of Kosovo Albanians, who were viewed as the enemy. In such circumstances the killing of women and children by members of this unit was clearly a foreseeable risk by members of the JCE, including the Accused, who willingly took that risk by engaging the Scorpions as part of the SAJ and sending them into Podujevo/Podujevë town.

2146. Another mass killing of at least 296 Kosovo Albanian male civilians by Serbian forces occurred on 27-28 April 1999 during the course of "Operation Reka" in the Carragojs valley in Đakovica/Gjakovë municipality. The evidence indicates this operation had multiple objectives. One was undoubtedly the "neutralising" of KLA elements in the area. A second objective was expelling the Kosovo Albanian population from this area. A third objective was punishing the population of the villages of Meja/Mejë and Korenica/Korenicë for the killing of Milutin Prasević, a senior policeman, and three of his colleagues, on 21 April 1999, near Meja/Mejë. The evidence of Nike Peraj, which the Chamber accepts, of an informal meeting in the days after this killing where "Operation Reka" was discussed by local VJ and MUP officials, during which it was said that the Carragojs Valley would pay a "high price" and that "at least 100 heads would be eliminated", reveals that mass murder of civilians was directly contemplated. While this evidence might suggest that the murders were a "local reaction" to a "local event", that is only part of the picture. The Chamber takes into account that the operation was a pre-planned, large-scale and highly

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<sup>7323</sup> The Defence has sought to suggest that the Prosecution did not charge the crime of deportation with respect to the events in Podujevo/Podujevë town because there was no such plan (*see* Closing Arguments, T 14469). The Chamber notes, however, that the common plan alleged is not limited to the specific locations charged.

coordinated attack involving both VJ and MUP forces, directed by the Priština Corps in conjunction with the MUP. It is observed that the killings were not in any way limited to the 100 victims, nor to the populations of Meja/Mejë and Korenica/Korenicë. Attention is also drawn to the systematic and public nature of these killings – men were separated from women and children either in their family compounds or at checkpoints as columns of refugees passed through, and then either shot in the courtyard of the compound or taken to nearby compounds and shot. This indicates that mass murders were planned, even though some individual VJ members took steps to halt some of the killings. In addition, the concerted effort of the MUP to conceal the crimes by organising the removal of the bodies of hundreds of those killed from the scene of the murders, without any investigation of the deaths, and taking them some 420 kilometres by truck to the Batajnica SAJ Centre near Belgrade where they were buried clandestinely in unmarked mass graves, demonstrates that the murders of such large numbers were pursuant to an overall plan which involved a considerable amount of coordinated planning.

2147. The Chamber further observes that if (contrary to its finding), these mass murders were not intended pursuant to the common plan of the members of the JCE, such murders were, in any event, a natural and foreseeable consequence of the common plan. As discussed previously, even relatively small-scale anti-terrorist operations by Serbian forces in 1998 and early 1999 routinely involved the commission of crimes against Kosovo Albanian civilians, particularly the murder of Kosovo Albanian men and boys. Therefore, it was clearly foreseeable that a large-scale coordinated operation of VJ and MUP forces sweeping down the Carragojs valley, expelling all those Kosovo Albanian residents in the affected villages and driving them into columns directed towards the town of Đakovica/Gjakovë, would involve killings on a massive scale. The Chamber is fully convinced that JCE members were aware of the possibility that Kosovo Albanian civilians, particularly men and boys, would be killed by Serbian forces during the operations to implement the common plan, and took that risk willingly.

2148. In addition, to the extent that some of the deaths may have also been committed as revenge for the killings of the senior policeman Prascević and his colleagues near Meja/Mejë, the Chamber recalls that this event had been recorded in MUP reports, which would have been sent to both the MUP Staff for Kosovo and the MUP in Belgrade. The JCE members would therefore have been aware of the likelihood of revenge killings for Prascević's death during the course of a large-scale operation of the VJ and MUP in the area where he was killed just a few days before. This was particularly so in view of the personal relationship between Prascević and Nikola Mićunović,<sup>7324</sup> Commander of the Reserve Units of the Territorial Defence (113<sup>th</sup> Military Territorial Detachment),

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<sup>7324</sup> Nikola Mićunović was the godson of Milutin Prašcević, Nike Peraj, Exhibit P313, para 58.

and Momir Stojanović, Military Security commander of the Priština Corps.<sup>7325</sup> Moreover, as noted above, the murders were openly planned and discussed days before the operation took place in an informal meeting attended by MUP (both RJB and RDB officials) and VJ members. Despite JCE members having the general foresight that civilians, particularly men and boys, would be killed by Serbian forces during the operations to implement the common plan, and being aware of the added risk of retaliatory killings, Operation Reka went ahead as planned by the Priština Corps and MUP leadership. The result was the murder of at least 296 Kosovo Albanian villagers, almost all men or boys.

2149. The Chamber is also satisfied that the crimes of forcible transfer, deportation and murder amounted to the crime of persecutions (as a crime against humanity) against the Kosovo Albanian population and were an objective of the JCE.

2150. As found elsewhere, the Chamber is not satisfied on the evidence before it that the crime of sexual assault was committed with the discriminatory intent required for the crime of persecution and therefore need not enter into the consideration of whether this might have been part of the common plan.

2151. With regard to the crime of the wanton destruction or damage of Kosovo Albanian religious sites, the Chamber accepts that this widespread destruction was committed with persecutory intent as symbols of Kosovo Albanian heritage and identity, and finds that this was part of the common plan. In particular, the fact that the mosques were targeted in coordinated and pre-planned actions of the Serbian forces – often with the use of explosives and detonating equipment – from the first few days of the NATO campaign, persuade the Chamber that their destruction was part of the plan to terrorise the ethnic Albanian population into leaving Kosovo.

2152. The Chamber is of the view, in light of the widespread and systematic nature of the campaign of terror and violence that it has found and has described in this Judgement, that all of the crimes established were clearly within the object of the JCE in that they were committed during a widespread and systematic campaign of terror and violence directed at the Kosovo Albanian population, with the aim of lessening its presence in Kosovo and, thereby, ensuring the continued Serbian control over the province.

2153. As the Chamber has also noted, alternatively, the crimes of murder and of persecutions as alleged in counts 3, 4 and 5 of the Indictment were a natural and foreseeable consequence of the common plan of the JCE.

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<sup>7325</sup> Momir Stojanović's wife was the first cousin of Milutin Prasević. See Nike Peraj, T 1300.

(c) Vlastimir Đorđević's participation in the common plan

2154. The Chamber has made its factual findings in relation to the Accused's role in the events taking place in Kosovo in 1999 and his knowledge of crimes committed by Serbian forces earlier in this Judgement. It recalls here its finding that as Head of the RJB and as an Assistant Minister of Interior the Accused had *de jure* powers and exercised effective control over the police in Kosovo, including regular and reserve police, the PJP and SAJ, during the Indictment period. The Accused was one of the most senior MUP officials, he had detailed knowledge of events on the ground and played a key role in coordinating the work of the MUP forces in Kosovo in 1998 and 1999. The Accused was a member of the Joint Command and of the MUP Collegium and regularly attended meetings of these bodies. He was present on the ground in Kosovo in 1998 and 1999 and attended meetings of the MUP Staff. He was aware that police used force disproportionately in 1998 as a result of his personal observations and as being so informed by international observers. He was aware of the arming of Serb civilian population in Kosovo and the formation of RPOs in 1998 and 1999. He represented the Republic of Serbia in international negotiations on the role of the police in Kosovo in October 1998 and played a leading role in the efforts of the MUP to limit any independent investigation of the killings of not less than 45 men in Račak/Raçak in January 1999.

2155. The Chamber has also found that the Accused contributed to the deployment of paramilitary units to Kosovo in 1999. In February 1999 he acted to implement a decision to engage volunteers and paramilitary units by sending a dispatch to all SUPs in Serbia requesting them to establish complete control over volunteer and paramilitary units and their members. He was personally and directly involved in the incorporation of a notorious paramilitary unit, the Scorpions, into the MUP reserve force, their formal attachment to the SAJ and their deployment to Kosovo in March 1999. Upon their arrival in Kosovo, members of the Scorpions shot 19 Kosovo Albanian women and children, killing 14 of them. The Accused was informed of these killings almost immediately after they occurred. The unit was withdrawn from Kosovo but no investigation followed. The Accused was aware of the lack of investigation but nonetheless authorised the re-deployment of members of the same unit to Kosovo a few days later.

2156. The Chamber was satisfied that the Accused played a leading role in the MUP efforts to conceal the crime of murder of Kosovo Albanian civilians and others taking no active part in the hostilities during the Indictment period. Upon being informed of the emergence of bodies of Kosovo Albanians in the Danube River the Accused gave instructions for the clandestine transportation of the bodies to the SAJ training centre at Batajnica near Belgrade and their secret reburial in a mass grave on the territory of the SAJ centre. When he was informed that a truck containing bodies of Kosovo Albanians was found in Lake Perucac he gave instructions for the

immediate burial of these bodies on the site. In both cases the Accused gave specific orders to preclude judicial investigations. The Chamber has found that the transportation of bodies from Kosovo to Batajnica and Petrovo Selo for clandestine burial in mass graves, and the burial of bodies from a refrigerated truck freight compartment on site at Lake Perucac, was undertaken as part of a coordinated operation to remove evidence of crimes by Serbian forces against Kosovo Albanians in Kosovo during the Indictment period. In the Chamber's finding, this operation was conducted under the direction of the Accused, in consultation with Minister Stojiljković, pursuant to an order of the President of the FRY, Slobodan Milošević. While it was his duty under the law to have the emergence of the bodies properly investigated, the role the Accused played ensured that the bodies were not the subject of investigation at the time.

2157. The Chamber was also satisfied that despite being aware of crimes committed by MUP forces in Kosovo, at no time during the Indictment period, or thereafter while he remained the head of the RJB did the Accused take any measures to ensure the investigation of the crimes or the punishment of those involved in their commission.

2158. The Chamber is satisfied that the Accused's conduct, as described in the summary of findings above, contributed significantly to the campaign of terror and extreme violence by Serbian forces against Kosovo Albanians which had the purpose of changing the demographic composition of Kosovo. Considering its earlier findings that the Accused had knowledge of crimes committed by Serbian forces in Kosovo as established in this Judgement, the Chamber is satisfied that when, *inter alia*, he acted to conceal crimes of Serbian forces in Kosovo, when he deployed paramilitary units to Kosovo, and when he failed to ensure the investigation and sanction of MUP personnel for crimes in Kosovo the Accused acted with the requisite intent. Alternatively, had the Chamber been not able to be satisfied that the Accused acted with the requisite intent, it would have been satisfied that Accused acted with the intent to further the campaign of terror and extreme violence by Serbian forces against Kosovo Albanians and that he was aware that the crimes established in this Judgement might be committed by Serbian forces in Kosovo and willingly took this risk.

3. Vlastimir Đorđević's responsibility for planning, instigating, ordering and aiding and abetting the crimes pursuant to Article 7(1)

2159. The Chamber is satisfied beyond reasonable doubt, for the reasons given, of Vlastimir Đorđević's individual criminal responsibility pursuant to Article 7(1) for his participation in a JCE and will enter a conviction on this basis. The Chamber has also made the following findings with respect to the Accused's responsibility under the other forms of liability pursuant Article 7(1) of the Statute alleged in the Indictment.

(a) Aiding and abetting

2160. The Indictment also alleges that Vlastimir Đorđević's is guilty of aiding and abetting the commission of the alleged crimes. It is submitted that the Accused contributed to the crimes charged by deploying PJP units to Kosovo to participate in joint operations with the VJ during the NATO bombing and by furnishing them with equipment. It is submitted further that he incorporated paramilitaries into the MUP to participate in these operations, that he armed local Serbs, that he played a leading role in coordinating large scale operations to conceal the evidence of widespread murders committed by his forces, that despite his awareness of crimes he failed to take any measures to investigate the crimes or to punish the perpetrators, and in this way he enabled and encouraged MUP forces to commit crimes.<sup>7326</sup> The Prosecution submits that Vlastimir Đorđević was aware of the general campaign of forcible displacement conducted by the VJ and the MUP throughout Kosovo and that he knew that it was probable that MUP units would commit murders and persecutions during joint VJ and MUP operations in 1999.<sup>7327</sup>

2161. The Defence submits that there is no evidence that the Accused aided and abetted the crimes.<sup>7328</sup>

2162. Earlier in this Judgement the Chamber has made its factual findings regarding the events alleged in the Indictment and the relevant conduct of the Accused. The Chamber was satisfied that Vlastimir Đorđević had effective control over all RJB forces in Kosovo, including PJP personnel, SAJ personnel, regular and reserve police, and border police. Considering its findings that a functioning reporting system existed in the MUP, that reports were also relayed orally to Đorđević by telephone by his subordinates, that the Accused had personal contact with SUP Chiefs in Kosovo, members of the MUP Staff and other MUP personnel, that he attended Joint Command meetings, and that he was present on the ground in Kosovo in 1998 and 1999, the Chamber was satisfied that Vlastimir Đorđević had knowledge of crimes committed by MUP personnel in Kosovo during the Indictment period.

2163. Despite his knowledge of crimes being committed in Kosovo by MUP forces under his effective control, at no time did the Accused take any measure to stop or prevent the commission of such crimes. To the contrary, the Accused acted to assist the commission of these crimes. The Chamber recalls in this respect its earlier findings that the Accused played a leading role in the MUP efforts to conceal the killings of Kosovo Albanian civilians and other persons not taking active part in the hostilities by giving instructions for the clandestine transportation of the bodies of

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<sup>7326</sup> Prosecution Final Brief, paras 1293-1294.

<sup>7327</sup> Prosecution Final Brief, paras 1297-1298.

persons killed in Kosovo and their secret reburial on the territory of MUP facilities in Serbia. Despite his responsibilities for police investigation, not only did the Accused fail to take any measures to investigate the killings, but he took active steps to prevent any investigation into the circumstances of these killings by instructing MUP personnel not to involve the judicial authorities. The Accused played an active role in engaging volunteers and paramilitary units in Kosovo and personally authorised the deployment to Kosovo of a paramilitary unit, notorious for crimes committed during the war in Bosnia and Herzegovina. Upon their deployment to Kosovo, members of this unit murdered 14 women and children in Podujevo/Podujevë. The unit was withdrawn from Kosovo, but no effective investigation followed and within a short time it was redeployed to Kosovo, again with the authorisation of the Accused. The Chamber is satisfied that by acts such as these the Accused had a substantial effect on the perpetration by MUP forces of the crimes of murder, deportation and persecutions in Kosovo in 1999 and that the Accused was aware that his acts were assisting the commission of these crimes.

2164. The Chamber is satisfied beyond reasonable doubt and finds that Vlastimir Đorđević is guilty of aiding and abetting the crimes of deportation, forcible transfer, murder, and persecutions established in this Judgement.

(b) Planning, ordering and instigating

2165. The Prosecution submits that the evidence it relies on in support of Vlastimir Đorđević's responsibility for aiding and abetting the crimes also establishes his criminal responsibility for planning and ordering the crimes.<sup>7329</sup> It submits that the same evidence and the evidence relevant to Vlastimir Đorđević's failure to discipline MUP officials who committed crimes, establish the criminal responsibility of the Accused on the basis of instigating.<sup>7330</sup>

2166. The Defence submits that there is no evidence that Vlastimir Đorđević planned, ordered or instigated the crimes.<sup>7331</sup> It is submitted that he had no knowledge or reason to acquire knowledge about the activities of the MUP Staff or about a plan or policy to expel ethnic Albanians from Kosovo.<sup>7332</sup>

2167. In order to find the Accused guilty of planning the crimes, the Chamber must be satisfied that he planned or designed, at both the preparatory and execution phases, the criminal conduct

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<sup>7328</sup> Defence Final Brief, para 637.

<sup>7329</sup> Prosecution Final Brief, para 1300.

<sup>7330</sup> Prosecution Final Brief, para 1300.

<sup>7331</sup> Defence Final Brief, para 637.

<sup>7332</sup> Defence Final Brief, paras 637-638.



constituting one or more of the established crimes.<sup>7333</sup> The Chamber has been able to be satisfied that Vlastimir Đorđević participated in a common plan, the purpose of which was to modify the ethnic balance of Kosovo. While the means by which the common plan was to be implemented involved the commission of the crimes established in this Judgement, the purpose of this common plan was not, in and of itself, a crime. The evidence does not establish that the Accused directly planned any of the crimes that have been committed in furtherance of the common plan. The Chamber, therefore, is not satisfied that Vlastimir Đorđević is guilty of planning any of the crimes established in this Judgement.

2168. No direct evidence has been tendered to prove the allegation that the Accused directly ordered or instigated the crimes charged in the Indictment. With respect to the Prosecution's submission that the Accused's alleged failure to discipline MUP officials who have committed crimes supports a conviction for instigation, the Chamber notes that to establish responsibility for instigating, a nexus between the act of instigation and the perpetration of crime must be established.<sup>7334</sup> No such nexus has been established in the present case. The Chamber is not satisfied, therefore, that Vlastimir Đorđević is guilty of ordering or instigating any of the crimes established in this Judgement.

#### 4. Vlastimir Đorđević's responsibility under Article 7(3) of the Statute

2169. The Prosecution submits that Đorđević, while holding a position of superior authority, is individually criminally responsible for the acts or omissions of his subordinates, pursuant to Article 7(3) of the Statute for the crimes alleged in Counts 1 to 5 of the Indictment.<sup>7335</sup> It alleges that as Chief of the RJB and Assistant Minister of the MUP, Đorđević exercised *de jure* and *de facto* authority over all RJB units in Kosovo.<sup>7336</sup> It submits that he was aware of the crimes committed by such forces and failed to take necessary and reasonable measures to prevent and punish crimes committed by them.<sup>7337</sup>

2170. The Defence does not specifically address the above allegations in relation to liability under Article 7(3) of the Statute. However, the Chamber recalls the Defence contention that the Accused did not have effective control over the use of MUP forces in Kosovo.<sup>7338</sup> According to the Defence, since the creation of the MUP Staff for the Suppression of Terrorism by decision of the Minister on

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<sup>7333</sup> See *supra*, para 1869.

<sup>7334</sup> See *supra*, para 1870.

<sup>7335</sup> Indictment, para 22.

<sup>7336</sup> Prosecution Final Brief, para 1302.

<sup>7337</sup> Prosecution Final Brief, paras 1312-1352.

<sup>7338</sup> Closing Arguments, T 14492-14493; Defence Final Brief, paras 379, 382.

16 June 1998, the Accused was excluded from the normal chain of command.<sup>7339</sup> It argues that from this time, the engagement of MUP forces on the ground in anti-terrorist activities in Kosovo was controlled by the MUP Staff headed by Sreten Lukić, which reported to Minister Stojiljković alone.<sup>7340</sup> The Defence submission is that throughout the Indictment period, the Accused had no responsibility for anti-terrorist activities in Kosovo<sup>7341</sup> and only limited knowledge of the anti-terrorist activities of MUP forces in Kosovo.<sup>7342</sup> This level of knowledge was, the Defence argues, insufficient “to trigger a duty to prevent or punish crimes”.<sup>7343</sup>

(a) Was Vlastimir Đorđević a superior of the forces who committed the crimes established by the Chamber?

2171. The Chamber is satisfied that the evidence establishes that Vlastimir Đorđević was a superior of the RJB forces of the MUP who committed the crimes established in this Judgement. The Accused was Chief of the RJB, a position which entailed both *de jure* and *de facto* authority over all RJB units in Kosovo.<sup>7344</sup> As discussed in detail in Section VI of the Judgement, crimes committed against Kosovo Albanian civilians during the Indictment period were perpetrated by forces falling within the RJB, namely regular and border police operating under the SUPs, special police units (PJPs) and special anti-terrorist units (SAJs), as well as police reservists.

(b) Did Vlastimir Đorđević have effective control (*de jure* and *de facto* powers) over the perpetrators of the crimes established by the Chamber?

2172. The Chamber recalls that there are a number of factors from which a superior’s effective control, the material ability to prevent the commission of crimes and punish the perpetrators thereof, may be inferred, including, *inter alia*, the official position held by an accused, his capacity

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<sup>7339</sup> The Chamber notes that the Defence has sought to argue that while the decision of 15 May 1998 issued by the Accused renewing the mandate of the MUP Staff for Kosovo (Exhibit D100)—which had been established by the Accused by decision of 11 June 1997 (Exhibit D402)—stipulated that the head of Staff, Sreten Lukić (Exhibit P760) was responsible to the Chief of the RJB, the decision issued by the Minister on 16 June 1998 establishing the MUP Staff for the Suppression of Terrorism (Exhibit P57) stipulated that the head of the Staff, Lukić, was responsible only to the Minister. On the basis of the wording of these decisions, the Defence contends that this excluded the Accused from the chain of command (Defence Final Brief, paras 195, 201-202, 204, 209, 216; *see also* Closing Arguments, T 14451-14452).

<sup>7340</sup> Defence Final Brief, paras 379-383, concerning all MUP forces; *see also* Defence Final Brief, paras 136-137 (concerning the PJP specifically), and paras 146-148 (concerning the SAJ specifically); *see also* Closing Arguments, T 14451-14452.

<sup>7341</sup> Closing Arguments, T 14449.

<sup>7342</sup> Defence Final Brief, paras 401, 406-407; *see also* Defence Final Brief, para 136 (concerning the PJP specifically), and para 147 (concerning the SAJ specifically).

<sup>7343</sup> Defence Final Brief, para 407.

<sup>7344</sup> *See supra*, paras 40, 42-44, 108-124.

to issue orders whether *de jure* or *de facto*, that orders issued by him were in fact followed, and the actual tasks that he performed.<sup>7345</sup>

2173. The Chamber recalls its finding that the establishment of the Ministerial Staff for the Suppression of Terrorism did not have the effect of excluding Đorđević from the RJB chain of command.<sup>7346</sup> No steps were taken to reduce Đorđević's powers as chief of the RJB and his role and functions continued undiminished. Throughout the Indictment period, Đorđević had the authority to issue orders to all the MUP officers subordinate to him, including Sreten Lukić, the head of the MUP Staff, and the PJP and SAJ commanders in Kosovo. Đorđević authorised the deployment of PJP units; those orders were complied with. The SUP chiefs in Kosovo reported to Đorđević. Đorđević had the power to reassign them or remove them from their posts. Đorđević authorised the incorporation of paramilitary forces within the reserve units of the SAJ.

2174. As chief of the RJB, Đorđević had the authority and obligation to prevent crimes from being committed by his subordinates and to punish offenders. He had the power to establish investigating bodies or commissions. He also had the power to prevent crimes, as evidenced by a Dispatch of 21 December 1998 sent to the SUP Chiefs and the MUP Staff ordering the prevention of "the crimes and violations that could be committed through the use of firearms and may contain elements of violence, especially murder, robbery, aggravated theft, the stealing of vehicles and so on".<sup>7347</sup> By this Dispatch, he also requested certain information about crime rates and set deadlines for receipt of information, confirming that he had the authority and means to be informed about such matters.<sup>7348</sup>

2175. Đorđević had the power to ensure that his subordinates were disciplined. The enforcement of discipline of MUP staff was regulated under the Law on Internal Affairs<sup>7349</sup> as well as the Decree on Disciplinary Responsibility.<sup>7350</sup> Pursuant to the Law on Internal Affairs, crimes committed in connection with official duties constituted a serious breach of employment duties and warranted disciplinary sanction.<sup>7351</sup> The Decree on Disciplinary Responsibility set out that the immediate supervisor of the person accused of a serious breach was required to report to the "responsible officer", defined as the "disciplinary prosecutor, the Chief of the Secretariat, the Chief of Administration or another appropriate organisational unit at the headquarters of the Ministry",<sup>7352</sup>

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<sup>7345</sup> See *supra*, paras 1880-1883.

<sup>7346</sup> See *supra*, paras 108-124.

<sup>7347</sup> Exhibit P717, p 1.

<sup>7348</sup> Exhibit P717, p 4.

<sup>7349</sup> Exhibit P66, Articles 50-57.

<sup>7350</sup> Exhibit P1049, Articles 11-33.

<sup>7351</sup> Exhibit P66, Article 50, item 13.

<sup>7352</sup> Exhibit P1049, Article 4.

including any relevant evidence of the alleged crime.<sup>7353</sup> If, based on that report and accompanying evidence, the responsible officer assessed that there were grounds to suspect that a serious breach had been committed, he was to submit to the disciplinary prosecutor a motion for disciplinary action.<sup>7354</sup> Ljubinko Cvetić testified that concurrently, the SUP chief would request approval to initiate criminal proceedings against an MUP staff member alleged to have committed a criminal offence from either the chief of the Police Administration, *i.e.* Stevanović, or the “head of the sector”, *i.e.* Đorđević.<sup>7355</sup> At the same time, the staff member would be suspended under the disciplinary procedure.<sup>7356</sup> Once the MUP headquarters had given approval, the SUP would submit a criminal report as well as a motion for disciplinary action to a disciplinary prosecutor.<sup>7357</sup> Therefore those RJB members who had allegedly committed crimes should have been subject both to a criminal procedure before the normal civilian criminal courts and to an internal disciplinary system within the MUP.<sup>7358</sup> In both cases, the MUP in Belgrade were informed, and in control, of any subsequent proceedings.<sup>7359</sup>

2176. The Decree on Internal Affairs During the State of War, issued on 24 March 1999, authorised the head of a sector, *i.e.* Đorđević as head of the RJB and Marković as head of the RDB, or a person designated by him to discipline MUP personnel for certain breaches in a more simplified procedure.<sup>7360</sup> A dispatch of Đorđević of 9 April 1999 informed SUP Chiefs about the recently adopted Decree on Internal Affairs During the State or War, and gave the authority to the heads of the organisational units to impose the disciplinary sanctions prescribed in the Decree for serious violations of employment duties.<sup>7361</sup>

2177. The Chamber is satisfied that it is established that at all times relevant to the Indictment the Accused had effective control over the members of the RJB who perpetrated the crimes established in the Judgement.

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<sup>7353</sup> Exhibit P1049, Article 9.

<sup>7354</sup> Exhibit P1049, Article 10.

<sup>7355</sup> Ljubinko Cvetić, T 6709.

<sup>7356</sup> Exhibit P66, Article 56; Ljubinko Cvetić, T 6709.

<sup>7357</sup> Exhibit P1049, Article 10; Ljubinko Cvetić, T 6704-6705, 6708-6709.

<sup>7358</sup> Ljubinko Cvetić, T 6711.

<sup>7359</sup> Ljubinko Cvetić, T 6709-6710.

<sup>7360</sup> Exhibit P47, Article 9; Vlastimir Đorđević, T 9521.

<sup>7361</sup> Exhibit P1050.

(c) Did Vlastimir Đorđević know or have reason to know that forces under his command were about to or had committed crimes?

2178. The Chamber recalls its findings that the Accused, through his personal observations and experience on the ground during the 1998 summer offensive,<sup>7362</sup> his attendance of and participation in the Joint Command meetings and meetings of the MUP Collegium,<sup>7363</sup> and his involvement in negotiations with international observers as the representative of the RJB during which his detailed knowledge of the numbers and activities of the police in Kosovo was displayed,<sup>7364</sup> was very much aware of the use of excessive force by MUP forces in anti-terrorist operations in 1998 that led to the deaths of Kosovo Albanian civilians and the displacement of thousands of people.

2179. In particular, Đorđević was on the ground at the time of the operations at the Jashari family compound in March 1998 and therefore was aware of the deaths of civilians at the hands of MUP forces.<sup>7365</sup> He was also aware of the 21 members of the Delijaj family who were killed in Gornje Obrije/Abri-e-Epërme by MUP forces in September 1998.<sup>7366</sup> As found earlier in this Judgement, despite this awareness, no investigations were carried out or measures taken to punish the MUP personnel involved in the killings of civilians in either of these instances.<sup>7367</sup> The Chamber is persuaded that Đorđević's knowledge of such crimes having been committed by MUP forces together with the total lack of punitive action in relation to such crimes should have put Đorđević on notice that the same forces would commit crimes of a similar nature when deployed in 1999.

2180. The Accused had first hand knowledge of crimes committed by police forces in regard to the incident in Racak/Raçak in mid-January 1999, where excessive force again resulted in civilian casualties and renewed condemnation by the international observers on the ground as well as in the international media. Đorđević was directly informed by SAJ commander Simović about the killings of civilians by members of the Scorpions unit, which had been incorporated as a reserve force to the SAJ, in Podujevo/Podujevë on 28 March 1999.<sup>7368</sup> Furthermore, he was present on the ground in Kosovo in April 1999 and visited SUPs at the time that operations resulting in civilians deaths were being carried out.<sup>7369</sup>

2181. As discussed in detail elsewhere, the Accused's knowledge of crimes of killings of Kosovo Albanians by his subordinates in the RJB is further and convincingly demonstrated by his

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<sup>7362</sup> See *supra*, paras 1900-1907, 271, 318, 322, 336, 339, 341.

<sup>7363</sup> See *supra*, paras 98-103, 232-239.

<sup>7364</sup> See *supra*, para 1918.

<sup>7365</sup> See *supra*, paras 271, 1900.

<sup>7366</sup> See *supra*, paras 248, 1988.

<sup>7367</sup> See *supra*, para 2083.

<sup>7368</sup> See *supra*, paras 1258, 1986.

<sup>7369</sup> See *supra*, paras 1925, 1987.

involvement in the concealment of hundreds of bodies of Kosovo Albanian civilians in mass grave sites on MUP property in Serbia from early April 1999. The Chamber recalls that in a meeting held in March 1999 in the office of President Slobodan Milošević, and attended by Minister Vljako Stojiljković, the Accused Vlastimir Đorđević, Radomir Marković, and others,<sup>7370</sup> Milošević ordered Stojiljković to take measures to remove “all traces which could indicate evidence of the crimes committed”.<sup>7371</sup> Subsequently, the issue was raised at the MUP Collegium and Stojiljković ordered Đorđević and Ilić to remove the bodies of civilian victims which could potentially become the subject of investigations by this Tribunal.<sup>7372</sup> Đorđević was informed of the discovery of a refrigerated truck in the Danube River containing bodies of Kosovo Albanians and of another truck with bodies found in Lake Perucac. He was directly involved in the clandestine burial of these bodies at the SAJ Centre in Batajnica.

2182. Đorđević was also keenly aware of mass displacement of Kosovo Albanian civilians, having witnessed thousands of displaced people in Istinic/Isnq in 1998 and having received regular MUP reports throughout March-June 1999 which relayed the increasing numbers of hundreds of thousands of Kosovo Albanians crossing the borders from Kosovo into Albanian or FYROM in 1999.

2183. In addition, the Accused was made aware of crimes committed or alleged to be committed by police forces through the international media, and local media responding to such reports,<sup>7373</sup> as well as reports sent to the Ministry of the Interior by Human Rights Watch of investigations into crimes committed by MUP forces against Kosovo Albanian civilians in 1998 and throughout 1999.<sup>7374</sup>

2184. The Chamber is satisfied that the evidence established that the Accused was aware that crimes were about to be or had been committed by his subordinates.

(d) Did Vlastimir Đorđević take the necessary and reasonable measures to prevent the crimes or to punish the perpetrators?

2185. The evidence establishes that despite being in a position where he could himself (or could ensure that others did) order his subordinates to obey the law, ensure compliance with the law, impose disciplinary sanctions on those MUP members who committed crimes, remove them from duty or from Kosovo, ensure that SUP chiefs investigated crimes committed by MUP personnel and

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<sup>7370</sup> Exhibit P387, p 3.

<sup>7371</sup> Exhibit P387, p 3.

<sup>7372</sup> Exhibit P387, p 3.

<sup>7373</sup> See *supra*, para 1996.

<sup>7374</sup> See *supra*, paras 1997-1998.

instituted disciplinary proceedings, or notify judicial authorities, the Accused did none of these things. Further, Đorđević actually authorised the re-deployment of the same units that had committed crimes in 1998 in 1999. The Chamber is satisfied that by doing so, the Accused failed to prevent crimes committed by these units in 1999.

2186. The Chamber is satisfied that the evidence, as described in detail elsewhere in this Judgement, establishes clearly that Đorđević knew of the murder of hundreds of Kosovo Albanians by forces under his control and failed to ensure the punishment of those responsible. Đorđević coordinated and planned the concealment of hundreds of bodies of Kosovo Albanian victims from early April 1999 in mass grave sites in MUP property in Serbia, hundreds of kilometres from where most had been initially buried in Kosovo. Instead of ensuring the prosecution of those responsible, he helped to cover up the crimes of those under his command by concealing the evidence of the killings.

2187. Đorđević gave evidence that he suggested to Minister Stojiljković that a commission be set up to investigate the finding of bodies, but that the Minister did not accept the proposal.<sup>7375</sup> The Accused was aware of his obligation as head of the RJB to properly investigate and to punish his subordinates responsible for the murders and admitted in court, that “I should have acted accordingly [...] I didn’t act that way, although I assumed that there may have been a crime involved and that the procedure wasn’t regular and fair, but I didn’t.”<sup>7376</sup> He accepted that “I will be held responsible for what I did.”<sup>7377</sup>

2188. In regard to the murder of 14 women and children committed by members of the Scorpions unit attached to the SAJ in Podujevo/Podujevë on 28 March 1999, the failure of Đorđević to prevent these crimes or ensure the prosecution of the perpetrators in order to prevent further crimes by the same persons is telling. Despite the fact that it was widely known that the Scorpions unit was a notorious paramilitary unit, Đorđević approved of the Scorpions unit’s incorporation into the RJB as members of the SAJ reserve force,<sup>7378</sup> without requiring any background checks on the criminal pasts of the men in the unit and without ensuring that the men were trained as was required by the law.<sup>7379</sup> By sending untrained paramilitaries, including some with criminal backgrounds, into Kosovo to be engaged in difficult operations with the highly trained SAJ, the high likelihood that crimes would be committed by these paramilitaries was only too obvious. Đorđević failed to ensure that even the most basic checks of these men were made.

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<sup>7375</sup> Vlastimir Đorđević, T 9723-9724.

<sup>7376</sup> Vlastimir Đorđević, T 10010.

<sup>7377</sup> Vlastimir Đorđević, T 10006.

<sup>7378</sup> See *supra*, paras 1935-1945.

<sup>7379</sup> See *supra*, paras 1949-1955.

2189. As noted earlier, Đorđević was directly informed by Simović, the SAJ commander, the day the crimes were committed by members of the Scorpions. Rather than ensuring proper investigation and prosecution and punishment, the Accused approved of Simović sending the unit immediately back to Serbia. He knew that their crimes had been unreported in the regular MUP reports. By this he had acted to ensure the offenders were immediately transferred away from the zone of responsibility of the SUP and Investigative Judge responsible for any investigation and prosecution. He did not act to ensure that there was any proper investigation or prosecution. Instead he authorised the redeployment to Kosovo of this unit soon afterwards.<sup>7380</sup> Once redeployed, they participated with the PJP in operations in which crimes were committed.<sup>7381</sup> Having had direct knowledge of the crimes committed by members of this unit, Đorđević was alerted to the clear risk that their redeployment meant that more crimes would be committed. Having had direct knowledge of the crimes committed by members of this unit, Đorđević was on notice of the clear risk that more crimes would be committed by them.

2190. No steps were taken except for a report prepared by Trajković in May 1999,<sup>7382</sup> which did not contemplate prosecution or punishment. While some prosecutions took place in later years, during the period of Đorđević's tenure as chief of the RJB, no member of the Scorpions unit was prosecuted for the crimes in Podujevo/Podujevë.<sup>7383</sup>

2191. The Chamber is satisfied that as well as killings, Đorđević was aware of other crimes committed by RJB against Kosovo Albanian civilians, such as mass expulsions and the destruction of property. At no stage during the Indictment period, or up until the end of his tenure as chief of the RJB on 30 January 2001, did he act to ensure the proper investigation of allegations of crimes committed by police in Kosovo.<sup>7384</sup> This remained the case even after the Indictment of this Tribunal against, *inter alios*, President Milošević and Minister Stojiljković became public on 22 May 1999, in which allegations of police involvement in mass murders, expulsions and destruction of property in Kosovo were made.

2192. Thus, far from taking necessary and reasonable measures to prevent and punish crimes committed by his subordinates, the Accused failed to give orders to his subordinates to stop the commission of crimes, failed to sanction errant subordinates or remove them from duty or from Kosovo, did not ensure crimes were investigated and sought to prevent their investigation. The Chamber is thereby satisfied, beyond reasonable doubt, of the Accused's responsibility under

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<sup>7380</sup> See *supra*, paras 1946-1948.

<sup>7381</sup> See *supra*, para 1948.

<sup>7382</sup> Exhibit P86. Živko Trajković, T 9106-9107.

<sup>7383</sup> Goran Stoparić, Exhibit P493, paras 83-88; Goran Stoparić, T 2845-2849.

<sup>7384</sup> Vlastimir Đorđević, T 10095-10096.



Article 7(3) for the crimes established in this Judgement. However, by virtue of its adverse finding under Article 7(1) it is not open to the Chamber to also convict the Accused under Article 7(3).

### **C. Conclusion**

2193. The Chamber is satisfied and finds the Accused Vlastimir Đorđević guilty pursuant to Article 7(1) of the Statute for having participated in a joint criminal enterprise with the purpose of modifying the ethnic balance in Kosovo. The Chamber is satisfied and finds that the crimes established in this Judgement were the means by which the purpose of this joint criminal enterprise was to be achieved.

2194. The Chamber is further satisfied and finds the Accused guilty of having aided and abetted the crimes that have been established, pursuant to Article 7(1). The modes of responsibility under Article 7(1) of the Statute are not mutually exclusive, and it is possible to convict on more than one mode in relation to a crime if this better reflects the totality of the accused's conduct.<sup>7385</sup> In this case, the Accused's leading role in the MUP efforts to conceal the killings of Kosovo Albanian civilians and other persons taking no active part in the hostilities by organising for the clandestine transportation of the bodies of persons killed by Serbian forces in Kosovo to secret mass grave sites on MUP property in Serbia, together with his active steps to prevent any investigation into the circumstances of these killings, and his failure to ensure that all offences by MUP forces were reported and investigated, taking into account his position as Chief of the RJB, substantially assisted the commission of these crimes. These facts are sufficiently compelling to also maintain the conviction for aiding and abetting, as well as the conviction for participating as a member of the JCE, in order to fully encapsulate the Accused's criminal conduct.

2195. In addition, the Chamber is satisfied and finds that it has been established that the Accused is criminally responsible pursuant to Article 7(3) of the Statute for his failure in respect of the members of the MUP under his authority, to prevent the crimes and to punish the perpetrators. However, pursuant to the jurisprudence of this Tribunal,<sup>7386</sup> the Chamber will enter a conviction on the basis of Article 7(1) only. The Accused's position of command of many of the actual perpetrators will be considered as an aggravating factor in sentencing as required by the jurisprudence of the Tribunal.

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<sup>7385</sup> *Nahimana* Appeal Judgement, para 483; *Ndindabahizi* Appeal Judgement, paras 122-123; *Kamuhanda* Appeal Judgement, para 77.

<sup>7386</sup> *See supra*, para 1891.

### XIII. CUMULATIVE CONVICTIONS

2196. The question of cumulative convictions arises where more than one charge arises out of what is essentially the same criminal conduct. It is established in the jurisprudence of the Tribunal that it is only permissible to enter cumulative convictions under separate statutory provisions to punish the same criminal conduct if “each statutory provision involved has a materially distinct element not contained in the other”.<sup>7387</sup> Where, in relation to two offences, this test is not met, the Chamber should enter a conviction on the more specific provision.<sup>7388</sup>

2197. For reasons given earlier, the Chamber had found that the elements of the offences of deportation (Count 1) and forcible transfer as “other inhuman acts” (Count 2), both charged as a crime against humanity, have been established. The evidence has also established the charges of murder as a crime against humanity (Count 3) and murder as a violation of the laws or customs of war (Count 4). Furthermore, the Chamber has also been satisfied that the elements of murder, and forcible transfer and deportation, all charged as persecutions (Count 5) have been proven.

2198. In the present case, the issue of cumulation arises in relation to persecutions (Count 5) and forcible transfer as “other inhumane acts” (Count 2). The crime of persecutions requires the materially distinct element, which is not required to be proved in establishing the crime of forcible transfer as “other inhumane acts”, namely, that the act or omission must have been committed with discriminatory intent. Similarly, as acknowledged above, the crime of forcible transfer as “other inhumane acts” (Count 2) also has a materially distinct element that requires that the act or omission cause serious mental or physical suffering or injury, or constitute a serious attack on human dignity.<sup>7389</sup> Given that each statutory provision requires a materially distinct element not contained in the other, these two charges are not impermissibly cumulative.

2199. The issue of cumulation also arises in relation to persecutions (Count 5) and deportation (Count 1). Both offences require that the act be committed within the context of a widespread or systematic attack directed against a civilian population. The offence of persecutions has an additional element in that the act or omission must have been committed with a discriminatory intent. Deportation also requires proof of a materially distinct element from the crime of persecutions, namely proof that the Accused forcibly displaced individuals across a border.<sup>7390</sup>

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<sup>7387</sup> *Čelebići* Appeal Judgement, paras 412-413; *Kordić* Appeal Judgement, paras 1032-1033; *Jelisić* Appeal Judgement, para 78; *Krstić* Appeal Judgement, para 218; *Kunarac* Appeal Judgement, para 173; *Stakić* Appeal Judgement, para 355.

<sup>7388</sup> *Čelebići* Appeal Judgement, paras 412-413; *Kordić* Appeal Judgement, paras 1032-1033; *Jelisić* Appeal Judgement, para 78; *Krstić* Appeal Judgement, para 218; *Stakić* Appeal Judgement, para 356.

<sup>7389</sup> *Stakić* Appeal Judgement, para 362.

<sup>7390</sup> *Stakić* Appeal Judgement, para 360.

Accordingly, cumulative convictions are permissible where the offence of persecutions, and deportation, charged as a crime against humanity, arise out of the same criminal conduct of the Accused.

2200. Earlier in this Judgement, the Chamber found the Accused responsible for murder, as a crime against humanity under Article 5(a) of the Statute (Count 3), and murder as persecutions, as a crime against humanity, under Article 5(h) of the Statute (Count 5).<sup>7391</sup> The Appeals Chamber has found that the definition of murder as persecutions, a crime against humanity under Article 5(a) of the Statute, has a materially distinct element not present in the definition of murder under Article 5 of the Statute: that the act or omission must have been committed with a discriminatory intent. Differently, murder requires proof that the accused caused the death of one or more persons, regardless of whether the act or omission was committed with a discriminatory intent. Thus, cumulative convictions on the basis of the same acts under Article 5 of the Statute are permissible in relation to murder.<sup>7392</sup>

2201. Although murder is also charged as a violation of the laws or customs of war under Article 3 of the Statute (Count 4), convictions for the same conduct under Article 3 of the Statute and Article 5 of the Statute are permissible.<sup>7393</sup> There is a materially distinct element because Article 3 of the Statute requires a close link between the acts of the Accused and the armed conflict, Article 5 of the Statute requires proof that the act occurred as part of a widespread or systematic attack against a civilian population. As a result, convictions related to the same conduct under Article 3, murder as a violation of the laws or customs of war (Count 4), and Article 5, murder as persecution (Count 5), are not impermissibly cumulative.

2202. For these reasons to the extent to which they are established by the evidence, the Chamber will enter convictions against the Accused Vlastimir Đorđević in respect of Count 1 (Deportation), Count 2 (Forcible Transfer as “other Inhuman Acts”), Count 3 (Murder as a crime against humanity), Count 4 (Murder as a violation of the laws or customs of war) and Count 5 (Persecutions).

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<sup>7391</sup> See *supra*, paras 1753, 1856, 2193, 2194.

<sup>7392</sup> *Kordić* Appeal Judgement, para 1041.

<sup>7393</sup> *Vasiljević* Appeal Judgement, paras 146, 169; *Galić* Appeal Judgement, para 165; *Kordić* Appeal Judgement, para 1036; *Kunarac et al.* Appeal Judgement, para 176; *Jelišić* Appeal Judgement, para 82.

## XIV. SENTENCING

2203. The Prosecution submits that Vlastimir Đorđević, if found guilty, should receive a sentence ranging from 35 years to life imprisonment.<sup>7394</sup>

2204. Sentencing is governed by Article 24 of the Statute and Rules 87(C) and 101 of the Rules of Procedure and Evidence.<sup>7395</sup> Pursuant to Rule 101(A), a convicted person may be sentenced to imprisonment for a term up to and including the remainder of his life. In accordance with Article 24(2) of the Statute and Rule 101(B) of the Rules, the Chamber is to take into account such factors as the gravity of the offence and the individual circumstances of the convicted person, and any aggravating and mitigating circumstances. The Chamber is also to take into account the general practice regarding prison sentences in the former Yugoslavia,<sup>7396</sup> although the Chamber is not bound by this practice.<sup>7397</sup> The decision as to the length of sentence is a discretionary one, according to the particular circumstances of the case.<sup>7398</sup> In the exercise of its discretion, the Chamber is guided by the relevant provisions of the Statute and the Rules. The Chamber is also to take note of the primary objectives of sentencing, namely deterrence and retribution.<sup>7399</sup> Further, a

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<sup>7394</sup> Prosecution Final Brief, para 1354.

<sup>7395</sup> Article 24 of the Statute provides: “1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia. 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. 3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.” Rule 101 of the Rules provides: “(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person’s life. (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as: (i) any aggravating circumstances; (ii) any mitigating circumstances including the substantial co-operation with the Prosecutor by the convicted person before or after conviction; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute. (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.”

<sup>7396</sup> Article 24(1) of the Statute; Rule 101(B)(iii) of the Rules.

<sup>7397</sup> *Krstić* Appeal Judgement, para 260; *Kunarac* Appeal Judgement, para 377; *Blaškić* Appeal Judgement, paras 681-682, referring to *Kunarac* Trial Judgement and *Kunarac* Appeal Judgement, para 829: “Although the Trial Chamber is not bound to apply the sentencing practice of the former Yugoslavia, what is required certainly goes beyond merely reciting the relevant criminal code provisions of the former Yugoslavia. Should they diverge, care should be taken to explain the sentence to be imposed with reference to the sentencing practice of the former Yugoslavia, especially where international law provides no guidance for a particular sentencing practice. The Trial Chamber notes that, because very important underlying differences often exist between national prosecutions and prosecutions in this jurisdiction, the nature, scope and the scale of the offences tried before the International Tribunal do not allow for an automatic application of the sentencing practices of the former Yugoslavia.”

<sup>7398</sup> *Krstić* Appeal Judgement, para 248; *Semanza* Appeal Judgement, para 394; *Brdanin* Appeal Judgement, para 500.

<sup>7399</sup> *Tadić* Appeal Judgement, para 48; *Deronjić* Appeal Judgement, paras 136-137, *Čelebići* Appeal Judgement, paras 800-801; 806; *Kordić* Appeal Judgement, paras 1073-1075; 1075-1076; *Blaškić* Appeal Judgement, para 678; *Aleksovski* Appeal Judgement, para 185; *Dragan Nikolić* Appeal Sentencing Judgement, para 46; *Stakić* Appeal Judgement, para 402.

sentence must not be capricious or excessive, *i.e.* it should not be out of reasonable proportion with sentences passed in similar circumstances for the same offences.<sup>7400</sup>

2205. By Rule 87(C), where the Accused is convicted of more than one charge, the Chamber may impose a single sentence reflecting the totality of the criminal conduct of the Accused, or it may impose a sentence in respect of each finding of guilt, indicating whether such sentences are to be served consecutively or concurrently.<sup>7401</sup>

2206. The Appeals Chamber has held that, in reaching a decision on sentence, a Chamber may be guided by a previous decision on sentence by the Tribunal that relates to the same offence committed in substantially similar circumstances.<sup>7402</sup> However, this comparison is limited,<sup>7403</sup> because several cases at the Tribunal involve mass killings committed in the one geographical area and during a limited period of time, yet the sentences vary because the conduct and responsibility of the accused in each case has varied.<sup>7404</sup> Sentences are not imposed on the convicted person merely for the violation of a specific Article under the Statute, but for his conduct and role in the particular crimes. The Chamber has an overriding obligation to tailor a penalty to fit the gravity of the crime and the individual circumstances of the accused, including its consideration of both aggravating and mitigating circumstances.<sup>7405</sup>

#### A. Gravity of the offences

2207. The gravity of the offence is a factor of primary importance in the determination of the sentence.<sup>7406</sup> In assessing the gravity of an offence the Chamber may consider the nature of the crime, the scale and brutality of the crime, the role of the accused and the overall impact of the crime upon the victims and their families.<sup>7407</sup> Factors that a Trial Chamber takes into account when assessing the gravity of an offence should not additionally be taken into account separately as an aggravating or mitigating circumstance, and *vice versa*.<sup>7408</sup> The sentence imposed must reflect the inherent gravity of the totality of the criminal conduct for which the accused is convicted, giving

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<sup>7400</sup> *Momir Nikolić* Appeal Sentencing Judgement, para 39, referring to *Jelisić* Appeal Judgement, para 96; *see also* *Babić* Appeal Judgement, para 33.

<sup>7401</sup> *Strugar* Appeal Judgement, para 335.

<sup>7402</sup> *Furundžija* Appeal Judgement, para 250; *Mucić* Appeal Sentencing Judgement, para 720.

<sup>7403</sup> *Mucić* Appeal Sentencing Judgement, para 721.

<sup>7404</sup> *See e.g. Blagojević* Trial Judgement, paras 797-798; *Stakić* Trial Judgement, paras 468, 616.

<sup>7405</sup> *Momir Nikolić* Appeal Sentencing Judgement, para 38, referring to *Mucić* Appeal Sentencing Judgement, paras 717, 719.

<sup>7406</sup> *Momir Nikolić* Appeal Sentencing Judgement, para 11; *Aleksovski* Appeal Judgement, para 182; *Mucić* Appeal Sentencing Judgement, para 731; *Kupreškić* Appeal Judgement, para 442; *Jelisić* Appeal Judgement, para 101; *Blaškić* Appeal Judgement, para 683.

<sup>7407</sup> *See Rajić* Sentencing Judgement, paras 83-95.

<sup>7408</sup> *Deronjić* Appeal Judgement, para 106; *Momir Nikolić* Appeal Sentencing Judgement, para 58; *Limaj* Appeal Judgement, para 143.

due consideration to the particular circumstances of the case and the form and degree of the participation of the accused.<sup>7409</sup>

2208. In its submission, the Prosecution draws particular attention to Vlastimir Đorđević's "high level of leadership" and the "scope of the crimes" which, it submits warrants a lengthy prison sentence.<sup>7410</sup>

2209. Vlastimir Đorđević was born on 17 November 1948 in Koznica, Vladičin Han municipality, in Serbia.<sup>7411</sup> He graduated from the University of Niš Faculty of Law in 1971 and commenced his career with the MUP the same year.<sup>7412</sup> His was a long and successful career. On 11 September 1996, he was appointed as Assistant Minister of the Interior.<sup>7413</sup> On 30 May 1997, he was assigned to the post of "acting chief" of the RJB.<sup>7414</sup> On 27 January 1998, he was appointed as Chief of the RJB.<sup>7415</sup> He remained in this post until 30 January 2001, when he was appointed as counsellor to the Minister of the Interior and member of a coordination body for the south of Serbia.<sup>7416</sup> On 5 July 1997, Vlastimir Đorđević had been promoted to the rank of Colonel-General, making him the highest ranking MUP officer at the time.<sup>7417</sup>

2210. It has been established, in the Chamber's finding, that Vlastimir Đorđević, as Chief of the RJB, bore the highest responsibility and authority in respect of the members of the MUP, who, with other Serbian forces, were the principal perpetrators of the offences which have been established in this case. Subject only to the ultimate authority of the Minister of the Interior, Vlastimir Đorđević had both *de jure* and *de facto* control over all MUP forces of the Republic of Serbia, whether in Kosovo or elsewhere in Serbia, except for personnel of the RDB. Vlastimir Đorđević's actions and conduct in this capacity, relevantly, were in support of, and vital to, the common enterprise the purpose of which was, *inter alia*, the modification of the ethnic balance in Kosovo in order to ensure continued Serbian control over the province. This was achieved substantially by criminal means consisting, in the Chamber's finding, essentially of a widespread systematic campaign of terror and violence that included extensive murders, deportations, forcible transfers and persecutions of the Kosovo Albanian population.

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<sup>7409</sup> *Furundžija* Appeal Judgement, para 249; *Blaškić* Appeal Judgement, para 683.

<sup>7410</sup> Prosecution Final Brief, para 1354.

<sup>7411</sup> Vlastimir Đorđević, T 9387.

<sup>7412</sup> Vlastimir Đorđević, T 9387-9388, 9400, 9766-9767; Exhibit D393, pp 1-3.

<sup>7413</sup> *See supra*, para 38.

<sup>7414</sup> *See supra*, para 40.

<sup>7415</sup> *See supra*, para 40.

<sup>7416</sup> *See supra*, para 40.

<sup>7417</sup> *See supra*, para 43.

2211. Other members of the joint criminal enterprise named in the Indictment include Slobodan Milošević, Nikola Šainović, Vlajko Stojiljković, Sreten Lukić, Radomir Marković, Obrad Stevanović, Dragan Ilić, Dragolub Ojdanić, Nebojša Pavković and Vladimir Lazarević. These men held most of the highest political, military and police positions in the FRY and in Serbia and between them effectively controlled the MUP, the VJ and the other Serbian forces which carried out the crimes which have been established. Even so, while other Serbian forces assisted in the implementation of the common enterprise, the MUP forces under the ultimate direction of the Accused, especially the PJP and the SAJ, were the primary means by which the campaign of crime and terror was conducted. Putting aside Milošević and Stojiljković, who have since died, in the Chamber's finding, no other member of the joint criminal enterprise made a more crucial contribution to the achievement of its objective. Not only were the MUP forces the primary means by which the campaign of crime and terror was conducted, the Accused also had a direct and leading role in efforts to conceal the crimes for which the joint criminal enterprise was responsible, and he failed to fulfil his responsibility to ensure that crimes committed by MUP forces in furtherance of the joint criminal enterprise were reported and investigated.

2212. These crimes all occurred in Kosovo, at various times between 1 January and 20 June 1999, although principally from the start of the NATO bombing campaign on 24 March 1999, in the municipalities of Orahovac/Rahovec, Prizren, Srbica/Skenderaj, Suva Reka/Suharekë, Peć/Pejë, Kosovska Mitrovica/Mitrovicë, Priština/Prishtinë, Đakovica/Gjakovë, Gnjilane/Gjilan, Uroševac/Ferizaj, Kačanik/Kaçanik, Dečani/Dečan, Vučitrn/Vushtrri and Podujevo/Podujevë. In well over 40 neighbourhoods, villages and towns across these municipalities, there were grave crimes committed in furtherance of this common plan. Serbian forces expelled Kosovo Albanians, often violently and peremptorily, or by their conduct caused Kosovo Albanians to leave their homes in fear for their lives. Some were displaced within Kosovo but many were made to cross the borders to Albania, FYROM or Montenegro. Great hardship and deprivation was experienced by Kosovo Albanians from this conduct. On the way to the borders, Serbian forces subjected Kosovo Albanians to harassment, beatings and killings. It has been established that some 724 Kosovo Albanian residents were murdered and hundreds of thousands were displaced within Kosovo or across the borders. Typically, Serbian forces attacked a predominantly Kosovo Albanian neighbourhood, village or town with tanks and other heavy weaponry. After shelling by the VJ, MUP forces entered the villages, neighbourhood or town, drove the residents from their homes and set fire to houses and other buildings. In some cases, mosques and other Kosovo Albanian cultural or religious sites were destroyed or damaged. In a number of cases, after the initial shelling and burning, Serbian forces, especially PJP and SAJ, separated the male residents from the women and children and ill treated and eventually killed the men. In some instances, women and children were

killed. It was often the case that those displaced by force found that their homes and possessions had been destroyed; there was nothing left for them to return to. In most cases it was MUP forces that ensured that Kosovo Albanians left their homes and that deportees reached and crossed the borders.

2213. It is noted that Vlastimir Đorđević was not the actual physical perpetrator of any of these offences. His primary criminal liability in this case is by virtue of his participation, with other Serb political, military and police leaders, in a joint criminal enterprise, the object of which was to change the ethnic balance of Kosovo by forcing Kosovo Albanians to leave Kosovo and by killing them. The murders, destruction of property and forced displacements or deportations were the criminal means by which the joint criminal enterprise was affected.

2214. However, as detailed in this Judgement, the Accused's conduct was such as to also render him liable to conviction and punishment for aiding and abetting the offences established. Further, for reasons given earlier, were it not for his convictions and punishment under Article 7(1) of the Statute, he would also have been convicted and punished under Article 7(3) of the Statute as a person in command of the forces who committed the offences established. In the view of the Chamber, in the circumstances of this case, the sentence appropriate for the leading and grave role of the Accused in the joint criminal enterprise and in aiding and abetting the offences established, fully and adequately reflect the totality of the criminality of the Accused which warrants punishment. It will determine the sentence accordingly.

2215. For the hundreds of victims who died as a result of these crimes, the consequences were absolute. The close family members of the victims were left to cope with the death of loved ones. Their anguish and the hurt were no doubt aggravated by the uncertainty, in very many cases, about the fate which befell their family members and by their own displacement or deportation. Many victims are still missing to this day. For the victims who survived, it is apparent that the physical and mental suffering has often been considerable and prolonged. In some cases it is still ongoing. For the people who were forced to abandon their homes and valuables, the financial loss and the broken livelihoods suffered are immense. Finally, the destruction of mosques and other religious and cultural sites caused entire communities to lose their place of worship and significant elements of their heritage.

2216. The Chamber recognizes that the Indictment is only representative and does not fully capture the extent of the criminal conduct of MUP, VJ and other Serbian forces in execution of the joint criminal enterprise in Kosovo between January and June 1999. The Chamber's duty, however, is to sentence for the charges in the Indictment which have been proved. It may not go beyond them.



## **B. Individual circumstances of the Accused: aggravating and mitigating circumstances**

2217. The Statute and the Rules do not endeavour to exhaustively define factors which may appropriately constitute aggravating and mitigating circumstances. Rule 101(B) merely refers to substantial cooperation with the Prosecutor as a mitigating circumstance. The jurisprudence of the Tribunal has identified further factors which a Chamber might take into account, but these are not exhaustive.<sup>7418</sup> Necessarily, what constitutes aggravating and mitigating circumstances, and the weight each should be accorded, must be determined in light of the particular circumstances of each case.<sup>7419</sup>

2218. Aggravating circumstances must be directly related to the commission of the offence,<sup>7420</sup> and must be established beyond reasonable doubt.<sup>7421</sup> The exercise by an accused of his right to remain silent may not constitute an aggravating circumstance.<sup>7422</sup>

2219. Mitigating circumstances may be taken into account regardless of whether they are directly related to the alleged offence,<sup>7423</sup> and are to be determined on the balance of probabilities.<sup>7424</sup>

2220. Neither the Prosecution, nor the Defence, has advanced any individual factors to be taken into account in considering Vlastimir Đorđević's sentence. As noted in paragraph 2195, the Chamber does take into account the role of the Accused who, as Chief of the RJB, was in a position of command and effective control of the MUP forces, except the RDB, who were among the actual perpetrators.

2221. The Chamber notes from the evidence that Vlastimir Đorđević did not willingly surrender to the custody of the Tribunal. In fact, he evaded arrest on an ICTY Indictment for some four years, until his arrest in June 2007.<sup>7425</sup> The whereabouts of the Accused had been unknown to this Tribunal and Serbian authorities from the time of his disappearance in May 2001. At that time, the Serbian authorities were giving attention to the role of the Accused in two distinct matters. One was a suspected financial abuse of his office. The other was the clandestine transport of corpses of Kosovo Albanians from Kosovo, which is dealt with in this Judgement. At the same time this Tribunal was also investigating the roles of a number of leading Serbian political, army and police

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<sup>7418</sup> *Blaškić* Appeal Judgement, paras 686 and 696.

<sup>7419</sup> *Čelebići* Appeal Judgement, paras 777; 780; *Blaškić* Appeal Judgement, para 685; *Stakić* Trial Judgement, para 405.

<sup>7420</sup> *Kunarac* Trial Judgement, para 850; *Stakić* Trial Judgement, para 911.

<sup>7421</sup> *Čelebići* Appeal Judgement, para 763; *Blaškić* Appeal Judgement, para 686.

<sup>7422</sup> *Čelebići* Appeal Judgement, para 783; *Blaškić* Appeal Judgement, para 687.

<sup>7423</sup> *Stakić* Trial Judgement, para 920.

<sup>7424</sup> *Blaškić* Appeal Judgement, para 697.

<sup>7425</sup> The Chamber notes that while Vlastimir Đorđević went missing in May 2001, it was not until 2003 that an arrest warrant was issued against him by the Tribunal.

leaders, including the Accused, in the events in Kosovo which are reflected in the charges dealt with in this trial.

2222. An indictment charging some of these men with some offences had been confirmed as early as 24 May 1999. Despite the continued absence of the Accused, which prevented questioning, in October 2003, an indictment of this Tribunal charging the Accused, with others, in connection with the events which are dealt with in this trial, was confirmed. While the other persons surrendered to this Tribunal, the Accused remained at large and had not been located when the trial of those persons charged in respect of events in Kosovo, commenced in 2006. On 26 June 2006, the charges against the Accused were severed from the Indictment to allow the trial of other persons to proceed (*Prosecutor v Milutinović et al.*).

2223. Eventually, Vlastimir Đorđević was located and arrested in Montenegro in June 2007 in respect of the Indictment of this Tribunal, and was transferred to The Hague for trial. His trial had to be held separately from the trial of the other persons charged in respect of the same matters because the Accused had avoided arrest until the trial of the other persons was well underway. This resulted in delay, an unnecessary waste of resources for the Tribunal and prolonged distress for victims or their families and for witnesses who were forced to testify more than once about traumatic events. Nevertheless, while noting the prolonged avoidance of arrest by the Accused and its consequences, the Chamber will not treat this as a factor aggravating the sentence which is otherwise appropriate for the offences for which the Accused is to be sentenced.

2224. The Chamber assumes in the Accused's favour, by virtue of the position he held in the MUP, that the Accused had not previously been convicted of any serious offence and that he had been of good character prior to the events that are the subject of the Indictment. No other matter is advanced as warranting mitigation of this sentence.

### **C. General practice in the courts of the former Yugoslavia**

2225. In the determination of the appropriate sentence, the Chamber is required to take into account the general practice regarding prison sentences in the courts of the former Yugoslavia.<sup>7426</sup>

The factors to be taken into consideration for the purpose of sentencing in the former Yugoslavia are set out in Article 41(1) of the SFRY Criminal Code which was in force at the time of the

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<sup>7426</sup> Article 24(1) of the Statute and Rule 101(B)(iii) of the Rules. Article 24 and Rule 101 B refer to actual practice of the courts of the former Yugoslavia. It is, however, settled in the jurisprudence of the Tribunal that the sources to be consulted pursuant to these provisions are not limited to actual case law from the former Yugoslavia, but also include statutory provisions, *Dragan Nikolić* Appeal Sentencing Judgement, para 148; *See also Čelebići* Appeal Judgement, para 715; *Stakić* Appeal Judgement, paras 888-890.

commission of the crimes alleged in the Indictment.<sup>7427</sup> This was renamed the FRY Criminal Code after the time of the commission of the crimes alleged in the Indictment.

2226. While there are no precise equivalents to the offences for which the Accused is now to be sentenced, there are a number of offences of a similar character. The Chamber will mention some of these. Article 142 of the SFRY Criminal Code prohibited ordering an attack against the civilian population or persons *hors de combat* and provided for a sentence of no less than five years in prison or the death penalty.<sup>7428</sup> Article 143 of the SFRY Criminal Code prohibited ordering or committing “murder, torture, inhuman treatment” of the wounded and sick, and provided for a sentence of not less than five years or the death penalty.<sup>7429</sup> Article 144 prohibited ordering or committing “killings, torture, inhuman treatment” of prisoners of war and provided for a sentence of not less than five years or the death penalty.<sup>7430</sup> Article 145(1) prohibited the organizing of a group for the purpose of committing criminal offences referred to in Articles 141 to 144 of the present Code and provided for no less than five years in prison.<sup>7431</sup> Article 151, sub-paragraph 1 prohibited the destruction of cultural and historical monuments in time of war or armed conflict and provided for a sentence of no less than one year in prison. Subparagraph 2 provided for a sentence of no less than five years if the building was clearly distinguished as being under special protection of international law as part of the cultural and spiritual heritage.<sup>7432</sup> Article 38(1) and Article 38(2)

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<sup>7427</sup> The SFRY Criminal Code was adopted on 28 September 1976 by the SFRY Assembly at the Session of Federal Council, declared by decree of the President of the Republic on 28 September 1976, published in the official Gazette SFRY No. 44 of 8 October 1976 and took effect on 1 July 1977. Article 41(1) of the SFRY Criminal Code states: “The court shall determine the sentence for the perpetrator of a given crime within the limits prescribed by the law for this crime, bearing in mind the purpose of the punishment and taking into account all the circumstances that could lead to this sentence being more or less severe, in particular: the degree of criminal responsibility, the motives of the crime, the degree of the threat or damage to protected property, the circumstances under which the crime was committed, the background of the perpetrator, his personal circumstances and behavior after the commission of the crime as well as other circumstances which related to the character of the perpetrator.”

<sup>7428</sup> Article 142 (1) of the SFRY Criminal Code provides: “Whoever, in violation of international law in time of war, armed conflict or occupation, orders an attack on the civilian population, settlement, individual civilians or persons *hors de combat*, which results in death or serious injury to body or health; indiscriminate attack affecting civilian population; the killing, torture or inhuman treatment of the civilian population (...), unlawful deportation, transfers (...) pillage of civilian property, unlawful and wanton destruction or extensive appropriation of property not justified by military necessity (...) shall be punished by no less than five years in prison or by the death penalty.”

<sup>7429</sup> Article 143 of the SFRY Criminal Code provides: “Whoever issues, orders during a war or armed conflict, in breach of the rules of international law, for the wounded and sick [...] to be subjected to murder, torture, inhuman treatment [...] or whosoever commits any of the said acts shall be punished by not less than five years or by death.”

<sup>7430</sup> Article 144 of the SFRY Criminal Code provides: “Whoever, in violation of the rules of international law, orders that the prisoners of war be subject to killings, torture, inhuman treatment [...] or whosoever commits any of the said acts shall be punished by imprisonment of not less than five years or by death.”

<sup>7431</sup> Article 145 (1) of the SFRY Criminal Code provides: “Whoever organises a group for the purpose of committing criminal offences referred to in Article 141 to 144 of the present Code, shall be punished by no less than five years in prison.”

<sup>7432</sup> Article 151 (1) of the SFRY Criminal Code provides “Whoever, in violation of international law in time of war or armed conflict, destroys cultural or historical monuments and buildings, or institutions dedicated to science, art, education or humanitarian purposes, shall be punished by no less than one year in prison. Article 151 (2) of the SFRY Criminal Code provides If the commission of the offence referred to in paragraph 1 of this Article results in the destruction of a building clearly distinguished as being under special protection of international law as part of the cultural and spiritual heritage of people, the offender shall be punished by no less than five years in prison.

of the SFRY Criminal Code provided that a sentence of imprisonment should not exceed 15 years unless the crime was punishable by the death penalty, in which case the term of imprisonment should not exceed 20 years.<sup>7433</sup> The death penalty was abolished by the Constitution of 1992. In 2002 the maximum term of imprisonment was increased to 40 years, but Serbian courts have applied the *lex mitior* principle and regard 20 years as the maximum applicable to an offence committed before that change.<sup>7434</sup>

#### **D. Other considerations**

2227. The Chamber notes that five other persons have been found guilty and sentenced for their differing roles in essentially the same offences as some of those for which Vlastimir Đorđević is now to be sentenced, although one additional crime scene was charged in the present case. The Chamber will, therefore, take into careful consideration the decisions on sentence in the *Milutinović et al.* case.<sup>7435</sup> The Chamber has also had regard to other sentences of this Tribunal in various ways comparable to the present case, including in each case the factors aggravating and mitigating the sentence imposed. While the sentences in the *Milutinović et al.* case, in particular, are of significance when determining the sentence of the Accused Đorđević, for the reasons identified, in the Chamber's view the role of Đorđević was more significant and a more severe sentence is appropriate in his case.

#### **E. Credit for time served in custody**

2228. Pursuant to Rule 101(C) of the Rules, the Accused is entitled to credit for the time spent in detention pending and during trial. The Chamber notes that Vlastimir Đorđević has been in custody in relation to this Indictment since 17 June 2007. He will receive full credit for the time spent in detention since 17 June 2007.

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<sup>7433</sup> Article 38 of the SFRY Criminal Code states, "Imprisonment: (1) The punishment of imprisonment may not be shorter than 15 days nor longer than 15 years. (2) The court may impose a punishment of imprisonment for a term of 20 years for criminal acts eligible for the death penalty. See *Rašević* and *Todović*, 11*bis* Decision, 8 July 2005, para 44; *Janković* 11*bis* Decision, 22 July 2005, para 53; *Lukić* and *Lukić* 11*bis* Decision, 5 April 2007, para 49.

<sup>7434</sup> See the three "Ovčara" judgements of the War Crimes Chamber of the Belgrade District Court: Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 1/2003) of 12 December 2005, p 134; Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 02/2005) of 30 January 2006, pp 49-50; Judgement of the War Crimes Chamber of the Belgrade District Court (case number: K.V. 01/2005) of 6 January 2006, pp 47-48.

<sup>7435</sup> The Trial Chamber found Vladimir Lazarević and Dragoljub Ojdanić to be guilty of deportation and forcible transfer (other inhuman acts), by aiding and abetting pursuant to Article 7(1) of the Statute and sentenced them each to 15 years of imprisonment. The Trial Chamber also found VJ General Nebojša Pavković, MUP General Sreten Lukić and Minister Nikola Šainović to be guilty of deportation, forcible transfer (other inhuman acts), murder (JCE 3) and persecution pursuant to the joint criminal enterprise charged and they were each sentenced to imprisonment for 22 years, *Milutinović* Trial Judgement, paras 463-467, 470-472, 1117-1120, 1130-1137, 1212, 1138.

## XV. DISPOSITION

2229. For the foregoing reasons, having considered all of the evidence and the submissions of the parties, the Chamber decides as follows:

2230. The Chamber finds the Accused Vlastimir Đorđević **GUILTY**, pursuant to Article 7(1) of the Statute, of the following counts:

- Count 1: Deportation, a crime against humanity, under Article 5 of the Statute, for having committed the crime of deportation through his participation in a joint criminal enterprise, and for having aided and abetted the deportation of Kosovo Albanians from the locations specified in this Judgement;
- Count 2: Other inhumane acts (forcible transfer), under Article 5 of the Statute, for having committed the crime of forcible transfer through his participation in a joint criminal enterprise, and for having aided and abetting the forcible transfer of Kosovo Albanians from the locations specified in this Judgement;
- Count 3: Murder, a crime against humanity, under Article 5 of the Statute, for having committed the crime of murder through his participation in a joint criminal enterprise, and for having aided and abetted the murder of not less than 724 Kosovo Albanians, identified in the Schedule to this Judgement;
- Count 4: Murder, a violation of the laws or customs of war, under Article 3 of the Statute, for having committed the crime of murder through his participation in a joint criminal enterprise, and for having aided and abetted the murder of not less than 724 Kosovo Albanians taking no active part in the hostilities, identified in the Schedule to this Judgement;
- Count 5: Persecutions, on racial grounds, a crime against humanity, under Article 5 of the Statute, for having committed the crime of persecutions through his participation in a joint criminal enterprise, and for having aided and abetted the persecutions against Kosovo Albanians through deportation, forcible transfer, murder, and destruction or damage to property of cultural and religious significance to Kosovo Albanians at locations specified in this Judgement.

2231. The Chamber hereby sentences Vlastimir Đorđević to a single sentence of 27 (twenty-seven) years imprisonment. Vlastimir Đorđević has been in custody since 17 June 2007. Pursuant

to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention so far. Pursuant to Rule 103(C) of the Rules, Vlastimir Đorđević shall remain in custody of the Tribunal pending the finalisation of arrangements for his transfer to a State where he shall serve his sentence.

Done in English and French, the English text being authoritative.

Dated this twenty-third day of February 2011  
At The Hague  
The Netherlands

\_\_\_\_\_  
Judge Kevin Parker  
Presiding

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Judge Christoph Flügge

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Judge Melville Baird

**[Seal of the Tribunal]**

## XVI. SCHEDULE: VICTIM CHARTS

2232. Throughout the Judgement, the Chamber has referred to the Victim Charts. In the charts that follow, the Chamber has listed the names of the victims whom the Chamber has accepted were murdered by Serbian forces as alleged in the Indictment.<sup>7436</sup> The Chamber has also added two further categories of victims, “Victims known by name and not listed in the Schedule of the Indictment” and “Victims not known by name and not listed in the Schedule of the Indictment” in respect of allegations where the scope of the Indictment is not restricted to those identified in the Indictment by name or number, and where the evidence establishes the murder of these victims.

2233. The charts detail the findings of the Chamber as to the name, approximate age and gender of each victim.<sup>7437</sup> Also included is a column for the place and date of the murder as found by the Chamber. Reference is given to forensic evidence which the Chamber accepts as to the cause of death of a victim where this is available; this is included in the footnote. As discussed earlier in this Judgement, in numerous cases because of the state of the remains no cause of death could be established from forensic examination. For these victims, the Chamber has included in the footnote a reference to the forensic evidence considered in the determination of the circumstances of the murder of the victim or the identification of the victim. For all victims reference is made to the paragraphs in this Judgement in which the Chamber’s finding as to the circumstances of the murder are to be found.

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<sup>7436</sup> The Victim Charts do not include all the alleged victims scheduled in the Indictment. Only those victims whom the Chamber is satisfied were murdered have been included in the Charts. No Victim Chart, related to Dubrava/Lisnaje, has been included as no evidence was called in support of these murder allegations as set out in paragraph 75(k)(iv) of the Indictment.

<sup>7437</sup> There are discrepancies in some cases between the evidence and the Indictment about the spelling of the names of some of the victims. In these cases the Chamber has included the alternative spelling in brackets. In some cases there are also discrepancies as to the gender and age of the victim. These have been noted in the main text of the Judgement and corrected in the Victim Charts below.

## A. Bela Crkva / Bellacërkë

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BEGAJ, Abdullah (Hajrullah)	25	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7438</sup>
BERISHA, Murat	60	Male	Belaja Bridge, 25 March 1999 <sup>7439</sup>
GASHI (GASHA), Fadil	46	Male	Belaja Bridge, 25 March 1999 <sup>7440</sup>
MORINA, Musa	65	Male	Belaja Bridge, 25 March 1999 <sup>7441</sup>
POPAJ, Abdullah (Abdulla/Abdullah)	18	Male	Belaja Bridge, 25 March 1999 <sup>7442</sup>
POPAJ, Agon	14	Male	Belaja Bridge, 25 March 1999 <sup>7443</sup>
POPAJ, Alban	21	Male	Belaja Bridge, 25 March 1999 <sup>7444</sup>
POPAJ, Bedrush	47	Male	Belaja Bridge, 25 March 1999 <sup>7445</sup>
POPAJ, Belul (Behlul)	14	Male	Belaja Bridge, 25 March 1999 <sup>7446</sup>
POPAJ, Ethem (Eteham)	46	Male	Belaja Bridge, 25 March 1999 <sup>7447</sup>
POPAJ, Hazer	77	Male	Belaja Bridge, 25 March 1999 <sup>7448</sup>
POPAJ, Hysni (Haxhi)	37	Male	Belaja Bridge, 25 March 1999 <sup>7449</sup>

<sup>7438</sup> See *supra*, paras 473, 1390-1394, 1712. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138835.

<sup>7439</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138818.

<sup>7440</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the neck, Exhibit P1151, K0138821.

<sup>7441</sup> See *supra*, paras 469-472, 1390-1394, 1711.

<sup>7442</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138841.

<sup>7443</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138845.

<sup>7444</sup> See *supra*, paras 469-472, 1390-1394, 1711.

<sup>7445</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138842.

<sup>7446</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1151, K0138839.

<sup>7447</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138844.

<sup>7448</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138837.

<sup>7449</sup> See *supra*, paras 469-472, 1390-1394, 1711.



NAME	AGE	GENDER	PLACE AND DATE OF MURDER
POPAJ, Irfan (Irfon)	41	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7450</sup>
POPAJ, Isuf (Haxhi Isuf)	76	Male	Belaja Bridge, 25 March 1999 <sup>7451</sup>
POPAJ, Kreshnik	18	Male	Belaja Bridge, 25 March 1999 <sup>7452</sup>
POPAJ, Lindrit	18	Male	Belaja Bridge, 25 March 1999 <sup>7453</sup>
POPAJ, Mehmet	46	Male	Belaja Bridge, 25 March 1999 <sup>7454</sup>
POPAJ, Mersel	53	Male	Belaja Bridge, 25 March 1999 <sup>7455</sup>
POPAJ, Nazmi (Nazim)	45	Male	Belaja Bridge, 25 March 1999 <sup>7456</sup>
POPAJ, Nisim (Nesim)	35	Male	Belaja Bridge, 25 March 1999 <sup>7457</sup>
POPAJ, Rrustem (Rrustem/Rrusten)	63	Male	Belaja Bridge, 25 March 1999 <sup>7458</sup>
POPAJ, Sahid (Sahit)	40	Male	Belaja Bridge, 25 March 1999 <sup>7459</sup>
POPAJ, Sedat	47	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7460</sup>
POPAJ, Shendet	17	Male	Belaja Bridge, 25 March 1999 <sup>7461</sup>
POPAJ, Vehap	58	Male	Belaja Bridge, 25 March 1999 <sup>7462</sup>

<sup>7450</sup> See *supra*, paras 473, 1390-1394, 1712. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138831.

<sup>7451</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138849.

<sup>7452</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138843.

<sup>7453</sup> See *supra*, paras 469-472, 1390-1394, 1711.

<sup>7454</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138850.

<sup>7455</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138839.

<sup>7456</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138848.

<sup>7457</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138847.

<sup>7458</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138818.

<sup>7459</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138840.

<sup>7460</sup> See *supra*, paras 473, 1390-1394, 1712. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138818.

<sup>7461</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1151, K0138830.

<sup>7462</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138851.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
POPAJ, Xhavit	32	Male	Belaja Bridge, 25 March 1999 <sup>7463</sup>
SPAHIU, Marigona (Marigioni)	10	Female	Belaja River, 25 March 1999 <sup>7464</sup>
SPAHIU, Iliriana	12	Female	Belaja River, 25 March 1999 <sup>7465</sup>
SPAHIU, Lirim	7	Male	Belaja River, 25 March 1999 <sup>7466</sup>
SPAHIU, Qamile	69	Female	Belaja River, 25 March 1999 <sup>7467</sup>
SPAHIU, Xhemal (Gjermal)	70	Male	Belaja River, 25 March 1999 <sup>7468</sup>
ZHUNIQI, Abein (Abedin)	37	Male	Belaja Bridge, 25 March 1999 <sup>7469</sup>
ZHUNIQI, Agim	51	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7470</sup>
ZHUNIQI, Bajram	51	Male	Belaja Bridge, 25 March 1999 <sup>7471</sup>
ZHUNIQI, Bilall (Biladh/Bilall/Balal/ Bilal)	67	Male	Belaja Bridge, 25 March 1999 <sup>7472</sup>
ZHUNIQI, Clirim (Shlirim/Qlirim)	40	Male	Belaja River, 25 March 1999 <sup>7473</sup>
ZHUNIQI, Dardan	6	Male	Belaja River, 25 March 1999 <sup>7474</sup>
ZHUNIQI, Dardane	8	Female	Belaja River, 25 March 1999 <sup>7475</sup>

<sup>7463</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138818.

<sup>7464</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138828.

<sup>7465</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138859.

<sup>7466</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138861.

<sup>7467</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138858.

<sup>7468</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as a gunshot wound to the neck, Exhibit P1151, K0138856.

<sup>7469</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138817.

<sup>7470</sup> See *supra*, paras 473, 1390-1394, 1712. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138834.

<sup>7471</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138823.

<sup>7472</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138825.

<sup>7473</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as multiple gunshot wounds to the back, Exhibit P1151, K0138854.

<sup>7474</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138855.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
ZHUNIQI, Destan	68	Male	Belaja Bridge, 25 March 1999 <sup>7476</sup>
ZHUNIQI, Dhurata	9-10	Female	Belaja River, 25 March 1999 <sup>7477</sup>
ZHUNIQI (ZHUNIQJ), Eshref	55	Male	Belaja Bridge, 25 March 1999 <sup>7478</sup>
ZHUNIQI, Fatos	42	Male	Belaja Bridge, 25 March 1999 <sup>7479</sup>
ZHUNIQI (ZHUNIKI), Hysni	70	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7480</sup>
ZHUNIQI, Ibrahim	68	Male	Belaja Bridge, 25 March 1999 <sup>7481</sup>
ZHUNIQI, Kasim (Kassim)	33	Male	Belaja Bridge, 25 March 1999 <sup>7482</sup>
ZHUNIQI, Lumnic (Lumnig/Lumuturie)	39	Female	Belaja River, 25 March 1999 <sup>7483</sup>
ZHUNIQI, Labinot	16	Male	Belaja Bridge, 25 March 1999 <sup>7484</sup>
ZHUNIQI, Medi (Mehdi/Mhedi)	55	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7485</sup>
ZHUNIQI, Muhammet (Muhamed)	70	Male	Belaja Bridge, 25 March 1999 <sup>7486</sup>
ZHUNIQI, Muharrem (Muharem)	30	Male	Belaja Bridge, 25 March 1999 <sup>7487</sup>

<sup>7475</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as gunshot wound to the head, Exhibit P1151, K0138857.

<sup>7476</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the left side of the chest, Exhibit P1151, K0138819.

<sup>7477</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as multiple gunshot wound to the back of the head, Exhibit P1151, K0138856.

<sup>7478</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138837.

<sup>7479</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138829.

<sup>7480</sup> See *supra*, paras 473, 1390-1394, 1712. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138836.

<sup>7481</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138820.

<sup>7482</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138813.

<sup>7483</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as multiple gunshot wounds to the head and back, Exhibit P1151, K0138854.

<sup>7484</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138829.

<sup>7485</sup> See *supra*, paras 473, 1390-1394, 1712. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138833.

<sup>7486</sup> See *supra*, paras 469-472, 1390-1394, 1711.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
ZHUNIQI, Qamil	77	Male	Belaja Bridge, 25 March 1999 <sup>7488</sup>
ZHUNIQI, Qemal	59	Male	Belaja Bridge, 25 March 1999 <sup>7489</sup>
ZHUNIQI, Reshit (Rehit)	32	Male	Belaja Bridge, 25 March 1999 <sup>7490</sup>
ZHUNIQI, Shemsi	52	Male	Belaja Bridge, 25 March 1999 <sup>7491</sup>

Victims known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
FETOSHI, Ardian		Male	Belaja Bridge, 25 March 1999 <sup>7492</sup>
FETOHSI, Hysni		Male	Belaja Bridge, 25 March 1999 <sup>7493</sup>
FETOSHI, Fatmir		Male	Belaja Bridge, 25 March 1999 <sup>7494</sup>
SPAHIU, Fikret (Fikrit/Fiqriq)	37	Female	Belaja River, 25 March 1999 <sup>7495</sup>
SPAHIU, Labinot	4	Male	Belaja River, 25 March 1999 <sup>7496</sup>

Victims not known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
SPAHIU family member			Belaja River, 25 March 1999 <sup>7497</sup>

<sup>7487</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138812.

<sup>7488</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138814.

<sup>7489</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138826.

<sup>7490</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138827.

<sup>7491</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138824.

<sup>7492</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as a gunshot wound, Exhibit P1151, K0138814-K0138815.

<sup>7493</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138815-K0138816.

<sup>7494</sup> See *supra*, paras 469-472, 1390-1394, 1711. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138815-K013-8816.

<sup>7495</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1151, K0138858-K0138859.

<sup>7496</sup> See *supra*, paras 463-465, 1390-1394, 1710. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1151, K0138860.

<sup>7497</sup> See *supra*, paras 463-465, 1390-1394, 1710.

## B. MALA KRUŠA/KRUSHË-E-VOGEL

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
ASLLANI, Adem	70	Male	Batusha barn, 26 March 1999 <sup>7498</sup>
ASLLANI, Asim	34	Male	Batusha barn, 26 March 1999 <sup>7499</sup>
ASLLANI, Feim (Fehim)	29	Male	Batusha barn, 26 March 1999 <sup>7500</sup>
ASLLANI, Muharrem (Muharremi)	61	Male	Batusha barn, 26 March 1999 <sup>7501</sup>
ASLLANI, Nexhat	31	Male	Batusha barn, 26 March 1999 <sup>7502</sup>
ASLLANI, Nisret (Nysret)	32	Male	Batusha barn, 26 March 1999 <sup>7503</sup>
ASLLANI, Perparim	29	Male	Batusha barn, 26 March 1999 <sup>7504</sup>
AVDYLI (AVDYL), Bali	73	Male	Batusha barn, 26 March 1999 <sup>7505</sup>
AVDYLI (AVDYL), Enver	25	Male	Batusha barn, 26 March 1999 <sup>7506</sup>
BATUSHA, Ahmet	41	Male	Batusha barn, 26 March 1999 <sup>7507</sup>
BATUSHA, Amrush (Emrush)	41	Male	Batusha barn, 26 March 1999 <sup>7508</sup>
BATUSHA, Asllan	43	Male	Batusha barn, 26 March 1999 <sup>7509</sup>
BATUSHA, Avdi	46	Male	Batusha barn, 26 March 1999 <sup>7510</sup>
BATUSHA, Bekim	17	Male	Batusha barn, 26 March 1999 <sup>7511</sup>

<sup>7498</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7499</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7500</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7501</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7502</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7503</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7504</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7505</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7506</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7507</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7508</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7509</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7510</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7511</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BATUSHA, Beqir	65	Male	Batusha barn, 26 March 1999 <sup>7512</sup>
BATUSHA, Burim	18	Male	Batusha barn, 26 March 1999 <sup>7513</sup>
BATUSHA, Enver	22	Male	Batusha barn, 26 March 1999 <sup>7514</sup>
BATUSHA, Feim (Fehim)	23	Male	Batusha barn, 26 March 1999 <sup>7515</sup>
BATUSHA, Mergim	20	Male	Batusha barn, 26 March 1999 <sup>7516</sup>
BATUSHA, Haxhi (Hagji)	29	Male	Batusha barn, 26 March 1999 <sup>7517</sup>
BATUSHA, Lirim	14	Male	Batusha barn, 26 March 1999 <sup>7518</sup>
BATUSHA, Milaim	32	Male	Batusha barn, 26 March 1999 <sup>7519</sup>
BATUSHA, Muharrem	73	Male	Batusha barn, 26 March 1999 <sup>7520</sup>
BATUSHA, Njazi	37	Male	Batusha barn, 26 March 1999 <sup>7521</sup>
BATUSHA, Osman	60	Male	Batusha barn, 26 March 1999 <sup>7522</sup>
BATUSHA, Sejdi (Sedji)	71	Male	Batusha barn, 26 March 1999 <sup>7523</sup>
BATUSHA, Skifer (Skifter)	20	Male	Batusha barn, 26 March 1999 <sup>7524</sup>
BATUSHA, Sulejman (Sylejman/Syle Sadik)	46	Male	Batusha barn, 26 March 1999 <sup>7525</sup>
BATUSHA, Zaim	47	Male	Batusha barn, 26 March 1999 <sup>7526</sup>

<sup>7512</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7513</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7514</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7515</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7516</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7517</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7518</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7519</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7520</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7521</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7522</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7523</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7524</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7525</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7526</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
HAJDARI, Abaz	42	Male	Batusha barn, 26 March 1999 <sup>7527</sup>
HAJDARI, Abedin	15	Male	Batusha barn, 26 March 1999 <sup>7528</sup>
HAJDARI, Halil	50	Male	Batusha barn, 26 March 1999 <sup>7529</sup>
HAJDARI, Halim	65	Male	Batusha barn, 26 March 1999 <sup>7530</sup>
HAJDARI, Hysni	21	Male	In the mountains, 26 March 1999 <sup>7531</sup>
HAJDARI, Marsel (Mursel)	13	Male	Batusha barn, 26 March 1999 <sup>7532</sup>
HAJDARI, Nazim (Nasim)	30	Male	Batusha barn, 26 March 1999 <sup>7533</sup>
HAJDARI, Qamil	54	Male	Batusha barn, 26 March 1999 <sup>7534</sup>
HAJDARI, Rasim	27	Male	Batusha barn, 26 March 1999 <sup>7535</sup>
HAJDARI, Sahit	36	Male	Batusha barn, 26 March 1999 <sup>7536</sup>
HAJDARI, Selajdin	34	Male	Batusha barn, 26 March 1999 <sup>7537</sup>
HAJDARI, Shani	39	Male	Batusha barn, 26 March 1999 <sup>7538</sup>
HAJDARI, Vesel	17	Male	Batusha barn, 26 March 1999 <sup>7539</sup>
HAJDARI, Zenun	26	Male	Batusha barn, 26 March 1999 <sup>7540</sup>
LIMONI (LIMANI), Avdyl	43	Male	Batusha barn, 26 March 1999 <sup>7541</sup>
LIMONI, Limon	71	Male	Batusha barn, 26 March 1999 <sup>7542</sup>
LIMONI, Luan	24	Male	Batusha barn, 26 March 1999 <sup>7543</sup>
LIMONI, Nehbi (Nebi)	57	Male	Batusha barn, 26 March 1999 <sup>7544</sup>

<sup>7527</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7528</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7529</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7530</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7531</sup> See supra, paras 488-490, 493, 1402, 1718; see also, Exhibit P477.

<sup>7532</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7533</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7534</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7535</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7536</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7537</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7538</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7539</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7540</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7541</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7542</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7543</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7544</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
RAMADANI, Afrim	27	Male	Batusha barn, 26 March 1999 <sup>7545</sup>
RAMADANI, Asllan	31	Male	Batusha barn, 26 March 1999 <sup>7546</sup>
RAMADANI, Bajram	15	Male	Batusha barn, 26 March 1999 <sup>7547</sup>
RAMADANI, Sabit	23	Male	Batusha barn, 26 March 1999 <sup>7548</sup>
RAMADANI, Hysen	76	Male	In his courtyard, 26 March 1999 <sup>7549</sup>
RAMADANI, Murat	57	Male	Batusha barn, 26 March 1999 <sup>7550</sup>
RAMADANI, Ramadan	55	Male	Batusha barn, 26 March 1999 <sup>7551</sup>
RAMADANI, Selajdin	29	Male	Batusha barn, 26 March 1999 <sup>7552</sup>
RASHKAJ (RASHKA), Kadri	14	Male	Batusha barn, 26 March 1999 <sup>7553</sup>
RASHKAJ, Demir	18	Male	In own house, 25 March 1999 <sup>7554</sup>
RASHKAJ, Refki	17	Male	Stream by the village, 26 March 1999 <sup>7555</sup>
SHEHU, Adnan	19	Male	Stream by the village, 26 March 1999 <sup>7556</sup>
SHEHU (SHAHU), Arben	20	Male	Batusha barn, 26 March 1999 <sup>7557</sup>
SHEHU, Arif	35	Male	Batusha barn, 26 March 1999 <sup>7558</sup>
SHEHU, Bekim	26	Male	Batusha barn, 26 March 1999 <sup>7559</sup>
SHEHU, Burim	22	Male	Batusha barn, 26 March 1999 <sup>7560</sup>
SHEHU, Destan	64	Male	Batusha barn, 26 March 1999 <sup>7561</sup>

<sup>7545</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7546</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7547</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7548</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7549</sup> See supra, paras 486, 1395-1402, 1716; see also, Exhibit P477.

<sup>7550</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7551</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7552</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7553</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7554</sup> See supra, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7555</sup> See supra, paras 488-491, 1399, 1402, 1718; see also, Exhibit P477.

<sup>7556</sup> See supra, paras 488-491, 1399, 1402, 1718; see also, Exhibit P477.

<sup>7557</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7558</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7559</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7560</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7561</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.



NAME	AGE	GENDER	PLACE AND DATE OF MURDER
SHEHU, Din (Neredin)	68	Male	Batusha barn, 26 March 1999 <sup>7562</sup>
SHEHU, Dritan (Driton)	21	Male	Batusha barn, 26 March 1999 <sup>7563</sup>
SHEHU, Fadil	44	Male	Batusha barn, 26 March 1999 <sup>7564</sup>
SHEHU Flamur	19	Male	Batusha barn, 26 March 1999 <sup>7565</sup>
SHEHU, FNU (son of Haziz)	20	Male	Batusha barn, 26 March 1999 <sup>7566</sup>
SHEHU, FNU (son of Sinan)	18	Male	Batusha barn, 26 March 1999 <sup>7567</sup>
SHEHU, Haxhi	28	Male	Batusha barn, 26 March 1999 <sup>7568</sup>
SHEHU, Haziz	42	Male	Batusha barn, 26 March 1999 <sup>7569</sup>
SHEHU, Ismail (Ismajl)	69	Male	Batusha barn, 26 March 1999 <sup>7570</sup>
SHEHU, Ismet	54	Male	Batusha barn, 26 March 1999 <sup>7571</sup>
SHEHU, Mehmet	16	Male	Batusha barn, 26 March 1999 <sup>7572</sup>
SHEHU, Mentor	15	Male	Batusha barn, 26 March 1999 <sup>7573</sup>
SHEHU, Myftar (Miftar)	47	Male	Batusha barn, 26 March 1999 <sup>7574</sup>
SHEHU, Nahit	19	Male	Batusha barn, 26 March 1999 <sup>7575</sup>
SHEHU, Nehat	21	Male	Batusha barn, 26 March 1999 <sup>7576</sup>
SHEHU, Nexhat	40	Male	In own house, 25 March 1999 <sup>7577</sup>
SHEHU, Sahit	27	Male	Batusha barn, 26 March 1999 <sup>7578</sup>

<sup>7562</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717

<sup>7563</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7564</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7565</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7566</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7567</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7568</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7569</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7570</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7571</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7572</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7573</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7574</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7575</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7576</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7577</sup> See *supra*, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7578</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
SHEHU, Sali	54	Male	In own house, 25 March 1999 <sup>7579</sup>
SHEHU, Sami	25	Male	Batusha barn, 26 March 1999 <sup>7580</sup>
SHEHU, Sefer	50	Male	Batusha barn, 26 March 1999 <sup>7581</sup>
SHEHU, Shani	34	Male	Batusha barn, 26 March 1999 <sup>7582</sup>
SHEHU, Shefqet	39	Male	Batusha barn, 26 March 1999 <sup>7583</sup>
SHEHU, Sinan	49	Male	Batusha barn, 26 March 1999 <sup>7584</sup>
SHEHU, Veli	30	Male	Batusha barn, 26 March 1999 <sup>7585</sup>
SHEHU, Vesel	21	Male	Batusha barn, 26 March 1999 <sup>7586</sup>
SHEHU, Xhafer	36	Male	Batusha barn, 26 March 1999 <sup>7587</sup>
SHEHU, Xhavit	25	Male	Batusha barn, 26 March 1999 <sup>7588</sup>
SHEHU, Xhelal	13	Male	Batusha barn, 26 March 1999 <sup>7589</sup>
ZYLFIU, Afrim	26	Male	Batusha barn, 26 March 1999 <sup>7590</sup>
ZYLFIU, Halim	55	Male	Batusha barn, 26 March 1999 <sup>7591</sup>
ZYLFIU Hamdi	66	Male	Batusha barn, 26 March 1999 <sup>7592</sup>
ZYLFIU, Hamit	23	Male	Batusha barn, 26 March 1999 <sup>7593</sup>
ZYLFIU, Hysen	63	Male	Batusha barn, 26 March 1999 <sup>7594</sup>
ZYLFIU, Njazim / Nazym	28	Male	Batusha barn, 26 March 1999 <sup>7595</sup>
ZYLFIU, Xhelal	18	Male	Batusha barn, 26 March 1999 <sup>7596</sup>

<sup>7579</sup> See *supra*, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7580</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7581</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7582</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7583</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7584</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7585</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7586</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7587</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7588</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7589</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7590</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7591</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7592</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7593</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7594</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7595</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7596</sup> See *supra*, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

Victims known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BATUSHA, Islam	40	Male	Batusha barn, 26 March 1999 <sup>7597</sup>
BATUSHA, Syle	43	Male	Batusha barn, 26 March 1999 <sup>7598</sup>
BATUSHA, Visar	15	Male	Batusha barn, 26 March 1999 <sup>7599</sup>
BERISHA, Mehmet	70	Male	Batusha barn, 26 March 1999 <sup>7600</sup>
EMERLLAHU, Sejdi	58	Male	In own house, 25 March 1999 <sup>7601</sup>
PRENKAJ, Anton	43	Male	Batusha barn, 26 March 1999 <sup>7602</sup>
PRENKAJ, Nikolle (PRENGAJ)	46	Male	Batusha barn, 26 March 1999 <sup>7603</sup>
RASHKAJ (RASHKAJ), Isnija		Male	In own house, 25 March 1999 <sup>7604</sup>
RASHKAJ, Nazmi	50	Male	In own house, 25 March 1999 <sup>7605</sup>
SHEHU, Afjaz (Ajvaz)	15	Male	Batusha barn, 26 March 1999 <sup>7606</sup>
SHEHU, Dervish	42	Male	In own house, 25 March 1999 <sup>7607</sup>
SHEHU, Kujtim	15	Male	Batusha barn, 26 March 1999 <sup>7608</sup>
SHEHU, Nuredin	70	Male	Batusha barn, 26 March 1999 <sup>7609</sup>
SHEHU, Raif	40	Male	In own house, 25 March 1999 <sup>7610</sup>
SHEHU, Selami	23	Male	Batusha barn, 26 March 1999 <sup>7611</sup>
SHEHU, Reshat	45	Male	In own house, 25 March 1999 <sup>7612</sup>
SHEHU, Visar	19	Male	Batusha barn, 26 March 1999 <sup>7613</sup>
ZYLFIU, Cene	67	Male	Batusha barn, 26 March 1999 <sup>7614</sup>

<sup>7597</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7598</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7599</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7600</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7601</sup> See supra, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7602</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7603</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7604</sup> See supra, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7605</sup> See supra, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7606</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7607</sup> See supra, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7608</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7609</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7610</sup> See supra, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7611</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717; see also, Exhibit P477.

<sup>7612</sup> See supra, paras 485, 1395-1402, 1715; see also, Exhibit P477.

<sup>7613</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717.

<sup>7614</sup> See supra, paras 488-491, 495, 496, 1395-1402, 1717.

### C. SUVA REKA/SUHAREKË

#### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BERISHA, Afrim	24	Male	Suva Reka/Suharekë town, 26 March 1999 <sup>7615</sup>
BERISHA, Altin	11	Male	Pizzeria, 26 March 1999 <sup>7616</sup>
BERISHA, Arta	18	Female	Suva Reka/Suharekë town, 26 March 1999 <sup>7617</sup>
BERISHA, Avdi	43	Male	Pizzeria, 26 March 1999 <sup>7618</sup>
BERISHA, Besim	26	Male	Pizzeria, 26 March 1999 <sup>7619</sup>
BERISHA, Bujar	40	Male	Berisha family compound, 26 March 1999 <sup>7620</sup>
BERISHA, Dafina	15	Female	Pizzeria, 26 March 1999 <sup>7621</sup>
BERISHA, Dorentina (Doruntina)	4	Female	Pizzeria, 26 March 1999 <sup>7622</sup>
BERISHA, Drilon	13	Male	Pizzeria, 26 March 1999 <sup>7623</sup>
BERISHA, Edon	12	Male	Pizzeria, 26 March 1999 <sup>7624</sup>
BERISHA, Eron	1	Male	Pizzeria, 26 March 1999 <sup>7625</sup>
BERISHA, Fatime (Wife of Avdi)	37	Female	Pizzeria, 26 March 1999 <sup>7626</sup>
BERISHA, Fatime (Wife of Ismet and mother of Faton)	48	Female	Berisha family compound, 26 March 1999 <sup>7627</sup>

<sup>7615</sup> See *supra*, paras 683, 1406, 1484-1491, 1724; see also, Exhibit P799.

<sup>7616</sup> See *supra*, paras 674-676, 1722.

<sup>7617</sup> See *supra*, paras 683, 1484-1491, 1724; see also, Exhibit P799; see also, Exhibit P818.

<sup>7618</sup> See *supra*, paras 674-676, 1722.

<sup>7619</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P799; see also, Exhibit P817; see also, Exhibit P818.

<sup>7620</sup> See *supra*, paras 670, 672, 1721.

<sup>7621</sup> See *supra*, paras 674-676, 1722.

<sup>7622</sup> See *supra*, paras 674-676, 1722.

<sup>7623</sup> See *supra*, paras 674-676, 1484-1491, 1722. The cause of death was forensically established as an injury to the trunk, Exhibit P456, K0528040-K0528042; see also, Exhibit P799; see also, Exhibit P817; see also, Exhibit P818.

<sup>7624</sup> See *supra*, paras 674-676, 1722.

<sup>7625</sup> See *supra*, paras 674-676, 1722.

<sup>7626</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P818, p 21.

<sup>7627</sup> See *supra*, paras 670, 672, 1404-1405, 1721. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1139, pp 77-78; Exhibit P1176, p 1.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BERISHA, Fatmire (Fatimira/Fatimire)	22	Female	Pizzeria, 26 March 1999 <sup>7628</sup>
BERISHA, Faton	27	Male	Berisha family compound, 26 March 1999 <sup>7629</sup>
BERISHA, Flora (Florice)	38	Female	Pizzeria, 26 March 1999 <sup>7630</sup>
BERISHA, Hajbin (Hajdin)	37	Male	Pizzeria, 26 March 1999 <sup>7631</sup>
BERISHA, Hamdi	54	Male	Suva Reka/Suharekë town, 26 March 1999 <sup>7632</sup>
BERISHA, Hanumusha (Hanumsha)	9	Female	Pizzeria, 26 March 1999 <sup>7633</sup>
BERISHA, Hanumusha (Hanumsha)	81	Female	Pizzeria, 26 March 1999 <sup>7634</sup>
BERISHA, Hava (Have)	63	Female	Pizzeria, 26 March 1999 <sup>7635</sup>
BERISHA, Herolinda (Hwolinda)	13	Female	Pizzeria, 26 March 1999 <sup>7636</sup>
BERISHA, Ismet	2-3	Male	Pizzeria, 26 March 1999 <sup>7637</sup>
BERISHA, Kushtrim (Kushtrim)	11	Male	Pizzeria, 26 March 1999 <sup>7638</sup>

<sup>7628</sup> See *supra*, paras 674-676, 1484-1491, 1722. The cause of death was forensically established as gunshot wounds to the head, chest and left leg, Exhibit P456, K0528029-K0528032; see also, Exhibit P817; see also, Exhibit P818.

<sup>7629</sup> See *supra*, paras 670, 672, 1404-1405, 1721. The cause of death was forensically established as a thoracic injury caused by a gunshot, Exhibit P1139, pp 77-78; Exhibit P1175; Exhibit P1177, K0141036; Exhibit P1179, K0141039.

<sup>7630</sup> See *supra*, paras 674-676, 1722.

<sup>7631</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P817; see also, Exhibit P818.

<sup>7632</sup> See *supra*, paras 683, 1484-1491, 1724; see also, Exhibit P799.

<sup>7633</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P818; see also, Exhibit P799.

<sup>7634</sup> See *supra*, paras 674-676, 1722.

<sup>7635</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P799.

<sup>7636</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P799.

<sup>7637</sup> See *supra*, paras 674-676, 1722.

<sup>7638</sup> See *supra*, paras 674-676, 1722.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BERISHA, Lirije (Lirija/ Lirie)	24	Female	Pizzeria, 26 March 1999 <sup>7639</sup>
BERISHA, Majlinda (Malinda)	15	Female	Pizzeria, 26 March 1999 <sup>7640</sup>
BERISHA, Merita	10	Female	Pizzeria, 26 March 1999 <sup>7641</sup>
BERISHA, Mevlude (Mevlyde)	26	Female	Pizzeria, 26 March 1999 <sup>7642</sup>
BERISHA, Mihrije	26	Female	Pizzeria, 26 March 1999 <sup>7643</sup>
BERISHA, Musli	63	Male	Pizzeria, 26 March 1999 <sup>7644</sup>
BERISHA, Nexhat	43	Male	Berisha family compound, 26 March 1999 <sup>7645</sup>
BERISHA, Nexhmedin (Nedžmedin)	37	Male	Berisha family compound, 26 March 1999 <sup>7646</sup>
BERISHA, Redon (Radon)	1	Male	Pizzeria, 26 March 1999 <sup>7647</sup>
BERISHA, Sebahate	25	Female	Pizzeria, 26 March 1999 <sup>7648</sup>
BERISHA, Sedat	45	Male	Berisha family compound, 26 March 1999 <sup>7649</sup>
BERISHA, Sherine (Sherina/Shirine)	17	Female	Pizzeria, 26 March 1999 <sup>7650</sup>

<sup>7639</sup> See *supra*, paras 674-676, 1484-1491, 1722. The cause of death was forensically established as a gunshot wound to the head, Exhibit P456, K0528024-K0528025; see also, Exhibit P817; see also, Exhibit P818; see also, Exhibit P799.

<sup>7640</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P799.

<sup>7641</sup> See *supra*, paras 674-676, 1406, 1484-1491, 1722; see also, Exhibit P799; see also, Exhibit P818.

<sup>7642</sup> See *supra*, paras 674-676, 1722.

<sup>7643</sup> See *supra*, paras 674-676, 1484-1491, 1722. The cause of death was forensically established as a gunshot wound to the head and neck, Exhibit P473, K0503609; see also, Exhibit P817; see also, Exhibit P818, p 20.

<sup>7644</sup> See *supra*, paras 674-676, 1406, 1484-1491, 1722. see also, Exhibit P799; see also, Exhibit P817; see also, Exhibit P818.

<sup>7645</sup> See *supra*, paras 670, 672, 1721.

<sup>7646</sup> See *supra*, paras 670, 672, 1484-1491, 1721; see also, Exhibit P799.

<sup>7647</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P799.

<sup>7648</sup> See *supra*, paras 674-676, 1722.

<sup>7649</sup> See *supra*, paras 670, 672, 1404-1405, 1721; Exhibit P1139, pp 76-78; Exhibit P1177, K0141034-K0141035; Exhibit P1178, K0141049.

<sup>7650</sup> See *supra*, paras 674-676, 1722.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BERISHA, Sofia (Sofije/Sofia)	58	Female	Pizzeria, 26 March 1999 <sup>7651</sup>
BERISHA, Vesel	55	Male	Pizzeria, 26 March 1999 <sup>7652</sup>
BERISHA, Vlorjan (Vlorian)	17	Male	Pizzeria, 26 March 1999 <sup>7653</sup>
BERISHA, Zana	13	Female	Suva Reka/Suharekë town, 26 March 1999 <sup>7654</sup>
BERISHA, Graniti (Granit)	2	Male	Pizzeria, 26 March 1999 <sup>7655</sup>
BERISHA, Genc (Genci)	4	Male	Pizzeria, 26 March 1999 <sup>7656</sup>
BERISHA, Jashar	46	Male	Near the pizzeria, 26 March 1999 <sup>7657</sup>

Victims not known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
Elderly Berisha family member			Restanski Put near Shyhrete Berisha's house, 26 March 1999 <sup>7658</sup>
Elderly Berisha family member			Restanski Put near Shyhrete Berisha's house, 26 March 1999 <sup>7659</sup>

<sup>7651</sup> See *supra*, paras 674-676, 1406, 1484-1491, 1722; see also, Exhibit P799; see also, Exhibit P817; see also, Exhibit P818.

<sup>7652</sup> See *supra*, paras 674-676, 1406, 1484-1491, 1722. The cause of death was forensically established as a gunshot wound to the spine, Exhibit P473, K0503611; see also, Exhibit P799; see also, Exhibit P817; see also, Exhibit P818.

<sup>7653</sup> See *supra*, paras 674-676, 1722.

<sup>7654</sup> See *supra*, paras 683, 1484-1491, 1724; see also, Exhibit P818; see also, Exhibit P799.

<sup>7655</sup> See *supra*, paras 674-676, 1484-1491, 1722. The cause of death was forensically established as a "possible gunshot wound", Exhibit P473, K0503607; see also, Exhibit P799.

<sup>7656</sup> See *supra*, paras 674-676, 1484-1491, 1722; see also, Exhibit P799.

<sup>7657</sup> See *supra*, paras 678, 683, 1406, 1484-1491, 1722; see also, Exhibit P799; see also, Exhibit P817; see also, Exhibit P818.

<sup>7658</sup> See *supra*, paras 672, 674, 1721.

<sup>7659</sup> See *supra*, paras 672, 674, 1721.

## D. IZBICA /IZBICË

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
ALUSHI, Jetullah (Jetulla)	93	Male	Izbica/Izbicë, 28 March 1999 <sup>7660</sup>
AMRUSHI, Asllan (Q)		Male	Izbica/Izbicë, 28 March 1999 <sup>7661</sup>
BAJRA, Asllan	60	Male	Izbica/Izbicë, 28 March 1999 <sup>7662</sup>
BAJRA, Bajram	62	Male	Izbica/Izbicë, 28 March 1999 <sup>7663</sup>
BAJRA, Bajram C	60	Male	Izbica/Izbicë, 28 March 1999 <sup>7664</sup>
BAJRA, Bajram S	68	Male	Izbica/Izbicë, 28 March 1999 <sup>7665</sup>
BAJRA, Brahim	81	Male	Izbica/Izbicë, 28 March 1999 <sup>7666</sup>
BAJRA, Fazli	60	Male	Izbica/Izbicë, 28 March 1999 <sup>7667</sup>
BAJRA, Ilaz (Iljaz)	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7668</sup>
BAJRAKTARI, Bislim	58	Male	Izbica/Izbicë, 28 March 1999 <sup>7669</sup>
BAJRAKTARI, Hajdar	53	Male	Izbica/Izbicë, 28 March 1999 <sup>7670</sup>
BEHRAMI, Demush	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7671</sup>
BEHRAMI, Muhamet	61	Male	Izbica/Izbicë, 28 March 1999 <sup>7672</sup>
BEHRAMI, Nuredin	76	Male	Izbica/Izbicë, 28 March 1999 <sup>7673</sup>
DAJAKU, Asllan	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7674</sup>

<sup>7660</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7661</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7662</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7663</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7664</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7665</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7666</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7667</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7668</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7669</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7670</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7671</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7672</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as multiple gunshot wounds to the chest, Exhibit P473, p 361; Exhibit P123, p 4; Exhibit P817, R0628786.

<sup>7673</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7674</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.



NAME	AGE	GENDER	PLACE AND DATE OF MURDER
DANI (PANI), Dibran (A)	67	Male	Izbica/Izbicë, 28 March 1999 <sup>7675</sup>
DERVISHI (DERVISH), Sali	61	Male	Izbica/Izbicë, 28 March 1999 <sup>7676</sup>
DERVISHI (DERVISH), Bajram	73	Male	Izbica/Izbicë, 28 March 1999 <sup>7677</sup>
DERVISHI (DERVISH), Ilaz (Iljaz)	73	Male	Izbica/Izbicë, 28 March 1999 <sup>7678</sup>
DOCI (DOQI), Musli	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7679</sup>
DOQI, Hamdi	42	Male	Izbica/Izbicë, 28 March 1999 <sup>7680</sup>
DRAGA, Ali	65	Male	Izbica/Izbicë, 28 March 1999 <sup>7681</sup>
DRAGA, Cen	68	Male	Izbica/Izbicë, 28 March 1999 <sup>7682</sup>
DRAGA (DRAGAJ), Hajriz	43	Male	Izbica/Izbicë, 28 March 1999 <sup>7683</sup>
DRAGA, Ismet	31	Male	Izbica/Izbicë, 28 March 1999 <sup>7684</sup>
DRAGA (DRAGAJ), Murat	68	Male	Izbica/Izbicë, 28 March 1999 <sup>7685</sup>
DRAGA, Rahim	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7686</sup>
DRAGA, Rrustem (Rustem)	81	Male	Izbica/Izbicë, 28 March 1999 <sup>7687</sup>

<sup>7675</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, Exhibit P467, p 2; Exhibit P468, p 4.

<sup>7676</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7677</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, Exhibit P115, p 3; Exhibit P473, p 362; Exhibit P817, R0628772.

<sup>7678</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7679</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7680</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7681</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, p 5.

<sup>7682</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7683</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7684</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7685</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7686</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7687</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
DRAGAJ, Zade (Zada)	71	Female	In the field, on or about 28 March 1999 <sup>7688</sup>
DURAKU, Avdullah	55	Male	Izbica/Izbicë, 28 March 1999 <sup>7689</sup>
DURAKU, Bel (A)	81	Male	Izbica/Izbicë, 28 March 1999 <sup>7690</sup>
DURAKU, Dibran	65	Male	Izbica/Izbicë, 28 March 1999 <sup>7691</sup>
DURAKU, Rexhep (Rexhe/Rexh)	87	Male	Izbica/Izbicë, 28 March 1999 <sup>7692</sup>
EMRA, Muhamat Kadriu	56	Male	Izbica/Izbicë, 28 March 1999 <sup>7693</sup>
FEJZA, Zyre (Zyhra)	65	Female	Izbica/Izbicë, 28 March 1999 <sup>7694</sup>
FETAHU, Lah (Hajrullah)	67	Male	Izbica/Izbicë, 28 March 1999 <sup>7695</sup>
GASHI, Ibrahim	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7696</sup>
GASHI, Ram (Rame)		Male	Izbica/Izbicë, 28 March 1999 <sup>7697</sup>
HAJDARI, Halil	50	Male	Izbica/Izbicë, 28 March 1999 <sup>7698</sup>
HAJRA, Mehmet	65	Male	Izbica/Izbicë, 28 March 1999 <sup>7699</sup>
HALITI (HALJITI/HALIT), Haliti (Halit B)	60	Male	Izbica/Izbicë, 28 March 1999 <sup>7700</sup>
HAXHA, Fejz (Fajz)	75	Male	Izbica/Izbicë, 28 March 1999 <sup>7701</sup>

<sup>7688</sup> See *supra*, paras 620, 1407-1417, 1508-1514, 1728. The cause of death was forensically established as gunshot wounds to the head and trunk, Exhibit P124, p 6; Exhibit P473, p 441.

<sup>7689</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7690</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7691</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7692</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P103, pp 7-10.

<sup>7693</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a projectile to the chest, Exhibit P128, p 3.

<sup>7694</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7695</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as violent death caused by gunshot, Exhibit P125.

<sup>7696</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7697</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P817, R0628776.

<sup>7698</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7699</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the neck, Exhibit P473, p 368; Exhibit P472, p 204; Exhibit P103, pp 1-2; Exhibit P817, R0628778.

<sup>7700</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, Exhibit P469; Exhibit P470, pp 1-3; Exhibit P473, p 100; Exhibit P817, R0628779.

<sup>7701</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
HOTI, Hazir	67	Male	Izbica/Izbicë, 28 March 1999 <sup>7702</sup>
HOTI, Qerim	42	Male	Izbica/Izbicë, 28 March 1999 <sup>7703</sup>
HOTI, Rifat	54	Male	Izbica/Izbicë, 28 March 1999 <sup>7704</sup>
HOTI, Rrustem	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7705</sup>
HOTI, Tahir	55	Male	Izbica/Izbicë, 28 March 1999 <sup>7706</sup>
HOTI, Muhamet	52	Male	Izbica/Izbicë, 28 March 1999 <sup>7707</sup>
HOTI, Sadik (Saditk)	66	Male	Izbica/Izbicë, 28 March 1999 <sup>7708</sup>
HOTI, Shefqet (A)		Male	Izbica/Izbicë, 28 March 1999 <sup>7709</sup>
HOTI, Vehbi		Male	Izbica/Izbicë, 28 March 1999 <sup>7710</sup>
ISUFI, Zenel	72	Male	Izbica/Izbicë, 28 March 1999 <sup>7711</sup>
JETULLAHU, Beqir	27	Male	Izbica/Izbicë, 28 March 1999 <sup>7712</sup>
KAJTAZDI, Kajtaz Z	68	Male	Izbica/Izbicë, 28 March 1999 <sup>7713</sup>
KELMENDI, Bajram	66	Male	Izbica/Izbicë, 28 March 1999 <sup>7714</sup>
KELMENDI, Jetullah	56	Male	Izbica/Izbicë, 28 March 1999 <sup>7715</sup>
KOTOORI/KOTORR I, Ram (Rame)		Male	Izbica/Izbicë, 28 March 1999 <sup>7716</sup>
KOTOORI/KOTORR I, Brahim		Male	Izbica/Izbicë, 28 March 1999 <sup>7717</sup>
KOTOORI/KOTORR I, Hajzer		Male	Izbica/Izbicë, 28 March 1999 <sup>7718</sup>
KRASNIQI, Deli	77	Male	Izbica/Izbicë, 28 March 1999 <sup>7719</sup>

<sup>7702</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, p 7.

<sup>7703</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P112, p 3; Exhibit P473, p 369.

<sup>7704</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7705</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7706</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7707</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7708</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7709</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7710</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7711</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7712</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7713</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7714</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7715</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7716</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7717</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7718</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to head, Exhibit P122, p 6; Exhibit P817, R0628786.

<sup>7719</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
KRASNIQI, Mustaf (Mustafe)	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7720</sup>
KRASNIQI, Rrahim	69	Male	Izbica/Izbicë, 28 March 1999 <sup>7721</sup>
KUQICA (KUCINA), Azem	88	Male	Izbica/Izbicë, 28 March 1999 <sup>7722</sup>
LOSHI, Sami	25	Male	Izbica/Izbicë, 28 March 1999 <sup>7723</sup>
LOSHI (LJOSAJ), Jashar (Jasar)	48	Male	Izbica/Izbicë, 28 March 1999 <sup>7724</sup>
LOSHI, Selman	78	Male	Izbica/Izbicë, 28 March 1999 <sup>7725</sup>
MORINA, Halil (Halit)	38	Male	Izbica/Izbicë, 28 March 1999 <sup>7726</sup>
MURSELI, Sokol (H)	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7727</sup>
MUSLIU, Beqir	45	Male	Izbica/Izbicë, 28 March 1999 <sup>7728</sup>
MUSLIU, Ilaz (Iljaz)	73	Male	Izbica/Izbicë, 28 March 1999 <sup>7729</sup>
MUSLIU, Shaban	87	Male	Izbica/Izbicë, 28 March 1999 <sup>7730</sup>
MUSLIU, Halit	62	Male	Izbica/Izbicë, 28 March 1999 <sup>7731</sup>
MUSLIU, Naim	23	Male	Izbica/Izbicë, 28 March 1999 <sup>7732</sup>
MUSLIU, Mehmet	46	Male	Izbica/Izbicë, 28 March 1999 <sup>7733</sup>
MUSTAFA (MSTAJ), Hasan (Hazan)	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7734</sup>

<sup>7720</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7721</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7722</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7723</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, Exhibit P465; Exhibit P466, 03081171; Exhibit P817, R0628789.

<sup>7724</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, Exhibit P461, p 2; Exhibit P462, p 3; Exhibit P817, R0628789.

<sup>7725</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, Exhibit P126; Exhibit P817, R0628789.

<sup>7726</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7727</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7728</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7729</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, Exhibit P127.

<sup>7730</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7731</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7732</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7733</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7734</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
OSMANI, Azem	75	Male	Izbica/Izbicë, 28 March 1999 <sup>7735</sup>
OSMANI, Fatmir	24	Male	Izbica/Izbicë, 28 March 1999 <sup>7736</sup>
OSMANI, Hetem	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7737</sup>
OSMANI, Muharrem	90	Male	Izbica/Izbicë, 28 March 1999 <sup>7738</sup>
OSMANI, Zoje	67	Female	In the field, on or about 28 March 1999 <sup>7739</sup>
QAKA, Pajazit (D)	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7740</sup>
QALLAPEKU, Sabit	55	Male	Izbica/Izbicë, 28 March 1999 <sup>7741</sup>
QELAJ, Ismajl (Ismail)	61	Male	Izbica/Izbicë, 28 March 1999 <sup>7742</sup>
QELAJ, Rexhep (Regjie/Rexh)	72	Male	Izbica/Izbicë, 28 March 1999 <sup>7743</sup>
QELAJ, Metush	68	Male	Izbica/Izbicë, 28 March 1999 <sup>7744</sup>
QUPEVA, Hamz (Hamzi/Hamez)	49	Male	Izbica/Izbicë, 28 March 1999 <sup>7745</sup>
RACI, Ramadan	56	Male	Izbica/Izbicë, 28 March 1999 <sup>7746</sup>
RAMAJ, Halit	60	Male	Izbica/Izbicë, 28 March 1999 <sup>7747</sup>
REXHEPI, Muj (Muje)	49	Male	Izbica/Izbicë, 28 March 1999 <sup>7748</sup>
SEJDIU, Mustaf (Mustafa)	46	Male	Izbica/Izbicë, 28 March 1999 <sup>7749</sup>
SHABANI, Azem		Male	Izbica/Izbicë, 28 March 1999 <sup>7750</sup>

<sup>7735</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7736</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P457; Exhibit P458; Exhibit P817, R0628794.

<sup>7737</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7738</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7739</sup> See *supra*, paras 620, 1407-1417, 1508-1514, 1728. Exhibit P113; Exhibit P817, R0628794.

<sup>7740</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7741</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7742</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7743</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7744</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound to the head, thorax and chest, Exhibit P473, p 370; Exhibit P117; Exhibit P817, R0628796.

<sup>7745</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7746</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7747</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7748</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7749</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7750</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
SHALA, Hysen A	65	Male	Izbica/Izbicë, 28 March 1999 <sup>7751</sup>
SHALA, Idriz	69	Male	Izbica/Izbicë, 28 March 1999 <sup>7752</sup>
SHALA, Isuf	64	Male	Izbica/Izbicë, 28 March 1999 <sup>7753</sup>
SHALA, Muj (Muje)	62	Male	Izbica/Izbicë, 28 March 1999 <sup>7754</sup>
SHALA, Sali (Salih)	38	Male	Izbica/Izbicë, 28 March 1999 <sup>7755</sup>
SHALA, Zymer	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7756</sup>
SHALA, Halim	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7757</sup>
SHALA, Hijraz (Hajriz)	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7758</sup>
SHERIFI, Sadik		Male	Izbica/Izbicë, 28 March 1999 <sup>7759</sup>
SHPATI, Zeqir	60	Male	Izbica/Izbicë, 28 March 1999 <sup>7760</sup>
SPAHIU, Rizah	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7761</sup>
SYLA, Ram (Rame)	63	Male	Izbica/Izbicë, 28 March 1999 <sup>7762</sup>
TAHIRI, Brahim (Rrahim)	83	Male	Izbica/Izbicë, 28 March 1999 <sup>7763</sup>
TEMAJ, Gani	41	Male	Izbica/Izbicë, 28 March 1999 <sup>7764</sup>
TEMAJ, Hamdi	49	Male	Izbica/Izbicë, 28 March 1999 <sup>7765</sup>
THAQI, Hamit B.	70	Male	Izbica/Izbicë, 28 March 1999 <sup>7766</sup>
THAQI, Ram (Rame)		Male	Izbica/Izbicë, 28 March 1999 <sup>7767</sup>
THAQI, Ajet (D)	71	Male	Izbica/Izbicë, 28 March 1999 <sup>7768</sup>

<sup>7751</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7752</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7753</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7754</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7755</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7756</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7757</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7758</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7759</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7760</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7761</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7762</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7763</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7764</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7765</sup> See supra, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727. The cause of death was forensically established as a gunshot wound, Exhibit P464, p 3; Exhibit P463; Exhibit P817, R0628805.

<sup>7766</sup> See supra, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P817, R0628805.

<sup>7767</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7768</sup> See supra, paras 621-630, 632-634, 1407-1417, 1727.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
THAQI, Sheremet (Shermet)	49	Male	Izbica/Izbicë, 28 March 1999 <sup>7769</sup>
UKA, Uke	80	Male	Izbica/Izbicë, 28 March 1999 <sup>7770</sup>
VELIQI (VELIHI), Zenel	75	Male	Izbica/Izbicë, 28 March 1999 <sup>7771</sup>
XHEMAJLI, Idriz	73	Male	Izbica/Izbicë, 28 March 1999 <sup>7772</sup>
XHEMAJLI, Qazim	57	Male	Izbica/Izbicë, 28 March 1999 <sup>7773</sup>
ZEKA, Jahir	60	Male	Izbica/Izbicë, 28 March 1999 <sup>7774</sup>
ZEKA, Milazim	52	Male	Izbica/Izbicë, 28 March 1999 <sup>7775</sup>
Unidentified Male		Male	Izbica/Izbicë, 28 March 1999 <sup>7776</sup>

Victims known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BAJRA, Enver			Izbica/Izbicë, 28 March 1999 <sup>7777</sup>
BAJRAMI, Qazim			Izbica/Izbicë, 28 March 1999 <sup>7778</sup>
BAJRAMI, Zaim			Izbica/Izbicë, 28 March 1999 <sup>7779</sup>
BEAJRUKU, Mehmet			Izbica/Izbicë, 28 March 1999 <sup>7780</sup>
CITAKU (QITAKU), Ajmone (Ajmane)	81	Female	In the field, on or about 28 March 1999 <sup>7781</sup>
DESHEVCI, Pajazit			Izbica/Izbicë, 28 March 1999 <sup>7782</sup>
DRAGA, Sofijic			Izbica/Izbicë, 28 March 1999 <sup>7783</sup>

<sup>7769</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, K0536173.

<sup>7770</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7771</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P817, R0628806; Exhibit P818, K0536173.

<sup>7772</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7773</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7774</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7775</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7776</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7777</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7778</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, p 5.

<sup>7779</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7780</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7781</sup> See *supra*, paras 620, 1407-1417, 1728.

<sup>7782</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, p 5; Exhibit P817, R0628772.

<sup>7783</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, p 5; Exhibit P459; Exhibit P460; *see also*, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
DURAKU, Sokol			Izbica/Izbicë, 28 March 1999 <sup>7784</sup>
HALITI, Islam			Izbica/Izbicë, 28 March 1999 <sup>7785</sup>
HALITI, Qerime			Izbica/Izbicë, 28 March 1999 <sup>7786</sup>
ISLAMI, Kajtaz			Izbica/Izbicë, 28 March 1999 <sup>7787</sup>
KELMENDI, Rrahim			Izbica/Izbicë, 28 March 1999 <sup>7788</sup>
KRASINQI, Florim			Izbica/Izbicë, 28 March 1999 <sup>7789</sup>
MULAJ, Qerime			Izbica/Izbicë, 28 March 1999 <sup>7790</sup>
OSMANI, Rabije (Rabe)			Izbica/Izbicë, 28 March 1999 <sup>7791</sup>
SHALA, Kujtim			Izbica/Izbicë, 28 March 1999 <sup>7792</sup>
SPAHIU, Aziz			Izbica/Izbicë, 28 March 1999 <sup>7793</sup>
XHEMAJLI, Zecir			Izbica/Izbicë, 28 March 1999 <sup>7794</sup>

<sup>7784</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727; see also, Exhibit P477.

<sup>7785</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727; see also, Exhibit P477.

<sup>7786</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7787</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7788</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7789</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727; see also, Exhibit P477.

<sup>7790</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, p 8; Exhibit P817, R0628786; see also, Exhibit P477.

<sup>7791</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; see also, Exhibit P817, R0628794; see also, Exhibit P477.

<sup>7792</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727.

<sup>7793</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1508-1514, 1727; Exhibit P818, p 9; see also, Exhibit P477.

<sup>7794</sup> See *supra*, paras 621-630, 632-634, 1407-1417, 1727; see also, Exhibit P477.



## E. ĐAKOVICA/GJAKOVĚ

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
CAKA, Dalina	14	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7795</sup>
CAKA, Delvina	6	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7796</sup>
CAKA, Diona	2	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7797</sup>
CAKA, Valbona	34	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7798</sup>
GASHI, Hysen	50	Male	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7799</sup>
HAXHIAVDIJA (HAXHIAVDIA), Doruntina	8	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7800</sup>
HAXHIAVDIJA (HAXHIAVDIA), Egzon	5	Male	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7801</sup>
HAXHIAVDIJA (HAXHIAVDIA), Rina	4	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7802</sup>
HAXHIAVDIJA (HAXHIAVDIA), Valbona	38	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7803</sup>
HOXHA, Flaka	15	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7804</sup>

<sup>7795</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7796</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7797</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7798</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7799</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7800</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7801</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7802</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7803</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7804</sup> See *supra*, paras 886-889, 1419-1421, 1731.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
HOXHA, Shahindere	55	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7805</sup>
NUÇI, Manushe	50	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7806</sup>
NUÇI, Shirine	70	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7807</sup>
VEJSA, Arlind	5	Male	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7808</sup>
VEJSA, Dorina	10	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7809</sup>
VEJSA, Fetije	60	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7810</sup>
VEJSA, Marigona	8	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7811</sup>
VEJSA, Rita	2	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7812</sup>
VEJSA, Sihana	8	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7813</sup>
VEJSA, Tringa	30	Female	157 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7814</sup>

<sup>7805</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7806</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7807</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7808</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7809</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7810</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7811</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7812</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7813</sup> See *supra*, paras 886-889, 1419-1421, 1731.

<sup>7814</sup> See *supra*, paras 886-889, 1419-1421, 1731.

Victims known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
CANA, Ganimete			80 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7815</sup>
CANA, Januz			80 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7816</sup>
CANA, Shpresa	43	Female	80 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7817</sup>
CANA, Fatmir	41	Male	80 Miloš Gilić/Millosh Giliq Street, 2 April 1999 <sup>7818</sup>

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<sup>7815</sup> See *supra*, paras 891, 1422, 1732.

<sup>7816</sup> See *supra*, paras 891, 1422, 1732.

<sup>7817</sup> See *supra*, paras 891, 1422, 1732.

<sup>7818</sup> See *supra*, paras 891, 1422, 1732.

## F. MEJA/MEJË

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
ABAZI, Mark	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7819</sup>
ABAZI, Pashk	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7820</sup>
ABAZI, Pjeter	53	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7821</sup>
ADEMAJ, Bekim	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7822</sup>
ADEMAJ, Shemsi	38	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7823</sup>
ADEMI, Isuf	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7824</sup>
ADEMI, Mazllum	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7825</sup>
AHMETAJ, Liridon	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7826</sup>

<sup>7819</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the spine, Exhibit P472, K0528618.

<sup>7820</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P98, K0498640; see also, Exhibit P818; see also, Exhibit P477.

<sup>7821</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P100, K0499932; see also, Exhibit P818; see also, Exhibit P477.

<sup>7822</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412531; see also, Exhibit P818; see also, Exhibit P477.

<sup>7823</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshots to the head, Exhibit P474, K0412583.

<sup>7824</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412552; see also, Exhibit P818; see also, Exhibit P477.

<sup>7825</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the trunk, Exhibit P456, K0527901.

<sup>7826</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412430; see also, Exhibit P818; see also, Exhibit P477.

<sup>7826</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P473, K0503423.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
AHMETI, Ahmet	54	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7827</sup>
AHMETI, Ahmet	65	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7828</sup>
AHMETI, Blerim	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7829</sup>
AHMETI, Hysen	68	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7830</sup>
ALIAJ (ALIJAJ), Adem (Arben/Adem/Alijah)	55	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7831</sup>
ALIAJ (ALIJAJ), Agron	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7832</sup>
ALIAJ (ALIJAJ), Ali (Alija)	50	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7833</sup>
ALIAJ (ALIJAJ), Sali	53	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7834</sup>
ALIAJ (ALIJAJ), Zenun	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7835</sup>

<sup>7827</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P473, K0503423.

<sup>7828</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest and both upper arms, Exhibit P456, K0528145.

<sup>7829</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P473, K0503413; see also, Exhibit P818; see also, Exhibit P477.

<sup>7830</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412701; see also, Exhibit P818; see also, Exhibit P477.

<sup>7831</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P456, K0528142; see also, Exhibit P818; see also, Exhibit P477.

<sup>7832</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries, Exhibit P456, K0528148.

<sup>7833</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412462; see also, Exhibit P818; See also, Exhibit P477.

<sup>7834</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412779; see also, Exhibit P818; see also, Exhibit P477.

<sup>7835</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412475; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
ALIAJ (ALIJAJ), Arben	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7836</sup>
AVDULLAHU, Ymer	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7837</sup>
AVDYLI, Avdyl		Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7838</sup>
AVDYLI, Bajrush	16	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7839</sup>
AVDYLI, Hysen	56	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7840</sup>
AVDYLI, Muhedin	26	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7841</sup>
BAJRAKTARI, Lavdim	22	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7842</sup>
BAJRAMI, Ali	55	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7843</sup>
BAJRAMI, Shaban	27	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7844</sup>

<sup>7836</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502778; see also, Exhibit P818; see also, Exhibit P477.

<sup>7837</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P472, K0528406; see also, Exhibit P818; see also, Exhibit P477.

<sup>7838</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P473, K0503415.

<sup>7839</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412733; see also, Exhibit P818; see also, Exhibit P477.

<sup>7840</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the head, chest, left hip, Exhibit P472, K0528438.

<sup>7841</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to chest and pelvis, Exhibit P472, K0528382.

<sup>7842</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the trunk, Exhibit P472, K0528412.

<sup>7843</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502568; see also, Exhibit P818; see also, Exhibit P477.

<sup>7844</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P456, K0528294.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BAJRAMI, Syle (Syl/Sylë)	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7845</sup>
BAJRAMI, Xhafer	35	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7846</sup>
BAJRAMI, Xhavit	27	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7847</sup>
BALA, Ali	75	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7848</sup>
BALA, Bajram	46	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7849</sup>
BALA, Mehmet	38	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7850</sup>
BALA, Perparim	28	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7851</sup>
BALIU (BALIA), Ragip (Raqip)	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7852</sup>
BARDHECI (BARDHECAJ), Demush	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7853</sup>

<sup>7845</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the chest, Exhibit P472, K0528446.

<sup>7846</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the head, Exhibit P474, K0412620.

<sup>7847</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412555; see also, Exhibit P818.

<sup>7848</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P474, K0412886; see also, Exhibit P818.

<sup>7849</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P456, K0528073.

<sup>7850</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P472; K0528645.

<sup>7851</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>7852</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502420; see also, Exhibit P818; see also, Exhibit P477.

<sup>7853</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412459; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BARDHECI, Idriz	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7854</sup>
BATUSHA, Haki	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7855</sup>
BEQAJ, Armend	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7856</sup>
BEQAJ, Bajram	41	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7857</sup>
BEQAJ, Bedri	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7858</sup>
BEQAJ, Brahim	28	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7859</sup>
BEQAJ, Dritan (Driton)	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7860</sup>
BEQAJ, Emin	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7861</sup>
BEQAJ, Kujtim	16	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7862</sup>

<sup>7854</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P456, K0528125; see also, Exhibit P818; see also, Exhibit P477.

<sup>7855</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the chest, Exhibit P472, K0528452.

<sup>7856</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the cervical, thoracic spine, Exhibit P472, K0528409.

<sup>7857</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a firearm injury to lower thoracic area and the pelvis, Exhibit P456, K0528056.

<sup>7858</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest, left hip and both thighs, Exhibit P472, K0528379.

<sup>7859</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the head, and through the pelvis and lower abdomen, Exhibit P474, K0412671.

<sup>7860</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P473, K0503429; see also, Exhibit P818; see also, Exhibit P477.

<sup>7861</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P472, L0528424; see also, Exhibit P818; see also, Exhibit P477.

<sup>7862</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412472; see also, Exhibit P818; see also, Exhibit P477.



NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BEQAJ, Milazim	31	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7863</sup>
BEQAJ, Ramadan	57	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7864</sup>
BEQAJ, Rasim	46	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7865</sup>
BEQAJ, Tafe (Tafë)	54	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7866</sup>
BEQAJ, Ymer	50	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7867</sup>
BEQIRAJ, Albert	21	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7868</sup>
BEQIRAJ, Arsim	16	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7869</sup>
BEQIRAJ, Syle (Sylë)	55	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7870</sup>
BEQIRAJ, Tahir	58	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7871</sup>
BERISHA, Halil	50	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7872</sup>

<sup>7863</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>7864</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>7865</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412527; see also, Exhibit P818; see also, Exhibit P477.

<sup>7866</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412469; see also, Exhibit P818; see also, Exhibit P477.

<sup>7867</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412722; see also, Exhibit P818; see also, Exhibit P477.

<sup>7868</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502260; see also, Exhibit P818; see also, Exhibit P477.

<sup>7869</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds, Exhibit P474, K0412604.

<sup>7870</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412608.

<sup>7871</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the lower abdomen, Exhibit P474, K0412664.

<sup>7872</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the lumbar spines, Exhibit P473, K0503427.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BINAKU (BINAKAJ), Avni	42	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7873</sup>
BINAKU, Binak	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7874</sup>
BOBI, Ismet	21	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7875</sup>
CUNI, Fixhri (Fiqrih/Fiqiri)	46	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7876</sup>
CUNI, Muharrem	67	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7877</sup>
CUNI, Sutki	20	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7878</sup>
DEDA (DEDAJ), Linton	16	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7879</sup>
DEDA (DEDAJ), Mark	47	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7880</sup>
DEDA (DEDAJ), Pashk	42	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7881</sup>
DEDAJ, Frrok	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7882</sup>

<sup>7873</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P472, K0528654; see also, Exhibit P818; see also, Exhibit P477.

<sup>7874</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P101, K0500776; see also, Exhibit P818; see also, Exhibit P477.

<sup>7875</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P456, K0527891; see also, Exhibit P818.

<sup>7876</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0503065; see also, Exhibit P818; see also, Exhibit P477.

<sup>7877</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412823.

<sup>7878</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P474, K0412792.

<sup>7879</sup> See *supra*, paras 958-960, 1500-1502, 1736; Exhibit P473, K0503457; see also, Exhibit P818; see also, Exhibit P477.

<sup>7880</sup> See *supra*, paras 958-960, 1500-1502, 1736; Exhibit P474, K0412883; see also, Exhibit P818; see also, Exhibit P477.

<sup>7881</sup> See *supra*, paras 958-960, 1500-1502, 1736. The cause of death was forensically established as a gunshot wound to the right arm, Exhibit P456, K0528083; see also, Exhibit P818; see also, Exhibit P477.

<sup>7882</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest and head, Exhibit P456, K0528087.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
DEDAJ, Gjon (Xhon)	62	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7883</sup>
DEDAJ, Mikel	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7884</sup>
DEDAJ, Pjeter	64	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7885</sup>
DELIU (DELIJA), Deli	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7886</sup>
DEMAJ (DEMA), Ali	39	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7887</sup>
DUZHMANI, Agron	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7888</sup>
DUZHMANI, Frane (Fran)	23	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7889</sup>
DUZHMANI, Gezim	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7890</sup>
DUZHMANI, Gostin	35	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7891</sup>

<sup>7883</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P473, K0503455.

<sup>7884</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P472, K0528490.

<sup>7885</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P98, K0498322; see also, Exhibit P818; see also, Exhibit P477.

<sup>7886</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, chest and to the right arm, Exhibit P456, K0527877.

<sup>7887</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the chest and right arm, Exhibit P473, K0503471.

<sup>7888</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the lower abdomen, Exhibit P474, K0412502.

<sup>7889</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head and to the chest, Exhibit P456, K0528170.

<sup>7890</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, Exhibit P474, K0412736.

<sup>7891</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the head, neck and chest, Exhibit P456, K0528155.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
DUZHMANI, Manuel (Manol)	20	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7892</sup>
DUZHMANI, Marjan (Marljan/Marian)	31	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7893</sup>
DUZHMANI, Mikel	32	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7894</sup>
DUZHMANI, Pal (Kolë)	33	Male	Meja/Mejë, 27 April 1999 <sup>7895</sup>
DUZHMANI, Pashk	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7896</sup>
FAZLIJAJ (FAXLIJA), Male (Mal)	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7897</sup>
FETAJ, Haxhi (Hagji)	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7898</sup>
GASHI, Robert	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7899</sup>

<sup>7892</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, Exhibit P474, K0412761.

<sup>7893</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a firearm injury to the abdomen, Exhibit P456, K0528067.

<sup>7894</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the head, Exhibit P454, K0538261; Exhibit P456, K0528166.

<sup>7895</sup> See *supra*, paras 961-963, 1493-1494, 1737. The cause of death was forensically established as a gunshot wound multiple gunshot wounds, Exhibit P474, K0412537; see also, Exhibit P477.

<sup>7896</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412697.

<sup>7897</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the chest, spine and lower abdomen, Exhibit P474, K0412678.

<sup>7898</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412505; see also, Exhibit P818; see also, Exhibit P477.

<sup>7899</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the head, the neck and the chest, Exhibit P456, K0527905.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
GAXHERRI (GAXHERRI), Brahim	38	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7900</sup>
GAXHERI, Xhafer	66	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7901</sup>
GJOCAJ, Deme	39	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7902</sup>
GJOKAJ, Ardian (Ardijan)	23	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7903</sup>
GOLAJ, Asllan	41	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7904</sup>
GOLAJ, Avdi	31	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7905</sup>
GOLAJ, Idriz	56	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7906</sup>
GOLAJ (GOLA), Musa (Muse)	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7907</sup>
GOLAJ, Rame (Ramë)	35	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7908</sup>
GOLAJ, Rexhe (Rexhë)	54	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7909</sup>

<sup>7900</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a firearm injury to the neck and upper chest, Exhibit P456, K0528063.

<sup>7901</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the chest, Exhibit P474, K0412719.

<sup>7902</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412543; see also, Exhibit P818; see also, Exhibit P477.

<sup>7903</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P474, K0412573.

<sup>7904</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412445; see also, Exhibit P818; see also, Exhibit P477.

<sup>7905</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P473, K0503299.

<sup>7906</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wounds to the spine and pelvis, Exhibit P474, K0412521.

<sup>7907</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the trunk, Exhibit P474, K0412421.

<sup>7908</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the head, neck and pelvis, Exhibit P456, K0528052.

<sup>7909</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the chest, head and legs, Exhibit P473, K0503297.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
HADERGJONAJ, Skender	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7910</sup>
HAJREDINI, Faik	43	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7911</sup>
HAJREDINI, Hysni (Isni)	35	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7912</sup>
HAJREDINI, Qamil	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7913</sup>
HASANAJ, Gjon	66	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7914</sup>
HASANAJ, Luan	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7915</sup>
HASANAJ, Shyt	45	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7916</sup>
HAXHA, Mentor	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7917</sup>

<sup>7910</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>7911</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injuries to the head, chest and right arm, Exhibit P473, K0503317.

<sup>7912</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412594.

<sup>7913</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the trunk and left thigh, Exhibit P473, K0503315.

<sup>7914</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412740; see also, Exhibit P818; see also, Exhibit P477.

<sup>7915</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the chest, Exhibit P474, K4012685.

<sup>7916</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the cox and to the abdominal cavity, Exhibit P474, K0412776.

<sup>7917</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P474, K0412751.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
HAXHIU (HAXHIAVDYLI), Afrim	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7918</sup>
HAXHIU (HAXHIJA), Avdi	23	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7919</sup>
HAXHIU (HAXHIJA), Florim	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7920</sup>
HAXHIU, Tahir	49	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7921</sup>
HOXHA, Ardian	16	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7922</sup>
HOXHA, Bajram	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7923</sup>
HOXHA, Blendian	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7924</sup>
HOXHA (Hoxha), Fitim	32	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7925</sup>
HOXHA, Hajrullah	27	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7926</sup>

<sup>7918</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P472, p 283; see also, Exhibit P818; see also, Exhibit P477.

<sup>7919</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502925; see also, Exhibit P818; see also, Exhibit P477.

<sup>7920</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412415.

<sup>7921</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the trunk, Exhibit P474, K0412436.

<sup>7922</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P472, K0528421; see also, Exhibit P818; see also, Exhibit P477.

<sup>7923</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the chest, Exhibit P472, K0528456.

<sup>7924</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest, Exhibit P472, K0528435.

<sup>7925</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412580.

<sup>7926</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
HOXHA, Naim	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7927</sup>
HOXHA, Ramiz	42	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7928</sup>
HOXHA, Rifat	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7929</sup>
HYSENI, Binak	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7930</sup>
IBRAHIMI (BRAHIMI), Hysni (Isni)	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7931</sup>
IDRIZI, Masar	21	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7932</sup>
ISLAMAJ, Demë	63	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7933</sup>
ISUFI, Bajram	16	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7934</sup>

<sup>7927</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P456, K0527887.

<sup>7928</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the head and chest, Exhibit P472, K0528394.

<sup>7929</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412567.

<sup>7930</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P454, K0538260; Exhibit P473, K0503319.

<sup>7931</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412600.

<sup>7932</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the left thigh, Exhibit P472, K0528403.

<sup>7933</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the chest, Exhibit P474, K0412838.

<sup>7934</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 1226-1234; see also, Exhibit P818; see also, Exhibit P477.



NAME	AGE	GENDER	PLACE AND DATE OF MURDER
ISUFI, Isa	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7935</sup>
KABASHI, Andrush	18	Male	Lizane Malaj's courtyard, 27 April 1999 <sup>7936</sup>
KABASHI, Arben	14	Male	Lizane Malaj's courtyard, 27 April 1999 <sup>7937</sup>
KABASHI, Nikoll	32	Male	Lizane Malaj's courtyard, 27 April 1999 <sup>7938</sup>
KAMERI, Besim	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7939</sup>
KAMERI, Gëzim	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7940</sup>
KAMERI (KAMBERI), Muharrem	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7941</sup>
KAMERI, Rrustem	41	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7942</sup>
KAMERI, Shpend	49	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7943</sup>
KOMANI, Nikolle (Nikollë)	26	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7944</sup>
KOMANI, Fran (Frane)	28	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7945</sup>

<sup>7935</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 913-921; see also, Exhibit P818; see also, Exhibit P477.

<sup>7936</sup> See *supra*, paras 955-957, 1500-1502, 1735; see also, Exhibit P818.

<sup>7937</sup> See *supra*, paras 955-957, 1500-1502, 1735; Exhibit P456, K0527913; see also, Exhibit P818.

<sup>7938</sup> See *supra*, paras 955-957, 1500-1502, 1735; Exhibit P100, K0499962; see also, Exhibit P818.

<sup>7939</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound.

<sup>7940</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 1062-1066; see also, Exhibit P818; see also, Exhibit P477.

<sup>7941</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the head and chest, Exhibit P473, K0503225.

<sup>7942</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412743; see also, Exhibit P818; see also, Exhibit P477.

<sup>7943</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 715-723; see also, Exhibit P818; see also, Exhibit P477.

<sup>7944</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the head and to the chest, Exhibit P456, K0528117.

<sup>7945</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P472, K0528418; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
KOMANI, Pashk (Pashkë)	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7946</sup>
KQIRA, Mikel	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7947</sup>
KQIRA, Pashk	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7948</sup>
KQIRAJ, Luz	39	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7949</sup>
KRASNIQI, Albert	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7950</sup>
KRASNIQI, Mark (Marko)	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7951</sup>
KRASNIQI, Ndue	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7952</sup>
KRASNIQI, Pjeter	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7953</sup>
KUQI, Hasan	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7954</sup>
KUQI, Shpend	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7955</sup>

<sup>7946</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P456, K0527884.

<sup>7947</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries, Exhibit P472, K0528648.

<sup>7948</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the head, Exhibit P472, K0528606.

<sup>7949</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the head, Exhibit P472, K0528683.

<sup>7950</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412624; see also, Exhibit P818; see also, Exhibit P477.

<sup>7951</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as missile injury to the head, Exhibit P474, K0412782.

<sup>7952</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412799.

<sup>7953</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, Exhibit P474, K0412688.

<sup>7954</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738. The cause of death was forensically established as a gunshot wound to the pelvis, Exhibit P474, K0412591; see also, Exhibit P818; see also, Exhibit P477.

<sup>7955</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest, Exhibit P472, K0528388.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
KURPALI, Ilmi (Elmi)	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7956</sup>
KURTAJ, Haki	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7957</sup>
KURTAJ, Isa	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7958</sup>
KURTAJ, Muhamet	45	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7959</sup>
KURTAJ, Sami	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7960</sup>
MALA, Kllaudie (Klaudia/Klaudie)	15	Female	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7961</sup>
MALA, Kol (Kole)	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7962</sup>
MALA, Monika (Manike)	66	Female	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7963</sup>
MALAJ, Blerim	15	Male	Lizane Malaj's courtyard, 27 April 1999 <sup>7964</sup>
MALAJ (MALA), Vat (Vate)	37	Male	Lizane Malaj's courtyard, 27 April 1999 <sup>7965</sup>

<sup>7956</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412561.

<sup>7957</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P472; K0528385.

<sup>7958</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the chest and the lower abdomen, Exhibit P474, K0412711.

<sup>7959</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>7960</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P456, K0527881; see also, Exhibit P818; see also, Exhibit P477.

<sup>7961</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P100, pp 81-87; see also, Exhibit P818; see also, Exhibit P477.

<sup>7962</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P100, pp 74-77; see also, Exhibit P818; see also, Exhibit P477.

<sup>7963</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; Exhibit P474, K0412921; see also, Exhibit P818; see also, Exhibit P477.

<sup>7964</sup> See *supra*, paras 955-957, 1500-1502, 1735. The cause of death was forensically established as a gunshot injury to the head, Exhibit P473, p 452; see also, Exhibit P818.

<sup>7965</sup> See *supra*, paras 955-957, 1500-1502, 1735; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P473, K0503243.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
MALOKU, Blerim	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7966</sup>
MALOKU, Burim	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7967</sup>
MALOKU, Petrit	22	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7968</sup>
MALOKU, Ymer	39	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7969</sup>
MALUSHAJ, Besim	32	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7970</sup>
MALUSHAJ, Shefki	38	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7971</sup>
MARKAJ, Bekim	23	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7972</sup>
MARKAJ, Mark	65	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7973</sup>
MARKAJ, Dede	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7974</sup>
MARKAJ (MARKU), Gezim (Gezime)	21	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7975</sup>
MARKAJ, Gjovalin (Xhevalin)	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7976</sup>

<sup>7966</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P473, K0503267.

<sup>7967</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412765; see also, Exhibit P818; see also, Exhibit P477.

<sup>7968</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412597; see also, Exhibit P818; see also, Exhibit P477.

<sup>7969</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412534; see also, Exhibit P818; see also, Exhibit P477.

<sup>7970</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P473, K0503265; see also, Exhibit P818; see also, Exhibit P477.

<sup>7971</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P456, K0527895.

<sup>7972</sup> See *supra*, paras 958-960, 1500-1502, 1736; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest and right thigh, Exhibit P473; K0503259.

<sup>7973</sup> See *supra*, paras 958-960, 1500-1502, 1736; Exhibit P473, K0503263; see also, Exhibit P818.

<sup>7974</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest and the head, Exhibit P474, K0412813.

<sup>7975</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P99; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound

<sup>7976</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 1336-1339; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
MARKAJ, Milan	35	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7977</sup>
MARKAJ, Pashk (Pashuk)	38	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7978</sup>
MARKAJ, Petrit	27	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7979</sup>
MARKAJ, Pren (Prend)	60	Male	Prend Markaj's courtyard, 27 April 1999 <sup>7980</sup>
MARKAJ, Sokol	63	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7981</sup>
MEHMETI, Agron	21	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7982</sup>
MEHMETI, Arben	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7983</sup>
MEHMETI, Gani	45	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7984</sup>
MEHMETI, Hysen	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7985</sup>
MEHMETI, Hysni	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7986</sup>

<sup>7977</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wounds to the head and thoracic vertebra, Exhibit P474, K0412755.

<sup>7978</sup> See *supra*, paras 958-960, 1500-1502, 1736. The cause of death was forensically established as a gunshot wound wound to the leg, Exhibit P456, K0528077; Exhibit P473, K0503799; see also, Exhibit P818.

<sup>7979</sup> See *supra*, paras 958-960, 1500-1502, 1736. The cause of death was forensically established as a gunshot wound to the trunk and to the right forearm, Exhibit P456, K0527944; see also, Exhibit P818; see also, Exhibit P477.

<sup>7980</sup> See *supra*, paras 958-960, 1500-1502, 1736; Exhibit P100, pp 56-61; see also, Exhibit P818.

<sup>7981</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P456, K0528070.

<sup>7982</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest and the head, Exhibit P456, K0528044.

<sup>7983</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the trunk, Exhibit P456, K0528048.

<sup>7984</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412524.

<sup>7985</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the trunk, Exhibit P473, K0503271.

<sup>7986</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, the trunk and the left arm, Exhibit P456, K0528138.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
MEHMETI, Muharrem	68	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7987</sup>
MEHMETI, Quash (Qaush)	45	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7988</sup>
MEHMETI, Rame	43	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7989</sup>
MEHMETI, Sami	20	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7990</sup>
MERTURI, Marash	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7991</sup>
META (METAJ), Bajram	15	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7992</sup>
MIFTARI, Ismet	22	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7993</sup>
MIROCI, Brahim	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7994</sup>
MIROCI, Fahredin	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7995</sup>
MIROCI, Isuf	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7996</sup>

<sup>7987</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries to the trunk and right arm, Exhibit P473, K0503275.

<sup>7988</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest, Exhibit P472, K0528415.

<sup>7989</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>7990</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P472, K0528400; see also, Exhibit P818; see also, Exhibit P477.

<sup>7991</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 485-491; see also, Exhibit P818; see also, Exhibit P477.

<sup>7992</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412449; see also, Exhibit P477.

<sup>7993</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the chest, Exhibit P474, K0412758.

<sup>7994</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the chest, Exhibit P474, K0412769.

<sup>7995</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412515.

<sup>7996</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the lower abdomen, Exhibit P474, K0412508.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
MIROCI, Sokol	42	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7997</sup>
NDREJAJ (NREAJ), Kole	45	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7998</sup>
NDUE, Nuc	68	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>7999</sup>
NEZIRI, Ahmet	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8000</sup>
NDUE (NUO) Sokol	45	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8001</sup>
NUZA, Sokol	51	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8002</sup>
OSMANI, Shpend	71	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8003</sup>
PAJAZITI, Avdyl	41	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8004</sup>
PAJAZITI, Gani	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8005</sup>
PAJAZITI, Haxhi	15	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8006</sup>

<sup>7997</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the trunk, Exhibit P473, K0503261.

<sup>7998</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>7999</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P472, K0528427.

<sup>8000</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the head and the trunk, Exhibit P472, K0528432.

<sup>8001</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P473, K0503498; see also, Exhibit P818; see also, Exhibit P477.

<sup>8002</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412635; see also, Exhibit P818; see also, Exhibit P477.

<sup>8003</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412638.

<sup>8004</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P456, K0527898; see also, Exhibit P818; see also, Exhibit P477.

<sup>8005</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8006</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot to the chest, Exhibit P474, K0412486.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
PAJAZITI, Ismet	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8007</sup>
PAJAZITI, Muje	52	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8008</sup>
PAJAZITI, Qerim	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8009</sup>
PAJAZITI, Shkelzen	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8010</sup>
PAJAZITI, Shpend	58	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8011</sup>
PAJAZITI, Smajl	48	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8012</sup>
PAJAZITI, Zenel	49	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8013</sup>
PEPAJ, Uke	16	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8014</sup>
PJETRI, Gasper	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8015</sup>
PJETRI, Ilirian (Ilirjan)	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8016</sup>

<sup>8007</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the pelvis and femur, Exhibit P474, K0412491.

<sup>8008</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the abdomen, Exhibit P474, K0412433.

<sup>8009</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502332; see also, Exhibit P818; see also, Exhibit P477.

<sup>8010</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412427; see also, Exhibit P818; see also, Exhibit P477.

<sup>8011</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P474, K0412586.

<sup>8012</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the trunk and blunt force trauma to the head, Exhibit P456, K0528121.

<sup>8013</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412715; see also, Exhibit P818; see also, Exhibit P477.

<sup>8014</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8015</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8016</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738. The cause of death was forensically established as a gunshot wound to the head, Exhibit P473, K0503405; see also, Exhibit P818; see also, Exhibit P477.



NAME	AGE	GENDER	PLACE AND DATE OF MURDER
PJETRI, Skender	27	Male	Prend Markaj's courtyard, 27 April 1999 <sup>8017</sup>
PRELAJ, Ardian	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8018</sup>
PRELAJ (PRELA), Driton	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8019</sup>
PRELAJ (PRELA), Gjergj	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8020</sup>
PRELAJ (PRELA), Sokol	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8021</sup>
PRELAJ (PRELA), Tome (Tomë)	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8022</sup>
PRENDI, Mark	26	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8023</sup>
PRENDI, Pal	49	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8024</sup>
PRENDI, Prend	55	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8025</sup>
PRENDI, Robert	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8026</sup>
PRENDI, Sokol	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8027</sup>

<sup>8017</sup> See *supra*, paras 958-960, 1736; see also, Exhibit P477.

<sup>8018</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412819.

<sup>8019</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the head and chest, Exhibit P472, K0528444.

<sup>8020</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the head, Exhibit P474, K0412816.

<sup>8021</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412540.

<sup>8022</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head and the chest, Exhibit P472, K0528449.

<sup>8023</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502869; see also, Exhibit P818; see also, Exhibit P477.

<sup>8024</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, Exhibit P456, K0527916.

<sup>8025</sup> See *supra*, paras 967-979, 985-995, 1498-1502, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8026</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502903; see also, Exhibit P818; see also, Exhibit P477.

<sup>8027</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, chest and left arm, Exhibit P473, K0503501.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
PRENDI, Viktor (Vitor)	28	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8028</sup>
QESTAJ (CESTAJ), Hajdar	61	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8029</sup>
RAMA, Adem	22	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8030</sup>
RAMA, Bujar	27	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8031</sup>
RAMA, Nijazi	22	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8032</sup>
RAMA, Sadri	50	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8033</sup>
RAMA (RAMAJ), Sezaj	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8034</sup>
RAMA, Zenun	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8035</sup>
RAMA, Zeqir	80	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8036</sup>
RAMAJ, Rame (Ram/Ramë)	27	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8037</sup>
RAMAJ, Tahir	70	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8038</sup>

<sup>8028</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412691; see also, Exhibit P818; see also, Exhibit P477.

<sup>8029</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412704; see also, Exhibit P477.

<sup>8030</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8031</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412518.

<sup>8032</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8033</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412577; see also, Exhibit P818; see also, Exhibit P477.

<sup>8034</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the head and trunk, Exhibit P473, K0503510.

<sup>8035</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412442; see also, Exhibit P818; see also, Exhibit P477.

<sup>8036</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P473, K0503507; see also, Exhibit P818; see also, Exhibit P477.

<sup>8037</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the legs and chest, Exhibit P472, K0528397.

<sup>8038</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the left hip, Exhibit P474, K0412546.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
REXHA, Adem	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8039</sup>
REXHA (REXHAJ), Anton	20	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8040</sup>
REXHA, Avni	28	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8041</sup>
REXHA, Bashkim	20	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8042</sup>
REXHA, Iber (Ibër)	53	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8043</sup>
REXHA, Ruzhdi	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8044</sup>
REXHAJ (REXHA), Hamza	62	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8045</sup>
REXHAJ (REXHA), Isuf	27	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8046</sup>
REXHAJ (REXHA), Xhevdet	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8047</sup>
RRUSTEMI (RUSTEMI), Bekim	28	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8048</sup>

<sup>8039</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head and the chest, Exhibit P473, K0503520.

<sup>8040</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412773.

<sup>8041</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries, Exhibit P473, K0503514.

<sup>8042</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head and right leg, Exhibit P473, K0503517.

<sup>8043</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head and trunk, Exhibit P473, K0503523.

<sup>8044</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, trunk and left leg, Exhibit P473, K0503505.

<sup>8045</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738. The cause of death was forensically established as a gunshot wound to the head, Exhibit P473, K0503800; see also, Exhibit P818; see also, Exhibit P477.

<sup>8046</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 856-862; see also, Exhibit P818; see also, Exhibit P477.

<sup>8047</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412631.

<sup>8048</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest, Exhibit P473, K0503492.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
RRUSTEMI (RUSTEMI), Dan	35	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8049</sup>
RRUSTEMI (RUSTEMI), Xhafer	27	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8050</sup>
SADIKU, Iber	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8051</sup>
SADIKU, Ismet	28	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8052</sup>
SADIKU, Osman	59	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8053</sup>
SADIKU, Ramiz	33	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8054</sup>
SADIKU, Sadik	57	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8055</sup>
SADRIU (SADRIJA), Hysni	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8056</sup>
SADRIU (SADRIA), Rexhep	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8057</sup>
SADRIU, Shaqir	47	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8058</sup>
SALIHAI, Osman	47	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8059</sup>

<sup>8049</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the mandible (lower jaw), Exhibit P473, K0503495.

<sup>8050</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, Exhibit P473, K0503489.

<sup>8051</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the right pelvis, Exhibit P474, K0412694.

<sup>8052</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8053</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412675; see also, Exhibit P818; see also, Exhibit P477.

<sup>8054</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8055</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the chest and right hand, Exhibit P473, K0503526.

<sup>8056</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412653; see also, Exhibit P477.

<sup>8057</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head and lower abdomen, Exhibit P474, K0412681.

<sup>8058</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the chest, Exhibit P474, K0412788.

<sup>8059</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P472; K0528391; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
SALIHU, Bajram	50	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8060</sup>
SELMANAJ (SELMANI), Beqir	40	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8061</sup>
SELMANAJ (SELMANI), Nexhat	16	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8062</sup>
SELMANI, Ali	54	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8063</sup>
SELMANI, Baki	26	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8064</sup>
SELMANI, Burim	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8065</sup>
SELMANI, Jonuz	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8066</sup>
SELMANI, Ujkan	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8067</sup>
SELMANI, Xheme (Xhemë)	65	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8068</sup>
SHALA, Deme (Demë)	29	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8069</sup>

<sup>8060</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the trunk, right arm and right leg, Exhibit P473, K0503547.

<sup>8061</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the right pelvis, Exhibit P474, K0412466.

<sup>8062</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P456, K0528131.

<sup>8063</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries to the head, trunk and limbs, Exhibit P473, K0503544.

<sup>8064</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the chest, Exhibit P456, K0528060.

<sup>8065</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8066</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P474, K0412611.

<sup>8067</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412453; see also, Exhibit P818; see also, Exhibit P477.

<sup>8068</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the chest, Exhibit P474, K0412807.

<sup>8069</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412614; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
SHEHU, Agim	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8070</sup>
SHEHU, Ahmet	53	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8071</sup>
SHEHU, Bujar	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8072</sup>
SHEHU, Ismet	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8073</sup>
SHEHU, Mehmet	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8074</sup>
SHEHU, Rame (Ramë)	44	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8075</sup>
SHOSHI, Elvis	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8076</sup>
SHOSHI, Naser	25	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8077</sup>
SHOSHI, Perparim	21	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8078</sup>
SMAJLI, Gani	41	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8079</sup>

<sup>8070</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P456, K0528135; see also, Exhibit P818; see also, Exhibit P477.

<sup>8071</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412795.

<sup>8072</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the lower abdomen, Exhibit P474, K0412667.

<sup>8073</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest, Exhibit P456, K0528152.

<sup>8074</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries to the head, chest and left arm, Exhibit P473, K0503532.

<sup>8075</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412412.

<sup>8076</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds, Exhibit P474, K0412456.

<sup>8077</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8078</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P477.

<sup>8079</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the head, trunk and right arm, Exhibit P456, K0528163.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
SOKOLI, Filip	45	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8080</sup>
SOKOLI, Kastriot	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8081</sup>
SOKOLI, Kriste (Krist/Kristë)	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8082</sup>
SOKOLI, Simon	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8083</sup>
SYLA, Ismet	48	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8084</sup>
SYLA, Rexhep	77	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8085</sup>
SYLAJ, Bajram	51	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8086</sup>
TAHIRAJ, Bajram	55	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8087</sup>

<sup>8080</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries to the head, trunk and limbs, Exhibit P473, K0503538.

<sup>8081</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head and right arm, Exhibit P474, K0412656.

<sup>8082</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P473, K0503535.

<sup>8083</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the chest, Exhibit P473, K0503541.

<sup>8084</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot injuries to the trunk, left arm and both legs, Exhibit P473, K0503529.

<sup>8085</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412439; see also, Exhibit P818; see also, Exhibit P477.

<sup>8086</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, pp 377-383; see also, Exhibit P818; see also, Exhibit P477.

<sup>8087</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412650; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
TAHIRAJ, Halil	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8088</sup>
TAHIRAJ, Isuf	63	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8089</sup>
TAHIRAJ, Osman	47	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8090</sup>
TAHIRAJ, Ramadan	37	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8091</sup>
TAHIRAJ, Rrustem	22	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8092</sup>
TAHIRAJ, Selman	47	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8093</sup>
TAHIRAJ, Xhevdet	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8094</sup>
XHEMAJLI, Uke	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8095</sup>
XHEMAJLI (XHEMAJLAJ), Hasan	64	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8096</sup>

<sup>8088</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury, Exhibit P474, K0412483.

<sup>8089</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412564; see also, Exhibit P818; see also, Exhibit P477.

<sup>8090</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries, Exhibit P474, K0412647.

<sup>8091</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury, Exhibit P474, K0412707.

<sup>8092</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head and to the chest, Exhibit P456, K0528159.

<sup>8093</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8094</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds, Exhibit P472, K0528430.

<sup>8095</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the pelvic-abdominal region and the right femur, Exhibit P474, K0412643.

<sup>8096</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as "several defects to pelvis and sacrum consistent with projectile impacts", Exhibit P474, K0412479.



NAME	AGE	GENDER	PLACE AND DATE OF MURDER
XHEMAJLI (XHEMAJLAJ), Isa	55	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8097</sup>
XHEMAJLI (XHEMAJLAJ), Miftar	34	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8098</sup>
XHEMAJLI (XHEMAJLAJ), Rifat	19	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8099</sup>
XHEMAJLI (XHEMAJLAJ), Xhemajl	46	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8100</sup>
YMERI (IMERI), Elez	59	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8101</sup>
YMERI (IMERI), Halit	57	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8102</sup>
YMERI (IMERI), Hasan	24	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8103</sup>
YMERI (IMERI), Hysen	18	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8104</sup>
YMERI (IMERI), Musa	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8105</sup>

<sup>8097</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477.

<sup>8098</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412495; see also, Exhibit P818; see also, Exhibit P477.

<sup>8099</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot injuries to the chest and left arm, Exhibit P473, K0503550.

<sup>8100</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the upper body, Exhibit P474, K0412841.

<sup>8101</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412558.

<sup>8102</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412570; see also, Exhibit P818; see also, Exhibit P477.

<sup>8103</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P576, K0502781; see also, Exhibit P818; see also, Exhibit P477.

<sup>8104</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as multiple gunshot wounds to the chest, Exhibit P474, K0412728.

<sup>8105</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412725; see also, Exhibit P818; see also, Exhibit P477.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
YMERI (IMERI), Xhafer	68	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8106</sup>
YMERI (IMERI), Zenel	41	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8107</sup>
ZENUNI, Bajram	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8108</sup>
ZENUNI, Xhevat	43	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8109</sup>
ZENUNI, Zenel	42	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8110</sup>
ZEQIRI, Hasan	56	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8111</sup>
ZYBERI, Arber	17	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8112</sup>
ZYBERI, Gani	36	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8113</sup>
ZYBERI, Skender	30	Male	Operation Reka, in and around Meja/Mejë and Korenica/Korenicë, 27-28 April 1999 <sup>8114</sup>

<sup>8106</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; The cause of death was forensically established as a gunshot wound to the lower abdomen, Exhibit P474, K0412660; see also, Exhibit P818; see also, Exhibit P477.

<sup>8107</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P474, K0412548; see also, Exhibit P818; see also, Exhibit P477.

<sup>8108</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P474, K0412627.

<sup>8109</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound to the head, Exhibit P474, K0412418.

<sup>8110</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; Exhibit P456, K0528128; see also, Exhibit P818; see also, Exhibit P477.

<sup>8111</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot wound through the neck, Exhibit P474, K0412746.

<sup>8112</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the head, Exhibit P474, K0412785.

<sup>8113</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as a gunshot injury to the chest, Exhibit P474, K0412617.

<sup>8114</sup> See *supra*, paras 967-979, 985-995, 1492-1495, 1738; see also, Exhibit P818; see also, Exhibit P477. The cause of death was forensically established as gunshot wounds to the right shoulder and right forearm; P473, K0503553.

## G. VUČITRN / VUSHTRRI

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	EVIDENCE ABOUT CAUSE OF DEATH
BUNJAKU, M. Hysni	21	Male	Donja Sudimlja/Studime-e-Poshtme convoy, 2 May 1999 <sup>8115</sup>
GERXHALIU, A. Haki	39	Male	Donja Sudimlja/Studime-e-Poshtme convoy, 2 May 1999 <sup>8116</sup>
XHAFA, S. Veli	45	Male	Donja Sudimlja/Studime-e-Poshtme convoy, 2 May 1999 <sup>8117</sup>
XHAFA, Miran	71	Male	Donja Sudimlja/Studime-e-Poshtme convoy, 2 May 1999 <sup>8118</sup>

<sup>8115</sup> See *supra*, paras 1184, 1197, 1742.

<sup>8116</sup> See *supra*, paras 1185, 1197, 1423-1427, 1742. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1174, pp160-163; Exhibit P1173, p 7.

<sup>8117</sup> See *supra*, paras 1192, 1197, 1423-1427, 1742. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1172, pp 71-72.

<sup>8118</sup> See *supra*, paras 1191, 1197, 1423-1427, 1742. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1172, pp 69-70.

## H. KOTLINA/KOTLINË, KAÇANIK/KAÇANIK

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
KUÇI (KUQI), Idriz	55	Male	Kotlina/Kotlinë, 24 March 1999 <sup>8119</sup>
KUQI, Ismail	21	Male	At the wells, 24 March 1999 <sup>8120</sup>
KUQI, Nexhadi	31	Male	At the wells, 24 March 1999 <sup>8121</sup>
KUQI, Xhemjal	22	Male	At the wells, 24 March 1999 <sup>8122</sup>
LOKU, Agim	31	Male	At the wells, 24 March 1999 <sup>8123</sup>
LOKU, Garip	47	Male	At the wells, 24 March 1999 <sup>8124</sup>
LOKU, Ibush	20	Male	At the wells, 24 March 1999 <sup>8125</sup>
LOKU, Ismajl (Ismail)	28	Male	At the wells, 24 March 1999 <sup>8126</sup>
LOKU, Izijah	19	Male	At the wells, 24 March 1999 <sup>8127</sup>
LOKU, Naser R.	17	Male	At the wells, 24 March 1999 <sup>8128</sup>
LOKU, Sabit	20	Male	At the wells, 24 March 1999 <sup>8129</sup>
REXHA, Neshat	16	Male	At the wells, 24 March 1999 <sup>8130</sup>
VLASHI, Sali M.	42	Male	At the wells, 24 March 1999 <sup>8131</sup>

### Victims known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
LOKU, Atmir	21	Male	At the wells, 24 March 1999 <sup>8132</sup>
LOKU, Bajram	28	Male	At the wells, 24 March 1999 <sup>8133</sup>

<sup>8119</sup> See *supra*, paras 1113, 1117, 1118, 1428-1429, 1436, 1445, 1744. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1167, p 8.

<sup>8120</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8121</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8122</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8123</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8124</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8125</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8126</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8127</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8128</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8129</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8130</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8131</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8132</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8133</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
LOKU, Cen	35	Male	At the wells, 24 March 1999 <sup>8134</sup>
LOKU, Ismet	21	Male	At the wells, 24 March 1999 <sup>8135</sup>
LOKU, Mahi	26	Male	At the wells, 24 March 1999 <sup>8136</sup>
LOKU, Sabri	26	Male	At the wells, 24 March 1999 <sup>8137</sup>
LOKU, Naser (Nasir) F	23	Male	At the wells, 24 March 1999 <sup>8138</sup>
KUQI (KUCI), Danush	16	Male	At the wells, 24 March 1999 <sup>8139</sup>
KUQI (KUCI), Sherif	27	Male	At the wells, 24 March 1999 <sup>8140</sup>
KUQI (KUCI), Minah	16	Male	At the wells, 24 March 1999 <sup>8141</sup>

<sup>8134</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8135</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8136</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8137</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8138</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8139</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8140</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

<sup>8141</sup> See *supra*, paras 1115-1116, 1120, 1428-1445, 1744.

## I. SLATINA/SLLATINË AND VATA/VATAJ

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
CAKA, Mahmut Hasan (Mahumat)	45	Male	Vata/Vataj, 13 April 1999 <sup>8142</sup>
LAMA (LAMI), Brahim	52	Male	Vata/Vataj, 13 April 1999 <sup>8143</sup>
LAMA (LAMI), Hebib (Habib)	18	Male	Vata/Vataj, 13 April 1999 <sup>8144</sup>

### Victims known by name and not listed in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
LAMA (LAMI), Rramam (Rraman)	52	Male	Vata/Vataj, 13 April 1999 <sup>8145</sup>

<sup>8142</sup> See *supra*, paras 1138-1139, 1447-1449, 1747. The cause of death was forensically established as a gunshot wound, Exhibit P1169, p. 13.

<sup>8143</sup> See *supra*, paras 1138-1139, 1447-1449, 1747. The cause of death was forensically established as multiple gunshot wounds to the chest, Exhibit P1169, pp. 29-32.

<sup>8144</sup> See *supra*, paras 1138-1139, 1447-1449, 1747. The cause of death was forensically established as multiple gunshot wounds to the chest and the abdomen, Exhibit P1169, pp. 33-36.

<sup>8145</sup> See *supra*, paras 1138-1139, 1447-1449, 1747. The cause of death was forensically established as gunshot wounds to the chest and the lower abdomen, Exhibit P1168, K0144157, K0144167.

## J. PODUJEVO/PODUJEVĚ

### Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BOGUJEVĆI, Šefkate (Shefkate)	43	Female	The courtyard, 28 March 1999 <sup>8146</sup>
BOGUJEVĆI, Nora	15	Female	The courtyard, 28 March 1999 <sup>8147</sup>
BOGUJEVĆI, Salja (Sala)	39	Female	The courtyard, 28 March 1999 <sup>8148</sup>
BOGUJEVĆI, Špend (Shpend)	13	Male	The courtyard, 28 March 1999 <sup>8149</sup>
BOGUJEVĆI, Špetim (Shpetim)	10	Male	The courtyard, 28 March 1999 <sup>8150</sup>
BOGUJEVĆI, Šehide (Shehide)	69	Female	The courtyard, 28 March 1999 <sup>8151</sup>
LLUGALIU, Fezdrije (Fexhrije/ Fezdrie/Fezrije)	21	Female	The courtyard, 28 March 1999 <sup>8152</sup>
LLUGALIU, Nefise	54	Female	The courtyard, 28 March 1999 <sup>8153</sup>
DURIQI, Isma (Esma)	69	Female	The courtyard, 28 March 1999 <sup>8154</sup>
DURIQI, Fitnete (Fetnete)	36	Female	The courtyard, 28 March 1999 <sup>8155</sup>

<sup>8146</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as a gunshot wound to the head, Exhibit P1144, K0291162.

<sup>8147</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as a gunshot wound to the chest and the head injury, Exhibit P1143, K0291140.

<sup>8148</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1147, K0291052.

<sup>8149</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as gunshot wounds to the head and the chest, Exhibit P1149, K0291096.

<sup>8150</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1148, K0291074.

<sup>8151</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1141, K0291118.

<sup>8152</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as a gunshot wound to the chest, Exhibit P1146, K0291030.

<sup>8153</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750. The cause of death was forensically established as multiple gunshot wounds, Exhibit P1145, K0291008.

<sup>8154</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750.

<sup>8155</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750.

<b>NAME</b>	<b>AGE</b>	<b>GENDER</b>	<b>PLACE AND DATE OF MURDER</b>
DURIQI, Dafina	9	Female	The courtyard, 28 March 1999 <sup>8156</sup>
DURIQI, Arbr (Arber)	7	Male	The courtyard, 28 March 1999 <sup>8157</sup>
DURIQI, Mimoza	4	Female	The courtyard, 28 March 1999 <sup>8158</sup>
DURIQI, Albjon (Albijon)	2	Male	The courtyard, 28 March 1999 <sup>8159</sup>

Victims known by name and not listed in the Schedule of the Indictment

<b>NAME</b>	<b>AGE</b>	<b>GENDER</b>	<b>PLACE AND DATE OF MURDER</b>
DURIQI Hamdi (Hamdija)	70	Male	The coffee-shop, 28 March 1999 <sup>8160</sup>
GASHI (GAŠI) Selman (Seliman/Sejman/ Selmon)	68	Male	The coffee-shop, 28 March 1999 <sup>8161</sup>

<sup>8156</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750.

<sup>8157</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750.

<sup>8158</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750.

<sup>8159</sup> See *supra*, paras 1241-1251, 1256, 1259, 1454-1457, 1750.

<sup>8160</sup> See *supra*, paras 1246, 1454, 1458, 1751.

<sup>8161</sup> See *supra*, paras 1246, 1454, 1458, 1751.



## XVII. ANNEX I: PROCEDURAL HISTORY

### A. Pre-Trial Proceedings

#### 1. Confirmation of the initial indictment, arrest, initial appearance and Indictment history

2234. An initial indictment against Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Slobodan Milošević, and Vlajko Stojiljković was confirmed on 24 May 1999.<sup>8162</sup> This indictment was amended on 29 June 2001 (amended indictment),<sup>8163</sup> on 16 October 2001 (second amended indictment)<sup>8164</sup> and on 19 July 2002 (third amended indictment).<sup>8165</sup> In the third amended indictment, the charges against Vlajko Stojiljković were removed because he had died and the charges against Slobodan Milošević were removed because he was being tried separately.<sup>8166</sup> The case was then called *Prosecutor v Milutinović et al.*

2235. The original indictment against Vlastimir Đorđević and three other accused, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić (“*Prosecutor v Pavković et al.*”), dated 25 September 2003, was confirmed on 2 October 2003 by Judge O-Gon Kwon.<sup>8167</sup> Confidential arrest warrants were issued for the four Accused on that day.<sup>8168</sup> Nebojša Pavković surrendered to the custody of the Tribunal on 28 April 2005, Vladimir Lazarević surrendered to the custody of the Tribunal on 3 February 2005 and Sreten Lukić surrendered to the custody of the Tribunal on 4 April 2005. Vlastimir Đorđević remained at large.

2236. On 1 April 2005, the Prosecution filed a motion seeking to join the *Prosecutor v Pavković et al.* case with the *Prosecutor v Milutinović et al.* case.<sup>8169</sup> On 8 July 2005, the Pre-Trial Chamber granted the motion, ordering the accused Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević and Sreten Lukić to be jointly charged

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<sup>8162</sup> *Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, and Vlajko Stojiljković*, Case No. IT-99-37-1, “Decision on Review of Indictment and Application for Consequential Orders”, 24 May 1999.

<sup>8163</sup> *Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, and Vlajko Stojiljković*, Case No. IT-99-37-1, “Amended Indictment”, 29 June 2001.

<sup>8164</sup> *Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, and Vlajko Stojiljković*, Case No. IT-99-37-PT, “Second Amended Indictment”, 29 October 2001.

<sup>8165</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-PT, “Third Amended Indictment”, 19 July 2002.

<sup>8166</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-PT, “Third Amended Indictment”, 19 July 2002.

<sup>8167</sup> *Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-03-70-I, “Confirmation of Indictment”, 2 October 2003.

<sup>8168</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-03-70-I, “Warrant for Arrest Order for Surrender”, 2 October 2003; *Prosecutor v. Nebojša Pavković*, Case No. IT-03-70-I, “Warrant for Arrest Order for Surrender”, 2 October 2003; *Prosecutor v. Vladimir Lazarević*, Case No. IT-03-70-I, “Warrant for Arrest Order for Surrender”, 2 October 2003; *Prosecutor v. Sreten Lukić*, Case No. IT-03-70-I, “Warrant for Arrest Order for Surrender”, 2 October 2003.

<sup>8169</sup> *Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-03-70-PT “Prosecution Motion for Joinder”, 1 April 2005.

and tried on one joint indictment (“*Prosecutor v Milutinović et al.*”) and ordering the Prosecution to file an amended joinder indictment.<sup>8170</sup> In addition, the Chamber granted Vladimir Lazarević and Sreten Lukić’s motions alleging defects in the form of the *Prosecutor v Pavković et al.* indictment, and ordered the Prosecution to cure those defects.<sup>8171</sup> On 16 August 2005, the Prosecution submitted the proposed amended joinder indictment in conformity with the Pre-Trial Chamber’s order and, in addition, sought to introduce further amendments.<sup>8172</sup>

2237. On 22 March 2006, the Pre-Trial Chamber granted the Motions of Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić challenging the form of the proposed amended joinder indictment and ordered the Prosecution to cure a number of defects in the amended joinder indictment.<sup>8173</sup> On 5 April 2006, the Prosecution submitted the second amended joinder indictment.<sup>8174</sup>

2238. On 11 May 2006, the Trial Chamber granted the Prosecution’s motion to amend the indictment.<sup>8175</sup> On the next day, the Prosecution filed the third amended joinder indictment.<sup>8176</sup>

2239. At a status conference on 17 May 2006, Judge Iain Bonomy, the Pre-Trial Judge, ordered the Prosecution to sever the case of Vlastimir Đorđević, who was still at large, from the case of the other accused in the case of *Prosecutor v Milan Milutinović et al.*, thereby allowing the trial against the remaining accused to commence as scheduled. Pursuant to the instructions given during the status conference, the Prosecution, on 21 June 2006, sought leave to sever Vlastimir Đorđević, from the case against the other accused in the case of *Prosecutor v Milutinović et al.*<sup>8177</sup> On 26 June 2006, the Pre-Trial Chamber granted the severance of Vlastimir Đorđević from the case of

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<sup>8170</sup> *Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-03-70-PT and *Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić*, Case No. IT-99-37-PT “Decision on Prosecution Motion for Joinder”, 8 July 2005.

<sup>8171</sup> *Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-03-70-PT, “Decision on Vlastimir Lazarević’s Preliminary Motion on Form of Indictment, 8 July 2005; *Prosecutor v. Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-03-70-PT, “Decision of Sreten Lukić’s Preliminary Motion on Form of the Indictment”, 8 July 2005.

<sup>8172</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-05-87-PT, “Amended Joinder Indictment”, 16 August 2005.

<sup>8173</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-05-87-PT, “Decision on Defence Motion Alleging Defects in the Form of the Proposed Amended Joinder Indictment”, 22 March 2006.

<sup>8174</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-05-87-PT, “Second Amended Joinder Indictment”, 5 April 2006.

<sup>8175</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-05-87-PT, “Decision on Motion to Amend the Indictment”, 11 May 2006.

<sup>8176</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-05-87-PT, “Third Amended Joinder Indictment”, 12 May 2006.

<sup>8177</sup> *Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić*, Case No. IT-05-87-PT, “Prosecution Motion Requesting Leave to Replace

*Prosecutor v Milan Milutinović et al.* and assigned a new case number to all further proceedings involving him.<sup>8178</sup> The third amended joinder indictment, filed on 6 July 2006, remained the operative indictment both in the case of *Prosecutor v Milan Milutinović et al.* and in this case against *Prosecutor v Vlastimir Đorđević*.<sup>8179</sup>

2240. Vlastimir Đorđević was arrested and transferred to the seat of the Tribunal on 17 June 2007. He chose to postpone his decision to enter a plea in accordance with Rule 62 (A) (iii) of the Rules at his initial appearance on 19 June 2007, subsequently entering a plea of not guilty to each charge in the indictment at a further initial appearance on 16 July 2007.<sup>8180</sup>

2241. On 18 June 2007, by order of Judge Kevin Parker, the Acting President of the Tribunal, this case was assigned to Trial Chamber III.<sup>8181</sup> On 21 June 2007, Judge Fausto Pocar, then President of the Tribunal, ordered that Judge Tsvetana Kamenova and Judge Frederik Harhoff be assigned to Trial Chamber III for the purpose of the pre-trial proceedings in this case.<sup>8182</sup>

2242. At a status conference on 22 February 2008, the Prosecution notified the Defence and the Pre-Trial Judge of its intention to seek leave to further amend the indictment.<sup>8183</sup> Pursuant to instructions by the Pre-Trial Judge during this status conference, the Prosecution, on 2 June 2008, filed a motion for leave to amend the third amended joinder indictment to add a murder allegation involving 14 victims in the town of Podujevo.<sup>8184</sup> On 7 July 2008, the Pre-Trial Chamber granted the Prosecution's motion seeking to amend the third amended joinder indictment.<sup>8185</sup> On 9 July 2008, the Prosecution filed the Fourth Amended Indictment, which then became the operative indictment in the case.<sup>8186</sup>

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the Third Amended Joinder Indictment and Leave to Sever Vlastimir Đorđević from the Trial in the Presence Case", 21 June 2006.

<sup>8178</sup> *Prosecutor v. Milutinović et al.*, IT-05-87-PT, "Order Replacing Third Amended Joinder Indictment and Severing Vlastimir Đorđević from the Trial", 26 June 2006.

<sup>8179</sup> *Prosecutor v. Milutinović et al.*, IT-05-87-PT, "Order Replacing Third Amended Joinder Indictment and Severing Vlastimir Đorđević from the Trial", 26 June 2006, pp 2-3.

<sup>8180</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, Court Session of 16 July 2007, T 4, 11-14.

<sup>8181</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-I, "Order Assigning a Case to a Trial Chamber", 18 June 2007.

<sup>8182</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-I, "Order Assigning *Ad Litem* Judges to Pre-Trial Proceedings", 21 June 2007.

<sup>8183</sup> Status Conference of 22 February 2008, T 31-32.

<sup>8184</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Prosecution's Motion for Leave to Amend the Third Amended Joinder Indictment with Annexes A, B and C", 2 June 2008.

<sup>8185</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Decision on Prosecution Motion to Amend the Third Amended Joinder Indictment", 7 July 2008.

<sup>8186</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Fourth Amended Indictment", 9 July 2008.

2243. On 17 July 2008, following the filing of the Fourth Amended Indictment, a further appearance was held and Vlastimir Đorđević entered a plea of not guilty to the additional allegation included in the Indictment.<sup>8187</sup>

## 2. Challenges to the jurisdiction of the Tribunal

2244. Challenges to the territorial and temporal jurisdiction of the Tribunal were submitted by Vlastimir Đorđević on 19 October 2007. The Defence submitted in essence that: (i) the temporal jurisdiction of the Tribunal ceased in 1995 as a result of a peace agreement ending the war in the territory of the former Yugoslavia;<sup>8188</sup> (ii) the Tribunal lacked territorial jurisdiction because the SFRY at the time the Tribunal was established no longer existed, having been replaced by five new states, including the FRY, within which was the province of Kosovo.<sup>8189</sup> On 6 December 2007, the Pre-Trial Chamber issued a decision on the motion, finding that the temporal jurisdiction of the Tribunal was left open-ended and that it extended to allegations of serious violations of international humanitarian law committed after 1999.<sup>8190</sup> The Pre-Trial Chamber also held that the jurisdiction of the Tribunal extended to the territory of Kosovo, as consistently recognized by its jurisprudence.<sup>8191</sup>

## 3. Commencement of trial

2245. The Prosecution filed its Pre-Trial Brief on 1 September 2008, accompanied by a list witnesses and exhibits pursuant to Rule 65ter (E) of the Rules.<sup>8192</sup> Throughout the trial, the Chamber granted fully or in part, a number of motions seeking to amend the Prosecution's Rule 65ter list.<sup>8193</sup> The Defence filed their Pre-Trial Brief on 22 September 2008.<sup>8194</sup>

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<sup>8187</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, Court Session of 17 July 2008, T 65-76.

<sup>8188</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Vlastimir Đorđević's Preliminary Motion Challenging Jurisdiction", 19 October 2007, paras 2, 8, 10, 20.

<sup>8189</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Vlastimir Đorđević's Preliminary Motion Challenging Jurisdiction", 19 October 2007, paras 13, 15, 20.

<sup>8190</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Decision on Vlastimir Đorđević's Preliminary Motion Challenging Jurisdiction", 6 December 2007, para 10.

<sup>8191</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Decision on Vlastimir Đorđević's Preliminary Motion Challenging Jurisdiction", 6 December 2007, para 11.

<sup>8192</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, "Prosecution's Submissions Pursuant to Rule 65ter (E) with Confidential Annex I, Annex II, and Annex III", 1 September 2008.

<sup>8193</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Decision on Prosecution's Motion to Amend the Rule 65ter Witness List with Annex A", 6 February 2009; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Decision on Prosecution's Motion to Amend the 65ter Exhibit List with Annexes A and B", 4 March 2009; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Prosecution's Motion for Leave to Amend its Rule 65ter Witness List with Confidential Annexes A and B", 14 May 2009; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Prosecution's Motion to Add Milan Đaković to the Rule 65ter Witness List", 21 May 2009; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Decision on Prosecution's Second Written Motion to Amend the Rule 65ter Exhibit List", 2 July 2009; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, "Second Decision on Prosecution's Second Written Motion to Amend the Rule 65ter Exhibit List", 22 July 2009.

2246. On 27 November 2008, Judge Patrick Robinson, President of the Tribunal, re-assigned the *Vlastimir Đorđević* case to Trial Chamber II and assigned Judge Christoph Flügge to Trial Chamber II for the purpose of this case.<sup>8195</sup> The following day, Judge Patrick Robinson assigned *ad litem* Judge Frederik Harhoff to Trial Chamber II for the purpose of the pre-trial proceedings in the case.<sup>8196</sup>

2247. On 1 December 2008, by order of Judge Carmel Agius, the Presiding Judge of Trial Chamber II, the case was assigned to a bench consisting of Judge Kevin Parker (Presiding), Judge Christoph Flügge and Judge Frederik Harhoff.<sup>8197</sup>

2248. On 15 December 2008, Judge Patrick Robinson, the President of the Tribunal, assigned Judge Melville Baird to Trial Chamber II for the purpose of this case.<sup>8198</sup> On the next day, Judge Carmel Agius, the President of Trial Chamber II, assigned Judge Melville Baird to replace Judge Frederik Harhoff on the bench in this case.<sup>8199</sup>

2249. The pre-trial conference took place on 16 December 2008 and 26 January 2009.<sup>8200</sup> The trial commenced on 27 January 2009.<sup>8201</sup>

## **B. Trial Proceedings**

### **1. Overview**

2250. The Prosecution case opened on 27 January 2009 and closed on 28 October 2009. On 17 May 2010, the Prosecution case was reopened again for the limited purpose of enabling cross-examination of a witness who had been previously unable to testify.<sup>8202</sup>

2251. The Chamber heard the evidence of 115 Prosecution witnesses, 105 of whom testified partly or fully *viva voce*. The evidence of five Prosecution witnesses was provided entirely in the form of Rule 92*bis* statements. 29 further Prosecution witnesses gave evidence pursuant to Rule 92*bis* but

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<sup>8194</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Vlastimir Đorđević’s Pre-Trial Brief Pursuant to Rule 65ter (F)”, 22 September 2008.

<sup>8195</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Order Reassigning a Case to a Trial Chamber and Assigning a Judge”, 27 November 2008.

<sup>8196</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Order Assigning a Judge to a Trial Chamber”, 28 November 2008.

<sup>8197</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Order Regarding Composition of Trial Chamber and Designation a Pre-Trial Judge”, 1 December 2008.

<sup>8198</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Order Assigning an *Ad Litem* Judge to a Case Before a Trial Chamber” 15 December 2008.

<sup>8199</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Order Replacing a Judge on the Trial Bench” 16 December 2008.

<sup>8200</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 26 January 2009, T 88-166.

<sup>8201</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 26 January 2009, T 167.

<sup>8202</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, Court Session of 17 May 2010, T 14151-14180.

were required to appear before the Chamber for cross-examination.<sup>8203</sup> The evidence of 48 Prosecution witnesses was presented pursuant to Rule 92ter. The evidence of five Prosecution witnesses was presented pursuant to Rule 92quater. The evidence of one Prosecution witness was initially admitted pursuant to Rule 92quater, but, subsequently, as this witness became available to testify, he was called to give oral evidence before the Chamber. A further five Prosecution witness gave evidence pursuant to Rule 94bis.

2252. The Defence case opened on 30 November 2009 and ended on 20 May 2010. The Defence called a total of 28 witnesses, 13 of whom were presented partly in written form pursuant to Rule 92ter and two pursuant to Rule 94bis.<sup>8204</sup>

2253. Final trial briefs were filed on 30 June 2010,<sup>8205</sup> and closing arguments were heard on 13 and on 14 July 2010.<sup>8206</sup>

## 2. Matters relating to witnesses

2254. The Chamber heard the evidence of 20 Prosecution witnesses and one Defence witness who gave their evidence under trial related protective measures. Of these, three were granted protective measures by the Chamber in this case and the remaining 18 were granted protective measures in the *Milutinović et al.* case, which continued to apply in this case. Throughout the trial, the Chamber issued subpoenas with respect to 23 witnesses.

## 3. Decision on admissibility of evidence

2255. The Chamber admitted a total of 2518 exhibits, of which 1585 were Prosecution exhibits and 933 were Defence exhibits. During the trial, the Chamber granted, fully or in part, a number of motions seeking admission of documents from the Bar Table, allowing the admission into evidence of documentary evidence.<sup>8207</sup>

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<sup>8203</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Decision on Prosecution’s Motions for Admission of Evidence Pursuant to Rule 92ter”, 10 February 2009.

<sup>8204</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Decision on Vlastimir Đorđević’s Motions for Admission of Evidence Pursuant to ICTY Rule 92ter”, 22 January 2010; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Decision on Vlastimir Đorđević’s submissions pursuant to Rule 65ter (G)”, 24 March 2010.

<sup>8205</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Final Trial Brief”, 30 June 2010; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Vlastimir Đorđević’s Final Trial Brief”, 30 June 2010.

<sup>8206</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, T 14362-14534.

<sup>8207</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Decision on Prosecution’s Motion to Admit Exhibits from the Bar Table”, 28 April 2009; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Decision on Prosecution’s Motion to Re-Open the Case and Exceed the Word Limit and Second Motion to Admit Exhibits from the Bar Table”, 7 December 2009; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Vlastimir Đorđević’s Motion to Exceed the Word Limit and Motion to Admit Documents from the Bar Table”, 23 June 2010.

## XVIII. ANNEX II: GLOSSARY OF TERMS

<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977
<i>Akayesu</i> Trial Judgement	<i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement, 2 September 1998
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999
APC	Armoured Personnel Carrier
<i>Babić</i> Appeal Judgement	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005
BBC	British Broadcasting Corporation
BCS	Bosnian Croatian Serbian language
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000

<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Blagojević</i> Appeal Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007
<i>Blagojević</i> Trial Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 January 2005
<i>Boškoski</i> Trial Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-T, Judgement, 8 July 2008
<i>Brdanin</i> Appeal Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, Judgement, 3 April 2007
<i>Bralo</i> Appeal Sentencing Judgement	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Judgement on Sentencing Appeal, 2 April 2007
<i>Brdanin</i> Decision on Interlocutory Appeal	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A. Decision on Interlocutory Appeal, 19 March 2004
<i>Brdanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
Chamber	Section II of Trial Chamber II of the Tribunal
CO	Civilian Defence
Common Article 3	Article 3 of Geneva Conventions I to IV
Contact group on the Balkans	The Contact Group on the Balkans comprised of France, Germany, Italy, Russia, the United Kingdom and the United States.
Defence	Counsel for the Accused Vlastimir Đorđević
<i>Delić</i> Trial Judgement	<i>Prosecutor v. Rasim Delić</i> , Case No. IT-04-83-T, Judgement, 15 September 2008



<i>Deronjić</i> Appeal Sentencing Judgement	<i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005
<i>Dragan Nikolić</i> Appeal Sentencing Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, Judgement on Sentencing Appeal, 4 February 2005
<i>Dragan Nikolić</i> Sentencing Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-S, Sentencing Judgement, 18 December 2003
<i>Dragomir Milošević</i> Trial Judgement	<i>Prosecutor v. Milošević Dragomir</i> , Case No. IT-98-29/1, Judgement, 12 December 2007
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECMM	European Community Monitor Mission
ECtHR	European Court of Human Rights
EU	European Union
EU-KDOM	European Union Kosovo Diplomatic Observer Missions
FRY	Federal Republic of Yugoslavia
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgement, 21 July 2000
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
FYROM	Former Yugoslav Republic of Macedonia
<i>Galić</i> Appeal Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003

Geneva Convention I	Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949
Geneva Convention II	Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949
Geneva Convention III	Geneva Convention III Relative to the Treatment of Prisoners of War of 12 August 1949
Geneva Convention IV	Geneva Convention IV Relative to the Protection of Civilian Person in Time of War of 12 August 1949
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
<i>Hadžihasanović</i> Appeal Judgement	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-A, Judgement, 22 April 2008
<i>Hadžihasanović</i> Trial Judgement	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Judgement, 15 March 2006
<i>Hadžihasanović</i> Appeals Chamber Decision	<i>Prosecutor v. Enver Hažihasanović</i> , Case No. IT-01-47-AR72, Appeals Chamber Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003
<i>Halilović</i> Appeal Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, Judgement, 16 October 2007
<i>Halilović</i> Trial Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, Judgement, 16 November 2005
<i>Haradinaj</i> Trial Judgement	<i>Prosecutor v. Ramush Haradinaj et al.</i> , Case No. IT-04-84, Judgement, 3 April 2008
HQ	Headquarters
HRW	Human Rights Watch

ICC	International Criminal Court
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICRC Commentary on Geneva Convention II	J. Pictet, ed., <i>The Geneva Conventions of 12 August 1949: Commentary, Part II Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea</i> , International Committee of the Red Cross, Geneva, 1960
ICRC Commentary on the Additional Protocols	<i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949</i> , International Committee of the Red Cross, Geneva, 1987
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
IKM	Forward Command Post
IMG	International Management Group
Indictment	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-PT, Fourth Amended Indictment, 2 June 2008

<i>Israel v. Adolph Eichmann</i>	<i>Attorney General of Israel v. Adolph Eichmann</i> , 36 I.L.R. 5 (Israel D.C. December 12 1961), aff'd 36 I.L.R. (Israel S. Ct., May 29, 1962)
JCE	Joint Criminal Enterprise
<i>Jelisić Appeal Judgement</i>	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001
<i>Jelisić Trial Judgement</i>	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999
JNA	<i>Jugoslovenska Narodna Armija</i> , the Yugoslav People's Army
JSO	Special Operations Unit of the Ministry of Interior (MUP), Republic of Serbia
<i>Kajelijeli Appeal Judgement</i>	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR- 98-44A-A, 23 May 2005
<i>Kamuhanda Appeal Judgement</i>	<i>Prosecutor v. Jean de Dieu Kamuhanda</i> , Case No. ICTR-99-54A-A, Judgement, 19 September 2005
<i>Kayishema Appeal Judgement</i>	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-A, Judgement, 1 June 2001
KDOM	Kosovo Diplomatic Observer Mission
KFOR	NATO Kosovo Force
KLA	Kosovo Liberation Army
<i>Kordić Trial Judgement</i>	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<i>Kordić Appeal Judgement</i>	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004

KPC	Kosovo Protection Corps
<i>Krajišnik</i> Appeal Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, Judgement, 17 March 2009
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002
<i>Krstić</i> Appeal Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 April 2004
<i>Krstić</i> Trial Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Judgement, 2 August 2001
<i>Kunarac</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23&23/1-A, Judgement, 12 June 2002
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23/1-T, Judgement, 22 February 2001
<i>Kupreškić</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-A, Judgement, 23 October 2001
<i>Kupreškić</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-T, Judgement, 14 January 2000
KVM	Kosovo Verification Mission
<i>Kvočka</i> Appeal Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005
<i>Kvočka</i> Trial Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30-T, Judgement, 2 November 2001
LDK	Democratic League of Kosovo

<i>Limaj</i> Appeal Judgement	<i>Prosecutor v. Fatmir Limaj et al.</i> , Case No. IT-03-66-A, Judgement, 27 September 2007
<i>Limaj</i> Trial Judgement	<i>Prosecutor v. Fatmir Limaj et al.</i> , Case No. IT-03-66-T, Judgement, 30 November 2005
<i>Martić</i> Trial Judgement	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, Judgement, 12 June 2007
<i>Martić</i> Appeal Judgement	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, Judgement, 8 October 2008
<i>Milošević</i> Rule 98bis Decision	<i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004
<i>Milošević</i> transcript	Transcript from proceedings in the case of <i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T
<i>Milutinović</i> transcript	Transcript from proceedings in the case of <i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T
<i>Milutinović</i> Trial Judgement	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, Judgement, 27 February 2009
<i>Momir Nikolić</i> Appeal Sentencing Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006
<i>Mrkšić</i> Appeal Judgement	<i>Prosecutor v. Mile Mrkšić and Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, Judgement, 5 May 2009
<i>Mrkšić</i> Trial Judgement	<i>Prosecutor v. Mile Mrkšić et al.</i> , Case No. IT-95-13/1, Judgement, 27 September 2007
<i>Mucić</i> Appeal Sentencing Judgement	<i>Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo</i> , Case No. IT-96-21-Abis, Judgement on Sentencing Appeal, 8 April 2003
MUP	Ministry of the Interior, Republic of Serbia

<i>Nahimana</i> Appeal Judgement	<i>Prosecutor v. Ferdinand Nahimana et al.</i> , Case No. ICTR-99-52-A, Judgement, 28 November 2007
<i>Naletilić</i> Appeal Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. 98-34-A, Judgement, 3 May 2006
<i>Naletilić</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. 98-34-T, Judgement, 31 March 2003
NATO	North Atlantic Treaty Organization
<i>Ndindabahizi</i> Appeal Judgement	<i>Prosecutor v. Emmanuel Ndindabahizi</i> , Case No. ICTR-01-71-A, Judgement, 16 January 2007
NGO	Non-governmental organisation
<i>Ntagerura</i> Appeal Judgement	<i>Prosecutor v. André Ntagerura et al.</i> , Case No. ICTR-99-46-A, Judgement, 7 July 2006
<i>Ntakirutimana</i> Appeal Judgement	<i>Prosecutor v. Elizaphan Ntakirutimana</i> , Case No. ICTR-96-10-A, Judgement, 13 December 2004
OMPF	Office for Missing Persons and Forensics
OPG	Operational Pursuit Group
<i>Orić</i> Appeal Judgement	<i>Prosecutor v Naser Orić</i> , Case No. IT-03-68-A, Judgement, 3 July 2008
<i>Orić</i> Trial Judgement	<i>Prosecutor v Naser Orić</i> , Case No. IT-03-68-T, Judgement, 30 June 2006
OSCE	Organization for Security and Cooperation in Europe
OTP	Office of the Prosecutor of the ICTY
OUP	Municipal Police Station

PJP	Special Police Units
<i>Popović</i> Trial Judgement	<i>Prosecutor v. Vujadin Popović et al.</i> , Case No. IT-05-88-T, Judgement, 10 June 2010
Prosecution	Office of the Prosecutor of the ICTY
Prosecution Final Brief	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-T, Confidential Prosecution's Final Brief
Prosecution Pre-Trial Brief	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-PT, Prosecution Pre-Trial Brief, 1 September 2008
<i>Rajić</i> Sentencing Judgement	<i>Prosecutor v. Ivica Rajić, a.k.a. Viktor Andrić</i> , Case No. IT-95-12-S, Sentencing Judgement, 8 May 2006
RDB	State Security Department of the Republic of Serbia Ministry of Internal Affairs ("MUP")
RJB	Public Security Department of the Republic of Serbia Ministry of Internal Affairs ("MUP")
RPO	Reserve Police Squad
Rules	Rules of Procedure and Evidence of the Tribunal
<i>Rutaganda</i> Trial Judgement	<i>Prosecutor v. Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-T, Judgement, 6 December 1999
SAJ	Special Anti-Terrorist Unit
SC	Supreme Command
SDC	Supreme Defence Council
<i>Semanza</i> Appeal Judgement	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, Judgement, 20 May 2005



SFRY	The Socialist Federal Republic of Yugoslavia
<i>Simić</i> Appeal Judgement	<i>Prosecutor v. Blagoje Simić et al.</i> , Case No. IT-95-9-A, Judgement, 28 November 2006
<i>Simić</i> Trial Judgement	<i>Prosecutor v. Blagoje Simić et al.</i> , Case No. IT-95-9-T, Judgement, 17 October 2003
<i>Stakić</i> Appeal Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003
Statute	Statute of the International Criminal Tribunal for the former Yugoslavia established by Security Council Resolution 827
<i>Strugar</i> Appeal Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, Judgement, 17 July 2008
<i>Strugar</i> Trial Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Judgement, 31 January 2005
SUP	Secretariats for Internal Affairs
T	Transcript of hearings. All transcript pages referred to in this Judgement are taken from the uncorrected version of the transcript. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<i>Tadić</i> Jurisdiction Decision	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-A and IT-94-1-Abis, Judgement in

<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić aka "Dule"</i> , Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
UÇK	<i>Ushtria Çlirimtare e Kosovës</i> , or the Kosovo Liberation Army (KLA)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	The United Nations Children's Fund
UNMIK	United Nations Mission in Kosovo
US-KDOM	United States Kosovo Diplomatic Observer Missions
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004
<i>Vasiljević</i> Trial Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002
VJ	<i>Vojska Jugoslavije</i> , the Yugoslavian Army

## **XIX. CONFIDENTIAL ANNEX**