

**UNITED  
NATIONS**



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 Flügge  
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 II of II**

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## 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 Vlastimir 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

<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 “Hygiëna” 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 “Hygiëna” headquarters.<sup>4874</sup> The director of the cleaning company, Jova Vujicić, 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 “Hygiëna”, where Ali Gjogaj and some of his colleagues were provided with clothes and gloves. From there, Budimir Spasić and Jova Vujicić 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”

<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

<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 Vujčić, 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

<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 Vujčić 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

<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

<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 unearthed 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

<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.

<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 pantaloon-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

<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/Izbičë in Srbica/Skenderaj municipality

1286. Liri Loshi, whose evidence is discussed in more detail elsewhere in this Judgement,<sup>4968</sup> visited Izbica/Izbičë 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/Izbičë 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

<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

<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>

<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

<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 Sprić, 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, Sprić, 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

<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 Taliban (*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

<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>

<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

<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

<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 Konstantinović, 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

<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.

<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

<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

<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

<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.

<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>

<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.

<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>

<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

<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

<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 Dorđević on his mobile phone, and was told by the Accused in advance about the arrival of each of these trucks. Dorđević 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

<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

<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

<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.

<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

<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

<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.

<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

<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

<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

<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>

<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

<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.

<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

<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>

<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 Vlajko Stojiljković, Chief of the RJB Vlastimir Đorđević, and Chief of the RDB Radomir Marković. The report records that

<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>

<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 Đakovica/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/Izbičë, Srbica/Skenderaj municipality.<sup>5311</sup> As detailed elsewhere in this Judgement, the victims at Izbica/Izbičë had initially been buried locally by villagers at the time of the killings. Other evidence has established that Serbian forces disinterred

<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

<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

<sup>5318</sup> He referred specifically to the report by Dr Christoph Markwalter at the Kotlina/Kotlinë 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

<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

<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>

<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.

<sup>5359</sup> Lutfi Ramadani, T 1097-1098.

<sup>5360</sup> Exhibit P1160 (British Forensic Report on Mala Kruša/Krushë-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/Krushë-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

<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/Izbicë 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/Izbicë 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/Izbicë 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/Izbicë 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/Izbicë.<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

<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/Izbicë 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>

<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/Izbičë

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/Izbičë 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/Izbičë; 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/Izbičë 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 is 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/Izbičë 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.

<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/Izbicë 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/Izbicë 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/Izbicë on or before 28 March 1999, and who appear in the video footage, were later

<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

<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

<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

<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

<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

<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

<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>

<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

<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

<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

<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

<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 the 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

<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,

<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 Duriqi 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.

<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

<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 Shefkate 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* Centre 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

<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>

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

<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

<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

<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.

<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

<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.

(e) 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

<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

<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.

<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

<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 Genc (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, it's 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 Batajnica 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>

<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

<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

<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

<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, Pashk 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.

<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>

<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

<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/Izbicë 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/Izbicë (*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/Izbičë 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/Izbičë, which is in the Srbica/Skenderaj municipality.<sup>5714</sup> Izbica/Izbičë 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/Izbičë.<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/Izbičë.<sup>5719</sup>

<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/Izbičë 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/Izbičë, annexed to this Judgement (*see infra*, Schedule: Victim Charts). These are: Pajazit Deshevcu, 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

<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.

<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

<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; *Bošković* 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 *Bošković* Trial Judgement, para 175; *Limaj* Trial Judgement, para 89.

<sup>5742</sup> *Bošković* 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

<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

<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> *Bošković* 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/Dečan 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/Dečan 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/Dečan 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/Komoran 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/Gllgoc 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/Dečan 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/Dečan municipality and near Grebник/Gremnik and Komorane/Komoran, 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.

<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-e-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

<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 Crosland, 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

<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 Crosland, Exhibit P1400, para 1; John Crosland, 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 Crosland, 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>

<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/Glllogoc and Klina/Klinë were included in this zone.

<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/ Glllogoc, 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 Glllogjan/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/Kleçkë 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, Deçani/Deçan 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, Vuçitrn/Vushtrri, Leposavic/Leposaviq, Zvecan/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>

<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 Vuçitër/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

<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 Vuçitër/Vushtrri municipality to Vuçitër/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

<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

<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>

<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 Ciaglinski, 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 Ciaglinski, 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>

<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 have 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

<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>

<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

<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> *Jelišić* 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

<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,

<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.

<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

<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>

<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

<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 *Kunarac* 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> *Štakić* Appeal Judgement, para 317; *Krajišnik* Appeal Judgement, para 308 and 333. See also *Blagojević* Trial Judgement, para 595; *Brđanin* 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; *Brđanin* 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; *Brđanin* 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; *Brđanin* 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; *Krnojelac* 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

<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

<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

<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/Opterushë 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.

<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

<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

<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/Turiquec 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/Turiquec.<sup>6036</sup> The Chamber is satisfied that the facts established above meet the requirements of forcible transfer. The people in Turicevac/Turiquec 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/Turiquec 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

<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

<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

<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

<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

<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

<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

<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/Querim 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

<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

<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 forcible 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/Prëlepnicë, 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/Prëlepnicë 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/Prëlepnicë 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

<sup>6055</sup> See *supra*, paras 950-983.

<sup>6056</sup> See *supra*, paras 1016-1024.

Prilepnica/Prëlepticë 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/Prëlepticë on 6 April 1999.

1659. The Chamber has found further that on 13 April 1999 the villagers of Prilepnica/Prëlepticë, Gnjilane/Gjilan municipality were ordered to leave their village by Serbian forces. By 0730 in the morning the 3,000 residents of Prilepnica/Prëlepticë and the approximately 1,000 displaced persons from other villagers who were lawfully in Prilepnica/Prëlepticë 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/Prëlepticë 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/Prëlepticë 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.

<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

<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

<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

<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

<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

<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/Dečan

1672. The Chamber has established that on 26 March 1999 Serbian forces, including police, positioned themselves in the village of Drenovac/Drenoc in Dečani/Dečan 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

<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 Vuçitrn/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 Vuçitrn/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 Vuçitrn/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 Vuçitrn/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 Vuçitrn/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

<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

<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/Smerkovnicë 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>

<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

<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 Ciaglinski 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 Ciaglinski 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

<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 Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, p 10.

<sup>6087</sup> Richard Ciaglinski, Exhibit P832, Statement of 21-23 March 2000, p 10.

<sup>6088</sup> Richard Ciaglinski, 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

<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

<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 Prušit border crossing, 16,873 through Globočica/Glloboçicë 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

<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/Turiquec (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), 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, Vuçitrn/Vushtrri town (27 March 1999) and Dobra Luka/Dobërllukë via Smerkovnica/Smerkovnicë prison (23 May 1999) in Vuçitrn/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 Orhovac/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),

<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/Deçan municipality, Donja Studimlja/Studime-e-Poshtme (28 March 1999), Vesekovce/Vesekoc (2 May 1999) and Slakovce/Sllakovc (2 May 1999) in Vuçitrn/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/Izbicë, Miloš Gilić Street/Millosh Giliq Street, Meja/Mejë, Vuçitrn/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

<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> *Bošković* 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

<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

<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

<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.

<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

<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

<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

<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.

(e) 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

<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

<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

<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

<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 Vuçitrn/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 Vuçitrn/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

<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.

<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

<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

<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

<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

<sup>6218</sup> *Kordić* Appeal Judgement, para 711.

<sup>6219</sup> *Brđanin* Trial Judgement, para 996; *Kordić* Trial Judgement, para 217.

<sup>6220</sup> *Brđanin* Trial Judgement, para 996; *Krnojelac* Trial Judgement, para 435; *Kupreškić* Trial Judgement, para 625.

<sup>6221</sup> *Kordić* Appeal Judgement, para 674; *Blaškić* Appeal Judgement, para 164; *Krnojelac* Appeal Judgement, para 184.

<sup>6222</sup> *Kordić* Appeal Judgement, para 674; *Blaškić* Appeal Judgement, para 164; *Krnojelac* 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

<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.

<sup>6237</sup> *Brđanin* Trial Judgment, para 1012.

<sup>6238</sup> *Milutinović* Trial Judgement, Volume I, para 188; *Furundžija* Trial Judgement, 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

<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/Turiquec (1 April 1999) in

<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> *Brđanin* Trial Judgement, para 598.

<sup>6252</sup> *Brđanin* Appeal Judgement, para 337.

<sup>6253</sup> *Krajišnik* Trial Judgement, para 782.

<sup>6254</sup> *Blaškić* Trial Judgement, para 185; see also *Brđanin* Trial Judgement, para 598.

<sup>6255</sup> *Brđanin* 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/Prelepnice (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, Vuçitër/Vushtrri town (27 March 1999) and Dobra Luka/Dobërllukë via Smerkovnica/Smerkovnicë prison (23 May 1999) in Vuçitër/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/Prelepnice (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 Vučitrn/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.

<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

<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/Dečan 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/Dečan, 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, Vlastica/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>

<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.

<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.

<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, András 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. András 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

<sup>6289</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5481; Exhibit P1137, p 3; András Riedlmayer, T 7541; Exhibits P1130; P1129.

<sup>6290</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5481; András Riedlmayer, T 7541; Exhibits P1137, p 3; P1130; P1129.

<sup>6291</sup> András Riedlmayer, T 7542; András 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; András 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 András 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> András 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

<sup>6293</sup> András Riedlmayer, T 7540; Exhibits P1127, p 1; Exhibit P1098, pp 35-36; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5482-5483, 5567.

<sup>6294</sup> Exhibits P1098; P1127.

<sup>6295</sup> Exhibit P1137.

<sup>6296</sup> András Riedlmayer, T 7544-7546, 7636; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5473, 5476-5477.

<sup>6297</sup> András Riedlmayer, T 7544-7546; András 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.

<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. András 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 András 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

<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> András Riedlmayer, T 7519-7521, 7644; see also András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5461-5462; Exhibits P1098, pp 44-46; P1111, pp 1-2.

<sup>6310</sup> András Riedlmayer, T 7519-7521, 7644; see also András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T5461-5462; 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. András 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> András 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

<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> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5485-5486; Exhibits P1121; P1122, p 2; P1137, p 9.

<sup>6316</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5484-5486.

<sup>6317</sup> András Riedlmayer, T 7536; András 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

<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

<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 in *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 Vlačica/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 Vlačica/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 Vlačica/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 Vlačica/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 Vlačica/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

<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> András 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.

<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> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5478-5479; Exhibit P1135.

<sup>6333</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5478-5479; Exhibits P1135; P1137, p 15.

<sup>6334</sup> András Riedlmayer, T 7551, 7555; Exhibit P1098, p 68; Exhibit P1135, p 1; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5480.

<sup>6335</sup> András 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.

<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. András 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.

<sup>6346</sup> András Riedlmayer, T 7503; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5443-5444.

<sup>6347</sup> András Riedlmayer, T 7503-7504; Exhibit P1103, pp 1-3.

<sup>6348</sup> Exhibit P1103, pp 1-3; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5444; András Riedlmayer, T 7503.

<sup>6349</sup> András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5444-5455; Exhibit P1102.

<sup>6350</sup> András Riedlmayer, T 7503, 7507; András Riedlmayer, Exhibit P1099 (*Milutinović* transcript), T 5443-5444; Exhibit P1103, pp 4-6.

<sup>6351</sup> Exhibit P1103, pp 1-3; András 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>

<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; *Brđanin* 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

<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>

<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); *Brđanin* 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> *Krnjelac* 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 Brđanin*, 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

<sup>6383</sup> *Brđanin* Appeal Judgement, paras 410, 418; *Martić* Appeal Judgement, para 82.

<sup>6384</sup> *Brđanin* Appeal Judgement, paras 413, 430; *Martić* Appeal Judgement, para 168.

<sup>6385</sup> *Krajišnik* Appeal Judgement, para 225, citing *Brđanin* Appeal Judgement, paras 413 and *Limaj* Appeal Judgement, para 120.

<sup>6386</sup> *Krajišnik* Appeal Judgement, para 226.

<sup>6387</sup> *Brđanin* Appeal Judgement, para 410.

<sup>6388</sup> *Krajišnik* Appeal Judgement, para 226.

<sup>6389</sup> *Brđanin* Appeal Judgement, paras 413, 431.

<sup>6390</sup> *Brđanin* Appeal Judgement, para 411.

<sup>6391</sup> *Brđanin* 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

<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>

(e) 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

<sup>6403</sup> *Boškoski* Trial Judgement, para 400; *Brđanin* Trial Judgement, para 270; *Mrkšić* Trial Judgement, para 550.

<sup>6404</sup> *Brđanin* 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; *Brđanin* 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; *Kunarac* 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>

<sup>6415</sup> *Mrkšić* Appeal Judgement, para 81; *Blaškić* Appeal Judgement, para 48; *Krnojelac* 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; *Boškoski* Trial Judgement, para 402; *Limaj* Trial Judgement, para 517.

<sup>6421</sup> *Boškoski* 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>

<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>

<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 1, 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

<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

<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>

<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

<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

<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

<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>

<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,

<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 Crnoljevo, 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/Dečan 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/Dečan 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.

<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/Glllogoc 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,

<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/Isnijq in Dečani/Dečan municipality at the end of September 1998. The Accused and Defence witness Vukmir Mirčić, the chief of the Dečani/Dečan 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

<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

<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

<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 Pešić, 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 Pešić 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 Pešić 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.

<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 Pešić with respect to RPOs, adding that Pešić 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

<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,

<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

<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>6600</sup> Evidence demonstrates that he also attended a MUP Staff meeting in Priština/Prishtinë on 8 March 1999.<sup>6601</sup> On 16 April 1999, he went to Kosovo together

<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

<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

<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 Čvetić, 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>

<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

<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/Prištinë SAJ units were sent to Kosovo on 23 March 1999 to take part in an 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

<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

<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

<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

<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

<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>

<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

<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

<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

<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 Nebojša 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 Nebojša 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

<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

<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

<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>

<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

<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

<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

<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

<sup>6780</sup> Radislav Stålević, 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.

<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

<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 "Nedeljni 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 "Nedeljni 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.

<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

<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 Bytiqi,<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 Bytiqi 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

<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 Bytiqi, Mehmet Ahmet Bytiqi 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 transfer 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 Bytyqi 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 "Nedeljini 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

<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

<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 Vuçitër/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

<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 Cvetić) 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.

<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/Isniq, Dečani/Dečan 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

<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/Raçak 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

<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

<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

<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

<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.

<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

<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

<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.

<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 Ciaglinski, 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

<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.

<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

<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 Maisonneuve, 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

<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

<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

<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

<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 Ciaglini, 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 Vlajko 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

<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

<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/Izbicë,<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/Turiquec,<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 Mirosavljë/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/Dobërlukë,<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/Izbiçë,<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

<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

<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/Izbicë 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>

<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, Vuçitrn/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 Vučitrn/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

<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; *Brđanin* Trial Judgement, para 262; *Simić* Trial Judgement, para 158; *Krnojelac* 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>

<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 Drewienkiewicz, 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/Tërrnje 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

<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

<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

<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 Vuçitër/Vushtrri, between 24 March 1999 and 2 May 1999, VJ and MUP forces arrived in Vuçitër/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 Vuçitër/Vushtrri town and forced people to leave.<sup>7062</sup> On 22 May 1999, VJ and police killed 74 Kosovo Albanians in Vuçitër/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

<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

<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

<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* HCJ 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* HCJ 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 Kopanja to “clean the area from Albanians” and send Kosovo Albanian civilians towards Korenica/Korenice 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

<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

<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

<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

<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

<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

<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

<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 Ciaglinski 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 Ciaglinski 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

<sup>7141</sup> Richard Ciaglinski, Exhibit P832, p 10; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript) T 3211. See also Karol John Drewienkiewicz, Exhibit P997 (*Milutinović* transcript), T 7994-7995.

<sup>7142</sup> Richard Ciaglinski, T 5291; Richard Ciaglinski, Exhibit P833 (*Milošević* transcript) T 3211; Richard Ciaglinski, 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

<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

<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

<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

<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

<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

<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/Izbiçë, 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/Izbiçë, 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/Izbiçë 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/Izbiçë village and that over four to five days, VJ and police

<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 Taçi, 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/Izbičë 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/Izbičë 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

<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>

<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 Dakovica/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

<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 Vuçitër/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 Vuçitër/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

<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 Stojilković 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

<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

<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

<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 Raçak/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 Raçak/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 Vljako Stojiljković, the

<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

<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 Cvetić 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 Vlajko Stojiljković, 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

<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

<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.

<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

<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>

<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

<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

<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.

<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/Korenice 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

<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 Prasević 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 Prasević'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 Prasević and Nikola Mićunović,<sup>7324</sup> Commander of the Reserve Units of the Territorial Defence (113<sup>th</sup> Military Territorial Detachment),

<sup>7324</sup> Nikola Mićunović was the godson of Milutin Prašević, 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

<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

<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

<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

<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>

<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

<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 Vljeko 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/Isnig 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

<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.

<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

<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.

<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>

<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).

<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

<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; *Brđanin* 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

<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.

<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, Radimir 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/Deçan, 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

<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

<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)

<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.

<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*, 11bis Decision, 8 July 2005, para 44; *Janković* 11bis Decision, 22 July 2005, para 53; *Lukić* and *Lukić* 11bis 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

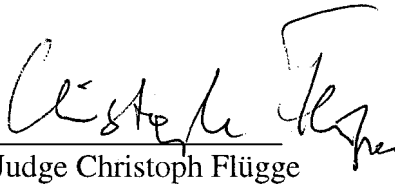
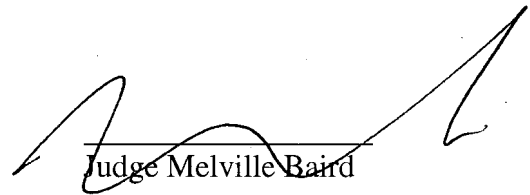
to Rule 101(C) of the Rules, he is entitled to credit for time spent in detention so far. Pursuant to Rule 103(C) of the Rules, Vlastimir Đorđević shall remain in custody of the Tribunal pending the finalisation of arrangements for his transfer to a State where he shall serve his sentence.

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

  
Judge Christoph Flügge  
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 / BellacërkëVictims 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, Rustem (Rustem/Rusten)	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, Litim	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
ZHUNIQUI, Destan	68	Male	Belaja Bridge, 25 March 1999 <sup>7476</sup>
ZHUNIQUI, Dhurata	9-10	Female	Belaja River, 25 March 1999 <sup>7477</sup>
ZHUNIQUI (ZHUNIQUJ), Eshref	55	Male	Belaja Bridge, 25 March 1999 <sup>7478</sup>
ZHUNIQUI, Fatos	42	Male	Belaja Bridge, 25 March 1999 <sup>7479</sup>
ZHUNIQUI (ZHUNIKI), Hysni	70	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7480</sup>
ZHUNIQUI, Ibrahim	68	Male	Belaja Bridge, 25 March 1999 <sup>7481</sup>
ZHUNIQUI, Kasim (Kassim)	33	Male	Belaja Bridge, 25 March 1999 <sup>7482</sup>
ZHUNIQUI, Lumnie (Lumnig/Lumuturie)	39	Female	Belaja River, 25 March 1999 <sup>7483</sup>
ZHUNIQUI, Labinot	16	Male	Belaja Bridge, 25 March 1999 <sup>7484</sup>
ZHUNIQUI, Medi (Mehdi/Mhedi)	55	Male	Channel behind the Belaja Bridge, 25 March 1999 <sup>7485</sup>
ZHUNIQUI, Muhammet (Muhamed)	70	Male	Belaja Bridge, 25 March 1999 <sup>7486</sup>
ZHUNIQUI, 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
ZHUNIQUI, Qamil	77	Male	Belaja Bridge, 25 March 1999 <sup>7488</sup>
ZHUNIQUI, Qemal	59	Male	Belaja Bridge, 25 March 1999 <sup>7489</sup>
ZHUNIQUI, Reshit (Rehit)	32	Male	Belaja Bridge, 25 March 1999 <sup>7490</sup>
ZHUNIQUI, 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/SUHAREKĒ**

Victims named in the Schedule of the Indictment

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
BERISHA, Afrim	24	Male	Suva Reka/SuharekĒ town, 26 March 1999 <sup>7615</sup>
BERISHA, Altin	11	Male	Pizzeria, 26 March 1999 <sup>7616</sup>
BERISHA, Arta	18	Female	Suva Reka/SuharekĒ 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 (Florie)	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, Kushtrin (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, Asslan	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 (Hazar)	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, Sofijie			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>

<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/MEJËVictims 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, Shtyt	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, Nue	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 (Iirjan)	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**

<b>NAME</b>	<b>AGE</b>	<b>GENDER</b>	<b>PLACE AND DATE OF MURDER</b>
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**

<b>NAME</b>	<b>AGE</b>	<b>GENDER</b>	<b>PLACE AND DATE OF MURDER</b>
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**

<b>NAME</b>	<b>AGE</b>	<b>GENDER</b>	<b>PLACE AND DATE OF MURDER</b>
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.

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
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

NAME	AGE	GENDER	PLACE AND DATE OF MURDER
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 Vljako 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 Vljako 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

<sup>8162</sup> *Prosecutor v. Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, and Vljako 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 Vljako 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 Vljako 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

<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>

<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 1999; *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

<sup>8194</sup> *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-PT, “Vlastimir Đorđević’s Pre-Trial Brief Pursuant to Rule 65*ter* (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 92*ter*. The evidence of five Prosecution witnesses was presented pursuant to Rule 92*quater*. The evidence of one Prosecution witness was initially admitted pursuant to Rule 92*quater*, 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 94*bis*.

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 92*ter* and two pursuant to Rule 94*bis*.<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>

<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 92*ter*”, 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 92*ter*”, 22 January 2010; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Decision on Vlastimir Đorđević’s submissions pursuant to Rule 65*ter* (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. 1T-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>Krnjelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003
<i>Krnjelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnjelac</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

## Sentencing Appeals, 26 January 2000

<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

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