



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-03-67-T

Date: 22 June 2012

Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, Presiding  
Judge Frederik Harhoff  
Judge Flavia Lattanzi

**Registrar:** Mr John Hocking

**Order of:** 22 June 2012

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

**PUBLIC DOCUMENT WITH PUBLIC ANNEX**

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**ORDER TO FILE PUBLIC REDACTED VERSION OF VOJISLAV ŠEŠELJ'S  
FINAL BRIEF**

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**The Office of the Prosecutor**

Mr Mathias Marcussen

**The Accused**

Mr Vojislav Šešelj

**TRIAL CHAMBER III** of the 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 (“Chamber” and “Tribunal”, respectively),

**NOTING** “Professor Vojislav Šešelj’s Final Brief”, filed – following the instructions of the Chamber – as a confidential document on 30 January 2012<sup>1</sup> (“Final Brief”),

**NOTING** the Order of 26 April 2012, in which the Chamber ordered Vojislav Šešelj (“Accused”) to file a public redacted version of his Final Brief by 31 May 2012 at the latest,<sup>2</sup>

**FINDING** that the Accused has not filed a public redacted version of his Final Brief by the date set in the Order of 26 April 2012,

**CONSIDERING** that the Final Brief of the Accused discloses confidential information, such as the identity of protected witnesses, and contains quotes not only from the transcripts of closed sessions, but also from other confidential sources,

**RECALLING** that it is incumbent upon the Accused to file a public redacted version of his Final Brief,<sup>3</sup>

**CONSIDERING** that since the Accused did not file a public redacted version of his Final Brief,<sup>4</sup> the Chamber, wishing to ensure the respect of the principle of the proceedings being public, as set out in Rule 78 of the Rules of Procedure and Evidence (“Rules”), and in the interest of justice, has, exceptionally, redacted itself the passages of the Final Brief of the Accused that contain confidential information,

<sup>1</sup> “Завршни претресни поднесак одбране проф. др Војислава Шешеља”, 30 January 2012 (confidential). See also “Certificate”, 31 January 2012 (confidential); for the English translation, see “Professor Vojislav Šešelj’s Final Brief”, 21 March 2012 (confidential); for the French translation, see “*Mémoire en clôture de Vojislav Šešelj*”, 27 March 2012 (confidential).

<sup>2</sup> “Order Charging the Accused Vojislav Šešelj to File a Public Redacted Version of His Final Brief”, 26 April 2012 (public) (“Order of 26 April 2012”), p. 2.

<sup>3</sup> See Order of 26 April 2012, p. 1 and fn. 4.

<sup>4</sup> The Chamber also notes that, during the administrative hearing of 7 February 2012 and with respect to the length of the Final Brief of the Accused, the Accused stated that he no longer wanted to work on the said Brief (Administrative Hearing, “T(E)” of 7 February 2012, pp. 17081 and 17082). The Chamber is deeply concerned by the continuous lack of cooperation on the part of the Accused.

**FOR THE FOREGOING REASONS****PURSUANT TO** Rules 54 and 78 of the Rules,**ORDERS**, *proprio motu*, the Registrar to:

- (i) file as a public document the public redacted version of the Final Brief of the Accused enclosed in the Annex to this decision;
- (ii) include the redactions made by the Chamber in the confidential versions of the Final Brief of the Accused in English and Serbian, and to file the public redacted versions.

Done in English and in French, the French version being authoritative.

/signed/Jean-Claude Antonetti  
Presiding JudgeDone this twenty-second day of June 2012  
At The Hague  
The Netherlands**[Seal of the Tribunal]**

**PUBLIC ANNEX TO “ORDER TO FILE PUBLIC REDACTED VERSION OF  
VOJISLAV ŠEŠELJ’S FINAL BRIEF”**

INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case no. IT-03-67-T

**TO TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, Presiding  
Judge Frederik Harhoff  
Judge Flavia Lattanzi

**Registrar:** Mr John Hocking

**Date:** ~~1 September 2011~~  
/handwritten: 30 January 2012/

**Submission** /handwritten: **486/**

THE PROSECUTOR  
v.  
Professor VOJISLAV ŠEŠELJ

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PROFESSOR VOJISLAV ŠEŠELJ'S FINAL BRIEF

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**The Prosecutor**

Christine Dahl  
Daryl Mundis

**The Accused**

Professor Vojislav Šešelj

**Expert Team Assisting the Defence**

Zoran Krasić	Gordana Pop-Lazić
Dragan Todorović	Petar Jojić
Vjerica Radeta	Momir Marković
Elena Božić-Talijan	Mirko Blagojević
Vesna Marić	Jadranko Vuković
Ognjen Mihajlović	Miroljub Ignjatović
Filip Stojanović	Ljubiša Petković
Dejan Mirović	Marina Toman
Nemanja Šarović	Ljiljana Mihajlović
Boris Aleksić	Aleksandar Martinović
Nataša Jovanović	

INTERNATIONAL CRIMINAL  
TRIBUNAL FOR THE FORMER YUGOSLAVIA

*The Prosecutor*

v.

*Professor Vojislav Šešelj*

Case No. IT-03-67-T

Submission number /handwritten: **486/**

**PROFESSOR VOJISLAV ŠEŠELJ'S  
DEFENCE FINAL BRIEF**

**I. Introduction**

Pursuant to Rule 86 (B) of the Rules on Procedure and Evidence, Professor Vojislav Šešelj is filing his Defence Final Brief (hereinafter: Final Brief) as part of his closing argument at the close of the presentation of evidence in this trial. The purpose of this Final Brief is the proposal and request that the Trial Chamber render a judgement that Professor Vojislav Šešelj is not guilty on any count of the indictment, since there is no evidence on which to find him guilty.

Professor Vojislav Šešelj is filing his Final Brief after the close of the Prosecution presentation of evidence. Professor Vojislav Šešelj decided to take this step for two important reasons. First, because the Prosecution did not succeed in proving that there are grounds for the charges and, second, because Professor Vojislav Šešelj is not in the position or, rather, the Trial Chamber did not ensure suitable conditions for him to present his Defence evidence, since he was not allowed privileged communication with his legal associates and has not had the financing of his Defence expenses approved.

In addition, it is clear that throughout this trial there has been a political background to the charges against Professor Vojislav Šešelj or, rather, an insistence on indicting him at any cost and, if possible, keeping him in detention for as long as possible so that his political influence should be stopped. None of the accused before the ICTY has had to wait as long for the trial to begin as in this case, and none of

them has had so many of his guaranteed and protected rights permanently violated, as in Professor Vojislav Šešelj's case.

He has been in continuous detention since 24 February 2003. In order to win the guaranteed right to represent himself, he had to go on hunger strike.

For a full nine months he was completely denied any communication with anyone outside the Detention Unit. First, for seven months, from December 2003 to mid-July 2004 because of the elections and the forming of the Government in Serbia, and two months in 2006, just before the first attempt to begin the trial.

From October 2008, he was also denied privileged communication with his legal associates. In several of his submissions, Professor Vojislav Šešelj explained in detail and proved that all his rights relating to a fair and just trial have been seriously violated.

Professor Vojislav Šešelj is the only one whose defence is not being financed with UN funds and this gives the impression that the ICTY is proud of the fact that the entire ICTY system has managed also to disregard in the most blatant way his right to an expeditious trial.

## **II. Background to the Trial and Violation of Rights**

### **Political Background to the Indictment**

The Prosecution drafted the indictment on 15 January 2003. It was confirmed by the duty judge on 14 February 2003, and Professor Vojislav Šešelj came to The Hague on 24 February 2003. On 28 February 2003, the Prosecution asked for stand-by Counsel to be imposed on Professor Vojislav Šešelj. It took the Prosecution only four days of detention to initiate the procedure to impose Counsel.

Let us recall that at the time the Prosecutor Carla Del Ponte had a meeting on 17 February 2003 at which Zoran Đinđić, Prime Minister of the Republic of Serbia, asked her to take Professor Vojislav Šešelj away and not bring him back, but he also "warned" her that she would have great difficulties with him. This is no longer any sort of secret, since Carla Del Ponte clearly described all of this in her memoirs.

Regardless of the decisions that have been made up to now, the following questions are inevitably raised again:

- Did the Prosecutor apply correctly her discretionary right to raise an indictment on 15 January 2003?

- Did the duty judge, who confirmed the indictment on 14 February 2003, do so in line with the Statute and the Rules?

Any reasonable person can answer both questions: the raising and confirming of the indictment against Professor Vojislav Šešelj at the time was a clear error in the sense of criminal law, but all of this was the intention of those who were politically hindered by him. The political motivation behind the indictment against Professor Vojislav Šešelj cannot be overlooked, because this has been a public matter from the very beginning. The judges no doubt concluded the same, as they amended the Rules of Procedure and Evidence in the provision on the confirmation of an indictment. This was not simply done in order to categorise the cases (as this amendment was explained), but because it was established that at that time, at the start of 2003, ICTY's existing work strategy was not right. The ICTY was looking for cases, while Professor Vojislav Šešelj who, had he remained free, would never have allowed as a leader the further break-up of the Serbian statehood, was in the international political elite's way.

The political background of this trial cannot have been overlooked for a full nine years, the length of Professor Vojislav Šešelj's stay in detention. Professor Vojislav Šešelj has filed several submissions on this matter, which exist in the court files.

### **Violation of the Right to Defence**

From 9 May 2003, when the Trial Chamber imposed stand-by Counsel by force, Professor Vojislav Šešelj has continually engaged in proceedings to preserve and protect his right to defend himself. The Prosecution filed its first motion on 28 February 2003 or, rather, on day four of Professor Vojislav Šešelj's detention, and asked the Trial Chamber to impose Counsel on him. At the request of the Prosecution, either through stand-by counsel and twice through Counsel, the Trial Chamber flagrantly violated the right of Professor Vojislav Šešelj to defend himself. On 8 December 2006, the Appeals Chamber adopted the second time, and only after 28 days of hunger strike, the final decision to restore Professor Vojislav Šešelj's right to defend himself.

This did not prevent the Prosecution from renewing its request, starting on June 2008 during its presentation of evidence phase, to impose Counsel on Professor Vojislav Šešelj. In this phase of the trial, when the Prosecution had only another 18



hours to present its evidence, it asked for the trial to be suspended and for Counsel to be imposed urgently. In this way, the Prosecution continued to confirm its basic argument that, for it, the trial was only possible if Professor Vojislav Šešelj was not allowed to defend himself. The Prosecution needed a “selected attorney”, who would be imposed by force as Counsel for Professor Vojislav Šešelj, so that the Prosecution would also have control of the defence.

Professor Vojislav Šešelj has filed several submissions and studies on this matter, which exist in the court files.

### **Initiation of Proceedings for Contempt of Court**

The Prosecution initiated several proceeding for contempt of court against Professor Vojislav Šešelj. Once in the pre-trial phase, and this Prosecution motion was denied by the Trial Chamber, with Judge Agius presiding, without this Prosecution motion being given to Professor Vojislav Šešelj either at the time or later.

The second time, the Prosecution filed a motion to initiate contempt proceedings in October 2008. Since the Trial Chamber did not want to consider it, by decision of the ICTY President the motion was referred to Trial Chamber II, with Judge Carmel Agius presiding. However, Judge Carmel Agius had to withdraw *ex officio* from ruling in this procedure, and his Trial Chamber issued a decision on 21 January 2009 in the form of an order to initiate contempt proceedings against Professor Vojislav Šešelj.

The Prosecution needed this indictment in order to justify its request to impose Counsel, because it seems that conspiracy was also needed in order to understand why the Prosecution did not succeed in proving guilt during its presentation of evidence or showing that there were any grounds for conviction.

One of the contempt proceedings for disclosing the identity of three protected witnesses ended with a 15-month prison sentence. These proceedings were essentially brought in order to achieve two goals: first, to impose again Counsel and second, to find some justification for the violation of the right to an expeditious trial.

The second contempt proceedings were held in 2010 because of a book that contains statements by 11 Defence witness who had first revealed their identity publicly, but who had also revealed all the problems they had during their contacts with the Prosecution investigators.

If we look at the statistics of the trial, then the purpose of initiating proceedings for contempt is perfectly clear. The trial commenced on 7 November 2007 and by the end of 2007, only one witness had testified. During 2008, 61 witnesses testified. In 2009, nine witnesses testified, and the same number in 2010. Therefore up to and including 31 December 2008, 77.5% of the witnesses had testified. Therefore, the first phase of the trial, the Prosecution's presentation of evidence, was nearing its end, but ICTY did not want to bring the trial to a close because the entire course of the trial was unfavourable for the Prosecution and the charges against Professor Vojislav Šešelj. This is why the contempt proceedings were needed as an excuse for the systematic violation of Professor Vojislav Šešelj's rights.

The third contempt proceedings were initiated in 2011, again because of a book on Professor Vojislav Šešelj's site. Despite the fact that the subjects of all these contempt proceedings have been books containing Professor Vojislav Šešelj's defence materials, the very fact that proceedings for contempt have been initiated for not respecting orders of the Trial Chamber on protective measures clearly leads to the conclusion that ICTY judges do not recognise Professor Vojislav Šešelj's right to defend himself. Anything that involves Professor Vojislav Šešelj's defence bothers the ICTY system, and it transpires that through these serial contempt proceedings the ICTY judges are effectively fighting to instil "reverence". There is almost a picture of the judges' uniforms and togas as a fashion detail that expresses inviolability, infallibility and the benchmark for international justice. Therefore, respect is imposed by force, and not a single example is shown of quality ICTY decisions that deserve respect because they reflect a respect for international standards and law. Since Professor Vojislav Šešelj is the only one to legally expose the background to and the essence of the ICTY, it is clear that the ICTY system set up a response by which it instils "reverence" and does so in the most flagrant way through contempt proceedings against Professor Vojislav Šešelj. It is its intention to make clear to everyone, through the example of Professor Vojislav Šešelj, the terrifying nature of this institution, which can fit everything into its standards and its mission. In this way the ICTY system sends a clear message that it is more important to ensure the respect for the ICTY than to bring to a close the main trial for charges of war crimes. Professor Vojislav Šešelj is in detention and he is being tried in order to ensure respect for the ICTY, while the charges for war crimes are no longer important, because the charges for war crimes were without grounds from the very start.

**Violation of the Obligation to Disclose Prosecution Material**

The matter of disclosing Prosecution material, and Professor Vojislav Šešelj requested that this be done on hard copy in Serbian, in writing, only started being resolved on 8 December 2006, and was resolved in a more or less acceptable way only half-way through 2007. However, this was not enough of a warning to the Prosecution, and even at the end of the first phase when the Prosecution presents its evidence, there is still a considerable amount of material that has not been disclosed to Professor Vojislav Šešelj. It need only be said that over 400 folders of Prosecution material were disclosed during May 2008 or, rather, during the presentation of Prosecution evidence, and all the video material lasting 6,600 hours has still not been disclosed. To be sure, they can be disclosed, but only through a procedure that goes against any reasonable thinking. Well, that's the ICTY.

We simply need to recall that the Prosecution had the obligation to disclose during the pre-trial phase, and certainly before the start of the trial. If we bear in mind that the first attempt to start the trial was in November 2006, and we see the amount of material that was disclosed during the Prosecution's presentation of evidence in 2007 and 2008, then it is absolutely clear what sort of deceit has been used by the Prosecution and how benevolent the Trial Chambers' approach towards the Prosecution has been. On the basis of this it is easy to establish that the Prosecution abused its obligation to disclose material in order to deceive and mislead both Professor Vojislav Šešelj and the Trial Chambers. There is no need to recall that when the obligation to disclose is abused, the Accused is not in a position to benefit from the right guaranteed to him to be informed of all the aspects of the counts and everything with which he is charged.

**Violation of the Obligation to Finance Defence Expenses**

The only case at the ICTY where the Defence costs are not financed is the case against Professor Vojislav Šešelj. The Trial Chamber issued a decision ordering the Registry to finance the cost of the defence of Professor Vojislav Šešelj, who is representing himself, with United Nations funds, but to this day the Registry has not acted on this decision. The Registry was already fully informed in 2003 of Professor Vojislav Šešelj's financial situation. In the meantime, the Registry has carried out all the checks related to Professor Vojislav Šešelj's financial situation, both directly and

with the help of the relevant organs in Serbia and he has not received to this day funds to finance his defence.

It is worth noting that the pre-trial phase lasted from 24 February 2003 to 7 November 2007 and that the Registry did not even pay for the expenses of the aeroplane tickets when Professor Vojislav Šešelj came to The Hague on 24 February 2003. During the trial phase, the Registry did not pay anything out either. As a partial solution to this situation, the Registry paid only for the cost of travel and stay in The Hague for his legal associates and case managers who visited Professor Vojislav Šešelj at the Detention Unit, but on two occasions (in September and December 2008) the visit was at the expense of the legal associates, and this is how it has continued to this day.

### **Violation of the Right to Communicate with Legal Associates**

Privileged communication with legal associates went ahead for the first time on 21 December 2006 or, rather, after almost four entire years of detention. From December 2003 until mid-July 2004, Professor Vojislav Šešelj was not allowed to communicate in any way with persons outside the Detention Unit, and in the second half of 2006 the ban lasted more than two months. From 29 September 2008 Professor Vojislav Šešelj was also not allowed any privileged communication with his legal associates, either by telephone or through any privileged visits to the Detention Unit. During a visit by his legal associates in December 2008, the discussions and communication took place in a special room with video and audio monitoring. These bans concerned associate Zoran Krasić, and in 2011 they were also extended to Boris Aleksić, Dejan Mirović and the case manager Nemanja Šarović.

In the six years of detention, Professor Vojislav Šešelj asked once in 2004 to be released pending the start of the trial. This request was denied. There is no need to remind anyone that it was not even made possible for Professor Vojislav Šešelj to attend his mother's funeral.

### **III. The Indictment and Counts**

From 15 January 2003 until the end of the presentation of evidence by the Prosecution, the indictment against Professor Vojislav Šešelj was amended several times. Of the initial 14 counts, there are now only nine left. The indictment was amended as follows:

1. On 15 January 2003 the Prosecutor raised an indictment against Professor Vojislav Šešelj, and on 14 February 2003 Judge Kwon examined it and confirmed the indictment (hereinafter: Initial Indictment) which had 14 counts (eight counts of crimes against humanity and six counts of violations of the laws or customs of war). To show how many obvious errors existed in this indictment, it is sufficient to mention that 15 counts were listed, although there were actually only 14 counts. An objection raised to this indictment was partially granted and the Prosecution was ordered to remove the counts for Vojvodina, only for these counts to be brought back in at a later date by a decision of the Appeals Chamber, on condition that the Prosecution proved specifically the existence of some conditions that would prove the existence of a nexus.

2. With the permission of Trial Chamber II, on 12 July 2005 the Prosecution drafted the Modified Amended Indictment (hereinafter: Modified Amended Indictment), which kept the same 14 counts.

3. In its decision of 8 November 2006, the Trial Chamber reduced the Modified Amended Indictment as follows:

- Counts 2, 3, 5, 6 and 7 were removed from the indictment;
- the crimes allegedly committed in Western Slavonia in Paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32, and 34 were removed as charges from the indictment;
- it was decided that the Prosecution could not present evidence on crimes in Western Slavonia, Brčko, Bijeljina, Bosanski Šamac and on Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present evidence relating to the crime base for Western Slavonia, Brčko, Bijeljina, Bosanski Šamac and on Boračko Lake/Mount Borašnica.

By order of Trial Chamber I, on 10 November 2006 the Prosecution drafted, and submitted to Professor Vojislav Šešelj on 14 November 2006, the "Prosecution's Submission of Redacted Version of Modified Amended Indictment and Annexes, Pursuant to Rule 73 *bis* (D) and Trial Chamber I Decision Dated 8 November 2006" (hereinafter: Redacted Version).

4. On 25 June 2007, the Prosecution drafted the Second Amended Indictment.

5. The Third Amended Indictment dates from 7 December 2007, and was drafted in accordance with the decision of the Trial Chamber of 27 November 2007.

Corrigendum to the Third Amended Indictment dates from 10 November 2008. It is worth noting that the trial started on 7 November 2007.

It should be noted that Professor Vojislav Šešelj filed timely objections to all the indictments or, rather, amendments, in accordance with the Rules of Procedure and Evidence, and that they were partially granted in two instances.

A serious scandal occurred when Professor Vojislav Šešelj objected to the Modified Amended Indictment. With respect to the deadline and right to object, for over a year the Trial Chamber II and Trial Chamber I did not set Professor Vojislav Šešelj straight. The first objection was returned due to the excessive number of pages, and the second time it was supposedly not submitted in time, only for it to be established and admitted a few months later that both objections had been premature, because the Prosecution had not disclosed the material accompanying the Modified Amended Indictment, which meant that this objection was submitted only in 2007, following a decision of the new Trial Chamber.

For this final brief, in addition to recalling how the indictments were amended, it is also important that the Prosecution started the process of presenting Prosecution evidence pursuant to the Third Amended Indictment and that its numbering of paragraphs and counts follows the Initial Indictment and, therefore, due to the amendments, certain paragraphs and counts no longer exist as they have been removed, as in the case of

- **paragraphs:** part of paragraph 17 (a); part of paragraph 18; paragraph 19; part of paragraph 22; paragraph 23; part of paragraph 24; paragraph 25; part of paragraph 26; three parts of paragraph 27; paragraph 29 (c); paragraph 29 (d); paragraph 29 (f); paragraph 29 (h); paragraph 29 (i);

- **counts:** 2; 3; 5; 6; and 7.

Therefore, when presenting its evidence the Prosecution intended to prove that Professor Vojislav Šešelj had responsibility for the following counts of the Third Amended Indictment;

**Count 1:** Persecutions on political, racial and religious grounds, crime against humanity, punishable under Articles 5 (h) and 7 (l) of the Statute;

**Count 4:** Murder, a violation of the laws or customs of war, as recognised by Common Article 3 (1) (a) of the Geneva Conventions of 1949, punishable under Articles 3 and 7 (1) of the Statute;

**Count 8:** Torture, a violation of the laws or customs of war, as recognised by Common Article 3 (1) (a) of the Geneva Convention of 1949, punishable under Articles 3 and 7 (a) of the Statute;

**Count 9:** Cruel treatment, a violation of the laws or customs of war, as recognised by Common Article 3 (1) (a) of the Geneva Convention of 1949, punishable under Articles 3 and 7 (1) of the Statute;

**Count 10:** Deportation, a crime against humanity, punishable under Articles 5 (d) and 7 (1) of the Statute;

**Count 11:** Inhumane acts (forcible transfer), a crime against humanity, punishable under Articles 5 (i) and 7 (1) of the Statute;

**Count 12:** Wanton destruction of villages, or devastation not justified by military necessity, a violation of the laws or customs of war, punishable under Articles 3 (b) and 7 (1) of the Statute;

**Count 13:** Destruction or wilful damage done to institutions dedicated to religion or education, a violation of the laws or customs of war, punishable under Articles 3 (d) and 7 (1) of the Statute;

**Count 14:** Plunder of public or private property, a violation of the laws or customs of war, punishable under Articles 3 (d) and 7 (1) of the Statute.

#### **IV. Evidence Presented by the Prosecution**

The Trial Chamber approved 125 hours to the Prosecution for the presentation of evidence. The Prosecution's task in the first phase of the trial was to prove Professor Vojislav Šešelj's guilt on all counts of the indictment. The trial started on 7 November 2007 with the Prosecution's opening statement, and the Prosecution's presentation of evidence phase ended in March or, rather, on 1 June 2010.

With respect to the date of the opening of the trial, we should keep in mind that, concerning the right to disclosure and from what moment the deadline for disclosure was counted, Professor Vojislav Šešelj used legal recourses available to him, and certain strange decisions were issued according to which the trial did not commence with the Prosecution's opening statement (7 November 2007), but on the day the testimony of the first Prosecution witness was heard (mid-January 2008)?

In this phase of the proceedings, the Prosecution changed its list of witnesses or, rather, from the start of the trial it has kept changing the list of Prosecution witnesses. In the pre-trial phase it calculated the number of witnesses by code as 144

Prosecution witnesses. The Prosecution also counted on the witnesses in its submissions on 29 March 2007 (105 witnesses), 19 September 2007 and 10 December 2007 (100 witnesses), and during the presentation of evidence from the list of witnesses, the number of Prosecution and Chamber witnesses heard in the courtroom came to 81 witnesses.

During the trial, the Prosecution inserted into its witness list, and heard the testimony of, [REDACTED], Vesna Bosanac (92 *ter*), and the expert witness Ivan Grujić was replaced with two expert witnesses, Anamarija Radić and Višnja Bilić, and decided not to call two witnesses.

The Trial Chamber's decision to admit into evidence the statements given by witnesses to the Prosecution investigators, despite the witnesses testifying in court, is truly astonishing. This is done solely in order to decide, in case the probative value must be established, whether to give priority to the initial statement or the oral testimony. The relevance and probative value should be given to the testimony in court and not to what the Prosecution investigator wrote that was allegedly the initial witness statement. In this sense, it will be interesting to see the situation with the witness statements that were given to the security organs in 1992 or some later statements where no mention is made of Professor Vojislav Šešelj's name and the fact that these very same witnesses in the courtroom or in their following statements pursuant to Rule 92 *ter* and 92 *quater* apparently remembered and mentioned Professor Vojislav Šešelj.

Mention must be made here of the complete inequality of the accused before the ICTY. Some accused who are representing themselves, such as Karadžić, have disproportionately more time to cross-examine Prosecution witnesses than the Prosecution has for the examination-in-chief. It is simply the case that anything that has been allowed to others is not allowed to Professor Vojislav Šešelj.

In this context one needs to be reminded of the unreliability not only of statements and testimony pursuant to Rule 92 *ter*, but also statements pursuant to Rule 92 *quater* and in general the statements given by witnesses in other cases.

#### **Erroneous Application of Rule 92 *ter***

Professor Vojislav Šešelj did not cross-examine the Prosecution witnesses who gave evidence pursuant to 92 *ter* for reasons of pure principle and because, as explained above, the application of this Rule violates not only the principle of



evidentiary procedure, but also represents a type of abuse that limits and denies the right to defence, bringing into question the fair and just trial. Professor Vojislav Šešelj made several submissions on this matter and explained in detail that the witnesses were not able to repeat and confirm all the allegations that were allegedly made in the statement they gave to the Prosecution, that these were in fact statements compiled by the Prosecution, that it was a well-known fact that a large number of witnesses were surprised by the contents of these statements, and that a few Prosecution witnesses denied the allegations in these statements, claiming that they had never said any such thing to the Prosecution investigators. In addition, Rule 92 *ter* is a rule added to the Rules after Professor Vojislav Šešelj came to The Hague, and there is therefore no possibility of applying this rule in his case because retroactive application of rules is not allowed, as laid down in Rule 6 (D) of the Rules.

By comparison with the decision of the Trial Chamber in the pre-trial phase on the application of Rule 92 *ter*, the number of 92 *ter* witnesses increased during the presentation of the Prosecution evidence. In this way, the number of the Prosecution's *viva voce* witnesses was reduced, but, at the same time, a number of witnesses who had initially been planned as *viva voce* witnesses and identified in a decision of the Trial Chamber, had become 92 *ter* witnesses. In this way Professor Vojislav Šešelj was deprived of his right to defend himself because, instead of the testimony of these witnesses before the Trial Chamber with the examination-in-chief and the cross-examination, all that was admitted into evidence was the statements of these witnesses and their oral confirmation that what was being admitted was their statement. This is how dozens of pages and a large number of paragraphs were admitted into evidence without any verification, and had Professor Vojislav Šešelj by any chance used his right to cross-examine these witnesses within the time-limit under Rule 92 *ter*, he would never have been able to verify all the claims made in the statements.

At the appropriate moment in this Final Brief, Professor Vojislav Šešelj will prove that the 92 *ter* witnesses were specially selected because they had already testified in other cases before the ICTY, and it would not be good for some other information to emerge during the cross-examination by Professor Vojislav Šešelj; because these are highly compromised Prosecution witnesses or because they are false witnesses who would not be able to repeat the text of the pre-ordered statement, or it

would simply be clear to the general public what sort of forgeries and lies were used by the Prosecution.

### **Erroneous Application of Rule 92 *quater***

The Trial Chamber did not grant the Prosecution's request to admit into evidence pursuant to this rule the statements and testimony of dead Prosecution witnesses. The Trial Chamber later changed its initial decision and admitted into evidence the statements and testimony of witnesses who had died in the meantime. Simply, these statements cannot be relevant, nor can they be assigned any probative value, because they were not verified by the defence, and there is too much proof that initial witness statements do not have any value, considering that a large number of witnesses in the courtroom withdrew the statements they gave to the Prosecution investigators. It is sufficient to mention that Professor Vojislav Šešelj asked for proceedings to be initiated against 44 Prosecution witnesses, who gave false statements to the Prosecution investigators, and 40 of this number falsely testified in the courtroom. Therefore, relevance and probative value must not be assigned to statements pursuant to Rule 92 *quater*.

### **List of *Viva Voce* Witnesses and 92 *ter* Witnesses**

During the presentation of evidence by the Prosecution at the trial, the following witnesses were heard:

1. Anthony Oberschall (hate-speech expert witness) 11, 12 and 13 December 2007;
2. VS-015, Goran Stoparić, 15, 16, 17, 22, 23 and 24 January 2008;
3. Yves Tomić (Greater Serbia expert witness) 29, 30 and 31 January 2008 and 5, 6 and 7 February 2008;
4. VS-004, ██████████, **protected**, 7, 12 and 13 February 2008;
5. Reynaud Theunens (military expert witness) 14, 19, 20, 21, 26, 27 and 28 February 2008;
6. VS-013, Mladen Kulić, 4, 5 and 6 March 2008;
7. VS-021, ██████████, **protected**, 6 March 2008 (**92 *ter***);
8. VS-020, Vilim Karlović, 11 and 12 March 2008;
9. VS-1126, Dragutin Berghofer, 12 March 2008 (**92 *ter***);
10. VS-1127, Emil Čakalić, 18 and 19 March 2008;
11. VS-1013, ██████████, **protected**, 25 and 26 March 2008;

12. VS-1015, [REDACTED], **protected**, 27 March 2008;
13. VS-033, [REDACTED], **protected**, 1 and 2 April 2008;
14. VS-1014, Fadil Kopic, 9 April 2008 (**92 ter**);
15. VS-1062, [REDACTED], **protected**, 10 April 2008;
16. VS-007, [REDACTED], **protected**, 15, 16 and 17 April 2008;
17. VS-1065, [REDACTED], **protected**, 22 April 2008;
18. VS-002, [REDACTED], **protected**, 6, 7 and 8 May 2008;
19. VS-1120, Đuro Matovina, 13 and 14 May 2008;
20. VS-1106, Asim Alić, 15, 20 and 21 May 2008;
21. András Riedlmayer (destruction of religious sites) 21, 22 and 27, 28 May 2008;
22. VS-051, [REDACTED], **protected**, 28 and 29 May 2008;
23. VS-1111, [REDACTED], **protected**, 3 June 2008;
24. VS-1055, [REDACTED], **protected**, 4 and 5 June 2008;
25. VS-1018, Perica Koblar, 10 and 11 June 2008;
26. VS-1057, Safet Sejdić, 12, 17 and 18 June 2008;
27. VS-1012, [REDACTED], **protected**, 18 and 19 June 2008;
28. VS-1060, [REDACTED], **protected**, 24 and 25 June 2008;
29. VS-1064, [REDACTED], **protected**, 25 June 2008;
30. VS-1026, Redžep Karišik, 1 July 2008;
31. VS-1051, [REDACTED], **protected**, 2 July 2008;
32. VS-1052, [REDACTED], **protected**, 2 July 2008 (**92 ter**);
33. VS-1069, Fahrudin Bilić, 2 and 3 July 2008;
34. VS-1112, [REDACTED], **protected**, 8, 9, 10, 15 and 16 July 2008;
35. VS-1105, [REDACTED], **protected**, 16 July 2008 (**92 ter**);
36. VS-1022, [REDACTED], **protected**, 17 July 2008;
37. VS-1024, Ibrahim Kujan, 22 July 2008 (**92 ter**);
38. VS-048, Nebojša Stojanović, 22 and 23 July 2008; on 23 July 2008 Senior Trial Attorney Daniel Saxon was also questioned.
39. VS-061 (formerly [REDACTED]), [REDACTED], **protected**, 24 and 25 September 2008;
40. VS-038, [REDACTED], **protected**, 1 and 2 October 2008;
41. VS-035, Aleksa Ejić, 7, 8 and 9 October 2008;

42. VS-1133, Franjo Baričević, 14 and 15 October 2008;
43. VS-1134, ██████████, **protected**, 15 October 2008 (*92 ter*);
44. Ewa Tabeau, 21, 22 and 23 October 2008;
45. VS-018, Jelena Radošević, 23 October 2008 (*92 ter*);
46. VS-016, ██████████, **protected**, 28 and 29 October 2008;
47. Vesna Bosanac, 4 and 5 November 2008 (*92 ter*);
48. VS-1131, Milorad Vojnović, 5 and 6 November 2008 (*92 ter*);
49. VS-1119, Julka Maretić, 6 November 2008 (*92 ter*);
50. Expert Witness Davor Strinović, 11 November 2008;
51. VS-1093, ██████████, **protected**, 12 November 2008;
52. Expert Witness Višnja Bilić, 18 and 19 November 2008;
53. VS-1136, Katica Paulić, 19 November 2008;
54. Expert Witness Anamarija Radić, 20 November 2008;
55. VS-009, Aleksandar Stefanović, video link, 25 and 26 November 2008;
56. VS-1068, ██████████, **protected**, 26 November 2008 (*92 ter*);
57. VS-1139, Ljubiša Vukašinović, 27 November 2008;
58. VS-1016, Fadil Banjanović, 2 December 2008;
59. VS-1007, Sulejman Tihčić, 3 and 4 December 2008;
60. VS-1028, ██████████, **protected**, 9 December 2008;
61. VS-044, Jovan Glamočanin, video link, 10 and 11 December 2008;
62. VS-1000, ██████████, **protected**, 11 December 2008 (*92 ter*);
63. VS-065, ██████████, **protected**, video link, 8 and 9 January 2009;
64. VS-1087, ██████████, **protected**, video link, 9 January 2009 (*92 ter*);
65. VS-008, ██████████, **protected**, 13 and 14 January 2009;
66. Expert Witness Zoran Stanković, 15 January 2009;
67. VS-1035, ██████████, **protected**, 28 and 29 January 2009;
68. VS-1066, ██████████, **protected**, 3 and 4 February 2009;
69. VS-2000 ██████████, **protected**, 4 and 5  
February 2009;
70. VS-1010, ██████████, **protected**, 11 February 2009;
71. VS-1029, Alija Gušalić, 4 March 2009;
72. VS-027, ██████████, **protected**, video link, 7 and 8 July 2009;
73. VS-037, ██████████, **protected**, 12 and 13 January 2010;

74. VS-029, Vojislav Dabić, 26 and 27 January 2010;
75. VS-1067, [REDACTED], **protected**, 2 February 2010;
76. VS-067, [REDACTED], **protected**, 16 and 17 February 2010;
77. VS-1058, [REDACTED], **protected**, 9 March 2010;
78. VS-1033, [REDACTED], **protected**, 10 March 2010;
79. VS-34, [REDACTED], 30 March 2010; did not testify;
80. VS-017, Zoran Rankić, 11 and 12 May 2010;
81. VS-032, Nenad Jović, video link, 6 and 7 July 2010.

### **Witness Statements Given to Prosecution Investigators**

The first phase of the trial, while the Prosecution was presenting evidence, the situation in the courtroom was marked almost every day by Prosecution witnesses denying parts of their claims from the statements that they allegedly gave to the Prosecution investigators. This was almost the standard situation during the trial, starting with the first Prosecution witness, VS-015, Goran Stoparić, and practically every subsequent Prosecution witness. Whether this could be seen and established clearly during the trial depended solely on the extent to which the witness statement contained in the statement given to the Prosecution investigator was relevant to Professor Vojislav Šešelj's defence.

This involved situations where witnesses denied that they had said to the Prosecution investigators what was written in the statement they had supposedly given to the Prosecution investigator. These situations occurred during cross-examination, when Professor Vojislav Šešelj asked a Prosecution witness whether the witness had really said something that was presented as his statement, and was contained in the statement compiled by the Prosecution investigator during the interview with the witness, and then the witness is surprised that this was written in his alleged statement.

These statements were compiled by the Prosecution investigators during interviews with the witness. The interviews were conducted through interpreters and lasted several hours a day for several days. The original statements were drafted in English. They were then translated into Serbian. Between the time the interview ended and the time when the witness signed the statement, a period of between several days and several months elapsed. The statements were read out to the witnesses in English and the witnesses signed them as their own, but in some cases statements in

Serbian were signed. None of the witnesses who gave statements received copies of their statements.

All of these statements are considered as part of the investigation process, since at the ICTY the investigation is in the hands of the Prosecution. Under the conditions laid down in the Rules of Procedure and Evidence these statements can be evidence. From a general point of view, these statements represent for Professor Vojislav Šešelj important information about the charges or some aspects of the charges. This is why they are disclosed as Prosecution material in accordance with the provisions of the Rules of Procedure and Evidence.

A considerable number of Prosecution witnesses denied in the courtroom that they had said what the Prosecution investigator wrote down. In this situation, the witness did not deny what was written, but claimed that he did not say it. Therefore, the question inevitably arises whether by putting together these statements in this way the Prosecution was creating grounds for the charges rather than fulfilling its obligation to verify whether there are any grounds for charges. Only amateurs and naïve people can believe that the errors arose because of the problem of interpretation. Hence the surprise when the discussion and conclusions of the Trial Chamber were voiced in the courtroom based on whether a witness confirmed his signature.

Professor Vojislav Šešelj filed criminal reports against 44 witnesses for false testimony. Of that number 40 witnesses gave false testimony in the courtroom during the examination-in-chief and the cross-examination, and the statements refer to factual claims. Professor Vojislav Šešelj asked for proceedings to be initiated against these people pursuant to Rule 91 of the Rules of Procedure and Evidence. All the false statements and false testimony in the courtroom resulted from consent or threats, coercion and blackmail by the Prosecution. Let us recall who these false witnesses are, so that in the part of this submission in which their testimony is analysed attention will be paid and it should be borne in mind that they do not deserve the protection granted them by the ICTY, which has still not initiated proceedings against the following witnesses:

1. VS-015, Goran Stoparić, testified on 15, 16, 17, 22, 23 and 24 January 2008;
2. VS-013, Mladen Kulić, testified on 4, 5 and 6 March 2008;

3. VS-1013, [REDACTED], **protected** witness, testified on 25 and 26 March 2008;
4. VS-1015, [REDACTED], **protected** witness, testified on 26 and 27 March 2008;
5. VS-033, [REDACTED], **protected** witness, testified on 1 and 2 April 2008;
6. VS-1014, Fadil Kopic, **protected** witness pursuant to Rule 92 *ter*, testified on 9 April 2008;
7. VS-1062, [REDACTED], **protected** witness, testified on 10 April 2008;
8. VS-007, [REDACTED], **protected** witness, testified on 15, 16 and 17 April 2008;
9. VS-1120, Đuro Matovina, testified on 13 and 14 May 2008;
10. VS-1106, Asim Alić, testified on 15, 20 and 21 May 2008;
11. VS-051, [REDACTED], **protected** witness, testified on 28 and 29 May 2008;
12. VS-1055, [REDACTED], **protected** witness, testified on 4 and 5 June 2008;
13. VS-1018, Perica Koblar, testified on 10 and 11 June 2008;
14. VS-1057, Safet Sejdić, testified on 12, 17 and 18 June 2008;
15. VS-1069, Fahrudin Bilić, testified on 2 and 3 July 2008;
16. VS-1105, [REDACTED], **protected** witness pursuant to Rule 92 *ter*, testified on 16 July 2008;
17. VS-1022, [REDACTED], closed session, testified on 17 July 2008;
18. VS-1024, Ibrahim Kujan, witness pursuant to Rule 92 *ter*, testified on 22 July 2008;
19. VS-061, [REDACTED], **protected** witness, testified on 24 and 25 September 2008;
20. VS-038, [REDACTED], **protected** witness, testified on 1 and 2 October 2008;
21. VS-1133, Franjo Baričević, testified on 14 and 15 October 2008;
22. VS-1134, [REDACTED], witness pursuant to Rule 92 *ter*, testified on 15 October 2008;

23. VS-018, Jelena Radošević, witness pursuant to Rule 92 *ter*, testified on 23 October 2008;
24. VS-037, [REDACTED], **protected** witness, testified on 28 and 29 October 2008;
25. Vesna Bosanac, witness pursuant to Rule 92 *ter*, testified on 4 and 5 November 2008;
26. VS-1131, Milorad Vojnović, witness pursuant to Rule 92 *ter*, testified on 5 and 6 November 2008;
27. VS-1119, Julka Maretić, witness pursuant to Rule 92 *ter*, testified on 6 November 2008;
28. VS-1093, [REDACTED], **protected** witness, testified on 12 November 2008;
29. VS-1136, Katica Paulić, testified on 19 November 2008;
30. VS-1028, [REDACTED], **protected** witness, testified on 9 December 2008;
31. VS-065, [REDACTED], **protected** witness, testified on 8 and 9 January 2009 via a video link;
32. VS-008, [REDACTED], **closed** session, testified on 13 and 14 January 2009;
33. VS-1035, [REDACTED], **protected** witness, testified on 28 and 29 January 2009;
34. VS-1066, [REDACTED], **closed** session, testified on 3 and 4 February 2009;
35. VS-2000 [REDACTED], **protected** witness, testified on 4 and 5 February 2009;
36. VS-1029, Alija Gušalić, testified on 4 March 2009;
37. VS-027, [REDACTED], **closed** session, testified on 7 and 8 July 2009;
38. VS-029, Vojislav Dabić, testified on 26 and 27 January 2010;
39. VS-1067, [REDACTED], **protected** witness, testified on 2 February 2010;
40. VS-1033, [REDACTED], **protected** witness, testified 10 March 2010;



41. Potential Prosecution Witness VS-1135, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness;

42. Potential Prosecution Witness VS-1002, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness;

43. Potential Prosecution Witness VS-1141, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness;

44. Potential Prosecution Witness VS-045, [REDACTED], gave a written statement to the Prosecution, and the Prosecution decided not to call this witness.

Therefore, a total of 23 witnesses were granted the status of protected witness, in order for their false testimony to be preserved and protected.

The criminal report against the false witnesses is only one of a string of legal initiatives by Professor Vojislav Šešelj, starting with the first one on 8 March 2007, when he asked for proceedings to be initiated for contempt of court against Carla Del Ponte and the most responsible persons in the Office of the Prosecutor, who were exerting illicit influence on potential witnesses. Although it was first decided that a decision would be made on this after the end of the trial, in October 2010 the Trial Chamber widened its investigation of the most responsible persons with the Office of the Prosecutor and the *amicus curiae* report is expected to establish whether to initiate contempt proceedings against Carla Del Ponte and her collaborators.

#### **Witness Testimony from Transcripts of Trials in Other Cases**

The Prosecution also disclosed this material, counting on it being admitted into evidence as an automatic process. The initial intention was for this to be material that could not be contested with the justification that it was the result of both the examination-in-chief and the cross-examination in some other trial before the ICTY. The Prosecution's idea was quite strange, but especially the significance that the Prosecution assigned to this material. The Prosecution counted on a considerable amount of deception that could remain undetected. They thought that these statements were more significant than the judgements rendered in these cases, and they completely forgot that this material was, in several cases, the basis for Professor Vojislav Šešelj's cross-examination which, as a result, clarified or refuted the relevance of this material. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**V. Evidence on Which the Prosecution Counted that Was Presented with the Intention of Confirming the Prosecution Charges**

The actual document in which the Prosecution specified the charges against Professor Vojislav Šešelj is the Prosecution's Final Pre-Trial Brief of 31 July 2007. In order to establish whether the Prosecution has succeeded in proving the charges, it is also important to consider the opening statement of the Prosecution of 7 and 8 November 2007 and the Revised Final Witness List in Confidential Annex A of 29 March 2007 with summaries of the witnesses' evidence or, rather, the statements that the Prosecution filed in its submissions of 29 March 2007, 19 September 2007 and 10 December 2007 (hereinafter: summaries of testimony).

Therefore, the Prosecution's Pre-Trial Brief, the Prosecution's opening statement and the Prosecution's summaries of testimony would need to correspond or, rather, form a logical entity with the testimony of the witnesses given in court before the Trial Chamber, on condition that they stood the test of cross-examination by Professor Vojislav Šešelj. This is the only way that any reasonable person can conclude beyond any doubt whether any fact has been proved and whether it is relevant to the establishing of guilt.

Later on there will be a further analysis of what the Prosecution's task was according to the argument it maintained in this case, according to the charges, the Final Trial Brief, the summaries of testimony for Prosecution witnesses and, finally, according to what was tendered in court. Of course, we must also bear in mind the schedule for the evidentiary procedure, which was determined by the Presiding Judge of the Trial Chamber while he was a pre-trial judge, and which was not respected by the Prosecution, with the tacit agreement of the judges of the Trial Chamber.

**The Final Pre-Trial Brief**

The Final Pre-Trial Brief should have been a thorough synopsis that developed and explained in detail the indictment or, rather, a complete plan of the work of the Prosecution with clear arguments for the charges, and should have contained "for each count, a summary of the evidence which the Prosecutor intends to bring regarding the

commission of the alleged crime and the form of responsibility incurred by the accused.”

The Prosecution’s Final Pre-Trial Brief clearly showed the Prosecution’s argument in its chapter headings:

II. Šešelj’s Participation in the JCE

Witnesses:

**VS-008** ( [REDACTED], false witness)

VS-010 (Zoran Dražilović, defence, did not testify);

VS-014 ( [REDACTED], defence, did not testify);

VS-011 (Ljubiša Petković, did not testify);

VS-026 ( [REDACTED], defence, did not testify);

**VS-017 (Zoran Rankić, more for the defence);**

VS-031 ( [REDACTED], defence, did not testify);

**VS-027** ( [REDACTED], false witness);

**VS-2000** ( [REDACTED], false witness);

**VS-038** ( [REDACTED], false witness);

VS-1141 ( [REDACTED], false, the Prosecution decided not to call him);

VS-1008 (Stevan Todorović, [REDACTED]);

**VS-1133 (Franjo Baričević, false witness);**

**VS-1136 (Katica Paulić, false witness);**

**VS-007** ( [REDACTED], false witness).

A. Šešelj’s Role as Chief Propagandist of “Greater Serbia”

Witnesses: **VS-035 (Aleksa Ejić);**

VS-043 (Milan Babić, deceased).

B. Šešelj Recruited and Coordinated SRS /Serbian Radical Party/ or SČP /Serbian Chetnik Movement/ Volunteers

Witnesses:

VS-011 (Ljubiša Petković, defence, did not testify);

**VS-027** ( [REDACTED], false witness);

VS-026 ( [REDACTED], defence, did not testify);

**VS-015 (Goran Stoparić, false witness);**

**VS-017 (Zoran Rankić, more for the defence);**

**VS-032 (Nenad Jović, more for the defence);**

VS-004 (██████████, more for the defence);  
VS-002 (██████████, more for the defence);  
VS-043 (Milan Babić, deceased);  
VS-008 (██████████, false witness);  
VS-045 (██████████, did not testify);  
VS-007 (██████████, false witness);  
VS-034 (██████████, defence, did not testify);  
VS-018 (Jelena Radošević, false witness);  
VS-012 (Aleksandar Filković, deceased);  
VS-1058 (██████████, more for the defence);  
VS-025 (unknown).

C. Šešelj's Intent to Participate in the JCE

Witnesses:

VS-017 (Zoran Rankić, more for the defence);  
VS-024 (unknown);  
VS-011 (Ljubiša Petković, did not testify);  
VS-027 (██████████, false witness);  
VS-034 (██████████, defence, did not testify);  
VS-045 (██████████, did not testify);  
VS-032 (Nenad Jović, more for the defence);  
VS-1141 (██████████, the Prosecution decided not to call him);  
VS-038 (██████████, false witness);  
VS-1058 (██████████, more for the defence);  
VS-008 (██████████, false witness);  
VS-1133 (Franjo Baričević, false witness);  
VS-015 (Goran Stoparić, false witness);  
VS-007 (██████████, false witness);  
VS-026 (██████████, defence, did not testify);  
VS-004 (██████████, more for the defence);  
VS-050 (██████████, defence, did not testify);  
VS-033 (██████████, false witness);  
VS-013 (Mladen Kulić, false witness);  
VS-018 (Jelena Radošević, false witness);

**VS-002** ( [REDACTED], more for the defence).

### III. Implementing the JCE in Croatia, BH and Serbia

#### A. Implementation of the JCE in Croatia

##### 1. Republic of Serbian Krajina:

Witnesses:

VS-043 (Milan Babić, deceased), plea bargain;

**VS-037** ( [REDACTED], more for the defence), he is for the Zvornik location, nothing to do with Croatia.

##### 2. Croatian Serb Parallel structures in the SAO /Serbian Autonomous District of/ Krajina:

Witness:

VS-043 (Milan Babić, deceased) plea bargain.

##### 3. SAO Slavonia, Baranja and Western Srem:

No witnesses.

##### 4. SAO Western Slavonia:

Witnesses:

VS-050 ( [REDACTED], defence, did not testify);

**VS-004** ( [REDACTED], more for the defence).

##### 5. Croatian Serb Police and Military Structure:

Witnesses:

VS-043 (Milan Babić, deceased) plea bargain;

**VS-027** ( [REDACTED], false witness);

**VS-004** ( [REDACTED], more for the defence);

**VS-002** ( [REDACTED], more for the defence);

VS-034 ( [REDACTED], defence, did not testify);

**VS-1126 (Redžep Karišik)** nothing to do with Croatia;

VS-022 ( [REDACTED], did not testify, the Prosecution decided not to call him);

**VS-020 (Vilim Karlović, more for the defence);**

**VS-021** [REDACTED]

#### B. Implementation of the JCE in Bosnia and Herzegovina:

Witnesses:

VS-043 (Milan Babić, deceased) plea bargain;  
**VS-037** ( [REDACTED], more for the defence);  
VS-1061 (unknown);  
VS-026 ( [REDACTED], did not testify).

C. Implementing the JCE in Serbia:

Witnesses in relation to Hrtkovci.

IV. The Creation and Structure of the SRS:

Witnesses:

**VS-009** (Aleksandar Stefanović, more for the defence);  
**VS-017** (Zoran Rankić, more for the defence);  
VS-010 (Zoran Dražilović, defence, did not testify);  
VS-026 ( [REDACTED], defence, did not testify);  
VS-011 (Ljubiša Petković, defence, did not testify);  
VS-043 (Milan Babić, deceased) plea bargain.

V. Factual Summaries of the Crimes Alleged

A. Crimes in Croatia

1. Vukovar, November 1991:

Witnesses:

VS-011 (Ljubiša Petković, did not testify);  
**VS-1126** (Dragutin Berghofer);  
**VS-015** (Goran Stoparić, false witness);  
**VS-021** [REDACTED]

[REDACTED]  
**VS-008** ( [REDACTED], false witness), he was not in Vukovar and does not even know where Vukovar is;

**VS-1127** (Emil Čakalić);  
**VS-017** (Zoran Rankić, more for the defence);  
**VS-020** (Vilim Karlović, more for the defence);  
**VS-027** ( [REDACTED], false witness);  
**VS-002** ( [REDACTED], more for the defence);  
**VS-1139** (Ljubiša Vukašinović, more for the defence);  
VS-022 ( [REDACTED], did not testify, the Prosecution decided not to call

him);

VS-1129 ([REDACTED], did not testify, the Prosecution decided not to call her);

**VS-051 ([REDACTED], false witness).**

2. Voćin, August - December 1991:

Witnesses:

**VS-1119 (Julka Maretić, false witness);**

VS-026 ([REDACTED], defence, did not testify);

VS-031 ([REDACTED], defence, did not testify);

**VS-1120 (Đuro Matovina, false witness);**

VS-050 ([REDACTED], defence, did not testify);

**VS-013 (Mladen Kulić, false witness);**

**VS-018 (Jelena Radošević, false witness);**

**VS-004 ([REDACTED], more for the defence);**

**VS-007 ([REDACTED], false witness);**

VS-010 (Zoran Dražilović, defence, did not testify).

B. Crimes in Bosnia and Herzegovina

1. Bijeljina:

Witnesses:

**VS-1029 (Alija Gušalić, false witness);**

**VS-1035 ([REDACTED], false witness);**

**VS-1028 ([REDACTED], false witness).**

2. Brčko:

Witnesses:

**VS-029 (Vojislav Dabić, more for the defence, and false witness for events before coming to The Hague),** it is not clear how he can be a witness for this location and he was not asked a single question related to the Brčko location;

**VS-1033 ([REDACTED], false witness);**

**VS-015 (Goran Stoparić, false witness).**

3. Bosanski Šamac, April 1992 - September 1993:

Witnesses:

VS-043 (Milan Babić, deceased), plea bargain;

**VS-1010 ([REDACTED]);**

VS-011 (Ljubiša Petković, defence, did not testify)  
VS-1002 (██████████, false, did not testify),  
VS-1004 (██████████, did not testify),  
**VS-1000** (██████████);  
VS-1008 (Stevan Todorović, ██████████);  
**VS-1058** (██████████, more for the defence);  
VS-010 (Zoran Dražilović, defence, did not testify);  
**VS-017 (Zoran Rankić, more for the defence).**

4. Zvornik, April 1992 - 1993:

Witness:

VS-036 (██████████, deceased);  
VS-1088 (unknown);  
**VS-037** (██████████, defence);  
VS-1097 (unknown);  
**VS-2000** (██, false witness);  
**VS-1012** (██████████);  
**VS-017 (Zoran Rankić, more for the defence);**  
**VS-1066** (██████████, false witness);  
**VS-1105** (██████████, false witness);  
**VS-1014 (Fadil Kopic, false);**  
VS-047 (unknown);  
VS-1100 (unknown);  
VS-1039 (unknown);  
VS-02 (unknown);  
**VS-1062** (██████████, false witness);  
VS-039 (Matija Bošković, deceased);  
**VS-1065** (██████████);  
VS-043 (Milan Babić, deceased), plea bargain, although it is not know what he

has to do with Zvornik;

VS-1086 (unknown);  
**VS-1093** (██████████, false witness);  
**VS-1016 (Fadil Banjanović);**  
**VS-1065** (██████████);



VS-1063 ([REDACTED], did not testify);  
**VS-038** ([REDACTED], false witness);  
**VS-1087** ([REDACTED], more for the defence);  
**VS-1013** ([REDACTED], false witness);  
**VS-032** (**Nenad Jović**, more for the defence);  
VS-011 (Ljubiša Petković, defence, did not testify);  
**VS-027** ([REDACTED], false witness).

5. Greater Sarajevo:

Witnesses:

**VS-1111** ([REDACTED]);  
VS-1056 (Mujo Džafić, deceased);  
**VS-1055** ([REDACTED], false witness);  
**VS-1060** ([REDACTED]);  
**VS-017** (**Zoran Rankić**, more for the defence);  
VS-034 ([REDACTED], defence, did not testify);  
**VS-1018** (**Perica Koblar**, false witness).

It is interesting that nobody even counted on Witness Safet Sejfić.

6. Mostar:

Witnesses:

VS-1020 ([REDACTED]);  
**VS-1068** ([REDACTED]);  
**VS-029** (**Vojislav Dabić**, more for the defence, [REDACTED]  
[REDACTED]);  
**VS-1069** (**Fahrudin Bilić**, false witness);  
**VS-1067** ([REDACTED], false witness);  
**VS-1026** (**Redžep Karišik**);  
VS-1009 (Zoran Tot, deceased);  
**VS-1022** ([REDACTED], false witness);  
**VS-015** (**Goran Stoparić**, false witness).

7. Nevesinje:

Witness:

**VS-015** (**Goran Stoparić**, false witness);  
VS-1025, ([REDACTED], did not testify);

VS-1022 ( [REDACTED], false witness);

VS-1024 (Ibrahim Kujan, false witness);

VS-1052 ( [REDACTED]);

VS-029 (Vojislav Dabić, more for the defence, [REDACTED]  
[REDACTED]);

VS-1051 ( [REDACTED]);

VS-1067 ( [REDACTED], false witness);

VS-1025 ( [REDACTED], did not testify), proposed twice;

VS-1020 ( [REDACTED]).

### C. Crimes in Serbia

#### 1. Hrtkovci, May - August 1992:

Witnesses:

VS-026 ( [REDACTED], defence, did not testify);

**VS-015 (Goran Stoparić, false witness);**

VS-1141 ( [REDACTED], false, the Prosecution decided not to call him);

**VS-017 (Zoran Rankić, more for the defence);**

**VS-1136 (Katica Paulić, false witness);**

VS-1135 ( [REDACTED], false, did not testify);

**VS-1134 ( [REDACTED], false witness);**

VS-034 ( [REDACTED], defence, did not testify);

**VS-1133 (Franjo Baričević, false witness);**

**VS-007 ( [REDACTED], false witness);**

**VS-067 ( [REDACTED]);**

**VS-035 (Aleksa Ejić);**

VS-043 (Milan Babić, deceased) plea agreement.

### VI. Legal Analysis

#### 1. General Requirements of Article 3 of the Statute and Common Article 3

#### 2. General Requirements of Article 5 of the Statute

#### 3. Elements of Specific Crimes

Witnesses mentioned in part VI., under 1, 2 and 3 are:

**VS-015 (Goran Stoparić, false witness);**

**VS-007 ( [REDACTED], false witness);**

VS-026 ( [REDACTED], defence, did not testify);

VS-011 (Ljubiša Petković, defence, did not testify);

**VS-1133 (Franjo Baričević, false witness);**

**VS-017 (Zoran Rankić, more for the defence);**

**VS-027 (██████████, false witness);**

VS-034 (██████████, defence, did not testify).

The codes of witnesses who testified *viva voce* and testified pursuant to Rule 92 *ter* are in bold.

On the basis of the structure presented by the Prosecution, it follows that what is known as crime base can be found in the part entitled “V. Factual Summaries of the Crimes Alleged” and is presented in chapters:

**A. Crimes in Croatia**

1. Vukovar, November 1991
2. Voćin, August - December 1991

**B. Crimes in Bosnia and Herzegovina**

1. Bijeljina
2. Brčko
3. Bosanski Šamac, April 1992 - September 1993
4. Zvornik, April 1992 - 1993
5. Greater Sarajevo
6. Mostar
7. Nevesinje

**C. Crimes in Serbia**

1. Htrkovci, May – August 1992

It has to be noted here that the Final Pre-Trial Brief of the Prosecution did not follow the shortening of the indictment that was carried out in line with the decision of the Trial Chamber of 8 November 2006. This is why all the places in the Indictment and the Pre-Trial Brief continue to be listed as a crime base, although some must be for the consistent pattern of conduct of the Accused.

**Revised Final Witness List with Confidential Annex A  
of 29 March 2007 – Summary of Prosecution Witness' Evidence**

The structure of the of the Prosecution's Final Pre-Trial Brief must correspond to the structure of the Revised Final Witness List of the Prosecution. However, where Professor Vojislav Šešelj's case is concerned, this is not the case and this is clear from

the structure of the Revised Final Witness List of Prosecution witnesses, and Annex A is entitled "Witness List and Summary of the Facts on Which the Witnesses Will Testify."

**Insider Witnesses:**

**VS-004** ([REDACTED], more for the defence), **VS-007** ([REDACTED], false witness), **VS-009** (Aleksandar Stefanović, more for the defence), **VS-010** (Zoran Dražilović, defence), **VS-011** (Ljubiša Petković, defence), **VS-012** (Aleksandar Filković, deceased), **VS-013** (Mladen Kulić, false witness), **VS-014** ([REDACTED], defence), **VS-015** (Goran Stoparić, false witness), **VS-017** (Zoran Rankić, more for the defence), **VS-026** ([REDACTED], defence), **VS-027** ([REDACTED], false witness), **VS-032** (Nenad Jović, more for the defence), **VS-034** ([REDACTED], defence), **VS-043** (Milan Babić, deceased, plea bargain), **VS-048** (Nebojša Stojanović, more for the defence, and he is not mentioned in the Pre-Trial Brief of the Prosecution), **VS-1061** (unknown witness).

**Expert Witnesses:**

Colonel Ivan Grujić, Professor **Anthony Oberschall**, Dr **András Riedlmayer**, Dr **Zoran Stanković**, Dr **Davor Strinović**, Osman Kadić, Dr **Ewa Tabeau**, **Reynaud Theunens**, **Iv Tomić**, **VS-1112** ([REDACTED]).

**Witnesses on Consistent Pattern of Conduct for Voćin:**

**VS-018** (Jelena Radošević was also proposed as witness for Count 2, which does not exist in the indictment, to testify on the murder of civilians), **VS-031** ([REDACTED], he did not testify), **VS-033** ([REDACTED], false witness, hearsay witness), **VS-050** ([REDACTED]), **VS-1119** (Julka Maretić, false witness, to testify about Counts 2, 3, 5 and 7 which no longer exist in the indictment, to testify about expulsion and murder), **VS-1120** (Đuro Matovina, false witness).

**Crime Base Witnesses for Vukovar:**

**VS-002** ([REDACTED], testified more as a defence witness), **VS-008** ([REDACTED], false witness), **VS-016** ([REDACTED], false witness, this witness was not included in the Final Pre-Trial Brief of the Prosecution), **VS-020** (Vilim Karlović, to testify about counts that do not exist in the indictment), **VS-021**

██ VS-022 (████████████████████), the Prosecution decided not to call him), VS-045 (████████████████████), this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-051** (████████████████████), false witness, to testify about Count 2 that no longer exists in the indictment), **VS-1126** (Dragutin Berghofer), **VS-1127** (Emil Čakalić), VS-1128 (Josip Čović, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), VS-1129 (████████████████████), the Prosecution decided not to call her), VS-1130 (████████████████████), defence witness, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1131** (Miodrag Vojnović, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1139** (Ljubiša Vukašinović, was a defence witness in every sense).

**Crime Base Witnesses for Hrtkovci;**

**VS-035** (Aleksa Ejić), **VS-067** (████████████████████), **VS-054** (████████████████████), this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1133** (Franjo Baričević, false), **VS-1134** (████████████████████), false), VS-1135 (████████████████████), false, the Prosecution decided not to call her), **VS-1136** (Katica Paulić, false), VS-1141 (████████████████████), formerly ████████████████████, the Prosecution decided not to call him).

**Witnesses on consistent pattern of conduct for Bosanski Šamac:**

**VS-1000** (████████████████████), VS-1002 (████████████████████), false, the Prosecution decided not to call him), VS-1004 (████████████████████), the Prosecution decided not to call him), **VS-1007** (Sulejman Tihić, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), VS-1008 (Stevan Todorović, ████████████████████), **VS-1010** (████████████████████), VS-1058 (████████████████████), defence witness, to testify on Counts that no longer exist in the indictment).

**Crime Base Witnesses for Zvornik;**

VS-036 (████████████████████), **VS-037** (████████████████████), defence witness), **VS-038** (████████████████████), false), VS-039 (Matija Bošković, deceased), **VS-1012** (████████████████████), **VS-1013** (████████████████████), false), **VS-1014** (Fadil Kopic, false), **VS-1015** (████████████████████), false witness, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1016** (Fadil Banjanović), **VS-1062** (████████████████████), false), VS-1063, **VS-1064** (████████████████████), this witness does not exist in the Final Pre-Trial Brief of the

Prosecution), **VS-1065** ( [REDACTED] ), **VS-1066** ( [REDACTED] , false ), **VS-1087** ( [REDACTED] , defence witness), **VS-1093** ( [REDACTED] , false), **VS-2000** ( [REDACTED] , false witness), **VS-1105** ( [REDACTED] , false), **VS-1106** (Asim Alić, false, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1132** ( [REDACTED] , this witness does not exist in the Final Pre-Trial Brief of the Prosecution and the Prosecution decided not to call him).

Witnesses on the consistent pattern of conduct for **Bijeljina and Brčko**:

**VS-1028** ( [REDACTED] , false), **VS-1029** (Alija Gušalić, false), **VS-1033** ( [REDACTED] , false), **VS-1035** ( [REDACTED] , false).

Crime Base Witnesses for **Nevesinje/Mostar**:

**VS-029** (Vojislav Dabić, defence, false), **VS-1009** (Zoran Tot, deceased), **VS-1020** ( [REDACTED] ), **VS-1022** ( [REDACTED] , false), **VS-1024** (Ibrahim Kujan, false), **VS-1025**, ( [REDACTED] , did not testify), **VS-1026** (Redžep Karišik), **VS-1051** ( [REDACTED] ), **VS-1052** ( [REDACTED] ), **VS-1067** ( [REDACTED] , false), **VS-1068** ( [REDACTED] ), **VS-1069** (Fahrudin Bilić, false).

Crime Base Witnesses for **Greater Sarajevo**:

**VS-1018** (Perica Koblar, false), **VS-1055** ( [REDACTED] , false), **VS-1056** (Mujo Džafić, deceased), **VS-1057** (Safet Sejdić, this witness does not exist in the Final Pre-Trial Brief of the Prosecution), **VS-1060** ( [REDACTED] ), **VS-1111** ( [REDACTED] ).

The codes of witnesses who testified *viva voce* and testified pursuant to Rule 92 *ter* are in bold.

If we compare the aforementioned Prosecution submissions that must constitute the argument for the indictment, we can see that there is complete chaos, messiness and lack of a systematic method. If all of this is put into the context of the witness testimony in the courtroom, then the witnesses have not even succeeded in repeating what was noted in the summaries of their supposedly expected testimony. In order to avoid confusion, it must be noted that even what was said by the witnesses in the courtroom during the examination-in-chief by the Prosecution and during the cross-examination by Professor Vojislav Šešelj has been amended, although it must also be noted that Professor Vojislav Šešelj never had time to clarify all the

imprecisions during the cross-examination because he insisted on giving priority to establishing the relevant facts in the indictment.

At this point it must be noted that during the initial phase of the trial, when the Prosecution presented its evidence, the Prosecution did not respect schedule imposed by the Trial Chamber. The schedule was not respected in relation to the locations, to the crime-base evidence and the consistent pattern of conduct, nor in relation to the evidence of involvement in the JCE. Using various excuses, the Prosecution simply brought in witnesses at random. This was done deliberately so that, for example, all the evidence relating to one location would not be presented continuously during one period before moving on to the presentation of evidence relating to another location, because if the order of the Trial Chamber had been respected the counts of the indictment and location would have fallen one by one due to lack of evidence. When the evidence is presented randomly instead of in defined units, then the charges remain uncertain until the very end of the presentation of Prosecution evidence.

This essentially makes assessment of the evidence presented by the Prosecution all the more difficult, but when the Prosecution evidence is grouped by location it can be concluded that none of the charges has been proved and nothing fits into the Prosecution argument, if such an argument even exists.

#### **VI. Whether the Conditions for Modes of Responsibility under Paragraph 5 of the Indictment Have Been Fulfilled**

Professor Vojislav Šešelj is being charged for almost all modes of responsibility pursuant to Article 7 (1) of the Statute.

##### **Planning**

It follows from the indictment that Professor Vojislav Šešelj planned and carried out all nine crimes, with special focus on persecutions, murder, torture and cruel treatment, deportation and forcible transfer, wanton destruction and plunder.

In the indictment they appear in paragraphs 5, 10, 11, 15, 18, 28, 31 and 34.

In the Prosecution's Pre-Trial Brief they appear in paragraphs 142 and 143 (with footnote 487), which list witnesses who will confirm that Professor Vojislav Šešelj was responsible for planning. These witnesses were: **VS-015** (Goran Stoparić, false witness), **VS-026** (██████████, did not testify, but he wanted to be a defence witness), **VS-1033** (Franjo Baričević, testified, false witness).

The Prosecution alleges the following:

“Planning” implies that “one or more persons design the commission of a crime at both the preparatory and execution phases.”

- In order to prove a person’s criminal responsibility on the basis of “planning”, the Prosecution must demonstrate that the Accused had the *mens rea* of the crime or was aware of the substantial likelihood that the crime committed would be an adequate consequence of carrying out the plan. Planning may also include organising. The existence of a plan can be proved through circumstantial evidence. With respect to the Accused’s *mens rea* for planning the crimes in Vukovar and Zvornik, the Accused’s awareness that such crimes would likely occur may be inferred from:

- (1) his inflammatory speeches;
- (2) the fact that he approved the dispatch of volunteers to these areas with the knowledge that the volunteers often committed crimes at the battlefields; and
- (3) the fact that the crimes occurred.

#### Professor Vojislav Šešelj’s Comment

As an opposition politician he was not in a position to plan either in the preparatory phase or in the commission phase any of the crimes with which he is charged. It is nonsensical even to think that an opposition politician plans to use armed forces. Not only was there no inflammatory speech, but there was never any speech like that claimed in the indictment in Vukovar or in Mali Zvornik. In addition, there is no convincing evidence, apart from the insinuations of false witnesses, that any volunteer sent by Professor Vojislav Šešelj committed any crime as claimed in the indictment. Therefore the planning by Professor Vojislav Šešelj in relation to the principal perpetrator is invented and a pure fiction of the Prosecution. If any crime has been committed, in order to establish responsibility for planning, there has to be some minimal link between the originator of the plan and the principal perpetrator, or between the originator of the plan and a mediator with the principal perpetrator, because planning is a form of co-perpetration which, in a more general sense, exists within the framework of aiding and abetting.

The Prosecution claimed that:

“With respect to Šešelj’s *mens rea* for planning the crimes in Hrtkovci, the Accused’s intent is evident from his statements during meetings with SRS supporters and members prior to and during the persecution campaign in Hrtkovci, as well as the



fact that the criminal actions encouraged by Šešelj during those meetings eventually took place in Hrtkovci.”

#### Professor Vojislav Šešelj's Comment

There is no evidence that Professor Vojislav Šešelj had meetings with supporters at which a plan was developed for the alleged commission of crimes in Vojvodina and Hrtkovci, and it is not at all clear what the Prosecution meant when it claimed the criminal actions took place and that Professor Vojislav Šešelj had encouraged them during earlier meetings. There is not a single shred of evidence for these meetings, for the alleged encouragement, which would be more like instigating and aiding and abetting, and so the Prosecution resorts to invention, which is why no distinction is made between *actus reus* and *mens rea*. This is simple guesswork and an attempt to mislead the judges.

The Prosecution counted on the following witnesses:

**VS-015** (Goran Stoparić, proven false witness) told an unbelievable story about Vojvodina, and on the order of the judges, [REDACTED]

**VS-026** ([REDACTED], did not testify) submitted several statements that he only wanted to testify for the defence.

**VS-1033** (Franjo Baričević, proven false witness), everything that he said during his testimony about Professor Vojislav Šešelj's speech is false, which is proved by the text of the speech in Hrtkovci which was published a long time ago.

Although the charge of planning is unfounded and Professor Vojislav Šešelj's speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence to support the charges for this mode of responsibility.

#### Ordering

It follows from the indictment that Professor Vojislav Šešelj ordered the commission of all nine crimes, and special emphasis is given to persecution, murder and cruel treatment, wanton destruction and plunder.

In the indictment, they appear in paragraphs 5, 10, 11, 15, 18, 28 and 34.

In paragraphs 144 and 145 and in footnotes 495 and 496 of the Prosecution Pre-Trial Brief, witnesses are mentioned who will confirm that Professor Vojislav Šešelj issued orders, and these witnesses are as follows: **VS-027** ([REDACTED],

false witness), **VS-015** (Goran Stoparić, false witness), **VS-026** ( [REDACTED], did not testify), **VS-1033** (Franjo Baričević, false witness).

The Prosecution claims that:

“‘Ordering’ entails a person in a position of authority using that position to convince another to commit an offence. No formal superior-subordinate relationship is required for a finding of ‘ordering’ as long as the accused possessed the authority to order.”

#### Professor Vojislav Šešelj’s Comment

Therefore, ordering can be proved through circumstantial evidence, circumstances and the criminal intent of the superior. This is the construction of the Prosecution because the circumstance can be interpreted too widely, like a speech in a place where the crimes were committed before their commission, but if there is no clear order then conclusions are drawn from the criminal intent of the superior. This raises the question of superiority as a formal and factual issue. Here, the Prosecution is clearly drawing some sort of conclusion from the fact that Professor Vojislav Šešelj had “some” authority, but is this enough to draw the conclusion about the alleged ordering on the basis of a criminal intent? What sort of authority did Professor Vojislav Šešelj have from the moment the volunteers entered a JNA /Yugoslav People’s Army/, VRS /Army of Republika Srpska/, VRSK /Army of Serbian Republic of Krajina/ or TO /Territorial Defence/ unit, and was he able to influence the armed operations in the field? None of the Prosecution witnesses uttered a single word about Professor Vojislav Šešelj ordering, issuing orders or having the authority to order, nor did the expert witnesses claim that Professor Vojislav Šešelj issued orders.

The Prosecution claims that:

“A person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under Article 7(1) pursuant to ordering.”

#### Professor Vojislav Šešelj’s Comment

If it has been proved that Professor Vojislav Šešelj did not issue orders to commit crimes, and it is well-known that he continually appealed, requested and stated in public that crimes should not be committed, then the awareness of the significant possibility that respecting his words not to commit crimes would lead to crimes raises the question not only whether it is at all possible to discover whether

Professor Vojislav Šešelj had a criminal intent, but whether Professor Vojislav Šešelj had the tools, means and way of ensuring that his words be respected in a given location. In addition, it is also debatable how Professor Vojislav Šešelj could have had an awareness of the significant possibility in relation to the volunteers who were members of the regular army units under the command of the JNA, VRS, VRSK and TO, and especially on what basis would one establish that he was aware of a significant possibility? These are incredible constructions: the Prosecution concludes from the fact that the Serbian Radical Party sent people who wanted to be volunteers to the relevant state organs that Professor Vojislav Šešelj issued orders.

The Prosecution claims that:

“It is not necessary to prove that the subordinate who executed the order shared the *mens rea* of the accused; it is therefore irrelevant whether the order was illegal on its face.”

#### Professor Vojislav Šešelj's Comment

This is the corrective factor. When there is no order from Professor Vojislav Šešelj, then the matter of unlawfulness of the order is irrelevant, but it is significant there were no witnesses during the trial who had carried out this alleged order and, therefore, there is no evidence about his *mens rea* as a subordinate, which means that the subordinate is, in fact, not important. To this we must add the fact that the Prosecution did not even attempt to show the existence of a relationship between Professor Vojislav Šešelj as the superior and any specific person as the subordinate. In fact, it is not clear who the subordinate is, and the Prosecution does not even need a subordinate with a first and last name. At times the Prosecution insinuates that this concerns an unidentified volunteer of the Serbian Radical Party, but more often it presents the subordinate as an unidentified member of the colloquially named “Serbian forces”. Therefore, the condition requires the superior to belong to the chain of command. Professor Vojislav Šešelj was never in the chain of command, except for the false witnesses who made insinuations regarding participation in a JCE.

The Prosecution claims that:

“The giving of an order may be proven circumstantially, and the order need not be in writing, need not be given by the superior directly to the person who commits the crime, and may be express or implied.”

#### Professor Vojislav Šešelj's Comment

There is no evidence, either written or oral, about direct or indirect ordering, but there are insinuations by the Prosecution concerning allegedly inflammatory speeches, from which the conclusion is fabricated that this “speech” was allegedly ordering. No evidence has been presented or exists about the direct, indirect or any other form of ordering.

The Prosecution claims that:

“In addition to the other modes of criminal liability contained in Article 7 (1), the Accused ordered the crimes of persecution, murder, torture and other inhumane acts, cruel treatment and forcible transfer in Vukovar (Counts 1 to 9 and 11, paragraphs 15 to 18, 20, from 28 to 32 of the indictment) by his instruction that ‘not one Ustasha must leave Vukovar alive!’”

#### Professor Vojislav Šešelj’s Comment

This sentence was never uttered and there is no evidence that it was in the case against Professor Vojislav Šešelj, nor is there any evidence in the case of the Vukovar Three: Mrkšić, Šljivančanin and Radić.

The Prosecution claims that:

“In addition, the Accused ordered the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15 to 17, 27, and 31 to 33 of the indictment) during his meetings with associates and supporters in Vojvodina in 1991 and 1992, and, implicitly, in his speech in Hrtkovci on 6 May 1992. The intent of Šešelj to order the crimes in Vukovar and Hrtkovci can be inferred from the content of:

- his speeches and discussions, and
- from the fact that the crimes subsequently occurred.”

#### Professor Vojislav Šešelj’s Comment

There is no evidence for 1991, and the speech in Hrtkovci on 6 May 1992 was falsely interpreted, but immovable property was exchanged even before the speech, after the speech and many years later. Did anyone actually order this? The content of the speech cannot be considered as ordering by any means, because the exchange of immovable property in Hrtkovci was a process that lasted from the second half of 1991 until, approximately, the end of 1995. The speech of 6 May 1992 was used for elections and could not influence the exchange of immovable property from the second half of 1991 to 6 May 1992. It is unclear how the speech of 6 May 1992 could

have been an order to exchange immovable property, which took place and depended only on whether the participants in the exchange reached an agreement starting from 6 May 1992 until, approximately, the end of 1995. Let us recall that Professor Vojislav Šešelj was arrested three times between 6 May 1992 and the end of 1995, and was imprisoned by Slobodan Milošević's regime. It is therefore difficult to infer logically that Professor Vojislav Šešelj's word and speech could have been ordering and everything else that the Prosecution has fabricated against him.

The Prosecution counted on the following witnesses:

**VS-027** ( [REDACTED], proven false witness), [REDACTED]  
[REDACTED]  
[REDACTED].

**VS-015** (Goran Stoparić, false witness), told an unbelievable story about Vojvodina and, at the order of the judges, the Prosecution obtained documentation that proved that he had testified falsely.

**VS-026** ( [REDACTED], did not testify), submitted several statements as a defence witness.

**VS-1033** (Franjo Baričević, false witness), everything that he said during his testimony about Professor Vojislav Šešelj's speech is false, as proved by the text of the speech in Hrtkovci which was published a long time ago.

Although the charges of ordering are unfounded and Professor Vojislav Šešelj's speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence that could support the charges for this mode of responsibility. Hence, the Prosecution's evidence consists of two witnesses (Stoparić [REDACTED]) whose testimony was not accepted as relevant and was not given any probative value by any court (in The Hague or in Belgrade), a witness ([REDACTED]) who did not testify in court, although the judges and the Prosecution were informed that he wanted to be a defence witness, and a man (Franjo Baričević) who seemed even to the judges to be a rude liar when he interpreted the speech in Hrtkovci, even though this speech had been published. With such evidence, the charges are obvious, but this is also a true picture of the the Prosecution's methods.

### **Instigation**

It follows from the indictment that Professor Vojislav Šešelj instigated persecution (all locations in the indictment), murder (Vukovar, Zvornik, Sarajevo, Mostar and Nevesinje), torture and cruel treatment (Vukovar, Zvornik, Sarajevo, Mostar and Nevesinje), deportation and forcible transfer (Vukovar, Zvornik, Sarajevo, Nevesinje and Hrtkovci), wanton destruction and plunder (Vukovar, Zvornik, Sarajevo, Mostar and Nevesinje).

In the indictment they appear in paragraphs 5, 10, 11, 15, 18, 28, 31 and 34.

In the Prosecution Pre-Trial Brief, they appear in paragraphs 146, 147 and 148, and in footnote 506 interviews with Professor Vojislav Šešelj are given as evidence of instigation.

The Prosecution claims that:

“Instigating” requires that Šešelj provoked, prompted or otherwise induced the conduct of another. Instigation is a contribution to the crime as a co-perpetrator either before or during the commission of the crime. Thus, instigation may take many forms such as promises, threats or abuse of power.

#### Professor Vojislav Šešelj’s Comment

Was Professor Vojislav Šešelj in a position to promise something? Was he able to threaten, and how, and what sort of power did he have when he was able to abuse it in the sense of the Prosecution’s claims about instigation, and all of this in relation to the principal perpetrator of the crime? It is not possible to find answers to these questions that would resemble some reasonable conclusions. The Prosecution knows that this does not exist and, therefore, does not present as evidence a witness who has been instigated, a witness who was the principal perpetrator, or an eye-witness to the act of instigation but, instead, infers from Professor Vojislav Šešelj’s speech and statements in which he was presenting his position on certain matters or events. It therefore follows that this concerns uniting the *actus reus* and *mens rea*. A word or a speech is taken as the *actus reus* and that same word or speech as the *mens rea*. The speech was an act of instigation and the same statement represents the psychological approach to a crime, and in the statement there is no mention of the crime. Therefore, the Prosecution wants the judges to put an index finger to their forehead, and to create in their mind an image of the statements, words and speeches of Professor Vojislav Šešelj in order to imagine some event which the Prosecution claims is a crime. This is the only way that this situation - where members of the Serbian forces sit in some muddy trench listening to the radio just waiting for

Professor Vojislav Šešelj to address them over the radio, instigating them to commit a crime - could be real. The battles, the shooting, the shells, none of this is important for the Serbian forces in comparison to hearing Professor Vojislav Šešelj's voice on the radio, while Professor Vojislav Šešelj is being arrested and is subjected to a media blackout by Slobodan Milošević's regime.

The Prosecution claims that:

"The conduct of the Accused must have been a clear contributing factor to the conduct of the other person(s)."

#### Professor Vojislav Šešelj's Comment

The Prosecution did not present any evidence showing that Professor Vojislav Šešelj instigated others to commit crimes. Instead, it engaged in interpreting his words and attributed to these words the significance of being simultaneously the basis for all modes of responsibility. Therefore, Professor Vojislav Šešelj's statements were clearly a contribution to the principal perpetrators of the crime. How does the Prosecution know this when it has not called a single witness who perpetrated a crime?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Prosecution claims that:

"However, it is not necessary to prove that the crime would not have been committed at all if the Accused had not instigated it. In addition, there is no requirement that instigation be direct or public. For example, in cases where instigation occurs through communications in the media, causation of crimes will necessarily be effected by an immediately proximate cause in addition to the communication itself. This does not diminish the causation to be attributed to the media, or the criminal accountability of those responsible for the communication. The Accused must also have intended to 'bring about' the commission of the crime, or have been aware of the substantial likelihood that the commission of a crime would be a probable consequence of his or her conduct. Making inflammatory and discriminatory public statements may constitute instigation. Instigation does not require any relationship of authority between the Accused and the physical perpetrator. The Accused's acts or statements directed at those over whom he had no

authority to order may also be considered instigation. A superior's failure to punish past crimes may constitute instigation of future crimes.

"In addition to the other modes of criminal liability contained in Article 7 (1), the Accused instigated the crimes of persecution, murder, torture, cruel treatment, and forcible transfer in Vukovar (Counts 1, 4, 8 to 9 and 11, paragraphs 15 to 18, 20 and 28 to 32 of the indictment), the crimes of persecution, murder, torture, other inhumane acts, cruel treatment, deportation, forcible transfer, wanton destruction and plunder of public or private property in Zvornik (Counts 1, 4, 8 to 9, 10 to 14, paragraphs 15 to 18, 22, 28 to 34 of the indictment) and the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15 to 17, 31 to 33 of the indictment) by his inflammatory speeches given when he visited those locales or places close to them, such as Mali Zvornik. The Accused's intention to instigate these crimes can be inferred from the same evidence with respect to the Accused's intent to commit persecution and from the Accused's acknowledgements of his ability to incite persons."

#### Professor Vojislav Šešelj's Comment

Instigation, according to the Prosecution's argument, is manifested mainly through Professor Vojislav Šešelj's speeches, and the same speech is found as instigation as a special mode of responsibility, speech as instigation as part of participation in the JCE, and a form of direct perpetration of the crime.

Judging by the Prosecution Pre-Trial Brief as evidence of instigation, regardless of the form of responsibility, only Professor Vojislav Šešelj's statements, interviews, books, video footage of speeches, newspaper articles and testimony in the Milošević case are being relied on. However, the issue of speech as instigation is an extremely broad area that enables the Prosecution to use the testimony of any witness as evidence of instigation. Therefore, it should be noted that in the strictly legal context instigation does not appear in some paragraphs of the indictment, but it is present in every paragraph in which the Prosecution refers to the word or speech of Professor Vojislav Šešelj. In this sense, speech as supposed incrimination dominates the indictment.

Considering that Professor Vojislav Šešelj's speeches will be processed in particular in the form of responsibility for commission through the direct commission of a crime under Counts 1, 10 and 11 of the indictment, it suffices to cite in this part paragraph 827 of the Trial Chamber's Judgement in the Kordić case:



“827. The Trial Chamber has already held that the allegations relating to the encouragement and promotion of hatred, etc., and the dismissal of Bosnian Muslims from employment do not amount to persecution for the purposes of this case or, in the case of the latter allegation, at all.”

Although the charges of instigation are unfounded and Professor Vojislav Šešelj’s speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence to support the charges for this mode of responsibility.

### **Aiding and Abetting**

It follows from the indictment that Professor Vojislav Šešelj aided and abetted the commission of all nine crimes, with a special emphasis on persecution, murder, torture or cruel treatment, deportation and forcible transfers, destruction and plunder.

In the indictment they appear in paragraphs 5, 11, 15, 18, 28, 31 and 34.

In the Prosecution Pre-Trial Brief they appear in paragraphs 149, 150, 151, 152 and 153 and in footnote 520, which mention Professor Vojislav Šešelj’s interviews and witnesses VS-007 [REDACTED], VS-011 Ljubiša Petković, VS-015 Goran Stoparić, VS-017 Zoran Rankić, VS-026 [REDACTED], VS-027 [REDACTED] and VS-034 [REDACTED].

The Prosecution claims that:

“Aiding and abetting” consists of “practical assistance, encouragement or moral support” to another person perpetrating a crime. Aiding and abetting may assume different forms of assistance, including omissions. The use of inflammatory, threatening and/or discriminatory statements may constitute aiding and abetting. Aiding constitutes contributing, while abetting would consist of supporting an act by expressing sympathy.

### **Professor Vojislav Šešelj’s Comment**

There is absolutely no evidence that Professor Vojislav Šešelj expressed sympathy for an act that constituted a crime, but there is much evidence that he publicly criticised and publicly called to account those who committed crimes (with respect to Zvornik, he welcomed the arrest of the Yellow Wasps, with respect to Bijeljina, the statement regarding the activities of Ljubiša Savić aka Mauzer against Bijeljina Muslims, constant public criticism of Arkan, etc.). If he did not support but only criticised, it is hard to draw from this the conclusion that he aided.

The Prosecution claims that:

Aiding and abetting may assume different forms of assistance, including omissions. The use of inflammatory, threatening and/or discriminatory statements may constitute aiding and abetting. "Proof that the conduct of the aider and abettor had a causal effect on the act of the principal perpetrator is not required," but the Accused's act "must have had a substantial effect on the commission of the crime." There is no requirement of a pre-existing plan. Aiding and abetting can take place before, during or after the event. The Accused's knowing presence when a crime is committed can constitute the act of aiding and abetting if it encourages the perpetrators.

#### Professor Vojislav Šešelj's Comment

There is no evidence that Professor Vojislav Šešelj was present when a crime was committed or that he was at the location at the time when the crime was found to have taken place. The only things left are Professor Vojislav Šešelj's speeches and statements as suspicious acts of having committed a crime, on condition that they had a "substantial effect". More on this effect could be heard in the courtroom during the cross-examination of the expert witness Anthony Oberschall, who was surprised by some of the facts that the judges of the Trial Chamber told him.

The Prosecution claims that:

An omission by a superior can contribute to the commission of a subordinate's crime, "for example by encouraging the perpetrator."

#### Professor Vojislav Šešelj's Comment

There is absolutely no evidence that Professor Vojislav Šešelj had the status of a superior, especially not for any of the people who were alleged to have been members of the JCE or the principal perpetrator of the crime, if the principal perpetrator is even known (he could not have had the status of a superior under any count of the indictment). It seems that the Prosecution claims that Professor Vojislav Šešelj was an unfettered authority and supreme superior for everyone, that he could even choose when he would be arrested and go to prison during the period covered by the indictment. It seems that the real orders for his imprisonment were written by Professor Vojislav Šešelj in person, and that through his words and speeches he aided and abetted Slobodan Milošević's regime in its persecution of Professor Vojislav Šešelj. It is as if there are two Professor Vojislav Šešeljs, one who aids and abets, and the other Professor Vojislav Šešelj who is politically persecuted.

The Prosecution claims that:

For the required *mens rea*, the accused must make a conscious decision to act,  
(1) either knowing that his conduct will contribute to the commission of a specific crime committed by another, or  
(2) being aware of the substantial likelihood that it will do so.

An aider or abettor of a “special intent” crime, such as persecution, must not only have knowledge of the crime he is assisting, but he must also be aware that those crimes are committed with that specific intent.

Thus, an aider and abettor of persecution “need not share the principal’s discriminatory intent, but must be aware of the broader discriminatory context and know that his acts of assistance or encouragement have a significant effect on the commission of the crimes”.

Alternatively to the other modes of criminal liability contained in Article 7 (1), the Accused aided and abetted all of the crimes charged in the indictment (Counts 1 to 14, paragraphs 15 to 32) by his wilful and knowing contribution to the commission of the crimes. The intention of the Accused to aid and abet these crimes is evidenced by:

- his own acknowledgement that he encouraged and boosted the morale of Serb forces;
  - the inflammatory content of his speeches calling for violence against non-Serbs, his repeated visits to the battlefields and towns in Vojvodina such as Hrtkovci;
  - his continuing, in collaboration with other JCE participants, to dispatch volunteers to the front lines even while knowing they were inclined to commit crimes;
- and
- his ordering the volunteers and other Serb forces to commit crimes;
  - and his failure to discipline volunteers for the commission of crimes.

#### Professor Vojislav Šešelj’s Comment

These are standard grounds that are repeated with every mode of criminal responsibility, with the aim of establishing a *mens rea* through fictions about a psychological relationship.

Aiding and abetting must be specific, causally linked between the aider and the principal perpetrator, and must be deliberate by the aider, who knowingly aids and protects through abetting. In this sense, the consequences of the crime are identical both with regard to the aider and the principal perpetrator. If the Prosecution is offering Professor Vojislav Šešelj’s speeches that do not contain any aiding of crime

as a substitute for all these elements, then there is no need to philosophise about the psychological relationship.

The Prosecution Pre-Trial Brief lists the following witnesses who will confirm that Professor Vojislav Šešelj aided and abetted:

- the inflammatory content of his speeches calling for violence against non-Serbs, his repeated visits to the battlefields and towns in Vojvodina such as Hrtkovci (Witness **VS-007**, ██████████, false, discredited; Witness **VS-011**, Ljubiša Petković, did not testify and was a defence witness; Witness **VS-015**, Goran Stoparić, false, discredited; Witness **VS-017**, Zoran Rankić, defence witness);

- his continuing, in collaboration with other JCE participants, to dispatch volunteers to the front lines even while knowing they were inclined to commit crimes (Witness **VS-017**, Zoran Rankić, defence witness), and

- his ordering the volunteers and other Serb forces to commit crimes (Witness **VS-007**, ██████████, false, discredited; Witness **VS-026**, ██████████, did not testify and was a defence witness; Witness **VS-027**, ██████████, false, discredited);

- and, his failure to discipline volunteers for the commission of crimes (Witness **VS-017**, Zoran Rankić, defence witness; Witness **VS-026**, ██████████, did not testify and was a defence witness; Witness **VS-034**, ██████████, was not allowed to testify).

The Prosecution is simply piling up slogans and conclusions, and would not even be able to answer the question of how and in what way could Professor Vojislav Šešelj have disciplined SRS volunteers? Witnesses ██████████, Stoparić and ██████████ have been proved to be false witnesses to such an extent that their assertions do not have any factual basis that reflects the truth, which will be discussed in more detail in the analysis of their testimony. Other witnesses that were mentioned were defence witnesses who claim that there was no aiding and abetting in the way that the Prosecution asserts, and that it pressured and forced them to sign statements with a content that did not correspond to a true interpretation of their interview with Prosecution investigators.

Although the charges of aiding and abetting are unfounded and Professor Vojislav Šešelj's speeches have been manipulated or given a significance they did not have in reality, the Prosecution did not present any evidence to support the charges for

this mode of responsibility. In essence, there is no evidence for the Prosecution's assertions, and the Prosecution admits this through cumulative charges and by cumulating modes of responsibility for the same word, same speech or same statement, which it moves from one location to another.

### **Commission as Participation in a JCE**

It follows from the indictment that Professor Vojislav Šešelj participated in the JCE and therefore is responsible for the commission of all nine crimes.

In the indictment, they appear in paragraphs 5 to 34.

In the Prosecution Pre-Trial Brief they appear in paragraphs 131 to 140 and footnotes 458 and 482, in which ICTY case law is cited.

The Prosecution claims that:

“Committing” covers “physically perpetrating a crime or engendering a culpable omission in violation of criminal law,” whether alone or jointly with co-perpetrators. Several perpetrators may “commit” the same crime if each individual fulfils the requisite elements of the crime.

The requisite *mens rea* is that the Accused acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.

The principles of a common criminal plan, design or purpose, i.e., JCE, articulate a mode of individual criminal responsibility encompassed by Article 7 (1).

The *actus reus* of a JCE requires three elements.

- First, there must be two or more persons, who need not be organised in a military, political or administrative structure.

- Second, there must be a common plan, design, or purpose that amounts to or involves the commission of a crime. The plan need not be previously arranged or formulated, but may “materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a JCE.”

Thus, the plan can be agreed upon either from the beginning or develop through the acts performed by the persons involved. Its objective may also change over time.

-Third, the Accused must participate in the enterprise. This participation need not involve the commission of a crime but may take the form of assistance in or

contribution to the execution of the common plan or purpose. It is sufficient for the participant to perform acts that in some way actively furthers the plan or purpose.

Institutional coordination can form the basis of a JCE among those individuals who control the institutions that are engaged in coordinated action.

It is settled law that the physical (or principal) perpetrators of a crime for which Šešelj is alleged to be criminally responsible as a participant in a JCE need not themselves be members of the enterprise. Rather, JCE members are criminally responsibly when they use the principal perpetrator to carry out the *actus reus* of a crime.

Thus, even where the evidence fails to show that the physical/principal perpetrator is a member of the JCE, the crime can still be imputed to at least one member of the JCE where the member - in using the physical/principal perpetrator - acted in accordance with the common purpose.

The existence of this link is to be assessed on a case-by-case basis.

What matters is whether the crime in question falls within the common purpose, not whether the person who carried out the *actus reus* of a crime is a member of the JCE.

Tribunal case law regarding JCE has identified three categories of responsibility for which the mental state differs.

All three categories may be present in the same case.

In the first situation, the accused intends to commit a certain crime, this intent being shared by all members of the JCE.

To prove liability, the Prosecution must show that the accused “voluntarily participated in one aspect of the common design” and the accused, “even if not personally effecting the [criminal act], must nevertheless have intended this result.”

In the second situation, the accused has knowledge of a system of ill-treatment, such as a concentration camp, and intends to further this system. Knowledge may be established expressly or reasonably inferred **from the position of authority** held by the accused at the relevant time. The Accused need only know the nature of the system and intend to further the joint criminal enterprise.

In the third situation, one of the participants in the joint criminal enterprise commits a crime “other than the one agreed upon in the common plan”.

The accused may be held responsible for that crime if, under the circumstances, it was “foreseeable” that such a crime might be perpetrated by some member of the group and the accused knew of and willingly took that risk.

“Foreseeability” involves the concept that a crime is a “possible” consequence of the enterprise.

The accused must intend to participate in and further the criminal activity or plan agreed upon “and to contribute to the joint enterprise, or in any event to the commission of a crime by the group.”

Professor Vojislav Šešelj actual participation is described in paragraph 10 of the indictment, and in the Pre-Trial Brief it is all developed in paragraphs entitled:

- II. Šešelj’s Participation in the JCE
  - A. Šešelj’s Role as Chief Propagandist of Greater Serbia
  - B. Šešelj Recruited and Coordinated SRS/SČP Volunteers
  - C. Šešelj’s Intent to Participate in the JCE
- III. Implementing the JCE in Croatia, BiH and Serbia
  - A. Implementing of the JCE in Croatia
    - 1. Republic of Serbian Krajina
    - 2. Croatian Serb parallel Structures in the SAO Krajina
    - 3. SAO Slavonia, Baranja and Western Slavonia
    - 4. SAO Western Slavonia
    - 5. Croatian Serb Police and Military Structures
  - B. Implementation of the JCE in Bosnia and Herzegovina
  - C. Implementing the JCE in Serbia
- IV. The Creation and Structure of the SRS.

#### Professor Vojislav Šešelj’s Comment

If we analyse the plurality of persons requirement, the Prosecution did not present any evidence to show any type of link between Professor Vojislav Šešelj and all the people mentioned as having participated with him in a JCE in paragraph 8 (a) of the indictment: Slobodan Milošević (indicted, deceased), General Veljko Kadijević (not indicted), General Blagoje Adžić (not indicted), Colonel Ratko Mladić (indicted for genocide), Radmilo Bogdanović (added subsequently, but not indicted), Jovica Stanišić (indicted), Franko Simatović aka Frenki (indicted), Radovan Stojčić aka Badža (deceased), Milan Martić (indicted and convicted), Goran Hadžić (indicted), Milan Babić (indicted, convicted in plea bargain, added subsequently, deceased),

Radovan Karadžić (indicted for genocide), Momčilo Krajišnik (indicted, convicted on the basis of having participated in a JCE), Biljana Plavšić (indicted and convicted in plea bargain), Željko Ražnatović aka Arkan (indicted, deceased), as well as other political figures from the (S)FRY, Republic of Serbia, Republic of Montenegro and the Bosnian and Croatian Serb leadership. Participants in the JCE also included “Serbian Forces” (added subsequently), which is the joint name.

In addition to the obviously arbitrary way in which the Prosecution decided who was a participant in the JCE and the fact that some of them have not had indictments raised against them, but are mentioned as participants in the JCE, it must also be noted that Professor Vojislav Šešelj is not mentioned as a participant in the JCE for some of the people who have been indicted and convicted. A simple examination provides the following facts:

a) Veljko Kadijević, Blagoje Adžić, Radmilo Bogdanović and Radovan Stojčić aka Badža have never been indicted by the ICTY;

b) Željko Ražnjatović aka Arkan was indicted for war crimes committed in September 1995 in Sanski Most, BH, and the indictment was raised on 23 September 1997. The indictment does not mention participation in a JCE, but the locations of Bijeljina, Zvornik, Eastern Slavonia are mentioned, and it is particularly stressed that his units operated together with the JNA and other Serbian forces, but that he was the sole and exclusive commander of his own units. In the indictment he is also charged under Articles 7 (1) and 7 (3) of the Statute. Neither Professor Vojislav Šešelj nor the SRS volunteers are mentioned at any point.

c) It states that the participants in the JCE from the indictment against Professor Vojislav Šešelj participated in the JCE with some other persons:

1. **Slobodan Milošević** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Goran Hadžić; Milan Babić; Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

2. **Veljko Kadijević** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Professor Vojislav Šešelj.

3. **Blagoje Adžić** (never indicted) is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Milan Babić; Professor Vojislav Šešelj.



**4. Ratko Mladić** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Milan Babić; Radovan Karadžić (not for participation in JCE); Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

**5. Radmilo Bogdanović** (never indicted) (added to the Second Amended Indictment against Professor Vojislav Šešelj) is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Professor Vojislav Šešelj.

**6. Jovica Stanišić and Franko Simatović aka Frenki** are mentioned as participants in the JCE in: Slobodan Milošević (deceased); Milan Martić; Goran Hadžić; Milan Babić; Professor Vojislav Šešelj.

**7. Radovan Stojčić aka Badža** (never indicted) (added to the Second Amended Indictment against Professor Vojislav Šešelj) is mentioned as a participant in the JCE in: Slobodan Milošević (deceased), Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Goran Hadžić; Professor Vojislav Šešelj.

**8. Milan Martić** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki; Goran Hadžić; Milan Babić; Professor Vojislav Šešelj.

**9. Goran Hadžić** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Milan Martić; Milan Babić; Professor Vojislav Šešelj.

**10. Milan Babić** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Milan Martić; Professor Vojislav Šešelj.

**11. Radovan Karadžić** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

**12. Momčilo Krajišnik** is mentioned as a participant in the JCE in: Milan Martić; Biljana Plavšić; Professor Vojislav Šešelj. He is mentioned in Radovan Karadžić, but not as a participant in the JCE.

**13. Biljana Plavšić** is mentioned as a participant in the JCE in: Jovica Stanišić and Franko Simatović aka Frenki; Milan Martić; Radovan Karadžić; Momčilo Krajišnik; Professor Vojislav Šešelj. She is mentioned in Radovan Karadžić, but not as a participant in the JCE.

**14. Željko Ražnatović aka Arkan** is mentioned as a participant in the JCE in: Slobodan Milošević (deceased); Jovica Stanišić and Franko Simatović aka Frenki;

Milan Martić; Goran Hadžić; Momčilo Krajišnik and Biljana Plavšić; Professor Vojislav Šešelj.

There needs to be a link between the people participating in a joint criminal enterprise, and what links them is probably the aim of the JCE. However, it must be said that it is impossible to establish any sort of link between these people, and between these people and Professor Vojislav Šešelj. When did some of them meet, when did they get to know each other, when did they talk, when and where did they communicate with each other, directly or indirectly, and a string of questions about any possible or even potential contacts linking them to Professor Vojislav Šešelj, for which the Prosecution did not manage to present any evidence. However, the court record is full of evidence that there was antagonism between Professor Vojislav Šešelj and these people, that they criticised, accused and argued with each other in public, and there is too much evidence that communication was not possible, let alone any sort of agreement.

For example, the Prosecution obtained the documentation of the Serbian State Security Service, around 4,000 pages of material, showing that Professor Vojislav Šešelj was continuously followed and that he was the subject of various measures of this service continuously from 1982 to 23 February 2003, as the most dangerous political opponent of all the authorities in the SFRY, FRY and Republic of Serbia, and even between 24 March 1998 and 25 October 2000, when he was Deputy Prime Minister of the Republic of Serbia. With regard to the period relevant to the indictment, from before August 1991 to September 1993, Professor Vojislav Šešelj was a politician in opposition and a political opponent of all the people mentioned as having participated with him, or he with them, in the JCE.

Therefore, despite the fact that the purpose of the JCE should be the dominant factor in the internal link between these alleged participants in the JCE, we should also bear in mind other factors, such as circumstance, status, position and mutual relationships.

It may be worth mentioning as part of the analysis of whether a common purpose of the JCE existed, and within the framework of the analysis of the plurality of persons requirement – due to the special overlap of these requirements – that in its decision of 10 November 2005, while ruling on the Prosecution's motion for joinder of the cases of Milan Martić, Jovica Stanišić and Franko Simatović and Professor

Vojislav Šešelj, Trial Chamber III denied this Prosecution motion and stated the following:

“The JCE set out here is not identical in all of the indictments, and it should be noted that there is only a partial overlap between the counts of the indictment, mode of liability, time frame and location of the crimes.”

Therefore, before the start of the trial, it was debatable for the ICTY judges whether the JCE was even possible between the aforementioned persons since the Prosecution did not describe in the same way the JCE for these three persons in their indictments. This doubt was not removed by the Prosecution during the presentation of the Prosecution evidence in the case against Professor Vojislav Šešelj.

At the trial against Professor Vojislav Šešelj, the phrase “related cases by geographical area” was also used. The following cases are listed within this:

- Milan Babić IT-03-72 (indicted, convicted in plea bargain, deceased);
- Slavko Dokmanović IT-95-13A “Vukovar Hospital” (deceased);
- **Stanislav Galić** IT-98-29 “Sarajevo” (indicted and convicted);
- Goran Hadžić IT-04-75 (indicted, proceedings ongoing );
- Radovan Karadžić IT-95-5/18, “Bosnia and Herzegovina” and “Srebrenica” (indicted, proceedings ongoing);
- **Momčilo Krajišnik** IT-00-39 & 40 “Bosnia and Herzegovina” (indicted and convicted);
- **Milan Martić** IT-95-11, RSK /Republic of Serbian Krajina/ (indicted and convicted);
- Slobodan Milošević IT-02-54 “Kosovo, Croatia and Bosnia” (indicted, died while the trial was ongoing);
- Ratko Mladić IT-95-5/18 “Bosnia and Herzegovina” and “Srebrenica” (indicted, proceedings ongoing);
- **Mile Mrkšić, Veselin Šljivančanin and Miroslav Radić** IT-95-13/1 “Vukovar Hospital” (Mrkšić: indicted and convicted; Šljivančanin: indicted and convicted; Radić: indicted and acquitted);
- Mladen Naletilić and Vinko Martinović IT-98-34 “Tuta and Štela” (indicted and convicted);
- Momčilo Perišić IT-04-81 (indicted, proceedings ongoing);

- Biljana Plavšić IT-00-39 & 40 “Bosnia and Herzegovina” (indicted, plea bargain, convicted, served her sentence and has been released);
- Jadranko Prlić et al. IT-04-74 (indicted, proceedings ongoing);
- **Blagoje Simić et al.** IT-95-9 “Bosanski Šamac” (indicted and convicted);
- Milan Simić IT-95-9/2 “Bosanski Šamac” (indicted, plea bargain, convicted, served his sentence and has been released);
- Jovica Stanišić and Franko Simatović IT-03-69 (indicted, proceedings ongoing);
- Mićo Stanišić IT-04-79 (indicted, proceedings ongoing);
- Stevan Todorović IT-95-9/1 “Bosanski Šamac” (indicted, plea bargain, convicted, served his sentence and was released, deceased);

As can be seen, these cases are significant for two reasons. First, because they involve locations that are also in the indictment against Professor Vojislav Šešelj and, in the factual sense, should help establish the truth of what happened in these locations. Second, because the Prosecution’s indictment against Professor Vojislav Šešelj claims that Professor Vojislav Šešelj participated with these people in a JCE. Therefore, through cases related by geographical area, the Prosecution needs to show the identical nature of events at a specific location and the link between these persons who allegedly participated in the JCE, that crimes were committed in these areas and that each of the JCE participants should naturally bear individual responsibility for each of these locations based on their participation in the same JCE. From the Prosecution’s erroneous argument, based on the alleged JCE, an entire string of factual and legal fabrications follow that simply negate the possibility of charging Professor Vojislav Šešelj. This is the situation in this case, before we take a look at the debacle that the Prosecution suffered when presenting its evidence in the courtroom.

The cases that have ended in convictions based on a plea bargain between the accused and the Prosecution do not factually deserve any attention in the case of Professor Vojislav Šešelj because a plea bargain also means that the accused is pleading guilty, and therefore they cannot be significant in respect of establishing facts. No evidence was presented on the basis of which the relevant facts could be established. Therefore, cases that have ended, which the Prosecution claims are related to the case against Professor Vojislav Šešelj in terms of location and

participation in a JCE, simply imply the existence of identical responsibility on the basis of participation in a JCE.

The focus must be given in every respect to the cases for which the ICTY has rendered a final judgement, because it is precisely these judgements that must be binding both for the ICTY judges and for the Prosecution. These cases are marked in bold in the parts where they are mentioned.

#### **Stanislav Galić**

The Trial Chamber declared Stanislav Galić guilty under Article 7 (1) of the Statute, with one judge dissenting, for:

Acts of violence whose predominant purpose was the infliction of terror upon the civilian population as defined by Article 51 of Additional Protocol I of the Geneva Conventions from 1949 (violations of the Laws and Customs of War, Article 3);

Murder and inhumane acts that are not murder (Crimes Against Humanity, Article 5).

The Appeals Judgement only changed the 20-year prison sentence to life imprisonment.

He was indicted as the Commander of the Sarajevo Romanija Corps of the Army of Republika Srpska (VRS), which was positioned around Sarajevo, for the period from September 1992 to August 1994, pursuant to Article 7 (1) and 7 (3) of the Statute, on seven counts of the indictment, for the location of Sarajevo, but **there are no charges nor any conviction for participation in a JCE.**

An almost identical judgement was rendered for Dragomir Milošević as the Commander of the Commander of the Sarajevo Romanija Corps, which was positioned around Sarajevo, covering the period from August 1994 to November 1995, finding him guilty under Article 7 (1) and 7 (3) of the Statute on seven counts of the indictment, for the location of Sarajevo, but **there are no charges nor any conviction for participation in a JCE.**

#### **Momčilo Krajišnik**

Momčilo Krajišnik was a member of the Bosnian Serb leadership during the war (later of Republika Srpska), a member of the Main Board of the SDS /Serbian Democratic Party/ of Bosnia and Herzegovina and President of the Bosnian Serb Assembly. In the Final Judgement he was sentenced to 20 years in prison. The crimes for which he was convicted were:

Persecution on political, racial or religious grounds, deportation, inhumane acts (forcible transfer) (crimes against humanity).

Momčilo Krajišnik was found guilty pursuant to Article 7 (1) of the Statute on grounds of having participated in a JCE of deportation in Zvornik, Banja Luka and Prnjavor, and forcible transfer in Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac. These crimes encompassed forcible displacement of several thousand civilians – Muslims and Croats, including women, children and the elderly – during the period from April to December 1992.

The indictment of 7 March 2002 against Momčilo Krajišnik and Biljana Plavšić states that in the JCE they “worked in concert with other members of the joint criminal enterprise, including Radovan Karadžić and Nikola Koljević”. Other members of the JCE included: Slobodan Milošević, Željko Ražnatović (aka Arkan), General Ratko Mladić, General Momir Talić, Radoslav Brdanin and Serbian forces. Professor Vojislav Šešelj is not expressly mentioned.

Their participation in the JCE is also described as:

“directing, supporting or encouraging the incorporation into the Bosnian Serb Forces members of paramilitary forces and volunteer forces known to have participated or suspected of having participated in crimes;

“aiding or abetting or instigating the commission of further crimes by failing to investigate, to follow up on investigations, and to punish subordinates in the Bosnian Serb Forces for crimes committed against Bosnian Muslims, Bosnian Croats or other non-Serbs throughout the period described in this indictment.”

In the Trial Chamber’s Judgement in the Krajišnik case, and in connection with the charges against Professor Vojislav Šešelj, the following paragraphs are important:

“**213.** In Zvornik, in the period April to May 1992, the Yellow Wasps, a paramilitary unit consisting of around 100 heavily armed men, cooperated closely with the TO and was even issued arms by the TO’s logistics staff. Once the VRS was established and the Zvornik Brigade formed towards the end of May, the Yellow Wasps were subordinated to it. (454) Witness 682, T. 16864-6, 16869-70, 16875, 16877, 16879, 16881-6, 16897-8, 16904, 16915, 16918, 16954-7; P865.A (Order of incorporation of TO into VRS, 30 May 1992); P922 (Zvornik Brigade command, information report, 17 June 1992); P932 (Bijeljina CSB report, 20 July 1992), p. 1.

“This paramilitary unit had direct contact with the Pale leadership. On 11 July 1992, the leader of the Yellow Wasps, Vojin (Žučo) Vučković, went to the Pale SJB to collect arms and ammunition. While in Pale, Vučković met with Plavšić. (455) Witness 682, T. 16918-19, 16920-2, 16986-95, 16999-17001; P927 (Pale SJB certificate, 11 July 1992); C7 (Plavšić statement), para. 43.

“He also met with the Minister of Defence Subotić. At this meeting, Subotić explained to Vučković that whoever took orders from VRS officers was considered to be a full member of the VRS, irrespective of whether that person was a reservist, a Serbian volunteer, or a member of a paramilitary. (456) Subotić, T. 26427, 26572; C3 (Subotić statement), para. 37.

“**215.** Local SDS boards, crisis staffs, and regional (SAO) governments often invited and assisted paramilitary groups. This occurred, for example, with the Yellow Wasps, the Red Berets, Mauzer’s men, and Arkan’s men, operating in north-eastern Bosnia-Herzegovina (Bijeljina, Brčko, and Zvornik). (459) Davidović, T. 14260-1, 15290-6; P764 (Davidović statement), pp. 19-21, 24-31, 29; P727, tab 7

(Transcript of TV interview with Ljubiša Savić, 1 July 1992), p. 2; P882 (indictment against Duško (Repić) Vučković and Vojin (Žuča) Vučković, 28 April 1994), p. 5; P883 (judgement of Šabac district court against Duško (Repić) Vučković and Vojin (Žuča) Vučković, 8 July 1996), pp. 9-10; Witness 165, T. 15794-5; P865.D (Bijeljina CSB official record of interview with Duško (Repić) Vučković, 9 August 1992); P865.E (statement of Vojin (Žučo) Vučković, 6 August 1992); P944 (Witness 674 statement), p. 6.

Crisis staffs only ceased to tolerate the paramilitaries when they lost control of them. (460) Davidović, T. 14246-50, 15290-1; P764 (Davidović statement), p. 19, 24-31.

“**216.** On 28 July 1992, and as a result of the VRS Main Staff Intelligence report mentioned earlier, Mladić issued an order regarding the disarmament of paramilitary formations. The order noted that paramilitaries engaged in looting were operating in all territories under the VRS. It ordered all paramilitary formations with ‘honourable’ intentions to place themselves under the command of the VRS. No individual or group responsible for crimes was to be incorporated into the army, and any member of a paramilitary unit who refused to submit to the unified command of

the VRS was to be disarmed and arrested. (461) P819 (Order from Ratko Mladić on disarmament of paramilitary formations, 28 July 1992).

“217. The report, while aimed at bringing law back to areas now under Bosnian-Serb control, also shows that the VRS was more concerned with looting and the breakdown of order than with the widespread crimes committed by the paramilitaries, as described in more detail in part 4 of the judgement. The report also does not account for the fact that incorporation of paramilitaries had already been the rule even before July 1992 and that crimes were committed, and were continuing to be committed, by the paramilitaries under the auspices of the Bosnian-Serb armed forces. (462) Brown, T. 16310-11.”

In one of the previous paragraphs, as part of footnote 447, the following are mentioned as evidence: “Poplašen, T. 20914-15, 20917, 21105-6; 21119, 21125-6; Mandić, T. 9025-9; P460.A (Telephone conversation between Momčilo Mandić and “Igor”, 21 April 1992); P1090 (Video clip); P1095 (Authorisation for Nikodin Čavić to sign up volunteers, 13 December 1991; P892, tab 54 (Report on paramilitary formations from Colonel Zdravko Tolimir, 28 July 1992), p. 3.”

All the locations mentioned in the indictment against Professor Vojislav Šešelj were also be examined in the Krajišnik Judgement.

In the indictment against Momčilo Krajišnik, Professor Vojislav Šešelj was not a participant in the JCE with Momčilo Krajišnik, and in the indictment against Professor Vojislav Šešelj, Momčilo Krajišnik was allegedly a participant in the JCE with Professor Vojislav Šešelj. This discrepancy is not a consequence of the simple fact that the indictments against Momčilo Krajišnik and Professor Vojislav Šešelj were not raised on the same day, but a consequence of the fact that in February 2003 Zoran Đinđić demanded that Prosecutor Carla Del Ponte take Professor Vojislav Šešelj and not bring him back, and it was therefore necessary to put all and sundry into the indictment against Professor Vojislav Šešelj. This is why there is a real confusion with respect to the participants of the JCE and huge differences also in the purpose of the JCE. The purpose of the JCE is thus set out differently for the same people who are alleged participants in the same JCE, and it is simply impossible to imagine how different are the elements that should, in this made-up theory of JCE, be the same.



In addition to the named JCE participants, the indictment against Momčilo Krajišnik also provides a classification of the “leadership” component and “local” component of the participants in the same JCE. During the trial, the judges also became involved in establishing the purpose of the JCE, and thus the general purpose of the JCE was to “ethnically recompose the territories under its control by expelling and thereby drastically reducing the proportion of Bosnian Muslims and Bosnian Croats living there”. The Chamber found that the crimes of deportation and forcible transfer represented the initial crimes within this general purpose.

For the mode of responsibility of JCE, and Momčilo Krajišnik was convicted on this ground, it is important to note the position of the Appeals Chamber:

“The Trial Chamber indeed erred because it failed to specify whether all or only some of the local politicians, soldiers, police commanders and paramilitary leaders mentioned in paragraph 1087 of the Judgement were members of the JCE. This is why these sub-grounds of Krajišnik’s Appeal were granted.

“The Trial Chamber made an error of law when it failed to reach conclusions necessary for the Krajišnik judgement of guilty regarding the following crimes that were not included in the original common purpose of the JCE:

“Persecution (Count 3), excluding the underlying crimes of deportation and forcible transfer;

“Extermination (Count 4); and

“Murder (Count 5).

“The Appeals Chamber therefore grants in part this sub-ground for appeal and denies the remainder. The conviction for Counts 3, 4 and 5 in the Judgement were quashed.”

Therefore, in relation to the indictment against Professor Vojislav Šešelj, if the Prosecution’s argument on the existence of a JCE and Professor Vojislav Šešelj’s participation therein were to be accepted, everything that comes under persecution, apart from forcible transfers and deportation as the main objective of the JCE, was dropped from Bijeljina, Greater Sarajevo, Zvornik and Nevesinje (Šamac and Mostar were not in the indictment against Krajišnik). Extermination and murder as crimes against humanity were also dropped. If Momčilo Krajišnik was not convicted for this, then Professor Vojislav Šešelj cannot be held accountable for this either. Of course, all of this is presented purely hypothetically, if we were to believe the Prosecution that Professor Vojislav Šešelj participated in some JCE together with Momčilo Krajišnik.

However, since the final Judgement against Momčilo Krajišnik and the evidence presented by the Prosecution at the trial of Professor Vojislav Šešelj both show that Professor Vojislav Šešelj cannot be included either in the leadership or the local component of JCE participants, for which Momčilo Krajišnik was charged, the question arises of whether Professor Vojislav Šešelj could even be indicted? Therefore, when the Prosecution refers to the related case of Momčilo Krajišnik based on the same locations and participation in the JCE, it has completely missed the point and given Professor Vojislav Šešelj the opportunity to use the Momčilo Krajišnik case and its judgements as exculpatory material in the question of how it is at all possible that someone thought of charging Professor Vojislav Šešelj? This is a consequence of the definitive nature of a judgement, which is completely binding, especially for the Prosecution and the ICTY judges.

The following position of the Appeals Chamber in the Krajišnik case is important not only for the responsibility of participating in the JCE with Momčilo Krajišnik or others at locations in Bosnia and Herzegovina, but also for all other locations in the indictment against Professor Vojislav Šešelj:

“The Appeals Chamber notes that the Trial Chamber failed to conclude on many occasions on the link between the principal perpetrators of the original crimes of deportation, forcible transfer and persecution that are based on these crimes, and the members of the JCE. Therefore, the Appeals Chamber concluded that the Trial Chamber only concluded that the members of the JCE committed the following original crimes using the principal perpetrators in order to achieve a common purpose:

“Persecution through deportation, Count 3: Bratunac, Sanski Most, Banja Luka, Bijeljina and Prnjavor;

“Persecution through forcible transfer, Count 3: Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac;

“Deportation, Count 7: Bratunac, Zvornik, Sanski Most, Banja Luka, Bijeljina and Prnjavor; and

“Inhumane acts through forcible transfer, Count 8: Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac.

“Krajišnik’s convictions for the remainder of the original crimes under Counts 3, 7 and 8 are thus quashed.”

Therefore, as part of the mode of liability for participation in the JCE, due to a lack of the required link between Krajišnik or a leading participant in the JCE and the

local participant in the JCE or principal perpetrator of the crime, persecution as deportation, persecution as forcible transfer, deportation and forcible transfer for the Zvornik and Bijeljina municipalities was dropped.

If this standard is applied, it can be concluded that the Prosecution has not presented evidence for any of the locations in the indictment against Professor Vojislav Šešelj that would establish either that link or any other link required by ICTY case-law to establish participation in the JCE. Therefore, there is no evidence on this vital connection between Professor Vojislav Šešelj and the other participants in the JCE with which he is charged, nor has any evidence been presented showing the link between Professor Vojislav Šešelj and any other person who would have had the status of a “local” component in the JCE. Equally, there is no evidence to show any other link between other JCE participants and a local component. In addition, there is no evidence linking either Professor Vojislav Šešelj or any other alleged participants in the JCE with which he is charged to the principal perpetrator of the crime.

Therefore, with regard to the plurality requirement in the JCE, in the indictment against Professor Vojislav Šešelj this is presented as a fiction, premise or supposition and not as a fact to be proved. This is why, when presenting its evidence, the Prosecution did not even offer evidence on this link relating to the plurality of persons requirement.

### **Milan Martić**

When discussing the connection with this case on the basis of geographical origin and alleged participation in the JCE, the Trial Chamber decision on the motion for joinder is important. It must be emphasised that none of the locations mentioned in the indictment against Milan Martić can be found in the indictment against Professor Vojislav Šešelj. In addition, the time frame of the indictment against Professor Vojislav Šešelj (narrower) and Milan Martić (wider) only partially overlap, and it follows that this depended on the relationship between Professor Vojislav Šešelj and Slobodan Milošević.

On 30 May, 1 June and 19 July 2005, the Prosecution filed three identical motions for joinder of the cases against Milan Martić, Jovica Stanišić, Franko Simatović and Professor Vojislav Šešelj. All four accused filed replies to the motions.

In Rule 48 of the Rules of Procedure and Evidence of the International Tribunal it states that “Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.” “Transaction” is defined in the Rules of Procedure and Evidence as “A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.”

If the Chamber decides that the requirements have been met, it may grant joinder or leave the cases to be tried separately. According to the case-law, the following factors may be taken into account in making this determination:

- (1) promoting judicial economy;
- (2) avoiding conflicts of interest that might cause serious prejudice to the accused;
- (3) protecting the interest of justice, *inter alia*, by safeguarding the rights of the accused to a fair and expeditious trial;
- (4) minimising hardship to witnesses; and
- (5) ensuring consistency of verdicts.

In the Decision of 10 November 2005, the Trial Chamber concluded that the crimes mentioned in the indictments against Milan Martić, Jovica Stanišić and Franko Simatović and Professor Vojislav Šešelj were indeed committed during the “same transaction” and that they can therefore be examined as a joint indictment and trial. Nevertheless, the judges of the Chamber also deemed that there is no other factor that can be seen as a factor in favour of joinder of the three cases. The judges deemed that the factors of judicial economy and the right of the accused militate strongly against granting joinder because it would extend significantly the length of the trial of each of the accused and, in the case of Milan Martić, would additionally delay the start of the trial. Therefore, the Trial Chamber decided to deny the motion for joinder and allow the three cases to be tried separately.

If we ignore, for the moment, the issue of participation in the JCE, although this decision does not even deal with this matter and only mentions that there is a likelihood that these crimes were committed in the mentioned locations, this decision is significant because it shows the position of the judges on the right to a fair and expeditious trial, and in this context the following should be kept in mind:

The indictment against Milan Martić: Initial Indictment of 25 July 1995; Amended Indictment of 13 December 2001; Second Amended Indictment of 5 September 2003;

Date of surrender: 15 May 2002

Transferred to the ICTY: 15 May 2002

Initial and further appearances before the court: 21 May 2002, pleaded not guilty to all counts of the indictment; 28 January 2003, pleaded not guilty;

Start of trial: 13 December 2005

Closing arguments: 10 to 12 January 2007;

Trial Chamber Judgement: 12 June 2007, sentenced to 35 years in prison;

Appeals Chamber Judgement: 8 October 2008, sentence upheld.

Therefore, Milan Martić came to the ICTY on 15 May 2002, and his trial started on 13 December 2005. This means that the pre-trial phase lasted 42 months, and the judges concluded in November 2005 that to extend this period by even a day would represent a significant prolongation of the trial that could not be justified. In the case against Professor Vojislav Šešelj, this phase lasted 56 months, from 24 February 2003 to 7 November 2007, and on the basis of the aforementioned Trial Chamber's position, it can only be concluded that Professor Vojislav Šešelj's right has been fundamentally and clearly violated.

It is also worth noting that the entire trial ended with the Appeals Chamber Judgement on 8 October 2008, which was 66 months after he first arrived in the Detention Unit. In the case against Professor Vojislav Šešelj, taking July 2011 as the cut-off date, more than 100 months have passed, but only the presentation of the Prosecution evidence in the trial phase has ended. Therefore, Professor Vojislav Šešelj's rights are being violated in all the phases of the trial (pre-trial and trial phase) by both the Prosecution and the Trial Chamber.

In the Amended Indictment against Milan Martić of 14 July 2003, it states that the following participated with him in the JCE: Slobodan Milošević; Borisav Jović; Branko Kostić; Veljko Kadijević; Blagoje Adžić; Milan Babić; Goran Hadžić; Jovica Stanišić; Franko Simatović aka Frenki; Tomislav Simović; Professor Vojislav Šešelj; Momir Bulatović; Radovan Stojčić aka Badža; Željko Ražnatović aka Arkan; Radovan Karadžić; Momčilo Krajišnik; Biljana Plavšić; Momir Talić; Ratko Mladić.

It should be noted that Jović, Kostić, Bulatović and Simović were never indicted by the ICTY.

In the judgements of the Trial Chamber and the Appeals Chamber in the Martić case there is practically no evidence at all for the fact asserted by the Prosecution that Professor Vojislav Šešelj participated in this alleged JCE. Both judgements in the Martić case are completely unfounded, especially with regard to the existence of the JCE, especially as Martić was convicted only for this mode of responsibility. From January 1992, RSK territory was effectively under the control of the UN and the time frame of the JCE is therefore untenable. In addition, one of the alleged participants of this JCE, Slobodan Milošević, was in constant contact with Franjo Tuđman, either directly or through UN mediators, and there is a lot of footage showing how Slobodan Milošević pressurised, hindered and forced the Serbian leadership in the RSK to seek peaceful solutions under the auspices of the UN. Operations Flash and Storm happened as a consequence of this. This is why the participants, time frame, length and the very existence of the JCE in the case against Professor Vojislav Šešelj are untenable claims of the Prosecution.

The Judgement of the Trial Chamber in the Martić case states the following in paragraph 329:

“The President of Serbia, Slobodan Milošević, publicly supported the preservation of Yugoslavia as a federation of which, *inter alia*, the SAO Krajina would form a part. However, Slobodan Milošević covertly intended the creation of a Serb state. Milan Babić testified that Slobodan Milošević intended the creation of such a Serb state through the establishment of paramilitary forces and the provocation of incidents in order to allow for JNA intervention, initially with the aim to separate the warring parties but subsequently in order to secure territories envisaged to be part of a future Serb state. In Milan Babić’s view, Slobodan Milošević advocated this political objective from the summer of 1990 until the end of 1991.”

Therefore, Milan Babić’s testimony is presented as evidence, only a few days before he hanged himself in the Detention Unit in Scheveningen. He was convicted in a plea bargain with the Prosecution. What Milan Babić actually said is given in footnote 1025, which states that on 16 February 2006 Milan Babić testified that Slobodan Milošević endorsed a “firm type of federation” along with the preservation of the right of self-determination of people who were in majority in an area. Therefore, there is no mention in the footnote of a public and an alleged secret goal. This is simply a fabrication of the Prosecution and the judges of the Trial Chamber. There is no evidence to support this conclusion, especially when you bear in mind that

Milan Babić said when he testified that “Slobodan Milošević advocated this political objective from the summer of 1990 until the end of 1991.”

**Mile Mrkšić, Veselin Šljivančanin and Miroslav Radić**

This final verdict rendered by the ICTY is the most important for the trial of Professor Vojislav Šešelj and not simply on the grounds of being related by geographic area but also on all other grounds – the existence of the JCE, the perpetrators, the crimes, etc. If we recall the position of the Trial Chamber in the Martić case with respect to the JCE and how long Slobodan Milošević allegedly encouraged some goal, and we add to this everything that follows from the Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin case, it is clear that the Prosecution has no arguments for the charges against Professor Vojislav Šešelj.

With respect to JCE, the indictment against Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin of 15 October 2004 states the following:

“Individuals participating in this joint criminal enterprise included Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin, Miroljub Vujović and Stanko Vujanović, and other known and unknown participants. Each member of the joint criminal enterprise worked in concert with each other and with other members of the joint criminal enterprise and acted either directly or through their subordinates, which included members of the JNA, the TO of the so-called 'Serbian Autonomous District Slavonia, Baranja and Western Srem' ('SAO SBWS'), TO of the Republic of Serbia ('Serbia'), and volunteer and paramilitary units including those organised by Vojislav Šešelj, all acting under the command of the JNA (collectively 'Serb Forces').”

It gives the role of individual members of the JCE:

“(a) Miroljub Vujović, during the time relevant to this indictment, was the commander of the Serb TO detachment called Petrova Gora in Vukovar.

“(b) Stanko Vujanović, during the time relevant to this indictment, was the commander of a TO unit in Vukovar. His property at Nova Ulica 81 in the Petrova Gora section of Vukovar served as the command post for Serb forces operating in the area.

“(c) Both Miroljub Vujović and Stanko Vujanović had command over units of the TO of the 'SAO SBWS' responsible for the mistreatment and killing of non-Serbs taken from Vukovar Hospital to Ovčara farm.”

All of these completely collapsed in the courtroom during the trial. This was a completely erroneous argument of the Prosecution even when indicting Mrkšić, Šljivančanin and Radić.

A summary of this case, seen from the aspect of its connection with the charges against Professor Vojislav Šešelj, could be presented as a final summary for the location of Vukovar as follows:

**Slavko Dokmanović**

Indictments: 3 April 1996 and 2 December 1997;

Arrested: 27 June 1997

Initial court appearance: 4 July 1997

Died on 29 June 1998

Related case: Mrkšić et al. – Vukovar Hospital

Counts of indictment:

- inhumane acts, murder (crime against humanity)
- cruel treatment, murder (violation of the Laws or Customs of War)
- wilfully causing great suffering, wilful killing (grave breaches of the Geneva Conventions).

**Mrkšić, Radić and Šljivančanin**

Indictments: 7 November 1995, 3 April 1996, 2 December 1997, 1 November 2002, Third Consolidated Amended Indictment of 9 March 2005.

Trial: 11 October 2005

Related cases: Dokmanović, Vukovar Hospital

Trial Chamber Judgement: 27 September 2007

Appeals Chamber Judgement: 5 May 2009

Charges:

Count 1 – Persecution on political, racial and religious grounds, crime against humanity, punishable under Articles 5 (h), 7 (1) and 7 (3) of the Statute of the Tribunal.

This persecution was based on political, racial or religious grounds, and included the following:

- (a) Extermination or the murder of approximately 264 Croats and other non-Serbs, including women and the elderly;



(b) Cruel or inhumane treatment of Croats and other non-Serbs, including torture, beatings, sexual assault and psychological abuse;

(c) Denial of medical care to the sick and wounded Croats and other non-Serbs.

Count 2: Extermination, a crime against humanity, punishable under Articles 5 (b), 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 3: Murder, a crime against humanity, punishable under Articles 5(a), and 7(1) and 7(3) of the Statute of the Tribunal.

Count 4: Murder, a violation of the Laws or Customs of War, as recognised by Common Article 3 (1) (a) of the Geneva Conventions of 1949, punishable under Articles 3, 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 5: Torture, a crime against humanity, punishable under Article 5 (f), Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 6: Inhumane acts, a crime against humanity, punishable under Article 5(i), Article 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 7: Torture, a violation of the Laws or Customs of War, as recognised by Common Article 3 (1) (a) of the Geneva Conventions of 1949, punishable under Article 3 and Article 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 8: Cruel treatment, a violation of the Laws or Customs of War, as recognised by Common Article 3 (1) (a) of the Geneva Convention of 1949, punishable under Article 3 and Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

The Prosecution started by alleging that the accused participated in a JCE whose purpose was to persecute Croats or other non-Serbs who found themselves in the Vukovar Hospital after the fall of Vukovar, and also through murder, torture and cruel treatment, extermination and inhumane acts.

**The Trial Chamber found that there was no immediate evidence for the existence of such a JCE. This was upheld by the Appeals Chamber Judgement.**

The evidence does not show that Veselin Šljivančanin or Miroslav Radić participated at any point in this process in which Mile Mrkšić reached the decision that the JNA should no longer keep guard over the prisoners-of-war and withdraw the military police who were guarding them. These facts exclude any conclusion that Mile Mrkšić, Veselin Šljivančanin and Miroslav Radić acted together in a JCE.

Therefore, it was definitively established that there was no JCE in the Vukovar location and that there could therefore be no participants in any JCE there. If this has been established by the judges of the Trial Chamber dealing with the most responsible military people and commanders, then what is unclear is the mental state of the person who thought in the indictment against Professor Vojislav Šešelj to charge Professor Vojislav Šešelj on the basis of participation in any JCE at all, let alone for Vukovar. A final judgement is supposed to be binding for ICTY judges and this is why they must especially keep in mind all that the Prosecution has done when piling up charges against Professor Vojislav Šešelj from the point of view of abuse of proceedings. In any case, what can be said about the situation when charges of participating in a JCE in the Vukovar location are dropped in a final decision, but the Prosecution persists with charges against Professor Vojislav Šešelj for participation in a JCE.

#### **Mrkšić**

The Trial Chamber concluded that Mile Mrkšić was responsible under Article 7 (1) of the Statute for aiding and abetting the crime of murder.

Mile Mrkšić was therefore found responsible under Article 7 (1) of the Statute for aiding and abetting the crimes of torture and cruel treatment.

#### **Radić**

For the reasons given while analysing the responsibility of Mile Mrkšić, there is no evidence that Miroslav Radić participated in the JCE. Two witnesses gave completely different statements that suggest that Miroslav Radić was informed about the soldiers under his command having participated in the mistreatment and killing of prisoners at Ovčara. The Trial Chamber did not deem these witnesses to be sincere and did not consider the third witness reliable. Therefore, for reasons that are described in detail in the written Judgement, the Trial Chamber concluded that it had not been proved that Miroslav Radić knew or had reasons to know that the soldiers under his command committed crimes at Ovčara.

If it was decided with regard to Radić that it has not been established that he “knew or had reason to know that his subordinates had committed offences at Ovčara”, and Radić was a JNA captain who commanded a JNA unit in Vukovar, how could anyone even think of charging Professor Vojislav Šešelj, an opposition politician who was in Banja Luka and Western Slavonia at the time that Ovčara happened?

### Šljivančanin

The Trial Chamber notes that the responsibility of Veselin Šljivančanin was established under Article 7 (1) for aiding and abetting the crimes of torture and cruel treatment.

On 27 September 2007, the Trial Chamber rendered its judgement and sentenced the accused as follows:

Mile Mrkšić, on the basis of individual criminal responsibility (Article 7 (1) of the Statute of the Tribunal) for:

- Murder (violation of Laws or Customs of War, Article 3);
- Torture (violation of Laws or Customs of War, Article 3);
- Cruel treatment (violation of Laws or Customs of War, Article 3).

Sentence: 20 years in prison.

Veselin Šljivančanin, on the basis of individual criminal responsibility (Article 7 (1) of the Statute of the Tribunal) for:

- Torture (violation of Laws or Customs of War, Article 3).

Sentence: five years in prison.

Miroslav Radić was acquitted of all charges.

The Judgement of the Trial Chamber established the following:

“While there may have been a small number of civilians among the 194 identified murder victims charged in the Indictment, in the Chamber’s finding, the perpetrators of the offences against the prisoners at Ovčara on 20/21 November 1991 charged in the Indictment, acted in the understanding that their acts were directed against members of the Croatian forces. The possibility now identified that a small number of civilians may have been among the prisoners, therefore, does not change the finding which the Chamber makes that the crimes charged in the present Indictment **do not qualify as crimes against humanity in the particular circumstances of this case.**”

### Conclusion

The Trial Chamber concluded that the prerequisites in connection with its power under Article 5 of the Statute had not been met in this case.

If Mrkšić, Radić and Šljivančanin were not mutually involved in the JCE, it is impossible that Professor Vojislav Šešelj was involved with any of them and the JNA in the JCE. If the Vukovar location was not included in the JCE for Mrkšić, Radić and

Šljivančanin, then it cannot be included for Professor Vojislav Šešelj either, as established in the final judgement. It is unclear how the indictment against Professor Vojislav Šešelj includes locations as part of the JCE when the JNA and its officers were evidently not participants in the JCE? Moreover, the Vukovar location was also reviewed from the aspect of crimes against humanity and, as the final judgement established that such crimes had not been committed, it is simply not possible that the indictment against Professor Vojislav Šešelj for Vukovar includes the JCE and crimes against humanity.

The situation with the charges for destruction, plunder, devastation and other crimes is interesting because, if the Prosecution did not charge Mrkšić *et al* with these crimes, it is unclear how it could charge Professor Vojislav Šešelj, an opposition politician, with these crimes?

Miroslav Radić was acquitted under all counts of the indictment and, interestingly enough, he was acquitted of responsibility under Article 7 (1) of the Statute for aiding and abetting killings, torture and cruel treatment under Article 3 of the Statute – violating the laws and customs of war. Therefore, the completion of the trials of Mrkšić, Šljivančanin and Radić and the judgements in that case are binding and exculpatory material for Professor Vojislav Šešelj.

### **Blagoje Simić *et al***

From the aspect of the charges against Professor Vojislav Šešelj, Bosanski Šamac is listed as a location not for the crime base, but for a consistent pattern of conduct. By the same logic, it should constitute responsibility on the basis of participation in the JCE.

This case is also interesting in view of the conclusion of the Appeals Chamber:

“The Appeals Chamber rendered its judgement on 28 November 2006. The Appeals Chamber revised the finding of the Trial Chamber that Blagoje Simić participated in the JCE, with the purpose of persecuting non-Serbs in the municipality of Bosanski Šamac, northern Bosnia. The Appeals Chamber established that Simić had not been provided with notice that he was charged as a participant in a JCE prior to the end of the presentation of the Prosecution’s case, because of which the trial was unfair. The Appeals Chamber also revised the judgement of guilty against Simić for persecutions based upon cruel and inhumane treatment in the form of torture and

beatings. However, the Appeals Chamber affirmed the verdict of guilty for aiding and abetting persecutions in the form of unlawful arrests and detention of non-Serb civilians, confinement of non-Serb civilians under inhumane conditions, forced labour of Bosnian Croats and Muslims and forcible transfer of non-Serb civilians. The Appeals Chamber commuted the sentence of Blagoje Simić to 15 years imprisonment.”

Therefore, participation in a JCE was not defined as an aspect of responsibility in the case against the Šamac Group, and if it did not exist then, it is unclear how it appears as a consistent pattern of conduct in the indictment against Professor Vojislav Šešelj. The conclusion of the Trial Chamber in the case *Simić et al – Bosanski Šamac* is interesting with respect to the charges against Professor Vojislav Šešelj:

“With respect to the forcible takeover of power, charged with being responsible for persecutions under Count 1, the Trial Chamber found that this crime did not reach the level of gravity as other crimes against humanity, and as such, did not constitute persecution.”

Consequently, the case *Simić et al – Bosanski Šamac* in fact constitutes an erroneous thesis in the Prosecution’s charges against Professor Vojislav Šešelj. This means that no one can allege that the events in Bosanski Šamac were the result of a JCE, and if *Simić et al* did not participate in a JCE, it is therefore impossible to charge Professor Vojislav Šešelj with participating in a non-existent JCE, and thereby complicity with *Simić et al*. Hence, in the case against Professor Vojislav Šešelj, the Prosecution unnecessarily hounded the witnesses for Bosanski Šamac in its effort to prove a pattern of conduct consistent with participation in the JCE, although the final judgement had established that there was no JCE in Bosanski Šamac.

#### **Other Cases Linked According to Geographical Area**

From the aspect of plurality of persons, other cases which are said to be geographically linked are also of interest but there is no final ICTY judgement. These cases are analysed for the existence of JCE according to all criteria:

- **Milan Babić** IT-03-72 (indicted, plea-bargain, convicted, died). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of relevance to the charges against Professor Vojislav Šešelj.

- **Slavko Dokmanović** IT-95-13A Vukovar Hospital (died). The case was not completed because the accused killed himself, but all relevant facts were established in the Mrkšić case and the final judgement in this case constitutes exculpatory evidence for Professor Vojislav Šešelj.

- **Goran Hadžić** (IT-04-75 (indicted and currently in detention). A case which is absolutely irrelevant with respect to the charges against Professor Vojislav Šešelj in the light of the final judgement in the Mrkšić case.

- **Radovan Karadžić** IT-95-5/18 Bosnia and Herzegovina and Srebrenica (indicted and proceedings are underway). As the trial is in the initial stage, practically nothing can be established with respect to the accusations against Professor Vojislav Šešelj beyond what has already been established by the final judgement in the Krajišnik case, rendering this case irrelevant.

- **Ratko Mladić** IT-95-5/18 Bosnia and Herzegovina and Srebrenica (indicted and proceedings are underway). It does not contain anything useful for the proceedings against Professor Vojislav Šešelj other than lots of exculpatory material.

- **Mladen Naletilić and Vinko Martinović** IT-98-34 Tuta and Štela (indicted and convicted). The relevance of this case is unclear as it deals with the opposite side and the location is Herzegovina, and therefore no one knows how it ended up in the indictment against Professor Vojislav Šešelj.

- **Biljana Plavšić** IT-00-39 and 40 Bosnia and Herzegovina (indicted, plea-bargain, convicted, served her sentence and released). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of relevance to the charges against Professor Vojislav Šešelj.

- **Jadranko Prlić et al** IT-04-74 (indicted and proceedings are underway). The relevance of this case is unclear as it deals with the opposite side and the location is Herzegovina, and therefore no one knows how it ended up in the indictment against Professor Vojislav Šešelj.

- **Milan Simić** IT-95-9/2 Bosanski Šamac (indicted, plea-bargain, convicted, served his sentence and released). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of facts relevant to the charges against Professor Vojislav Šešelj.

- **Stevan Todorović** IT-95-9/1 Bosanski Šamac (indicted, plea-bargain, convicted, served his sentence and died after he was released). It does not require analysis since the relevant facts are not established in a plea-bargain and a plea-bargain agreement has no probative value in terms of relevance to the charges against Professor Vojislav Šešelj.

- **Momčilo Perišić** IT-04-81 (indicted and proceedings are underway). The indictment of 22 February 2005 against Momčilo Perišić for the locations of Sarajevo, Zagreb and Srebrenica does not mention his criminal responsibility on the basis of a JCE. It is unclear how the Momčilo Perišić case has any relevance to the charges against Professor Vojislav Šešelj.

- **Jovica Stanišić and Franko Simatović** IT-03-69 (indicted and proceedings are underway). As officials of the State Security Service, they implemented measures of surveillance, monitoring, restraining and aggravating the political activities of Professor Vojislav Šešelj, even while Professor Vojislav Šešelj was the Deputy Prime Minister of the Republic of Serbia. It is unclear how someone could assume that they were participants in a fabricated JCE with Professor Vojislav Šešelj. Moreover, the Trial Chamber rejected an application for a joinder of the trial of Professor Vojislav Šešelj with them since the Prosecution tried to present different texts of the alleged JCE from the indictments as a single transaction and with an identical objective.

- **Miće Stanišić** IT-04-79 (indicted and proceedings are underway). The indictment against Miće Stanišić does not even list Professor Vojislav Šešelj as a participant in the JCE, making it unclear according to which criteria they were linked.

- **Slobodan Milošević** IT-02-54 Kosovo, Croatia and Bosnia (indicted, died during the trial). Since Milošević is listed as the central figure of the JCE with which Professor Vojislav Šešelj is charged and as there is no judgement in the Milošević case, the indictments against him must be analysed as to the conditions for the existence of a JCE.

**Croatia:** the Second Amended Indictment of 23 October 2002 was brought only against Slobodan Milošević and it lists the following participants in the JCE:

“This joint criminal enterprise came into existence before 1 August 1991 and continued until at least June 1992. Individuals participating in this joint criminal enterprise included Slobodan Milošević, Borisav Jović (not indicted), Branko Kostić (not indicted), Veljko Kadijević (not indicted), Blagoje Adžić (not indicted), Milan

Babić, Milan Martić, Goran Hadžić, Jovica Stanišić, Franko Simatović, also known as Frenki, Tomislav Simović (not indicted), Vojislav Šešelj, Momir Bulatović (not indicted), Aleksandar Vasiljević (not indicted), Radovan Stojičić, also known as Badža, Željko Ražnatović, also known as Arkan, and other known and unknown participants.

“In order for the joint criminal enterprise to succeed in its objective, Slobodan Milošević worked in concert with or through several individuals in the joint criminal enterprise. Each participant or co-perpetrator within the joint criminal enterprise played his own role or roles that significantly contributed to the overall objective of the enterprise.” Unlike the other indictments, it precisely lists the roles of every participant in the JCE, stating the following for Professor Vojislav Šešelj:

“13. Professor Vojislav Šešelj, as President of the Serbian Radical Party, from at least February 1991 throughout the time relevant to this indictment, recruited or otherwise provided substantial assistance or support to Serb volunteers, commonly known as Chetniks, *Šešeljevci* or Šešelj’s men, who perpetrated crimes as specified in this indictment. In addition, he openly espoused and encouraged creation of a ‘Greater Serbia’ by violence and other unlawful means, and actively participated in war propaganda and spreading inter-ethnic hatred.”

The following statement from the indictment against Slobodan Milošević is important for the case against Professor Vojislav Šešelj:

“Controlled, contributed to, or otherwise utilised Serbian state-run media outlets to manipulate Serbian public opinion by spreading exaggerated and false messages of ethnically based attacks by Croats against Serb people in order to create an atmosphere of fear and hatred among Serbs living in Serbia and Croatia. The propaganda generated by the Serbian media was an important tool in contributing to the perpetration of crimes in Croatia.”

The Prosecution’s problem is that the indictment against Professor Vojislav Šešelj with respect to Croatia mentions the location of Vukovar where, according to the final judgement in the Mrkšić case, the existence of a JCE was not established, and the Prosecution’s allegations of the existence of a JCE therefore fall through. Moreover, in view of the time frame of the charges, it is implied that Professor Vojislav Šešelj participated in the JCE (February 1991) before the date when Slobodan Milošević is said to have become a participant in the JCE (August 1991).



The Prosecution's allegations in the Croatia indictment against Slobodan Milošević, that Professor Vojislav Šešelj participated in the JCE by espousing and encouraging "the creation of a Greater Serbia by violence and other unlawful means, and actively participated in war propaganda and spreading inter-ethnic hatred" also fall through for Croatia and Vukovar. Of the 16 known alleged perpetrators of the JCE, eight were never indicted and they testified in court as witnesses of the Prosecution. These eight were state officials, unlike Professor Vojislav Šešelj, who was the sole opposition politician.

The **Bosnia** indictment of 22 November 2002 says:

"The joint criminal enterprise was in existence by 1 August 1991 and continued until at least 31 December 1995. The individuals participating in this joint criminal enterprise included Slobodan Milošević, Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić, General Ratko Mladić, Borisav Jović (not indicted), Branko Kostić (not indicted), Veljko Kadijević (not indicted), Blagoje Adžić (not indicted), Milan Martić, Jovica Stanišić, Franko Simatović, also known as Frenki, Radovan Stojičić, also known as Badža, Vojislav Šešelj, Željko Ražnatović, also known as Arkan, and other known and unknown participants."

The roles of these participants or co-perpetrators include, but are not limited to, the following:

"13. Vojislav Šešelj, as President of the Serbian Radical Party (SRS), from at least February 1991 throughout the time relevant to this indictment, recruited or otherwise provided substantial assistance or support to Serb paramilitary units, commonly known as *Šešeljevci* or Šešelj's men, who perpetrated crimes as specified in this indictment. In addition, he openly espoused and encouraged the creation of a Greater Serbia by violence and other unlawful means, and actively participated in war propaganda and spreading inter-ethnic hatred."

In the indictment against Professor Vojislav Šešelj, the Prosecution alleges that Professor Vojislav Šešelj participated in the JCE until September 1993, when he came into conflict with Slobodan Milošević, but the indictment against Slobodan Milošević states that Professor Vojislav Šešelj was a participant in the same JCE until 31 December 1995. Does anyone understand what the Prosecution wants?

Does the Prosecution allege that Clinton, Chirac, Kohl and other officials of the so-called international community signed agreements with the war criminals

Milošević, Tuđman and Izetbegović in Dayton and Paris in December 1995? Does that mean that the JCE ended in Paris in 1995 and that the party which finally ended the JCE in Paris is the same party which conceived, planned, established and set the JCE in motion? After all, top NATO officials are thankful to Bosnia and Herzegovina to this day because, had there not been a conflict in 1992, they would not have known how to define the role of NATO following the dissolution of the Warsaw Treaty. NATO therefore boasts that it needed a crisis to survive as a military alliance whose function changed after the Cold War. One can easily guess that, since NATO needed a crisis, it created one and has been controlling it to this day for its own purposes. This is also why the ICTY is a screen, to cover up and mask the interests of others. Slobodan Milošević's involvement in the following, as part of the JCE, is of importance in relation to Professor Vojislav Šešelj:

“He provided financial, logistical and political support for the regular and irregular military forces. These forces subsequently participated in the execution of the joint criminal enterprise through the commission of crimes which are in violation of Articles 2, 3, 4 and 5 of the Statute of the International Tribunal. /.../

“He controlled, manipulated or otherwise utilised Serbian state-run media to spread exaggerated and false messages of ethnically based attacks by Bosnian Muslims and Croats against Serb people intended to create an atmosphere of fear and hatred among Serbs living in Serbia, Croatia and Bosnia and Herzegovina which contributed to the forcible removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of Bosnia and Herzegovina.”

All this is cited to show the tendency of the Prosecution to haphazardly lump together concepts, empty phrases, qualifications and conclusions, which are basically nonsensical and are more an indicator of the psychological state of the author of the indictment than a serious bill of indictment. It appears that Professor Vojislav Šešelj, as an opposition deputy, participated with Slobodan Milošević in an invented JCE in Croatia and Bosnia and Herzegovina up until December 1995, but Milošević arrested Professor Vojislav Šešelj as a political opponent at least three times during the course of those five years. Also, Professor Vojislav Šešelj, who was the Deputy Prime Minister of the Republic of Serbia between 1998 and 2000, did not participate with Milošević in the JCE according to the Kosovo indictment. This speaks volumes about the Prosecution's logic and motives, and basically shows that no JCE ever existed on the Serbian side. A JCE on the Serbian side is simply not possible.

Regarding Professor Vojislav Šešelj's specific involvement in the JCE, the Prosecution states the following in paragraph 10 of the indictment against Professor Vojislav Šešelj:

"10. Professor Vojislav Šešelj participated in the joint criminal enterprise in the following ways:

a. Professor Vojislav Šešelj participated in the recruitment, formation, financing, supply, support and direction of Serbian volunteers connected to the SRS and/or SČP through and/or with the assistance of the SRS Crisis, then War Staff. These volunteer units were created and supported to assist in the execution of the joint criminal enterprise through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal.

b. Professor Vojislav Šešelj made inflammatory speeches in the media, during public events, and during visits to the volunteer units and other Serb forces in Croatia and Bosnia and Herzegovina, instigating those forces to commit crimes in violation of Articles 3 and 5 of the Statute of the Tribunal.

c. Professor Vojislav Šešelj espoused and encouraged the creation of a homogeneous "Greater Serbia", encompassing the territories specified in this indictment, by violence, and thereby participated in war propaganda and incitement of hatred towards non-Serb people.

d. In public speeches Professor Vojislav Šešelj called for the expulsion of Croat civilians from parts of the Vojvodina region in Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia) and thus instigated his followers and the local authorities to engage in a persecution campaign against the local Croat population.

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Districts in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

f. Professor Vojislav Šešelj participated in the provision of financial, material, logistical and political support necessary for such take-overs. He obtained this support, with the help of Slobodan Milošević, from the Serbian authorities and from

Serbs living abroad where he collected funds to support the aim of the joint criminal enterprise.

g. Professor Vojislav Šešelj recruited Serbian volunteers connected to the SRS and indoctrinated them with his extreme ethnic rhetoric so that they engaged in the forcible removal of the non-Serb population in the targeted territories through the commission of the crimes in this indictment with particular violence and brutality.”

Since the specific participation of Professor Vojislav Šešelj in the JCE is listed as a set of his activities, conduct and especially “personal views”, they will be discussed in more detail in the subsequent parts of this submission, with regard to the locations and conditions under Articles 3 and 5 of the Statute and each individual crime with which he is charged.

#### **Conclusion on Charges of Participation in a JCE**

The Prosecution completely missed the mark when it made participation in a JCE the basic premise of all charges against Professor Vojislav Šešelj. In addition to the fact that the final judgements in the Mrkšić and Krajišnik cases, which are binding for the Prosecution and the judges at the ICTY, negate the charges against Professor Vojislav Šešelj with respect to his participation in a JCE, one must bear in mind that all the requirements with respect to the existence and participation in the alleged JCE, based on a fabricated theory developed by the Prosecution of the Hague Tribunal, are inapplicable and nonexistent in the case against Professor Vojislav Šešelj.

The requirement of plurality of persons is completely implausible, not only from the selective aspect with regard to the charges against them, but also with respect to the overall circumstances such as their status, position of authority and interpersonal relations between the alleged participants of the same JCE.

The requirement in the indictment against Professor Vojislav Šešelj for a common criminal goal or criminal means to achieve the common goal is totally implausible. The Prosecution did not provide a single piece of relevant evidence of the existence of a common goal. The Prosecution and judges at the ICTY have presented the goal of the JCE differently for various persons, locations and events, dealing with custom-made constructions, expecting to somehow sneak it all into the case against Professor Vojislav Šešelj. For this reason, the Prosecution’s thesis is unfathomable.

In the case of *Simić et al Bosanski Šamac*, the Trial Chamber presented the position that the goal was unification with other areas with a similar ethnic structure, which in itself, pursuant to Article 7 (1) of the Statute, does not constitute a common goal for a JCE in the legal sense. However, if the intent to create such territories involves commission of crimes punishable under the Statute, it can be sufficient to represent a common criminal goal.

This view is important because it demonstrates that the theory of the JCE should not exist. The commission of crimes and the organising of groups for the commission of crimes should be punished, but that is different from the controversial theory about a JCE which even declares valid political goals as incriminatory and, consequently, automatically declares every act a crime. This is something that even Machiavelli would envy.

Despite this excessively broad concept of the JCE, a report on the JCE submitted several years ago as a specific form of defence of Professor Vojislav Šešelj contains important elements which show that the theory is inapplicable in the ICTY, and therefore also in the case against Professor Vojislav Šešelj.

1. Analysing who participated with whom in the JCE is an indication of the arbitrariness of the Prosecution rather than the existence of a system based on the theoretical premises of the alleged JCE. The indictments themselves are lacking in logic, and this is manifested with regard to the judgements and indictments against other alleged participants in the same JCE. If it is based on a theory of criminal law, there should be no such differences. Naturally, the question remains of why indictments were not brought against some alleged participants in the JCE, some of whom have even testified as witnesses of the Prosecution.

An example of alleged participation in the JCE with which Professor Vojislav Šešelj is charged is recruitment. Other persons also supervised or helped recruitment, but they have not been indicted, although they did it *ex officio*, that is, from positions of authority and as part of their job. Thus, recruitment is not in itself a criminal activity and this is a generally accepted principle. The fact is that an act which is not regarded as criminal by national legislation may be declared as a crime against humanity and this is probably the case with the act of recruitment, that is, a set of actions which are called recruitment. If Professor Vojislav Šešelj is charged with recruitment, as organising or supervising recruitment, what about the others (authorised officials, state officials or Vuk Drašković) who also supervised and

organised recruitment? Moreover, the term recruitment is used erroneously because it refers to a set of acts to register a person in the list of military conscripts and send him to do military service. Therefore, persons who were allegedly recruited by Professor Vojislav Šešelj had completed their military service, since recruitment precedes military service, and they could not have been recruited a second time. It is impossible that their recruitment for the JNA was invalid since they had already done their military service and there was no need for additional recruitment to allegedly “do their military service in the JNA, TO, the SČP or something else.” For the record, the JNA cannot be likened to the SČP. The JNA is an armed force, while the SČP is a political movement without a military doctrine, weapons or uniforms. Although it may seem strange, the recruitment with which Professor Vojislav Šešelj is charged seems like enlisting for a private army, an army belonging to a political party or something of the sort. This is impossible since no authorities would agree to having two types of recruitment for different armies. Therefore, the term recruitment in the indictment against Professor Vojislav Šešelj does not in fact mean anything.

When persons who did their military service are called up to fulfil their military obligation this is called “mobilisation” according to wartime assignment and it also includes assignment to units of the TO. This means that everything which might be interpreted as calling up people and making lists cannot be called recruitment or mobilisation, but a type of activity held for the purpose of fulfilling obligations to relevant state organs. Up until May 1992, this was part of permissible assistance to the JNA which every citizen and organisation was obliged to offer.

Therefore, it cannot be done independently and this is proven by relevant regulations which practically enabled and legalised mobilisation of volunteers who signed up through the Serbian Radical Party. Sending volunteers through an association to serve in state institutions is neither prohibited nor unlawful. After all, regardless of how someone became a member of an armed formation, he became a person protected by conventions regulated by the Law of War, i.e. International Humanitarian Law, through the JNA, the TO and other official armed forces.

2. The Prosecution’s problem in the case against Professor Vojislav Šešelj is its attempt to portray every single volunteer as a member of a criminal unit and, in general, inevitably turning all Serbian armed formations into criminal organisations. This is completely implausible. From the aspect of International Humanitarian Law, this would involve declaring all armed formations of Serbs as criminal organisations,

which is not permitted by the ICTY Statute. Unlike the Statute of the International Military Tribunal in Nuremberg, the ICTY Statute does not require organisations to be declared criminal because it deals with the individual criminal responsibility of persons who have breached the provisions of International Humanitarian Law. It must be noted here that there is a big difference between conspiracy under the Statute of the International Military Tribunal in Nuremberg and the invented and alleged JCE under the ICTY Statute, if there is any mention at all of the JCE in Article 7 (1) of the ICTY Statute. Article 7 (1) of the ICTY Statute does not include, within the scope of commission, participation in a JCE as an act of commission of a crime.

Without elaborating in detail Article 6 of the Statute of the International Military Tribunal in Nuremberg, conspiracy appears as an element of the crime against peace. The same article also contains co-conspiracy in the narrow sense as a form of individual criminal responsibility for all crimes. In its jurisprudence, the ICTY resolved these issues contrary to the rules which were applicable in Nuremberg, but also contrary to the Rome Statute. For this reason, the criminal plan, or the existence of a criminal plan, is improvised in cases before the ICTY. The best example of this was the case against Duško Tadić.

In general, there is a big difference between the text of Article 6 of the International Military Tribunal in Nuremberg and Article 7 of the ICTY Statute.

This is particularly stressed because some ICTY judgements treat Article 7 (1) of the ICTY Statute as a provision concerning the forms of individual criminal responsibility, while other judgements treat it as an act of commission of a crime. There is a similar situation with regard to the existence of an armed conflict, which is in some instances a question of the jurisdiction of the ICTY, but in others an element of the crime. This is because the invented theory of the JCE is experienced as a unique form of improvisation in proceedings before the ICTY.

3. The following may be used to show that a parallel cannot be drawn between the trials in Nuremberg and the ICTY:

- The criminal plan in Nuremberg allegedly existed since 1919 and as a count of the indictment it referred to the period between January 1933 and April 1945. It existed for six years before the first combat operation and all combat operations were acts of aggression, but in cases before the ICTY, it is unknown when the criminal plan appeared (it is said that it can materialise extemporaneously on the spot, and also that it changes and develops), and there are no crimes against peace, i.e. no aggression, in

cases before the ICTY. This is sufficient to establish that it is erroneous to refer to conspiracy at Nuremberg as representing the JCE at the ICTY and as allegedly a heritage of customary international law.

- In Nuremberg, the criminal plan was defined as consisting of five points of the 25-point programme of the Nazi Party, although only two or perhaps three were viewed as criminal. The criminal plan was to:

- a) destroy the Treaty of Versailles;
- b) acquire the territories lost by Germany as a result of the war;
- c) create "living space" in Europe for the Germans.

The remaining two points were for all Germans to live in one state and to realise their right to self-determination. These two goals are not contained in the commentaries of the Nuremberg judgements or are not described as criminal. According to the theory of the JCE which was invented at the ICTY, Serbs are being tried for wanting the right to self-determination and wanting to live in one state without having to leave their homes, and the enemies of the Serbs are simultaneously being rewarded for forcibly achieving the three goals for which Germans stood trial in Nuremberg. Everyone except the Serbs violated the UN Charter and the documents on security and unchangeability of borders in Europe, and they gained the territories they had lost in 1945 for helping Hitler, and they are now creating their living space and spreading out in their newly-formed states at the expense of the Serbs. Are Serbs being put on trial at the Hague Tribunal by those who lost and were defeated in the Second World War?

These three points were the criminal plan of an aggressive war in every respect and which involved the redrawing of internationally recognised borders. The criminal plan in Nuremberg involved aggression and it was a crime against peace.

The JCE which is ascribed to the Serbs is founded on an invented criminal plan or goal.

What the Serbs sought from 1990 did not involve overturning the international order or territorial expansion in violation of the principle of the unchangeability and inviolability of borders in Europe. What the Serbs wanted did not even constitute a threat to peace in Europe, unless someone from the outside with territorial claims to parts of the SFRY were to interfere. In general, the Serbs were the only ones insisting on the principle of unchangeability of internationally recognised borders. That is why it is important whether what the Serbs wanted, which is not unlawful from the aspect



of national legislation and international law, falls under crimes against humanity with no requirement of illegality? Is it possible that Cutileiro's plan, which preceded the armed clashes in Bosnia and Herzegovina, is the embodiment of a criminal plan? Is it possible that Cutileiro formulated the JCE on the Serbian side? If the principle of consensus was not respected in the Assembly of Bosnia and Herzegovina on, let's say, 15 October 1991, why was an anachronistic form of decision-making by consensus of the three peoples promoted by the Dayton Agreement in the Constitution of Bosnia and Herzegovina? What and where are the international principles and standards, if they are not to impose the interests of the West? How is it that the Serbs are guilty when they did the exact same thing as the Slovenes, Croats and Muslims, who were rewarded for the act of secession?

If one were to apply the logic from Nuremberg, the situation is similar with regard to the acquisition of territories for the Serbs. They did not want to acquire new territories where Serbs had not been present for centuries, and the very term acquisition of territory is inapplicable with regard to the SFRY and the 1991 political crisis, which later turned into an imposed armed conflict as a way to resolve the situation. The Serbs were against an armed conflict as a way to resolve the problem because they already had all Serbs living in one common state, Yugoslavia. Only by imposing an armed conflict could one take away from them what the Serbs and other nations in Yugoslavia already had.

The Serbs showed what they wanted at the elections. This is a fact which cannot be overlooked. Professor Vojislav Šešelj's political programme is one thing, but the facts, or rather reality, is something else. At the elections, the Serbs voted for the political programmes which clearly showed them what they needed.

In urban areas of Croatia, where there were no organisations of the SDS or where there were no SDS candidates, the Serbs mainly voted for Račan in the first round of elections – at the time Račan was not talking about a Croatia without Serbs – and not establishing the RSK or unification of the RSK and Serbia. It later turned out that Račan had deceived the Serbs who voted for him, handing over the votes of Serbs to the new Ustasha *poglavnik* /chieftain/, Franjo Tuđman.

The situation was similar with some socialist and communist parties in Bosnia and Herzegovina, which deceived Serbs who declared themselves as Yugoslavs. It must be said that the deception of Serbian voters in Bosnia and Herzegovina was not so marked and devastating because most Serbs voted for the SDS. At that time the

SDS was closer to the Democratic Party in Belgrade than any other party. Karadžić, Tadić, Mićunović, Klara Mandić, Čosić and others were constantly in the focus of media attention. None of them ever demanded the acquisition of territories for the Serbs or Serbia, and this went on probably until the end of 1993. If everyone else who was accused by the ICTY of trying to acquire territory for the Serbs or, as some members of the Prosecution want to say, for Serbia (this distinction is very important), how is it possible that the persons who had their pictures taken with Karadžić are to this day treated as “good Serbs”? Let us recall that the category of “good German” did not exist at Nuremberg.

Besides, what territory was lost by the Serbs in the past which they wanted to reclaim in 1991? The reason for mentioning this is because a conspiracy is unacceptable except in case of aggression. No comment will be made about the crimes of genocide as they have not been included in the indictment against Professor Vojislav Šešelj.

No comment will be made about the creation of living space for the Serbs since that would be a waste of time.

However, the issues which must be addressed are the points which were included in the Nuremberg indictment but which the Tribunal did not interpret as criminal (self-determination of the German people and for all Germans to live in one state), which are treated as part of the criminal plan in the indictments and judgements of the ICTY against the Serbs, although there are no grounds for this in customary international law and it is contrary to the UN Charter.

- The next element which requires analysis and was also present in Nuremberg is the means of achieving the criminal plan, i.e. “by the use, if necessary, of armed force, or aggressive war”. This is important because of the character of the armed conflict, not only because of the applicability of the rules of international humanitarian law or determination of the type of crime, but also to determine the existence of a conspiracy, that is, the invented JCE before the ICTY. Stated otherwise, the use of armed force and waging of aggressive war still indicate that conspiracy as customary international law is possible only in the event of aggression or a crime against peace, and these crimes do not fall under the jurisdiction of the ICTY. In this respect, the ICTY Prosecution’s Final Report on the 1999 NATO bombing is very important. Having made an analysis, the Prosecution announced that the NATO bombing of the Federal Republic of Yugoslavia might be a crime against peace which

did not fall under the jurisdiction of the ICTY, which is still more proof that, if the Prosecution insists on a JCE in the indictment against Professor Vojislav Šešelj, it is admitting that he is being prosecuted for crimes against peace which do not fall under the jurisdiction of the ICTY. The Prosecution therefore did not review the 1999 NATO bombing either alternatively or cumulatively, as was done in Nuremberg (four counts of the indictment). This is not brought into question by the fact that some new crimes have been adduced from this since 1949.

In this respect, the difference between the “right to wage war” and “law of war” is of vital importance for the very existence of a criminal plan, i.e. the JCE. In the initial stage of its work, the ICTY defined the armed conflict or armed conflicts in the territory of the former SFRY as internal, international or a unique mixture up to a certain date, and as internal after a certain date, all because it was looking for a way to break through the grey area in order to implement the invented theory of the JCE. According to the practice of the Nuremberg trials, the theory of the JCE is unlikely to be applicable in an internal conflict because there is no aggression, and with the exception of the crime of aggression, other crimes cannot be regarded as conspiracy, but must be dealt with as straightforward perpetration of crimes or complicity in the narrow sense, but this is another subject, the true subject, which is of no interest to the ICTY.

An important detail is that the SFRY was authorised and obliged to respond with armed force as a form of self-defence, because what else should one do when JNA soldiers and army barracks come under fire other than reply to the attack? Is protecting army barracks from attacks, that is, defending army barracks, a part of the Serbs’ criminal plan? What about persons who open fire at US soldiers or soldiers of a NATO-member state? There has been no registered evacuation of NATO army barracks and pullout of soldiers to other territories, and particularly no case where a withdrawing army leaves behind weapons and ammunition to the enemy. This is what the JNA was asked to do, something that no one in his right mind would have even thought, let alone accepted, fearing charges of high treason.

- Pursuant to the Statute of the International Military Tribunal, the Tribunal in Nuremberg was authorised to establish whether an organisation was criminal. Thus, the Nazi Party was labelled an “instrument of cohesion among the accused” which instigated them to achieving the goals of the conspiracy. However, other criminal organisations emerged from the Nazi Party: the Nazi Party leadership, the Gestapo,

the SD and the SS, and the participants in the conspiracy were only officials of these organisations up to a certain level. That is why the Government, Army and Command were not defined as criminal. There is some reason in this because the criminal plan was viewed in the context of 25 years and, naturally, within the framework of the crime of aggression.

In cases before the ICTY, there is no logical parallel with Nuremberg from which to draw the alleged criminal plan of the Serbs (which appears to be genetically incorporated from Vuk Karadžić, according to the findings and opinion of the self-styled expert Yves Tomić), where it was formulated, or its elementary institutional cohesion or strength for it to be possible to say that a plan exists, who formulated it and where, who was involved in its formulation (the formulation concept is intentionally emphasised), how the JNA could have been the armed force that served the criminal plan when, institutionally, the JNA was until May 1992 the army of Yugoslavia under the command of others, least of all Serbs. How could anyone count on the JNA as an armed force to implement a criminal plan when the JNA was defending its barracks or standing on the lines of separation between the warring parties? Why would participants in the JCE within the JNA include Macedonians, Muslims and all others except Serbs if, according to the Prosecution, the original goal of the Serbian JCE was to create a new Serb-dominated state. Of course, the goal of the JCE is given too superficially and broadly here, because the JCE has not been specifically explained before the ICTY with regard to the Serbs, that is, it varies from one indictment against a Serb to the next.

Thus, the Nuremberg trials did not have an allegedly horizontal and vertical perception of the JCE (with respect to its goals and participants).

It must be noted that the ICTY is explicitly prohibited from declaring an organisation to be criminal and holding someone criminally responsible on the basis of his voluntary membership in an organisation. In this respect, ICTY practice has gone even further than the norms of Control Law no. 10.

In making comparisons it is important to note that, from the very beginning, the ICTY declared everything falling within the term "Serbian forces" as an armed force implementing the JCE. In the final score, this means that no Serb should have held a rifle from 1991, even when he was attacked on his doorstep and as his family was being killed. The Prosecution supports the opinion that the only legitimate armed forces in the territory of the SFRY since 1991 were the forces which had no Serbs,

because that is the only way a Serb can be relieved of responsibility for participating in the JCE. Ultimately, this means that it negates the very existence of Serbs and Serbia and this view is derived from the indictments for Kosovo and Metohija in the case against Slobodan Milošević.

- If the Nuremberg Trials are cited with regard to the JCE, it should also be known that the persons convicted there all held positions of authority, either as state officials or employees. It should also be known that some persons were acquitted in Nuremberg. The Nuremberg trials did not convict a single opposition politician or person who was only a member of the legislative authorities. In the proceedings against Professor Vojislav Šešelj, this Nuremberg principle is overlooked. He is the only accused who was an opposition deputy during the time frame covered by the indictment and the only member of the Serbian Radical Party. It should be known that the Democratic Party participated in the Government of Prime Minister Milan Panić from June 1992 to February 1993 and if Professor Vojislav Šešelj was a participant in the JCE with the top FRY and Serbian officials at the time, how could he have been a participant as an opposition deputy, while the Democrats who were in power were not? After all, they were all present at the joint session of the Assembly of all Serbian Lands held at the *Sava* Centre in May 1993 (including the Democratic Party deputies who are the favourites of the Western countries), while only Professor Vojislav Šešelj and deputies of the Serbian Radical Party were against this and left the session. How could he have been a participant in the JCE with those who were present at the *Sava* Centre, when he showed his disagreement by demonstratively leaving the gathering? It was then that the initiative was launched to topple the Government of Nikola Šainović, and several months later, when a debate was launched for a vote of no confidence, everyone joined the campaign of political persecution of the Serbian Radical Party with accusations against volunteers of the Serbian Radical Party in the media, surveillance by the secret police, searches of flats belonging to members of the Serbian Radical Party in Serbia, allegedly to find weapons brought from the fronts due to fears they might seize power in Serbia by force, and police arrests during preparations for the elections which were held in December 1993. During the campaign there were clear indications about a possible coalition between the SPS /Socialist Party of Serbia/ and the DS /Democratic Party/. Everything was done to reduce the number of deputies of the Serbian Radical Party and prevent it from coming to power in the elections. This shows that there never was a goal of a JCE,

and Professor Vojislav Šešelj could not have been a participant in the Prosecution's alleged JCE along with with no less than Slobodan Milošević.

The purpose of this abridged chronology (of dates and events) is to describe the Prosecution's view on participation in the JCE. Namely, the Prosecution asserts that there was a conflict between Milošević and Professor Vojislav Šešelj in September 1993, after which Professor Vojislav Šešelj stopped being a participant in the JCE. A similar principle was used for Milan Babić, i.e. he was expelled from the JCE by Slobodan Milošević. The Prosecution believes that participation in the JCE depends on personal relations with Milošević, not on the goals of the enterprise, engagement, participation or some other factors in connection with the criminal plan, contained in the theory of the JCE invented by the Prosecution. If one was to apply this logic, then all the politicians in Serbia who cooperated politically with Slobodan Milošević at any time between 1991 and December 1995 were participants in the JCE. An interesting point which can be derived as an inevitable conclusion from the Prosecution's concept, is that Professor Vojislav Šešelj appears to have been in the JCE with Slobodan Milošević even when Milošević, under pressure from the West, erected a border on the Drina and arrested Professor Vojislav Šešelj. These details are important because they are the most striking example of the Prosecution's ridiculous attempts to present transcripts of Professor Vojislav Šešelj's testimony in the Milošević case as a confession by Professor Vojislav Šešelj or proof of his tendency for manipulation.

4. An important moment is that Professor Vojislav Šešelj did not hold a position of authority and that he was constantly engaged in opposition struggle. In addition, Professor Vojislav Šešelj dealt with some matters as part of his academic work, and later as an opposition politician. The foundation of his political views must not be overlooked and it must be presented scholastically. An example is that many nations in Europe do not live in nationally consolidated states and the reason for this is often that territory was lost as a form of punishment. The Hungarians are perhaps a good example. In the Austro-Hungarian Empire, they all lived in one state but after the defeat in WWI, new borders were drawn and Hungary as a state was punished.

Croatia as a state and a nation should have been punished, although they were not punished, after WWI or WWII. The Croats should have been punished for genocide against the Serbs between 1941 and 1945. Croatia was in fact rewarded in 1991 when it first came into existence, even in the area which was never under its rule

in history, like in Dubrovnik for example. Croatia was rewarded following the disintegration of the SFRY, according to the colonial principle of creating new states (the Badinter Commission – opinion) at a time when Europe is becoming united, allegedly on the principle of “abolishing” borders between countries. The Germans were reunited, but the Serbs were punished. No one could compare the SFRY with the Austro-Hungarian Empire or parts of Africa where no states existed before the arrival of the colonial powers. These and similar views which were critically set out by Professor Vojislav Šešelj must be presented as the result of free and unencumbered academic work and expression of opinion.

These views must be presented as scholastic even for the subsequent period, not covered by the indictment, citing examples from news conferences at which Professor Vojislav Šešelj not only criticised the division, but also proposed compromise solutions to stop the armed conflict and ensure just peace. Professor Vojislav Šešelj reviewed and analysed many of the plans on how to end the armed conflict, all of which have been published.

Therefore, Brdanin’s or Krajišnik’s view of events cannot be identical to the statements made by Professor Vojislav Šešelj, not only because of the offices they held, but also in view of the way they were made public and their contents. This is where lies the difference, why everything that had been applicable in those cases from the aspect of the JCE cannot simply be copied and used in the case against Professor Vojislav Šešelj.

### **I n c o n c l u s i o n**

Since there was no JCE, the charges involving participation in the JCE do not hold up. If the JNA was not a participant with Professor Vojislav Šešelj in the JCE in Vukovar, it is therefore impossible that the JNA was a participant in the JCE with Professor Vojislav Šešelj at some other location. As far as Hrtkovci is concerned, there is no evidence that a JCE existed, and no evidence of other participants in the JCE, regardless of how the Prosecution would have defined the goal of the JCE. Hrtkovci is located in the AP Vojvodina, which is a part of the Republic of Serbia, and therefore, allegations about the “cleansing of territory to ensure dominance” is just another ludicrous idea of the Prosecution.

It is therefore impossible to define a goal of the JCE, determine its participants and establish its time frame. Since these conditions do not exist, except in the Prosecution's insinuations, all charges based on participation in the JCE do not hold up.

### **Commission as Physical Commitment Through Speech**

The Prosecution alleges that Professor Vojislav Šešelj physically committed the crimes of persecution, deportation and forcible transfer with his speeches.

This is alleged in paragraphs 5, 15, 17 (k), 17 (i), 31 and 33 of the indictment.

The indictment reads:

“Physical commitment is pleaded only in relation to the charges of persecutions (Count 1) by direct and public ethnic denigration (paragraphs 15 and 17(k)) with respect to the Accused's speeches in Vukovar, Mali Zvornik and Hrtkovci, and by deportation and forcible transfer (paragraphs 15 and 17(i)) with respect to the Accused's speech in Hrtkovci, and in relation to the charges of deportation and inhumane acts (forcible transfer) (Counts 10 – 11, paragraphs 31 - 33), with respect to the Accused's speech in Hrtkovci.”

It is mentioned in the Prosecution's Pre-Trial Brief in paragraph 141 and footnote 483, the only evidence being a report by expert witness Anthony Oberschall.

The Prosecution's Pre-Trial Brief reads:

“The Prosecution alleges that Professor Vojislav Šešelj physically committed the crime of persecution in Vukovar (Count 1, paragraphs 15 – 17 and 20), Zvornik (Count 1, paragraphs 15 – 17 and 22 of the indictment) and Hrtkovci (Count 1, paragraphs 15 – 17 and 33 of the indictment), through his use of ‘hate speech’ targeted at the non-Serb populations of those localities. The intent of the Accused to commit persecution in these locales is evidenced by:

- (1) the derogatory, violent and ethnic content of his speeches,
- (2) the environment of violent ethnic conflict in which the Accused made his speeches and
- (3) the fact that (as described above) such crimes occurred shortly after the Accused made his speeches.”

Besides expert witness Anthony Oberschall, the Prosecution also relied on witnesses mentioned in the section entitled instigating. In addition to the dilemma



whether it is possible to physically commit a crime through speech, there is also a dilemma whether one and the same speech can constitute committing and instigating a crime as well as aiding and abetting. A cumulative listing of the modes of liability in fact shows that the Prosecution relies on “deception”. For this reason, it is better to cite completed cases and final judgements and try to determine a location for it all. It must be borne in mind there was no speech in Mali Zvornik in March 1992 and no gathering, rally, public or private speech, as alleged by the Prosecution, in Vukovar in November 1991. Nevertheless, since this section analyses commission as a form of liability for what has been said, emphasis is placed on speech in general.

The view taken by the Trial Chamber in the Kordić case became binding for all judges at the ICTY. Of interest are paragraph 209 and footnote 272), which read:

**“a. Encouraging and promoting hatred on political etc. grounds**

“209. The Trial Chamber notes that the indictment against Dario Kordić is the first indictment in the history of the International Tribunal to allege this act as a crime against humanity. The Trial Chamber, however, finds that this act, as alleged in the indictment, does not by itself constitute persecution as a crime against humanity. It is not enumerated as a crime elsewhere in the International Tribunal Statute, but most importantly, it does not rise to the same level of gravity as the other acts enumerated in Article 5. Furthermore, the criminal prohibition of this act has not attained the status of customary international law. Thus to convict the accused for such an act as is alleged as persecution would violate the principle of legality.”

Footnote 272: “The criminal prosecution of speech acts falling short of incitement finds scant support in international case law. In the Streicher case, the International Military Tribunal /IMT/ convicted the accused of persecution because he incited the German people to active persecution. The IMT found that his acts (publishing a virulently anti-Semitic journal) amounted to incitement to murder and extermination.

“Similarly in the Akayesu Trial Judgement /.../, the ICTR found the accused guilty of direct and public incitement to commit genocide under Article 2(3)(c) of the Statute of the ICTR. Furthermore, the only speech act explicitly criminalised under the statutes of the International Military Tribunal, Control Council Law No. 10, the ICTY, ICTR and ICC Statute, is the direct and public incitement to commit genocide. The sharp split over treaty law in this area is indicative that such speech may not be

regarded as a crime under customary international law. The International Convention on the Elimination of All Forms of Racial Discrimination, for example, states that parties to the Convention shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, and incitement to racial discrimination. Article 20 of the International Convention on Civil and Political Rights /ICCPR/ (Prohibitions of Propaganda for War) provides that (1) any propaganda for war shall be prohibited by law. (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Although initial drafts of Article 20 made incitement to racial hatred a crime, only the obligation to provide for a prohibition by law prevailed. This formulation does not require a prohibition by criminal law. /.../ The broad spectrum of legal approaches to the protection and prohibition of encouraging, instigating and promoting hatred, distrust and strife on political, racial, ethnic or religious grounds, by propaganda, speeches or otherwise also indicates that there is no international consensus on the criminalisation of this act that rises to the level of customary international law. Germany and Canada mark the opposite ends of this spectrum, although various other countries, including the former Yugoslavia and the USA, have provided for some form of regulation of hate speech.

“South Africa Constitution (1996), Art. 16(c) (excluding advocacy of hatred that is based on race, ethnicity, gender and religion, and that constitutes incitement to cause harm), Canadian Criminal Code, section 319(2) (prohibiting the communication of statements that wilfully promote hatred against any identifiable group distinguished by colour, race, religion or ethnic origin), and French Criminal Code, article 32 (Those, who by publication by any of various means, provoke discrimination, hatred, or violence with regard to a person or a group of persons by reason of their origin or their membership or nonmembership in an ethnic group, nation, race, or particular religion, shall be punished by a term of imprisonment of one year and by a fine). Article 133 of the Yugoslav Federal Criminal Code prohibited the publication of information that could disrupt the brotherhood, unity and equality of nationalities. The German Criminal Code provides for the punishment of those who incite hatred, or invite violence or arbitrary acts against parts of the population, or insult, maliciously degrade, or defame part of the population, in a manner likely to disturb the public peace. /.../ The United States, in contrast, is exceptional in the extent of its free speech guarantees. Hate speech finds protection in the United States constitutional

regime provided it does not rise to the level of incitement, a very high threshold in American jurisprudence.”

It follows that speech, for which punishment is sought from the point of view of the ICTY, has not yet reached the level of international customary law. Discriminatory or hate speech was not listed as a crime in the ICTY and, the important point is that it does not reach the same degree of gravity as other acts listed in Article 5 of the Statute. Therefore it is impossible to indict someone for physical commission through speech, and most significantly, speech cannot constitute a crime against humanity, that is, the charges against Professor Vojislav Šešelj for his speeches as constituting physical commitment of persecution, deportation and forcible transfer do not hold. There will be more mention of speech being used for inciting, aiding and abetting in the section on his contribution as a co-perpetrator, which is possible only under certain circumstances.

#### **Additional Elements for Speech**

Since all of Professor Vojislav Šešelj’s speeches, statements and phrases (speeches) have been analysed at the ICTY, they must be sorted out according to several criteria.

The starting point in view of the time frame criterion would have to be the moment when Professor Vojislav Šešelj became a public figure, meaning that the starting point would be 1982, if not earlier, extending to the present. During this time, his speeches could be grouped into periods, depending on the status of Professor Vojislav Šešelj at the time. This would result in the following periods: from 1982 to 1986, when he moved from Sarajevo to Belgrade; from 1986 to 31 December 1990; from 1 January 1991 to July 1991; from August 1991 to September 1993; from September 1993 to 24 March 1998; from 24 March 1998 to 31 December 2000; from 1 January 2001 to 24 February 2003; and from 24 February 2003 until the present.

A common denominator for all these periods is that Professor Vojislav Šešelj was constantly under surveillance by the State Security Service, as the biggest opponent of everyone who was in power during this very long period. His four books entitled “Police File” are proof of this as they contain all the documents showing the covert surveillance of Professor Vojislav Šešelj and his activities. Therefore, everything he said was the subject of daily analysis by the authorities who were not inclined to Professor Vojislav Šešelj. As an anti-communist, Professor Vojislav Šešelj

was publicly favoured by Western democracies and intellectuals until 1986 and certainly after that, until a multi-party system was established in the SFRY in 1990. Therefore, what Professor Vojislav Šešelj said could not have been interpreted as inciting national, racial, religious or any other form of discrimination and it was not viewed as such by Western democracies, nor by the authorities although it was in their political interest to curb Professor Vojislav Šešelj's political activities. This is also important since his prison sentence for inciting intolerance or discrimination was reduced from 10 to 5 years in 1990, since the description of the nature of the crime leaned on the crime of verbal offence which cannot be defined as a crime since it brings into question the freedom of expression, thought and presenting scholarly opinions, i.e. bringing into question political freedoms. If the existence of such a crime could be justifiable in a one-party system, its existence cannot be justified in a multi-party system for threatening political freedoms.

The best way of illustrating those times is by giving examples. Imagine Professor Vojislav Šešelj in Belgrade's main pedestrian zone, standing next to a small table covered by the Serbian flag (which is now the official flag) and a cassette-player is playing the song *Bože pravde* /God of Justice/ (now the anthem of the Republic of Serbia). If a retired communist were to pass by and then go up to the first policeman and tell him that the actions of Professor Vojislav Šešelj were disrespectful of his feelings, the policeman could take Professor Vojislav Šešelj into custody to a police station under the Law Protecting the Name and Works of Comrade Tito and launch misdemeanour proceedings which would have landed him in prison for several dozen days. That might have been the case according to the laws at the time, but it was strange because expressing resistance to the communist regime in other republics was not prohibited, it was encouraged. If this event were viewed from present-day circumstances, there is no adequate reply to the question what was Professor Vojislav Šešelj's mistake?

Everyone today salutes the flag of the Republic of Serbia and stands at attention during the rendering of the anthem *Bože pravde*. It appears that Professor Vojislav Šešelj was always ahead of his time and others. What did he see that the others did not and why was it not seen by the others? After all, what could those others, or everyone today for that matter, have seen or felt had it not been for individuals like Professor Vojislav Šešelj who broaden horizons.

How can a person who enlightens others by example be guilty? Today we are taught that Galileo is not guilty. How can scientific thought be controlled in natural and social sciences? To prevent persecution for scientific thought, people have been granted freedom of thought, creativity and exchange of thought. Civilisation must not allow the worst to kill off the best. The best are respected and protected even if one disagrees with their thoughts. History is full of examples when the majority was wrong which is why the minority is always protected.

One need only recall the fact that Professor Vojislav Šešelj appeared on television to present his program at the presidential elections in the Republic of Serbia in 1990, practically straight from prison. He was a fierce political opponent although the authorities described his ideology as entertaining folklore and an impossible mission. In 1990, few knew that the words "Greater Serbia" had any meaning which is why Milošević and nearly everyone on the political scene described the things Professor Vojislav Šešelj was talking about as an impossible mission, something found in history books, unrealistic and out of date, something one should not pay attention to because Serbs are moving towards a Western-style democracy.

That is why it is now ludicrous when persons, who used to be Professor Vojislav Šešelj's fierce opponents in the past, support the ideology of Greater Serbia, and the situation culminates and becomes hilarious when the ideology of an opposition politician, Professor Vojislav Šešelj, is presented as a dominant and cohesive factor in the JCE, when politicians in power held completely opposite views and constantly persecuted Professor Vojislav Šešelj on political grounds as their fierce political rival.

Added to this should be the fact that Professor Vojislav Šešelj was the only one who never reneged on or abandoned his ideology during the period covered by the indictment, to this day. If the ideology of the Serbian Radical Party had been criminal, it would have been banned at the time, during the period covered by the indictment and as well as now. However, no one (not even expert witness Yves Tomić) established that the ideology of the Serbian Radical Party was criminal, banned or in contradiction to the Constitution, the laws and international standards. The ideologies of the HDZ /Croatian Democratic Union/, the SDA/Party of Democratic Action/, the SDS, the SPS and the SRS are in existence to this day. From the aspect of Western democracy, all these ideologies are now acceptable, except the ideology of the SRS. However, the ICTY has convicted representatives of some of

these ideologies, but there have not yet been convictions of persons who support the ideology of the SRS. Since the impression is that the ideologies are not on trial at the ICTY, it is peculiar why are the ideology of the SRS and Professor Vojislav Šešelj on trial in the proceedings against Professor Vojislav Šešelj?

Notwithstanding what may be deduced about his activities, Professor Vojislav Šešelj is first and foremost an accomplished scholar. He was always the best pupil and student, the best Master of Arts and holder of a doctorate. He was the best and the youngest person when he acquired his titles. He is talented and predestined for scholarly work and for broadening horizons. It is therefore unclear how anyone could dare put a scholar on trial for his scholarly work, for his discoveries, his knowledge and quest for truth. People engaged in scholarly work incorporate the scientific methods of gaining knowledge and making conclusions so deeply that it becomes a part of their nature to constantly check, doubt, search and espouse their views. He demonstrated this during his incarceration, by reviewing, searching and looking for the truth, which is why he does not have a problem with correcting those who make mistakes in the courtroom or accepting everything that he believes to be indisputable. In all matters, his character does not allow him to use something that is not his, and he is particular about lying for he is against lies, even though they might sometime be helpful to him in confusing people in the courtroom. He must react to a lie and contribute to the establishment of the truth. Therefore, scientific methods of deliberation and cognition are an integral part of his personality in all respects, which is why he fascinates with his knowledge. He asks questions, investigates, studies, searches and resolves questions which are not an integral part of his primary profession with regard to translation, understanding medical findings, geography, history, statistics, media and, generally, everything that is of concern to him.

As a scholar, he fights for his discoveries, knowledge and the truth, and this is why he is critical of everything, questioning and checking his findings and his way of seeing the truth. Professor Vojislav Šešelj shows this in his work where he openly states his agreement or disagreement with an author about a matter, event or person, giving arguments and reasons for his opinion.

This is why the issue of Professor Vojislav Šešelj's state of mind and intent must never be broached because it is an area of his guaranteed freedom. It is because of this that he cannot be silent, but like any serious scholar, he has to defend his position, his truth, and always strongly confront an opinion or position he disagrees

with. This is important to know because the state of mind and intent of a scholar are not subject to being checked, evaluated and determined in the sense of criminal responsibility for a view or an opinion, because another scholar has the freedom to hold a completely opposite view or opinion, although views can sometimes be quasi-scientific primarily if the method of work was not scientific. However, even under such circumstances, it does not fall within the jurisdiction of a court except for plagiarism, where judges are assisted by scholars as experts.

In this respect, it is important to point out that it is completely unacceptable to have unqualified and incompetent individuals appear as experts, basically testifying about Professor Vojislav Šešelj's speech. Speech here is used in its broadest term to include statements, interviews, announcements, as well as newspapers, books and scholarly works of Professor Vojislav Šešelj.

At first glance it may appear that Professor Vojislav Šešelj made statements about matters which are outside the framework of his scientific thought. He is a professor of law, he was a professor at the Faculty of Political Science in Sarajevo, a professor at the Faculty of Law in Priština and Belgrade and he was actively creative in a wide variety of fields. Suffice it to say that his field of expertise was politics, so as to include all social sciences (philosophy, sociology, defence, history, law, etc.).

For this reason it is completely incomprehensible to establish the state of mind and intent of a scholar who displays in every step the methods used to establish his knowledge and creativity.

This comment is necessary in order to comprehend the absurdity in dividing this long period into stages, with respect to the events and circumstances. If one were to engage in a stage-by-stage deliberation and explain the speech, one would again encounter the problem of impunity for reviewing the state of mind and intent of a scholar for his work.

The aspect of authenticity and truth are disregarded in many statements cited by the Prosecution. Examples are alleged statements about the Ustasha hordes, the new Ustasha *poglavnik*, the danger of a repeat of the genocide against Serbs and so on. The question asked is what is discrimination, or which word causes discrimination. When Tuđman says he will restore the borders of the Croatian *banovina* without the Serbs within the borders of the NDH, and when Professor Vojislav Šešelj warns that this should not be allowed, it is unclear what is seen as discriminatory in the words of Professor Vojislav Šešelj?

In the trial against Professor Vojislav Šešelj, there is simply confusion as to the values. The following matrix appears to be in force: perhaps everything you said is the truth but someone has to be responsible for crimes committed by the Serbs and we found Professor Vojislav Šešelj to be the guilty party. Speech which contains the truth, which has been historically proven and confirmed to this day, must be instigation in the opinion of the Prosecution. The only refugees in Europe today are the Serbs and that is why Serbs must stand trial. The international community is making demands on Croatia to resolve the problem of Serbian refugees, while Professor Vojislav Šešelj is on trial for telling the truth and warning about the consequences which really came true.

Perhaps more reasons should be mentioned in this part of my submission entitled “instigation”, but since the Prosecution gives a more serious legal and criminal qualification of speech as physical commitment of a crime, it may turn out to be useful once again to state some views with respect to instigation, which we said have not been fulfilled in the charges against Professor Vojislav Šešelj, making it simply impossible for them to exist in connection with the charges for physical commitment. If aiding and abetting is not mentioned as a requirement for the speech charges, it cannot exist for a more grave form of individual criminal responsibility such as physical commitment of crime through speech. The legal analysis of instigation at the ICTY uses some standards as questions which require an answer:

**First, what could be the *actus reus*?**

**- Professor Vojislav Šešelj used all means to promote his nationalistic rhetoric.**

It is unclear whether this is prohibited. It is natural for a scholar and an opposition politician to promote the ideology of his party, his views and opinions whenever an opportunity arises. The purpose of political engagement is to promote one’s ideology in order to enlist voters and sympathisers so that a politician could come to power, respecting the electoral will of the people, and implement his ideology. In other words, this means that the goal is to win power and be elected to office in order to implement an ideology and the way to do it is by promoting this ideology, enlisting as many followers as possible and winning elections. There is nothing unlawful about promoting one’s ideology, although it may be nationalistic, both with respect to the ideology itself and the means used for its promotion. Had



Professor Vojislav Šešelj used unlawful means to promote his ideology, the authorities would have certainly prohibited its promotion. Promotions at public forums, rallies, news conferences, publications, books and other allowed means cannot be incriminating in anyway. It is therefore unclear how anyone could even think to look for elements of the *actus reus* of a crime within the framework of legal activities. In this respect, the ICTY is a creation of sorts which looks for the *actus reus* of a crime within the crime as well as within the framework of individual criminal responsibility, thus shifting the boundaries of criminal responsibility with respect to the act of commission of a crime by equating it with the act as a form of individual criminal responsibility.

**- Professor Vojislav Šešelj systematically denigrated the non-Serbian populations.**

Croats in Croatia boast of being Ustashas and because they are Ustashas they hold enviable positions in Croatian society. To Croats, the word Ustasha is not an insult and it is thus unclear why the Prosecution would regard it as an insult. Professor Vojislav Šešelj did not make generalisations that all Croats were Ustashas, worse than the Nazis, but in view of the historical context, the Serbs' accumulated experience and the fact that Croatia has not distanced itself from the Ustasha ideology, it is not an insult to say that one cannot know whether a Croat is against the Ustasha ideology. To be sure, it must be noted that the Prosecution mentioned in the indictment some words which Professor Vojislav Šešelj never said, but this was discussed during the Prosecution's presentation of evidence when witnesses recanted statements they allegedly gave to investigators of the Prosecution.

**- Professor Vojislav Šešelj spread an atmosphere of fear among the civilian population.**

If everything Professor Vojislav Šešelj said was true, the importance of whether it was experienced as intimidation by an individual is unclear. In other words, it is not alleged that he intimidated the population or that he created an atmosphere of fear, but that he spread an atmosphere of fear, meaning that everyone was justifiably afraid but only Professor Vojislav Šešelj is guilty although all he did was tell the people why they were afraid.

This would specifically mean that when people listened to Professor Vojislav Šešelj saying that killings of Serbs resembled the genocide of 1941, having already

some knowledge about this, either from others or directly from refugees, the people were rightfully afraid of war and suffering but Professor Vojislav Šešelj is guilty for spreading the atmosphere of fear. It seems that, as an opposition politician, only he was prohibited from commenting on events and it appears that his words were decisive in making the people afraid.

The crowning touch is that he spread fear among Croats and Muslims as well as the Serbs. It would be safe to assume that Croats in Serbia wondered why Serbs in Croatia and Bosnia and Herzegovina were being killed and expelled, and they would normally be afraid, or at least not be comfortable with the fact that their people were killing and expelling Serbs because, if Croats in Croatia could do that to Serbs, the inevitable question is whether Serbs might do the same thing to Croats in Serbia? It is probably the Croats in Croatia who caused fear among Croats in Serbia. If Serbs were killed and expelled from parts of Croatia which were not within the territory of the RSK, for example from Zagreb where there were no armed clashes between Croats and Serbs, what was the difference for Croats in, let's say, Belgrade? Probably what Tuđman and his Ustashas were doing caused fear among the people, both among Serbs in Croatia and Croats in Serbia. After all, since 1991 the Serbs have left whole sections of Zagreb's suburbs which they used to inhabit and Croats now live in their homes. How many former and current Croatian state officials live in flats belonging to Serbs?

Moreover, Professor Vojislav Šešelj is charged with spreading an atmosphere of fear and by the logic of things, the guilty party is responsible for this atmosphere. The person spreading the atmosphere of fear cannot be responsible, if those who created the atmosphere are not known. Those who created the atmosphere of fear are those who caused and imposed the fear, and the Prosecution admits this was not done by Professor Vojislav Šešelj.

**- Professor Vojislav Šešelj instigated volunteers of the SRS and SČP to sign up and use all means when going to the field to implement his nationalistic ideology.**

It is not prohibited to call on people to sign up as volunteers to fight in the area of conflict as part of units of the JNA, VRS, VRSK, TO and other units of the official armed formations. There is no document prohibiting the act of calling on volunteers to carry out their legal obligation. Moreover, during the Prosecution's presentation of

evidence, what Professor Vojislav Šešelj told the volunteers before going to the front was established, and there is no indication of an order or a call to commit crimes in the area of armed conflict. The Prosecution made a blunder and, unable to find a word resembling incitement or ordering, it plumps the words of Professor Vojislav Šešelj's "nationalist ideology" with "all necessary means" clearly implying that his ideology was in every respect criminal. Simply said, everything about Professor Vojislav Šešelj is criminal and this is the methodology which was used although it is more appropriate for a media war than a serious judicial institution, which the Prosecution should be. There is no point in commenting the Prosecution's allegation that the volunteers used all means necessary to implement Professor Vojislav Šešelj's ideology. The meaning of this is not known, how is it possible and what it might look like in a place where there is fighting. Other than slogans and empty phrases, the Prosecution did not offer any proof of this allegation. If it counted on any witnesses, it still remains unclear which witness confirmed the Prosecution's allegation in the courtroom.

**Second, what could be the *mens rea*?**

**- Professor Vojislav Šešelj's awareness with regard to the real probability that crimes would be committed after his acts of instigation.**

This means that the act of instigation is seen as having been perpetrated and in existence. If this thesis of the Prosecution were true, there would be no need to establish *mens rea* because it is practically premeditated intent. The condition of real probability is classified according to the Prosecution's Pre-Trial Brief into:

a) Professor Vojislav Šešelj was aware of his influence on the public opinion in Serbia, generally speaking, his sympathisers and ideology, and specifically on the trainees, volunteers, of the Serbian Radical Party and the Serbian Chetnik Movement.

It is an undisputable fact that everyone engaged in politics influences public opinion. It is indisputable that every politician is aware of this influence, but what would certainly be of importance for the fate of the charges against Professor Vojislav Šešelj is the extent of his influence on public opinion? The only way to measure influence on public opinion is popularity, position in the authorities and, of course, electoral results. They constitute the response of the public which is used to measure Professor Vojislav Šešelj's influence. Every politician wants to be an important political factor, to be a factor in political processes and, logically, to promote and even

make exaggerations about his importance and influence. This is normal for people who are politicians. However, since influence is here put in the context of individual criminal responsibility, one must resort to facts.

As a reminder, the ICTY has jurisdiction over acts, activities and conduct committed as of 1 January 1991. The presidential and parliamentary elections were held in Serbia in December 1990. The Serbian Radical Party did not participate in the parliamentary elections because it had not been founded and could therefore not have had any deputies since it had no candidates. With regard to the presidential elections in the Republic of Serbia, Professor Vojislav Šešelj was a candidate of a group of citizens because he was serving a prison sentence for a misdemeanour offence and was released just before his first televised public appearance. He won about 100,000 votes in the 1990 elections. Naturally, he was not elected president. The parliamentary and presidential election results clearly show the influence of the other politicians. The Serbian Radical Party was established on 23 February 1991 and the first important political step it made was when Professor Vojislav Šešelj was elected to the republican parliament at by-elections in Rakovica in mid 1991. Thus, Professor Vojislav Šešelj was only one of 250 deputies. As a result, Professor Vojislav Šešelj was truly aware of his political influence, unlike the Prosecution which is completely oblivious of what it wrote in the indictment and its Pre-Trial Brief. Professor Vojislav Šešelj is aware of his political influence to this day. The condition imposed by the ICTY is simply incomprehensible as it means nothing because the Prosecution could not find a single word incriminating Professor Vojislav Šešelj of inciting and calling for the commission of crimes. As it was lacking this word and in view of the disaster with its witnesses, as obvious false witnesses, the Prosecution resorted to making fabrications about the state of mind of Professor Vojislav Šešelj.

b) The Accused was aware of the context of war in which this transpired, making the crimes of incitement perpetrated by him particularly dangerous.

This refers to the context of war, awareness about the existence of the context of war and, fundamentally to the act of instigation, thereby either surmising or assuming the requirement of *mens rea*. Therefore, if *mens rea* examines the state of mind, then awareness of the context of war in Professor Vojislav Šešelj was identical to that of the UN Secretary General, the presidents of the United State, France, Germany, Italy and others who, unlike Professor Vojislav Šešelj, have not been charged with having the identical state of mind about the context of war.

c) He was aware that crimes were committed during the war; what is missing here is the allegation, as expected from the Prosecution, that he had knowledge of crimes committed during the war, about which he learned when he came to The Hague on 24 February 2003. This is the type of nonsense employed by the Prosecution.

d) He was aware that it was impossible not to know about the criminal past of volunteers which was known and that one could not have known about the existence of a greater risk that these volunteers would commit war crimes once they are armed and in a war situation. Nonsense prevails in the wording of this requirement. He was aware that the criminal past could not have been unknown. How can this be proven? How does the Prosecution intend to prove this? Awareness about two negative facts and the procedure of proving negative facts. How can this be possible and is it even possible in the legal system of a serious country?

e) He had knowledge about what was going on in the field and that crimes had been committed against civilians in the zones of combat, in areas where volunteers of the SRS and SČP had been sent. How can this be proven with respect to awareness, when there was no evidence showing that Professor Vojislav Šešelj could have known what was going on in the field?

**- The intention of the Accused to provoke and induce his audience to persecute non-Serbs on political and religious grounds.**

The intention to provoke and induce his audience to commit persecution. The audience is unknown and in presenting its evidence, the Prosecution did not find proof of anyone from the audience having committed persecution. The Prosecution did not name a single person who committed persecution by his full name and proved that this person had been a part of the audience who listened to Professor Vojislav Šešelj.

**The third condition for instigation or incitement: the existence of a significant nexus between the instigation and crimes committed by volunteers of the SČP, the SRS or followers of the ideology of the Accused**

The Prosecution failed to prove this condition during the proceedings. This is the Prosecution's biggest problem, because not a single volunteer of the Serbian Radical Party has been convicted of war crimes at any location. Therefore, more empty words of the Prosecution and no proof.

**The time frame of the charges**

The ICTY Statute covers acts committed in the territory of the former SFRY from 1 January 1991. Professor Vojislav Šešelj has been charged for events which took place between 1 August 1991 and 1 September 1993 (uninterruptedly for 25 months). Although the Prosecution claims that the JCE, of which Professor Vojislav Šešelj was a part, lasted until December 1995, under the indictment his participation practically ends in September 1993. It is interesting that the day Professor Vojislav Šešelj “left” the JCE was when he came into conflict with Slobodan Milošević. In the indictment against Milan Babić, instead using the word “left” the JCE, the Prosecution said that Milan Babić was “expelled” from the JCE. The different words are not the result of a difference in translation, they represent the Prosecution’s conjecture and arbitrariness, because in bringing charges it lumped everything together and counted on coming up with something or at least one thing which might be acceptable to the judges of the Trial Chamber.

In view of provisions of the ICTY Statute, the JCE could have started on 1 January 1991. According to the indictment against Professor Vojislav Šešelj, he joined the JCE on 1 August 1991 and he had a conflict with Slobodan Milošević in September 1993, which is when he simply “left” or was “expelled” by Slobodan Milošević.

What about his relationship with other persons who were, according to the Prosecution, allegedly in the same JCE with Professor Vojislav Šešelj? What happened before 1 August 1991 and after 1 September 1993 with respect to his participation and the existence of the JCE? How could he have “joined” and “left” the JCE which lasted until December 1995? It appears that the Prosecution alleges that the JCE continued without Professor Vojislav Šešelj, according to the principle of “those who are absent are not missed.”

From 1 August 1991 until the end of 1992, Professor Vojislav Šešelj was the sole member of the Serbian Radical Party who was also a deputy in the National Assembly of the Republic of Serbia. Although the Serbian Radical Party won 73 seats in the December 1992 election, it was still an opposition party during the period covered by the indictment (until September 1993) and Professor Vojislav Šešelj was a prominent opposition politician. As an opposition politician, Professor Vojislav Šešelj could propose, criticise and state his political views, with a view of gaining more popularity for his political party with every move, for it to win even more seats in parliament at the next elections, which is a prerequisite for winning and coming to

power or participating in the government. The Serbian Radical Party became a part of the government on 24 March 1998.

A simple analysis of the time frame of the indictment shows that as an opposition politician, Professor Vojislav Šešelj was allegedly a participant in the JCE, but as the Deputy Prime Minister from 24 March 1998, he was not a participant in the JCE in connection with the events in Kosovo and Metohija in 1999? He could allegedly be held accountable as an opposition politician within a certain time frame, but he does not come under suspicion as a member of the government in another period of time? There is probably no such case in international jurisprudence. As an opposition politician and a fierce opponent of the authorities, he is allegedly responsible for participating in the JCE with members of the authorities, but as a politician in power there is no suspicion about his participation in the JCE with other representatives of the government?

Added to this should be the fact that from 1982 until 24 February 2003, the State Security Department constantly implemented measures of surveillance against Professor Vojislav Šešelj, that is, even when he was not in politics, as a member of the opposition and when he was a part of the government. For the absurdity to be complete, as members of the JCE together with Professor Vojislav Šešelj, the Prosecution listed persons who were in charge of the State Security Department and those who were notified by the State Security Department. Their names are: Slobodan Milošević, Jovica Stanišić, Franko Simatović aka Frenki, Radmilo Bogdanović, Radovan Stojčić aka Badža.

All this shows the arbitrariness of the Prosecution in bringing the indictment against Professor Vojislav Šešelj, and like everything else, the arbitrariness is evident in the time frame of the charges.

## **VII. Satisfying the Requirements for the Crimes Charged**

### **A) General Requirements under Article 3 of the Statute and the Common Article 3**

In its Pre-Trial Brief the Prosecution alleges:

“154. The Accused has been charged with violations of Articles 3(b), 3(d) and 3(e) of the Statute, as well as with murder, cruel treatment and torture as violations of Article 3(1)(a) common to the 1949 Geneva Conventions (hereinafter: common Article 3) chargeable under Article 3 of the Statute.

“155. The general requirements for violations of Article 3 are:

- (i) that there was an armed conflict; and
- (ii) there was a nexus between the conduct and the armed conflict.

“156. An 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. The armed conflict can consist of localised areas of conflict.

“157. The nexus need not be a causal link, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. To find a nexus, it is sufficient that the alleged crimes be closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. Crimes need not be committed in the area of armed conflict, but must at least be “substantially related” to this area, which at least includes the entire territory under control of the warring parties. It is essential, however, to establish the existence of a geographical and temporal linkage between the crimes ascribed to Šešelj and the armed conflict. Šešelj must be aware of the factual circumstances constituting the armed conflict.

“158. Crimes under common Article 3 must be committed against persons taking no part in hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat.

(i) the violation must constitute an infringement of a rule of international humanitarian law;

(ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;

(iii) the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim;

(iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.”

The Prosecution’s problem is that in the indictment it claims that Professor Vojislav Šešelj did not commit any of the crimes he is charged with under Article 3 of the Statute, but holds him responsible for participating in the JCE and for other forms



of criminal responsibility as co-perpetrator in the commission of crimes (instigating, aiding and abetting, planning and ordering).

Therefore, the general provisions of Article 3 are of no relevance for Professor Vojislav Šešelj, but the Prosecution is trying to establish and find a link between Professor Vojislav Šešelj and one of the principal perpetrators of the said crimes. There will be more about the absolute nonexistence of this necessary link in the individual analysis of every crime with which Professor Vojislav Šešelj is charged under the indictment.

Moreover, of interest is the view about the *nexus* in connection with the general provisions of Article 3 of the Statute and the *nexus* in the sense of the general provisions under Article 5 of the Statute. This is particularly manifested with respect to locations where there were armed clashes and those where there were no armed clashes, such as the location of Hrtkovci and the Autonomous Province of Vojvodina in Serbia. Under Article 3 of the Statute, “crimes need not be committed in the area of armed conflict, but must at least be “substantially related” to this area, which at least includes the entire territory under control of the warring parties.” This definition of *nexus* is justified unlike the definition of *nexus* under Article 5 of the Statute where the Prosecution insists on the existence of crimes against humanity at the Hrtkovci location, where there is no material *nexus*, and overlooking the concept of territory under control of the warring parties. This is just another proof that the ICTY has no jurisdiction over the events in Hrtkovci because the government which was in power in the territory of Serbia, where Hrtkovci and the Autonomous Province of Vojvodina are located, did not have the status of a warring party in the armed conflict which was unfolding at the time in the territories of Bosnia and Hezegovina and Croatia.

#### **Count 4: Murder as a Violation of the Laws or Customs of War**

In its Pre-Trial Brief the Prosecution alleges:

“170. For ‘murder’ under common Article 3(1)(a), the Prosecution must establish:

- (i) the death of a victim;
- (ii) the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;
- (iii) the act or omission was committed with intent to kill, or in the knowledge that death was a probable consequence of the act or omission.

“171. Omissions as well as concrete acts can satisfy the *actus reus*. The victim’s death may be proved either directly or circumstantially.”

In the indictment the Prosecution claims:

“18. From on or about 1 August 1991 until June 1992 in the territory of the SAO SBWS in Vukovar, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation, or execution of the [Removed] murder of Croat, Muslim and other non-Serb civilians as specified in paragraphs 20-22, 24, 26, and 27.

C R O A T I A [Removed]

“19. [Removed]

S A O S B W S – V u k o v a r

“20. In November 1991 while Serb forces fought to take over Vukovar, Vojislav Šešelj visited the town. On or about 8 November 1991, Vojislav Šešelj publicly pronounced, “This entire area will soon be cleared of Ustashas.” On or about 13 November 1991, Vojislav Šešelj, both publicly and privately, pronounced, “Not one Ustasha must leave Vukovar alive.” These speeches persecuted Croats and instigated the killing of Croats. On or about 20 November 1991, as part of the overall persecution campaign, Serb forces, including volunteers recruited and/or incited by Vojislav Šešelj, removed approximately four hundred Croats and other non-Serbs from Vukovar Hospital in the aftermath of the Serb take-over of the city. Approximately three hundred of these non-Serbs were transported to the JNA barracks and then to the Ovčara farm located about 5 kilometres south of Vukovar. There, members of the Serb forces beat and tortured the victims for hours. During the evening of 20 November 1991, the soldiers transported the victims in groups of 10-20 to a remote execution site between the Ovčara farm and Grabovo, where they shot and killed approximately two hundred and sixty-four non-Serbs from Vukovar Hospital. Their bodies were buried in a mass grave. The names of the murder victims are set out in Annex III attached to this indictment.

“21. After Serb forces took control of Vukovar on 18 November 1991, over one thousand civilians gathered at the *Velepromet* facility. Some were compelled to

go there by Serb forces and others went voluntarily seeking protection. By 19 November 1991, approximately two thousand people had gathered inside the *Velepromet* facility. The JNA considered about eight hundred of these persons to be prisoners of war. By the evening of 19 November 1991, shortly after the JNA began to transfer the alleged prisoners of war to their Sremska Mitrovica detention facility in Serbia, Serb forces, including volunteers recruited and/or incited by Vojislav Šešelj, separated a number of individuals from the alleged group of prisoners of war. They took these selected individuals out of the *Velepromet* facility and killed them. The bodies of some of those killed were transported to the Ovčara farm and buried there in the mass grave. The bodies of six other victims were left lying on the ground behind the *Velepromet* facility. The names of these six murder victims are set out in Annex IV attached to this indictment.

B o s n i a   a n d   H e r z e g o v i n a  
Z v o r n i k

“22. In March 1992, Vojislav Šešelj gave a speech at a rally in Mali Zvornik, located across the Drina river from Zvornik. Vojislav Šešelj said: “‘Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong.’ This speech persecuted and/or instigated the persecution of non-Serbs in Zvornik. In April 1992, Serb forces, including volunteers known as ‘Šešelj’s men’ and ‘Arkan’s tigers’, attacked and took control of the town of Zvornik and surrounding villages. During the attack, Serb forces killed many non-Serb civilians. On or about 9 April 1992, Serb forces, including members of Arkan’s unit, executed twenty Bosnian Muslim and Croat men and boys in Zvornik town. Following the take-over, non-Serbs were routinely detained, beaten, tortured and killed. From April to July 1992, hundreds of non-Serb civilians were detained in or near Zvornik in the *Standard* shoe factory, the *Ciglana* factory, the *Ekonomija* farm, the Drinjača Cultural Centre and the Čelopek Cultural Centre. On or about 12 May 1992, at the *Ekonomija* farm, Serb forces, including the leader of a group of “Šešelj’s men”, beat to death a detainee named Nesib Dautović. Between 12 and approximately 20 May 1992, Serb forces killed at least four other Muslim men at the *Ekonomija* farm. In June or July 1992, Serb forces, including volunteers known as ‘Šešelj’s men’, killed a non-Serb male detainee at the *Ciglana* factory. Between 30 and 31 May 1992, Serb forces,

including a group of 'Šešelj's men', tortured and killed 88 Bosnian Muslim males at Drinjača Cultural Centre. Between 1 and 5 June 1992, Serb forces killed more than 150 Bosnian Muslim males at Karakaj Technical School. Between 7 and 9 June 1992, Serb forces killed more than 150 detainees at Gero's slaughter-house. Between 1 and 26 June 1992, Serb forces killed more than forty non-Serb male detainees at Čelopek Cultural Centre. The names of the identified murder victims at the *Ciglana* factory, Drinjača Cultural Centre, Karakaj Technical School, Gero's slaughter-house, Čelopek Cultural Centre, and the *Ekonomija* farm are set out in Annex V to this indictment.

[Removed]

23. [Removed]

#### Greater Sarajevo

"24. Beginning in April 1992, Serb forces, including volunteers known as 'Šešelj's men', attacked and took control of towns and villages in the area of Greater Sarajevo, including the town of Ilijaš and the village of Lješevo in Ilijaš municipality, the village of Svrake in Vogošća municipality and the neighbourhood of Grbavica in Novo Sarajevo municipality. Following the take-over, non-Serbs were routinely detained, beaten, tortured and killed. On or about 5 June 1992, members of a unit of 'Šešelj's men' killed 22 non-Serb civilians in the village of Lješevo. During the summer of 1993, members of a unit of 'Šešelj's men' cut off the head of a civilian and killed four prisoners-of-war in the area of Crna Rijeka in Ilijaš municipality. In the summer of 1993, members of a unit of 'Šešelj's men' killed twenty-five non-Serb men who were being used as human shields, and two non-Serb men who refused to act as human shields, at Žuč in Vogošća municipality. On 17 July 1993, members of a unit of 'Šešelj's men' killed two prisoners-of-war, Živko Krajišnik and Rusmir Hamalukić, on Mount Igman in Ilidža municipality. The names of identified victims of murder [Removed] at Lješevo and Žuč are set out in Annex VII to this indictment.

[Removed]

25. [Removed]

#### M o s t a r

"26. Between April 1992 and June 1992, Serb forces, including volunteers known as 'Šešelj's men', attacked and took control of the town of Mostar and surrounding villages. Following the attack, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 13 June 1992 Serb forces, including volunteers

known as 'Šešelj's men', arrested and transported eighty-eight non-Serb civilians from the neighbourhood of Zalik and from the villages of Potoci, Kuti Livač, Vrapčići and other nearby villages to Vrapčići football stadium, detained them in the locker room, and subsequently killed them. The bodies of these non-Serbs were found in the dump in Uborak. On or about 13 June 1992, Serb forces arrested eighteen non-Serb civilians from Zalik and transported them to the city mortuary in Sutina. They were subsequently killed in Sutina in the vicinity of the city mortuary and dumped near the Neretva River in a pit. 'Šešelj's men' participated in the detention and killings. The names of identified victims of murder [Removed] at Uborak and Sutina are set out in Annex IX to this indictment.

#### N e v e s i n j e

"27. In June 1992, Serb forces, including volunteers known as 'Šešelj's men', took control of the town of Nevesinje and attacked Muslim villages in the municipality. During this time, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 22 June 1992, Serb forces, including volunteers known as 'Šešelj's men', arrested seventy-six Muslim civilians in the woods in the area of Velež and took them to the primary school in the village of Dnopolje in Zijemlje Valley. They separated the men from the women and children. The men were killed. Their bodies were found in a place known as Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Forty-four of them were killed at the dump pit at Lipovača. 'Šešelj's men' participated in the detention and killing. Five of the women from the heating factory were further detained at the resort at Boračko Lake, part of the Konjic municipality, which was used by Serb forces, including 'Šešelj's men', as a military post. Two of the five women detained at that location, Fadila Mahinić and Mirsada Mahinić, were subsequently killed. On or about 26 June 1992, eleven Muslim civilians from the areas of Hrušta and Kljuna were arrested in Teleća Lastva. They were detained and tortured in the primary school in Zijemlje. Seven were taken away and subsequently killed. Their bodies were found in a pit in Zijemlje. 'Šešelj's men' participated in these killings. The names of identified victims of murder [Removed] at the Lipovača pit and [Removed], as well as the names of identified victims of murder [Removed] whose bodies were found at Teleća Lastva and the pit at Zijemlje are set out in Annex X to this indictment."

The main questions are whether the crimes of murders were committed, when, who is the direct or principal perpetrator of the murders and whether there was a link between Professor Vojislav Šešelj and the principal perpetrator. All this must be reviewed within the context of all presented forms of criminal responsibility (planning, ordering, instigating, aiding and abetting and participating in the JCE). Since this involves an allegation of the Prosecution that it involves commission or non-commission, the position of Professor Vojislav Šešelj must be borne in mind. Responsibility for non-commission or omission is possible for a person holding an official and legal authority to allow or prevent something from happening. In view of the time frame of the indictment, it is unclear what Professor Vojislav Šešelj omitted to do as an opposition politician, an opposition deputy and the President of the Serbian Radical Party.

Every political party and every association of citizens is a voluntary organisation of persons who obey the rules of the organisation. Those who fail to obey or intentionally disobey the rules or whose acts are damaging to the organisation are expelled from a political party and that is the only penalty which can be undertaken on the basis of membership in a party. Persons who are in units of the JNA and the TO, smaller or greater in size and organisation, are responsible to the superior in the military hierarchy and their membership in a political party is absolutely irrelevant from the aspect of responsibility.

It is thus important to start making an analysis first from the aspect of omission, that is, failure to act, because from that one may comprehend the possibility of the existence of a significant criminal and legal link between Professor Vojislav Šešelj and any persons who have been named as the principal perpetrators of the crimes of murder and all other crimes of which Professor Vojislav Šešelj stands accused under the indictment.

For the listed locations at which the crime of murder was perpetrated according to the indictment, there are final judgements from cases tried at the ICTY and these facts should be used as they are probably no longer disputable, but binding for the judges and the Prosecution.

### **Murders in Vukovar**

In the Mrkšić, Šljivančanin and Radić case, it was established that Professor Vojislav Šešelj did not hold a speech of which he stands accused, while Mrkšić and

Šljivančanin have been convicted of aiding and abetting murder as a violation of the laws and customs of war, not as participants in the JCE which did not exist, but as persons responsible for the evacuation of prisoners. In the case against Professor Vojislav Šešelj, evidence and witnesses were once again presented and were rejected (the judges did not believe them) in the final judgement in the Mrkšić, Šljivančanin and Radić case. It is unclear under which form of responsibility could Professor Vojislav Šešelj be responsible for the murders in Vukovar? There is no proof and no evidence was adduced which would link Professor Vojislav Šešelj with the murders in Vukovar. Professor Vojislav Šešelj was not in Vukovar at the time when the murders were committed, he was not at the scene of the crime, he does not know who committed the murders, he does not know who the victims were and there is no evidence of instigating, aiding and abetting, planning or ordering and there was no JCE in Vukovar. If Radić as the JNA officer who was in Vukovar, but not at the scene of the crime, did not know about the murders and was not held criminally responsible, it is unclear how Professor Vojislav Šešelj could have even been charged?

#### **Murders in Zvornik**

It must be recalled that there was no speech in Mali Zvornik in March 1992 because there was no rally. It is important for all counts of the indictment that this fabricated rally, that is, speech is in fact the detonator charge for all charges of which Professor Vojislav Šešelj stands accused for the Zvornik location. This is an opportunity to analyse the charge for murder and to mention the facts applicable to all other counts of the indictment.

The events in Zvornik were given form in the judgement of the Trial Chamber in the Krajišnik case, in the following paragraphs:

“359. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Zvornik municipality was 48,102 (59 per cent) Muslims, 30,863 (38 per cent) Serbs, 122 Croats, 1,248 Yugoslavs, and 960 persons of other or unknown ethnicity.

“360. On 3 April 1992, despite ongoing discussions between representatives of the SDA, SDS, and JNA about defence measures to be taken in case of an attack, a long convoy of Serbs left Zvornik town. On 5 April 1992, the Serb TO was mobilised pursuant to an order of the Serb crisis staff. Around this time, paramilitary forces, including the White Eagles, the Yellow Wasps and the Red Berets, began to arrive in

the municipality. They had been invited by Branko Grujić, president of the crisis staff of Zvornik, who later became a member of the Zvornik war commission on 17 June 1992 by decision of the Bosnian-Serb Presidency.

“**361.** On 5 and 6 April 1992, Serb police and paramilitary forces – mainly Arkan’s men – erected barricades throughout the municipality, the police was divided along ethnic lines pursuant to a dispatch of Momčilo Mandić, and Serb members of the Zvornik SJB relocated to Karakaj, where the Serb crisis staff was located. During the night of the 7 April, the SDA also erected barricades, on the bridge linking Zvornik to Serbia.

“**362.** When shooting broke out on 8 April 1992, the barricades were temporarily taken down, allowing hundreds of Muslims and Serbs to leave the municipality. The Serb civilians had been informed of a plan to have them killed, and some were forced by Serb paramilitaries to abandon their homes. That same day, a combination of Serb forces – the police, the TO, the JNA, and Arkan’s men – launched an attack against Zvornik town, which originated, at least partially, from inside Serbia. Many civilians were killed during the attack, and Zvornik town was taken over by the Serb forces within a day. The Serbian flag was hoisted on top of the main town mosque. On 10 April, Arkan’s men looted houses in Zvornik town and piled dozens of dead bodies – including the bodies of children, women, and elderly persons – onto trucks. More dead bodies lay in the streets and outside houses. As a result of the take-over, many Muslims withdrew to the nearby deserted village of Kula Grad, which was also attacked and taken over by paramilitaries and local police on 26 April.

“**363.** After the attack on Zvornik town, Witness 583, a member of a humanitarian organisation, saw a group of thousands of Muslims who had sought refuge in a close-by valley. Among the group were wounded persons, as well as the bodies of those who had died. The witness left the valley in order to organise a convoy of vehicles to take the displaced persons to a safer place, however when the transport vehicles returned, the Muslims had moved on. Some of the group reached Tuzla a few days later.

“**364.** On 10 April 1992, the provisional government of Zvornik instructed all persons with tenancy rights in socially owned apartments, as well as all owners of immovable property including private houses and businesses, to return and lay claim



to those properties before 15 May, or face loss of title to the municipality. On 5 May, the provisional government established a “real estate exchange agency” authorised to execute exchanges of real estate between residents of Zvornik municipality and other municipalities.

“365. By late April 1992, Serb authorities had taken control of the Muslim village of Đulići in Zvornik municipality, and the villagers surrendered their weapons to Serb forces. In order to remain employed, Muslims had to sign a pledge of loyalty to the Serb authorities. Also in late April or early May, Serb forces demanded the surrender of the Muslim village of Divič. However, before the deadline for surrender had expired, Divič was attacked by Serb forces consisting of Arkan’s men, White Eagles, and reserve police officers. About 1,000 Muslims fled towards the nearby village of Jošanica. When some of them attempted to return later in May, they were turned away by Serb forces. Around 28 May, between 400 and 500 Muslims from Divič village, including women, children, and elderly persons, were forced onto buses by members of the Yellow Wasps and told that they would be taken to Muslim territory. In Crni Vrh, the captives were released and allowed to depart on foot. The same day, Major Svetozar Andrić, commander of the VRS 1st Birač Brigade, ordered the Zvornik TO to organise and co-ordinate the moving out of the Muslim population with municipalities through which they would pass. Only women and children would be moved out, while men fit for military service were to be placed in camps for exchange. In early June, Serbs were seen moving into the villages in Zvornik municipality where Muslims had been evicted. Some of them had been ordered to do so by the provisional government of the Serb municipality of Zvornik.

“366. By the end of May 1992, a large number of Muslim villagers gathered in the Muslim-majority village of Kozluk fearing paramilitaries and Serb forces who harassed them with demands to surrender arms. After the take-over of Zvornik town, paramilitary groups and local Serbs had set up barricades in nearby villages and isolated Kozluk. The police force in the village was split into Muslim and Serb parts. In the beginning of June, Muslim police officers in Kozluk were forced to surrender their uniforms and weapons to a Serb police officer. On the night of 20 June, the Serb TO under the command of Marko Pavlović attacked Kozluk. On 26 June, a large number of Serb soldiers, TO, and paramilitary units entered Kozluk in tanks and other military vehicles. Among the group were Branko Grujić, president of the Zvornik

SDS and crisis staff, Pavlović, and Jovan Mijatović, a member of the Zvornik crisis staff and a deputy to the Bosnian-Serb Assembly. They informed the Muslims that they had one hour to leave, or they would be killed. They also told them that they could not take any personal belongings with them, and forced them to sign statements surrendering their property. On the same day, a convoy of vehicles organised by the Serbs who had attacked and taken over Kozluk transported approximately 1,800 persons out of the municipality to Serbia.

“367. Most of the nineteen Muslim monuments in Zvornik municipality had been damaged or completely destroyed through shelling or explosives during the attacks on Muslim villages in April and May 1992. According to the Zvornik SJB’s own reports, during the same period the Serb police engaged in house searches and interrogations of Muslims on a massive scale, accusing the Muslims of having ‘prepared the liquidation of Serbs’. Many were detained in various locations in the municipality. For example, the Serb police, Arkan’s men, and the White Eagles detained Muslims in the *Alhos* factory in the Karakaj area of Zvornik town, where the Muslims were extensively mistreated. On 9 April 1992, Witness 674 was interrogated and beaten by Branko Grujić, and approximately eighteen other Muslim detainees were killed by Arkan’s men that same day or soon thereafter.

“368. Around the end of April 1992, several Muslim men were detained at the *Standard* factory, in Karakaj, guarded by local Serbs. Around 10 May, they were moved by the Serb police to the *Ekonomija* farm, also in Karakaj, where a lot of Muslim men were already detained. Some time later, they were moved again, to the *Novi Izvor* factory, guarded by the reserve police. This detention centre received another 186 Muslim detainees from Divič village on 27 May 1992. Armed groups, including members of paramilitaries from Serbia, frequently visited those three detention centres and severely mistreated the detainees. One detainee died in the *Ekonomija* farm.

“369. On 30 May 1992, about 150 Muslim men, women, and children from the village of Kostijerevo in Zvornik municipality were arrested by JNA soldiers. They were taken to Cultural Centre in Drinjača, where they were guarded by the JNA. Muslim detainees from other villages in the municipality were also brought there, although all women and children were soon released. The male detainees who remained were beaten by the guards and by Arkan’s men. Soon after the arrival of the

detainees, a unit of White Eagles took them out in groups of ten and shot them dead. In total, 88 people, including family members of Witness 654, were killed at the Cultural Centre.

“370. In late May 1992, Muslim representatives met with local Serbs, including a member of the Zvornik provisional government, to discuss the removal of Muslims from the municipality. A group of approximately 3,000 Muslim men, women, and children left in fear for their safety. On 1 June 1992, soon after the group had set off, Serb soldiers separated out men fit for military service from the column, and took the women, children, and elderly to Muslim-controlled territory. The men were taken, together with other Muslim men captured in the village of Klisa on the same day, to the Karakaj technical school, where they were detained in a workshop building. The facility was guarded by Serb soldiers. Within hours of arriving at the school, approximately 20 detainees had died from heat stroke and lack of water. Over the course of several days, many of the detainees were severely beaten. About 160 detainees were removed in small groups and executed by Serb guards.

“371. On 5 June 1992, a total of 550 detainees from the Karakaj technical school, including Witness 571, were taken in a lorry to a cinema hall in Pilića. From there Witness 571 together with another 63 men was taken to Gero’s slaughterhouse in Karakaj. Guards in JNA uniform forced the men to face the wall and shot them dead. The witness, who managed to escape the execution, saw two more buses arrive at the slaughterhouse. A total of 190 men were executed.

“372. From late May 1992 onwards, Muslims were detained in the Cultural Centre building in Čelopek village and subjected to severe physical and psychological abuse. In early June, a paramilitary group from Serbia assaulted the detainees with spiked metal bars and chains. Some detainees were forced to beat each other, and three were murdered by the guards. The Yellow Wasps, headed by the Vučković brothers, Repić and Žučo, arrived at the Cultural Centre on 11 June and killed at least five detainees. One man had his ear cut off, others had their fingers cut off, and at least two men were sexually mutilated. Repić’s men forced detainees to eat the severed body parts, killing two detainees who could not bring themselves to do so. On 27 June, Repić returned to the Cultural Centre alone and shot 20 detainees dead and wounded 22 others. In mid July, the remaining detainees were transferred, with the

assistance from the Serb municipal authorities of Zvornik, to Batković camp in Bijeljina municipality.

“373. In addition to the facilities mentioned above, Serb authorities detained mostly Muslim civilians at thirteen detention centres in Zvornik municipality in 1992, namely the Orahovac CS headquarters, a prison near *Novi Izvor*, the Zvornik prison, the SUP /Secretariat of the Interior/, the Zvornik town police station, the Kneževići school, a clay factory in Karakaj, an administration building entrance, the Hladnjača refrigeration plant, the youth village, the sports hall, the house of Paša Salihović and elementary school at Liplje, and the Vidikovac motel.

“374. The Chamber concludes that, in total, approximately 507 Muslim civilians were killed by Serb forces in Zvornik municipality from April to June 1992. Dozens were killed during the attack on Zvornik town on 8 April 1992 and many left the town in the direction of Tuzla. In April and May 1992, Serb forces attacked other villages in Zvornik municipality, including Divič. Most of the nineteen Muslim monuments in Zvornik municipality were either deliberately damaged or completely destroyed through shelling or explosives; Serb paramilitaries looted Muslim houses. The attack on Divič prompted about 1,000 Muslim villagers to flee. They were not allowed to return to their homes, and 400 to 500 were forced onto buses by paramilitary units and brought to Crni Vrh. Moreover, Serb soldiers separated a column of approximately 3,000 Muslims who had left in fear of their safety, bringing the women, children, and elderly to Muslim-controlled territory, and detaining the military-aged men in a hangar in the Karakaj technical school. Serbs detained mainly Muslim civilians in 25 detention facilities in Zvornik municipality, where they were severely beaten, and large groups executed. A total of 88 detainees were executed by Serb paramilitaries in the Cultural Centre on 30 May 1992. In the beginning of June 1992, about 160 detainees in Karakaj school were executed by Serb soldiers, and another 190 detainees were transported to Gero’s slaughterhouse and executed there by Serb guards.”

Thus, not a single mention of Professor Vojislav Šešelj or volunteers of the Serbian Radical Party. The principal perpetrators of the murders are known and a link with Professor Vojislav Šešelj cannot be established for any form of responsibility. This means that, pursuant to the Krajišnik case in which a final judgement has been rendered, the ICTY judges have all the binding facts about the murders in Zvornik on

the basis of which they are obliged to assess the probative value and relevance of evidence presented during the trial of Professor Vojislav Šešelj. However, since the Prosecution does not charge Professor Vojislav Šešelj as a direct perpetrator of the murders, it is important to establish whether there is a causal relationship between Professor Vojislav Šešelj and the direct or principal perpetrators of the murders. Evidence presented by the Prosecution did not prove the existence of such a link.

### **Murders in Greater Sarajevo**

This is an opportunity to analyse the charges for murder, and to mention facts applicable to all other counts of the indictment. The events in the Greater Sarajevo area are given factual form in the judgement of the Trial Chamber in the Krajišnik case, under the following paragraphs:

#### **I l i d Ź a**

“551. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Ilidža municipality was 29,337 (43 per cent) Muslims, 25,029 (37 per cent) Serbs, 6,934 (10 per cent) Croats, 5,181 Yugoslavs, and 1,456 persons of other or unknown ethnicity.

“552. In the beginning of March 1992, a Serb SJB was created after the Muslim police officers were dismissed from their positions. In April and May 1992, various paramilitary formations arrived in the municipality, including Brne Gavrolović’s group, Bokan’s group, ‘Chetniks’ from Zvornik, and Arkan’s men, with some of whom the Ilidža crisis staff cooperated. After the establishment of the VRS, some paramilitaries remained in Ilidža and assisted the VRS and MUP /Ministry of Interior/ forces.

“553. By the end of April 1992, under the orders of Lieutenant Colonel Tadija Manojlović, JNA heavy artillery, rocket launchers, anti-aircraft guns, and tanks, fired every evening on targets in Sarajevo, including the neighbourhoods of Butmir and Hrasnica in Ilidža municipality. The Serb SJB also took part in the attacks. By early May 1992, Serb forces controlled Ilidža.

“554. In 1992, Serb authorities detained mostly Croat and Muslim civilians in ten detention centres in Ilidža municipality, namely the former health centre building, the Lužani trailer park, the cultural and sports complex, the storage building of *Energoinvest*, Kasindol hospital, the July 27 elementary school, the graphic school, the kindergarten, the Ilidža SJB, and the Blažuj military barracks. On 23 July 1992,

Witness Musić was arrested by 'Chetnik' police and detained in a small cell without windows at the Ilidža SJB. During Musić's detention in Ilidža, 'Chetnik' police officers forced him to help them loot Muslim houses in the town. All detained Muslims were interrogated in order for Serb authorities to obtain information regarding their intentions.

"555. Due to repressive measures undertaken against them, many Muslims fled and moved out of the municipality. Tomislav Kovač, the wartime chief of the Ilidža SJB, said on one occasion that the civilian authorities had declared a general policy of expelling Muslims from Ilidža. On 25 June 1992, Nedjeljko Prstojević, president of the Ilidža crisis staff, spoke with Rade Ristić, a local official from Ilidža, about the situation in the Kasindol area. Upon hearing that the Serbs were holding their ground, Prstojević told Ristić: 'All right. But have them hold on to it tightly and have them all killed there please ... Kill all the Muslims, like Alija ... I don't want to see one military aged Muslim alive there.' He went on to authorise Ristić to give Muslim apartments in the area to Serbs involved in the fighting, saying that he had printed the requisite forms for the transfer of property, and that on that same day authorities in Ilidža had already filled out 30 such forms for apartments in the Nedžarići area, east of Ilidža town.

"556. The Chamber concludes that, after Serb forces took control over Ilidža municipality in May 1992, they detained mainly Muslim and Croat civilians in twelve detention facilities in the municipality. Many Muslims left the territory of Ilidža municipality out of fear and due to repressive measures undertaken against them."

No evidence about the murders appears to have been presented and there is no mention of Professor Vojislav Šešelj and volunteers of the Serbian Radical Party. Knowing how the Prosecution works and the importance of the Krajišnik case for the ICTY, it is simply improbable that the Prosecution failed to make use of something which it mentioned in the indictment against Professor Vojislav Šešelj. That section reads as follows:

"On 17 July 1993, members of a unit of 'Šešelj's men' killed two prisoners-of-war, Živko Krajišnik and Rusmir Hamalukić, on Mount Igman in Ilidža municipality."

The Prosecution would have gladly used the last name of the alleged victim, Krajišnik, in the case against Momčilo Krajišnik but it did not, knowingly and

intentionally because it knew full well that it was not a murder which could fall under the category of a war crime since Živko Krajišnik died in battle.

### I l i j a š

“557. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Ilijaš municipality was 11,325 (45 per cent) Serbs, 10,585 (42 per cent) Muslims, 1,736 (7 per cent) Croats, 1,167 Yugoslavs, and 371 persons of other or unknown ethnicity.

“558. In March 1992, Serb flags were hoisted on the Ilijaš municipal building and on the police station and SDA and HDZ representatives stopped attending the municipal assembly meetings. Around the same time, the SJB split along ethnic lines. The Serb part called itself the ‘Serb police’ of SAO Romanija and came under the control of the Serb crisis staff. Muslim and Croat police officers, as well as Muslims and Croats employed at schools, banks, and hospitals, were dismissed. Muslims proceeded to establish their own crisis staff and police station in a village close to the town of Ilijaš.

“559. The Serb crisis staff took over all the major military and civilian institutions and facilities in the municipality, including the SDK, banks, a JNA fuel warehouse, and the media. The local SDS was assisted by a paramilitary formation. Still later, on 14 June 1992, the Serb crisis staff of the municipality invited Arkan’s men to come to its assistance with at least one platoon.

“560. Preparations to take over the majority-Muslim village of Lješevo began in March 1992 when Serbs erected checkpoints, distributed arms to the locals, and placed heavy artillery on the surrounding hills. In April 1992, the Muslims in the village organised village guards and in May they formed a crisis staff, charged with organising life and work in the village. Also in May, the Serb police ordered the Muslims to surrender their weapons. Most of the Muslims complied and 60 to 80 per cent of the Muslims left the village in fear of an attack. On 4 June, Lješevo was hit with gunfire and shells. The shells hit several houses in the Muslim part of the village where no military target was present. On the following day, Serb soldiers entered the village and killed approximately 20 Muslim villagers, after capturing them and burning their personal documents. The Serb soldiers forced other villagers from their homes and assembled them at the railway station. From there, the Serb police

transported the village residents by bus to a building in the Podlugovi area of Ilijaš, where they were detained for two months.

“561. On two occasions, in April and again on 4 June, Serb forces shelled the hamlet of Mlini. By early July, the attacks caused the majority of the village population to move to Breza municipality, to the north of Sarajevo.

“562. Around May 1992, the Muslims in the predominantly Muslim village of Gornja Bioča organised guard shifts, armed with military and hunting rifles. On 29 May, Serb forces shelled the village. Serb soldiers killed two relatives of Witness Selimović outside their house. Soon thereafter local Serb soldiers detained the Muslim village residents, including women and children, and held them for five days in the village primary school. Soldiers then moved 80 men to another school, in Podlugovi. The detainees in Podlugovi were guarded by Serbs. They slept on the floor and received very little food, on some days nothing at all. Sometime in August 1992, a representative of the Ministry of Justice of the Bosnian-Serb Republic visited the detainees and informed them that, because of the poor conditions in detention, they would be moved elsewhere. Around 17 August, the detainees were indeed transferred, to another detention centre in Semizovac, Vogošća municipality.

“563. In addition to the facilities mentioned above, Serb authorities detained mostly Croat and Muslim civilians at nine detention centres in the municipality in 1992, namely the industrial school, the former railway station, the INA gasoline storage plant, the old homes in Jamjanovići, the old pit in Podlugovi, the town police station and prison [17.7], the Nišići winter services maintenance, the MIK factory hall in Podlugovi, and a concrete bunker by the Stavanja river in Podlugovi.

“564. During 1992, Serb forces destroyed a large number of historical and religious sites in Ilijaš, including the Catholic cathedral in Taračin Do and 21 Muslim religious monuments, including the mosque in Stari Ilijaš, the mosque in Misoča, the mekhtab in Bioča, and a mosque in Srednje.

“565. The Chamber concludes that, in total, at least 22 Muslims were killed by Serb forces in the municipality of Ilijaš in May and June 1992. Serb forces attacked several Muslim-majority villages and destroyed a large number of historical and religious monuments. The attacks on the hamlet Mlini caused the majority of the population to move to Breza municipality, to the north of Sarajevo. In other villages,



Serbs forced villagers out of their houses and detained many of them in twelve detention centres in the municipality in poor conditions.”

There is no mention of Professor Vojislav Šešelj or volunteers of the Serbian Radical Party. For the charges of murder in the case against Professor Vojislav Šešelj, it is important that the judgement against Krajišnik states the following for the village of Lješevo:

“On the following day (5 June 1992), Serb soldiers entered the village and killed approximately 20 Muslim villagers, after capturing them and burning their personal documents.”

The indictment against Professor Vojislav Šešelj reads:

“On or about 5 June 1992, members of a unit of ‘Šešelj’s men’ killed 22 non-Serb civilians in the village of Lješevo.”

Paragraph 560 of the Judgement in the Krajišnik case issued by the Trial Chamber proves that this is a trumped up charge fabricated by the Prosecution.

The principal perpetrators of these murders are known (local villagers and Serbian policemen who prepared and took part in the attack) and a link with Professor Vojislav Šešelj cannot be established under any form of responsibility.

#### V o g o š ć a

“594. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Vogošća municipality was 12,499 (51 per cent) Muslims, 8,813 (36 per cent) Serbs, 1,071 (4 per cent) Croats, 1,730 Yugoslavs, and 534 persons of other or unknown ethnicity.

“595. In early March 1992, the SDS delegates withdrew from the Vogošća municipal assembly and established their own assembly. Jovan Tintor, member of SDS Main Board and president of Vogošća crisis staff, Rajko Koprivica, president of the local SDS, and other local SDS leaders wanted the municipality of Vogošća to be divided along ethnic lines. The division, as envisaged by them, would leave the Serbs with the town centre, the important communication links, and all local industry. In March, the JNA set up roadblocks around important factories in Sarajevo, including the Pretis artillery and rocket manufacturing plant in Vogošća, which was one of the largest in Europe. In late March, the police were divided along ethnic lines.

“596. A large part of Vogošća was brought under Serb control by military force between 4 and 17 April 1992 by Serb army units and the police organised by the

Vogošća crisis staff. SDS and crisis staff control did not extend to the Serb paramilitaries which appeared in the municipality in the period April until August 1992. Paramilitaries acted in collusion with some members of Vogošća's military command, police force, and municipal authorities. On 30 July 1992, the Vogošća war commission decided to remunerate the volunteers under Major Jovo Ostojić, referred to as the 'Šoša detachment'.

"597. On the basis of instructions received from the MUP and the local military command, all Serb police forces in Vogošća municipality were sent to the front lines as early as mid-April 1992. Rather than maintaining law and order, police officers engaged in combat activities. Many police officers participated in criminal activities, such as looting of Muslim houses. They also robbed the TAS factory in Vogošća, which manufactured Golf vehicles, of around 2,000 cars by June 1992. A special platoon from Sokolac, led by Duško Malović and assigned to Mićo Stanišić, was involved in the large scale theft of cars from the TAS factory in Vogošća, while the reserve police looted Muslim houses.

"598. On 1 May 1992, a Muslim police officer in Sarajevo and his colleague were arrested by the Serb TO while driving to his home in Vogošća. They were taken to the police station in Vogošća town, where they were interrogated and beaten by Jovan Tintor.

"599. On 2 May 1992, Serbs surrounded and shelled the villages of Svrake and Semizovac, in Vogošća municipality. Military aeroplanes bombed the villages, following which residents surrendered their weapons. After the take-over of Svrake and Semizovac in early May 1992, the Serbs took 470 Muslim men, women, and children to the barracks in Semizovac. The women, children, and the elderly were later released, but the men were kept. They were supposed to be exchanged for nine Serbs who had been taken prisoner by Muslim forces.

"600. On 29 May 1992, Gornja Bioča was shelled by Serb forces. Some Muslim men who had been guarding Gornja Bioča with hunting and military rifles fled into the woods. [1347] They were arrested and detained in Planjo's house in Semizovac on 31 May 1992. Since the beginning of June 1992, Serb police also detained men from the village of Lješevno, in Ilijaš municipality, in Planjo's house. [1348] On 8 July, the municipal secretariat for town planning, property rights, housing policy, and land register decided, upon request of the Ministry of Justice, to

temporarily turn over Planjo's house to the Ministry, for use as a prison. [1349] On 17 August, a group of more than 80 Muslim men who had been in detention in a school Podlugovi, in Ilijaš municipality, were transferred by police officers in camouflage uniform to Planjo's house. [C33.1.] There were a total of 113 men detained at Planjo's house, most of whom were Muslims, but also some Croats and one Serb. Women and children were held in separate quarters upstairs. They were guarded by Serb soldiers and police officers in camouflage uniform, who would often severely beat them. In October, 172 people were detained here. In the period between August and November 1992, Serbs would come from Serbia on the weekends to beat the detainees and force them to perform sexually humiliating acts.

**“601.** At the end of August 1992, Serb military personnel began to take Muslim detainees from Planjo's house to perform labour at the front lines in Ravne and Žuč. This included digging trenches, carrying ammunition, and removing the bodies of Serb soldiers killed in battle. Sometimes groups of detainees from Planjo's house were used as human shields. During the month of September 1992, at least fifteen Muslim detainees were killed while performing labour at the front lines or being used as human shields. Several detainees were also wounded.

**“602.** In May 1992, some detainees from a detention facility called “bunker” where 35 male villagers from a Muslim majority village Svrače were detained were taken out by a man called Boro Radić and also sent to dig trenches in Žuč. According to one witness, some detainees never returned. The Chamber is not in a position to further assess the fate of these detainees.

**“603.** Another detention centre in Vogošća was located in the Sonja café-restaurant. Brano Vlačo was the warden. The conditions at the detention centre were inadequate, as there was overcrowding and insufficient food.

**“604.** In addition to the facilities mentioned above Serb authorities detained mostly Croat and Muslim civilians at the following detention centres in the municipality in 1992, namely the Sonje bunker beside the Kon Tiki boarding house, a sports complex, the Krivoglavci tunnel, the Kisikana Company Building, the UPI Distribution centre, Nike's garage, the Park hotel, and the UNIS factories.

**“605.** The mosque in Svrače and the mosque at Kobilja Glava were destroyed. Also, the following places of worship were destroyed during the war in Vogošća: the mosque in Ugorsko, the masjid (mosque without minaret) in Karaula-Donja Vogošća,

the masjid in Tihovići, the masjid in Gora, the masjid in Krč, the mosque under construction in the Park Hotel vicinity, and the Catholic church in Semizovac.

“606. The Chamber concludes that at least fifteen Muslim and Croat detainees were killed by Serb forces in Vogošća municipality in September 1992. A large part of Vogošća was brought under Serb control by military force already between 4 and 17 April, but Serb forces shelled other villages in the municipalities and damaged or destroyed several mosques in the following months. Many police officers participated in criminal activities, such as looting of Muslim houses and robbing the TAS factory in Vogošća. After the take-over of villages, Serb forces arrested Muslims and Croats and detained them in ten detention centers in the municipality under harsh conditions. Some of the prisoners were used as human shields and were killed. Until November 1992, Serbs regularly came from Serbia to beat the detainees and force them to perform sexually humiliating acts.”

There is no mention of Professor Vojislav Šešelj and volunteers of the Serbian Radical Party. The principal perpetrators of the crime of murders are known and a link with Professor Vojislav Šešelj cannot be established under any form of responsibility.

#### **M o s t a r**

The events in Mostar were not of interest in the indictment against Momčilo Krajišnik.

#### **N e v e s i n j e**

This is an opportunity to analyse the charge for murder and to mention the facts applicable to all other counts of the indictment.

The events in Nevesinje were factually formulated in the judgement of the Trial Chamber in the Krajišnik case, under the following paragraphs:

“668. According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Nevesinje municipality was 10,711 (74 per cent) Serbs, 3,313 (23 per cent) Muslims, 210 (1 per cent) Croats, 123 Yugoslavs, and 91 persons of other or unknown ethnicity.

“669. On 16 June 1992, soldiers in camouflage uniform led by Krsto Savić, the commissioner for SAO Eastern Herzegovina, entered the house of Witness Trebović, a Muslim resident of Nevesinje municipality. They claimed to be looking for weapons and radio equipment. During this operation, Savić shot the witness' husband, Redžep Trebović, in the leg. The Serb soldiers held the witness back from

helping her husband. When the witness and the family were allowed to bring the husband to the hospital four hours later, Redžep Trebović had died from his injury. The witness' house was burnt down.

“**670.** On 22 June 1992, Serb forces shelled Presjeka village in Nevesinje municipality. Witness 270, a Muslim, her family, and a group of about 150 to 200 other Muslim civilians from Presjeka and Kljuna fled to the Velež mountains. Sixteen elderly persons who could not keep pace, were left behind, and were later killed by a local Serb. The group wandered the mountains for three to four days before an artillery attack split the group in two. Near Mostar, the witness and 75 others were detained by Serbs in JNA uniform or mixed civilian-military clothing. They were taken to Dnopolje, in Mostar municipality. In front of a school, 29 men were separated from the women and 20 children in the group. The men, among them Witness 270's husband, were later killed at Dubravica. A total of 27 bodies of men from this group were exhumed at Teleća Lastva, to where they had been moved. On the order of Major Zdravko Kandić of the 5th JNA battalion, the women and children, including babies, were taken to the basement of a heating plant in Kilavci, in Nevesinje municipality. The basement of the heating plant was bare and had no lavatory. No food or water was given to the group, not even for the babies, and Witness 270 and the other mothers had to give urine to them to avoid dehydration. After four days, Witness 270 and four other detained women were separated from their children and taken to Boračko Lake lake resort, in Konjic municipality. The remaining women and children in the basement of the heating plant in Kilavci were killed and placed in a pit at Lipovača by the Serb military. During an official exhumation in 1999, the bodily remains of adult persons and seven children were found at Lipovača.

“**671.** In addition to the basement of the heating plant in Kilavci, Serb authorities detained mostly Muslim civilians at two detention centres in Nevesinje in 1992, namely Gornje Rakitno, and the tool factory and workshop, which was one detention facility. Also, in June 1992, Muslim men were detained and beaten at the Nevesinje police station and on 16 June, one witness observed a dead body of a Muslim man lying in front of the station. The Chamber is not in a position to assess the circumstances of his death.

“672. During the spring and summer of 1992, nine Muslim and Catholic monuments in Nevesinje municipality, including three mosques in the town of Nevesinje and the mosque in Kljuna were either heavily damaged or destroyed through fire and explosives. Already in September 1991, the Old Mosque at Odzak had been almost completely destroyed through shelling and explosions.

“673. The Chamber concludes that, in total, over 53 Muslims were killed by Serb forces in June 1992. Serb forces shelled villages in the municipality of Nevesinje and deliberately damaged or destroyed religious monuments. Mostly Muslim civilians were detained in four detention centres. Most of the women and children who had been detained in the basement of a heating plant in Kilavci in June were killed by Serb soldiers.”

Therefore, there is no mention of Professor Vojislav Šešelj and volunteers of the Serbian Radical Party. The principal perpetrators of the crime of murders are known and a link with Professor Vojislav Šešelj cannot be established under any form of responsibility.

Momčilo Krajišnik was acquitted for the charges of murder against humanity and for murder as a violation of the laws and customs of war under all forms of responsibility, especially on the basis of participation in the JCE, where the murders were presented as additional crimes as part of the purpose of the JCE, and under all other forms of individual criminal responsibility in the judgements of the Trial Chamber and the Appeals Chamber for the aforementioned locations. Therefore, the third category of JCE in the Krajišnik case was not applied for murder.

### **Counts 8 and 9: Torture and Cruel Treatment as Violations of the Laws or Customs of War**

In its Pre-Trial Brief the Prosecution alleges:

“172. The specific requirements for “torture” under common Article 3(1)(a) are:

(i) infliction of severe pain or suffering, either physical or mental, or sexual violence, including rape, constitute torture.

(ii) the pain or suffering inflicted upon the victim are from unlawful sanctions.”

Although the following is also given:

(i) the infliction, by act or omission, of severe pain or suffering, whether physical or mental; sexual violence including rape may constitute torture;

(ii) the act or omission must be intentional and

(iii) the act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.

It is sufficient that the prohibited purpose(s) because of which the pain or suffering were inflicted are “part of what motivates actions.”

**173.** “Cruel Treatment” under common Article 3(1)(a):

The seriousness of the suffering, injury or attack on human dignity need not rise to the level of severity required for the crime of torture.”

In the indictment the Prosecution alleges:

“**28.** From August 1991 until September 1993, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of the imprisonment under inhumane conditions of Muslim, Croat and other non-Serb civilians in the territories listed above.

“**29.** Serb forces, including those volunteer units recruited and/or incited by Vojislav Šešelj, captured and detained hundreds of Croat, Muslim and other non-Serb civilians. They were detained in the following short- and long-term detention facilities:

a) The *Velepromet* warehouse, Vukovar, SAO SBWS, November 1991, run by JNA, approximately twelve hundred detainees.

b) The Ovčara farm, near Vukovar, SAO SBWS, November 1991, run by JNA, approximately three hundred detainees.

c) [Removed]

d) [Removed]

e) The *Standard* shoe factory, the *Cigлана* factory, the *Ekonomija* farm, the Drinjača Cultural Centre, the Karakaj Technical School, Gero’s slaughter-house and the Čelopek Cultural Centre in Zvornik, Bosnia and Herzegovina between April and July 1992, hundreds of detainees.

f) [Removed]

g) The *Iskra* warehouse in the village of Podlugovi, Ilijaš municipality, Planja's house in the village of Svrače, Vogošća municipality, Sonja's house in Vogošća municipality, the barracks in Semizovac village, Vogošća municipality and the tire repair garage at the Vogošća crossroad in Vogošća municipality between April 1992 and September 1993, dozens of detainees.

h) [Removed]

i) [Removed]

j) The city mortuary in Sutina, Mostar and the stadium in Vrapčići, Mostar during June 1992, more than one hundred detainees.

k) The basement of the heating factory in Kilavci, Nevesinje, the resort at Boračko Lake, Nevesinje, the primary school in Zijemlje, Nevesinje and the SUP building in Nevesinje during June 1992, more than one hundred detainees.

“30. The living conditions in these detention facilities were brutal and characterised by inhumane treatment, overcrowding, starvation, forced labour, inadequate medical care and systematic physical and psychological assault, including torture, beatings and sexual assault.”

The locations for the charges of torture and cruel treatment are the same: Vukovar, Zvornik, Greater Sarajevo, Mostar and Nevesinje.

About the Vukovar location, Mrkšić and Šljivančanin were found guilty of aiding and abetting torture and cruel treatment as responsible officers of the JNA for the Vukovar location where they were located, while Radić was acquitted because the necessary link between Radić and the acts of the principal perpetrators of the crime was not found. If it was difficult to find this connection for Radić, it is impossible to find it for Professor Vojislav Šešelj.

As far as the locations of Zvornik, Greater Sarajevo, Mostar and Nevesinje are concerned, Momčilo Krajišnik was not convicted of torture and cruel treatment or similar acts under Article 5 of the Statute under persecution, or for individual forms of criminal responsibility and for participation in the JCE. It is completely unclear how Professor Vojislav Šešelj could even have been charged, but it is absolutely clear that there is no evidence which could be used to establish a link between the acts, the principal perpetrator of torture and cruel treatment and Professor Vojislav Šešelj and any volunteer of the Serbian Radical Party.



**Counts 12, 13 and 14: Wanton Destruction, Devastation and Plunder of Public or Private Property as a Violation of the Laws or Customs of War**

In its Pre-Trial Brief the Prosecution wrote:

“**180.** Article 3(b) covers ‘wanton destruction’ or ‘devastation’ of cities, towns and villages. This crime requires that:

- (i) the destruction of property occurs on a large scale;
- (ii) the destruction is not justified by military necessity; and
- (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.

“**181.** The destruction of a hospital may suffice to meet the large scale-requirement. Rendering houses or communal structures uninhabitable or useless would be covered by this prohibition.

“**182.** The term ‘not justified by military necessity’ may be defined with reference to the widely acknowledged definition of military objectives in Article 52 of Additional Protocol I as ‘those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage’.

“**183.** Article (3)(d) also includes as a war crime ‘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’.

“**184.** For this crime, the Prosecution must establish that:

- (i) an act has caused damage to, or destruction of, an institution dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (ii) the damaged or destroyed institution was not used for military purposes at the time of the act; and
- (iii) the act was carried out with intent to destroy or damage, or in reckless disregard of the likelihood of the destruction or damage to the institution in question.

“**185.** The crime is committed if even one item or building protected under this provision is destroyed or damaged. ‘Damage’ requires a lesser degree of impairment or loss of value or significance than ‘destruction’. Acts causing damage to protected property include desecration and vandalism.

“186. The crime of plunder is committed when private or public property is appropriated intentionally and unlawfully. Furthermore, the general requirements of Article 3 of the Statute in conjunction with Article 1 of the Statute relating to the seriousness of the crime must be fulfilled. ‘Plunder’ includes all forms of unlawful appropriation of property [...] including those acts traditionally described as ‘pillage’.

In the indictment the Prosecution alleges:

“34. From on or about 1 August 1991 until May 1992 in the territories of the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the wanton destruction and plunder of public and private property of the Croat, Muslim and other non-Serb populations, acts which were not justified by military necessity. This intentional and wanton destruction and plunder included the plunder and destruction of homes and religious and cultural buildings, and took place in the following towns and villages:

(a) SAO SBWS: Vukovar: (hundreds of homes destroyed and many homes plundered);

(b) Bosnia and Herzegovina: Zvornik (hundreds of homes plundered, and many mosques and other places of worship and a religious archive destroyed); Greater Sarajevo (homes plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Ilijaš; homes plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Vogošća); Mostar (many homes plundered and destroyed and several mosques destroyed) and Nevesinje (many homes plundered and destroyed and many mosques destroyed).”

In view of the repetition of the locations, it must be borne in mind that the final judgements in the Mrškić, Šljivančanin and Radić case (Vukovar) and the Krajišnik case (Zvornik, Greater Sarajevo, Mostar and Nevesinje) none of them were found guilty under any form of criminal responsibility for wanton destruction, devastation and plunder as a violation of the laws and customs of war. It is not known under what grounds Professor Vojislav Šešelj was indicted because there is no

evidence in the aforementioned cases and there is no proof that Professor Vojislav Šešelj was in any way connected to the principal perpetrators of these crimes, and no volunteers of the Serbian Radical Party are mentioned as potential perpetrators.

**B. General Provisions under Article 5 of the Statute**

“159. The Accused is charged under Articles 5(a), 5(b), 5(d), 5(e), 5(f), 5(h), and 5(i). The general requirements of Article 5 are:

(i) the existence of a widespread or systematic attack directed against a civilian population;

(ii) the crimes of the Accused formed part of the widespread or systematic attack directed against a civilian population; and

(iii) the Accused had knowledge of the wider context in which his conduct occurred.

As a jurisdictional requirement, the Statute requires, in addition, (i) the existence of an armed conflict.

“160. The attack must be widespread or systematic. The phrase ‘widespread’ refers to the large-scale nature of the attack and the number of targeted persons, while the phrase ‘systematic’ refers to the organised nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence. Only the attack, not the individual acts of the accused, must be widespread or systematic. ‘Civilian population’ means that the population must be predominantly civilian in nature, the presence within a population of members of resistance groups, or former combatants, who have laid down their arms, does not alter its civilian characteristic.

“161. The alleged crime must be part of a widespread or systematic attack directed against a civilian population.

“162. The accused must be aware of the wider context in which his or her conduct occurred. The accused must have known that there was an attack on the civilian population and that his acts comprise part of that attack, or at least that he took the risk that his acts were part of the attack. The “accused must have known that his acts fit into such a pattern.”

“163. With respect to the crimes alleged in the indictment, ‘the jurisdictional requirement that Article 5 crimes be committed in armed conflict requires the

Prosecution to establish that a widespread or systematic attack against the civilian population was carried out while an armed conflict in Croatia and/or Bosnia and Herzegovina was in progress.’ The jurisdictional requirement of Article 5 does not require the Prosecution to establish that an armed conflict existed within the State (or region) of the former Yugoslavia in which the charged Article 5 crime is alleged to have been committed. The requisite armed conflict may be international or non international. Moreover, Article 5 does not require a material nexus between the crime and the armed conflict.”

### **V u k o v a r**

Of relevance for the Vukovar location are the judgements in the Mrkšić, Šljivančanin and Radić case. This is important because the status of victim was decisive for the elimination of the existence of crime under Article 5 of the Statute in the judgement of the Trial Chamber and the judgement of the Appeals Chamber. The formulated and binding position reads:

“Under Article 5 of the ICTY Statute, a crime listed under that article can only constitute a crime against humanity when committed ‘in an armed conflict’. The nature of the conflict is irrelevant: conduct must be in a temporal and geographic link with the armed conflict, either international or non-international.

“The nexus requirement for crimes against humanity resembles the nexus requirement for war crimes described above, but is not identical. Whereas for war crimes, a sufficient link between the conduct of the accused and the armed conflict must be established, the nexus requirement for crimes against humanity 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.

“An ‘attack’ within the meaning of Article 5 has been defined as a course of conduct involving the commission of acts of violence. It is not limited to the use of armed force but it may also encompass any mistreatment of the civilian population. The attack may be, but need not be, part of the armed conflict as such.

“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. This requirement only applies to the attack itself, not to the individual acts of the accused. Only the attack, not the accused's individual acts, must be widespread or systematic

“Article 5 further requires the existence of a nexus between the acts of the accused and the attack on a civilian population. According to the Tribunal's jurisprudence, the acts of the perpetrator must be objectively part of the attack, as opposed to being isolated acts. They need not be committed in the midst of that attack provided that they are sufficiently connected to that attack.

“Concerning the required mens rea in relation to the attack, the Appeals Chamber has held that in addition to the intent to commit the underlying offence charged, the accused must have known that there is an attack on the civilian population and that his acts comprise part of that attack, or at least that he took the risk that his acts were part of the attack. This requirement does not entail knowledge of the details of the attack. It is also irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim. It is the attack, not the acts of the accused, which must be directed against the target population and the accused need only know that his acts are part thereof.

“While there may have been a small number of civilians among the 194 identified murder victims charged in the indictment, in the Chamber's finding, the perpetrators of the offences against the prisoners at Ovčara on 20/21 November 1991 charged in the indictment, acted in the understanding that their acts were directed against members of the Croatian forces. The possibility now identified that a small number of civilians may have been among the prisoners, therefore, does not change the finding which the Chamber makes that the crimes charged in the present indictment do not qualify as crimes against humanity in the particular circumstances of this case.

“The Chamber concludes that in the present case the jurisdictional prerequisites of Article 5 of the Statute have not been established.

“Other than this position in connection with jurisdiction under Article 5 of the statute which refers to the status of protected persons, that is, victims, of importance are judgements of the Trial Chamber and the Appeals Chamber with regard to all the charges for crimes against humanity. As a reminder, the Prosecution charged Mrkšić, Radić and Slijvančanin on the basis of individual criminal responsibility (Article 7

(1)) and criminal responsibility of a superior (Article 7 (3)) of the Statute, for the following:

- persecutions on political, racial, and religious grounds, extermination, murder, torture, inhumane acts; (crimes against humanity, Article 5), and
- murder, torture and cruel treatment (violations of the laws and customs of war, Article 3).”

The Trial Chamber concluded that:

“The indictment says that the JNA laid siege to the city of Vukovar by late August 1991. The siege lasted until 18 November 1991, when the Serbian forces occupied the city. During the three-month siege, the town was devastated to a large extent by the JNA shelling, in which hundreds of people were killed. When the Serbian forces occupied the city, their members killed another several hundred non-Serbs. The vast majority of non-Serbs were expelled from the city several days after the fall of Vukovar. During the last days of the siege of Vukovar, several hundred people sought refuge at Vukovar hospital, which was near the city centre, in the belief that the Vukovar hospital would be evacuated in the presence of international observers.”

The judgement of the Appeals Chamber reads:

“42. In the present case, after reviewing the evidence before it, the Trial Chamber concluded that the perpetrators of the crimes committed against the prisoners in Ovčara selected the individuals based on their involvement in the Croatian armed forces. The Trial Chamber found:

“While there may have been a small number of civilians among the 194 identified murder victims charged in the indictment, in the Chamber’s finding, the perpetrators of the offences against the prisoners at Ovčara on 20/21 November 1991 charged in the indictment acted in the understanding that their acts were directed against members of the Croatian forces.

“The Appeals Chamber concurs with the Trial Chamber’s assessment of the evidence in the trial record. The crimes in Ovčara were directed against a specific group of individuals, the victims of the crimes were selected based on their perceived involvement in the Croatian armed forces, and as such treated “differently from the civilian population”. The Prosecution’s arguments that the crimes occurred two days after the fall of Vukovar, that Ovčara was located within the geographical scope of the

attack against Vukovar, that the perpetrators of the crimes in Ovčara also participated in the attack against the civilian population in Vukovar, and that the perpetrators of the crimes 'harboured intense feeling of animosity towards persons they perceived as enemy forces', do not undermine the Trial Chamber's findings, unchallenged by the Parties, that the perpetrators of the crimes in Ovčara acted in the understanding that their acts were directed against members of the Croatian armed forces. **The fact that they acted in such a way precludes that they intended that their acts form part of the attack against the civilian population of Vukovar and renders their acts so removed from the attack that no nexus can be established.**

"43. The Appeals Chamber finds that the requirement of a nexus between the acts of the accused and the attack itself was not established and that, in the absence of the required nexus under Article 5 of the Statute between the crimes committed against the prisoners at Ovčara and the widespread or systematic attack against the civilian population of Vukovar, the crimes committed cannot be qualified as crimes against humanity. Thus, even though the Trial Chamber erred in law by adding a requirement that the victims of the underlying crimes under Article 5 of the Statute be civilians, the Appeals Chamber concurs with the Trial Chamber – albeit for different reasons – that the 'jurisdictional prerequisites of Article 5 of the Statute have not been established'."

In light of the foregoing in the Mrkšić, Radić and Šljivančanin case, in paragraph 44 of the judgement, the Appeals Chamber "dismisses the Prosecution's first ground of appeal in all other respects and upholds the acquittals of Šljivančanin and Mrkšić under Article 5 of the Statute, which specifically refers to the charges of persecutions on political, racial, and religious grounds, extermination, murder, torture, inhumane acts; (crimes against humanity, Article 5)."

#### Professor Vojislav Šešelj's Comment

With regard to the Vukovar location, the general conditions for applying Article 5 of the Statute have not been met and this must also be accepted in the case against Professor Vojislav Šešelj. If no nexus exists for the JNA officers in Vukovar, then it is not clear how this nexus could be found for Professor Vojislav Šešelj.

The established practice in the ICTY is as follows:

The nexus in question consists of two elements:

(i) commission of the crime which by its nature or consequences objectively constitutes part of the attack; together with the fact that

(ii) the accused knows that the attack on civilians was carried out and that his crime was part of this attack.

In the final judgment in the Mrkšić, Šljivančanin and Radić case, they were acquitted of the charges for persecutions committed on political, racial and religious grounds; extermination; murder; inhumane acts; (crimes against humanity, Article 5) because it is an established fact that the perpetrators at Ovčara acted in such a way as to exclude the intent for their acts to constitute part of the attack on the civilian population in Vukovar, and thus their acts become so remote from the attack that it is impossible to establish the existence of a nexus. Let us recall, what is being analysed here is only the existence of a crime and its degree for the Vukovar location in the indictment against Professor Vojislav Šešelj. This means that persecutions, forcible transfer and deportation do not exist as crimes against humanity under Article 5 of the Statute, i.e. the condition of the jurisdiction in Article 5 of the Statute does not exist and these charges must be dropped. It is really unnecessary to continue analysing the behaviour of Professor Vojislav Šešelj and the crimes with which he has been charged in the indictment, considering that there is “distance from the attack”.

#### **Locations in Bosnia and Herzegovina**

The indictment against Professor Vojislav Šešelj states that Krajišnik was a participant in the JCE, but in the indictment against Krajišnik, Šešelj is not mentioned as one of the participants in the JCE. Furthermore, the objective of the JCE has been defined differently. In Krajišnik’s indictment, the primary objective was the persecution (deportation and forcible transfer) of Muslims and Croats from territories where Serbs constituted a majority in municipalities of Bosnia and Herzegovina, hence all the other charges, extermination and murder, were dropped.

The Appeals Chamber found the following in its judgement:

“**257. Zvornik:** The Trial Chamber found that, around 28 May 1992, Major Svetozar Andrić, commander of the VRS 1<sup>st</sup> Birač Brigade, ordered the Zvornik TO to organise and co-ordinate the moving out of the Muslim population with municipalities through which they would pass. In view of the Trial Chamber’s findings on Ratko Mladić’s position within the VRS, coupled with his support for and repeated receipt of reports on forced expulsions, the Appeals Chamber is satisfied that the Trial



Chamber found that Ratko Mladić used Major Svetozar Andrić for the commission of these crimes of deportation and forcible transfer in accordance with the common purpose (deportation, Count 7; inhumane acts, Count 8).”

Professor Vojislav Šešelj’s Comment

Professor Vojislav Šešelj’s speech is not mentioned as an event, although there was no speech in Mali Zvornik in March 1992. Major Svetozar Andrić is not even mentioned in the indictment against Professor Vojislav Šešelj. The principal perpetrator and the person who issued orders are known, as is everything about this crime against humanity, but there is no mention of Professor Vojislav Šešelj anywhere. There are no indications that Professor Vojislav Šešelj aided and abetted, planned, ordered or participated through speech or action in the JCE, hence the necessary nexus cannot even be assumed for Professor Vojislav Šešelj. Furthermore, the mentioned date, 28 May 1992, cannot in any way be brought into context with the volunteers of the Serbian Radical Party or their presence in Zvornik.

Jovan Mijatović

“**265.** The Trial Chamber found that Jovan Mijatović was a member of the Zvornik crisis staff, a deputy to the Bosnian-Serb Assembly and a member of the local component of the JCE.

“**266.** The Trial Chamber found that on 26 June 1992, a large number of Serb soldiers, TO, and paramilitary units entered the village of Kozluk (Zvornik municipality) with tanks and other military vehicles. It held that Jovan Mijatović was among this group which then informed the Muslims that they had one hour to leave and to gather their personal belongings, or else they would be killed. The villagers were also forced to sign statements surrendering their property. The Trial Chamber held that on the same day, a convoy of vehicles organised by the Serbs who had attacked and taken over Kozluk transported approximately 1,800 persons out of the municipality to Serbia, constituting deportation (Count 7).

“**267.** The Appeals Chamber is satisfied that the Trial Chamber found that Jovan Mijatović arrived with the attacking forces and together with them informed the villagers that they would have to leave in one hour, or else would be killed. On the same day, the villagers were forced to sign statements surrendering their property, and the attacking forces deported about 1,800 people. In light of these findings, the Appeals Chamber is satisfied that the Trial Chamber found that Mijatović used the

principal perpetrators of the crime of deportation (Count 7) and imputed this crime to him.”

Professor Vojislav Šešelj's Comment

We are talking about 26 June 1992, which cannot in any way be brought into context with the volunteers of the Serbian Radical Party and their presence in Zvornik.

Vojin Vučković aka Žučo

“**268.** The Trial Chamber found that Vojin (Žučo) Vučković, together with his brother Dušan (Repić) Vučković, led the paramilitary unit called Yellow Wasps /*Žute osele*, which was comprised of around 100 men. While the Trial Chamber found that both brothers had several men under their command, it considered only Vojin Vučković to have been a member of local component of the JCE.

“**269.** The Trial Chamber held that from April to May 1992, the Yellow Wasps co-operated closely with the TO in Zvornik and were even issued arms by the TO's logistic staff. It further held that after the establishment of the VRS Zvornik Brigade, the Yellow Wasps were subordinated to it, and that Vojin Vučković received weapons from the Pale SJB and met with Plavšić and with the Minister of Defence Subotić, who informed him that as soon as military units took orders from the VRS, they were considered to be a member of the VRS.

“**270.** Zvornik: The Trial Chamber found that around 28 May 1992, between 400 and 500 Muslims from Divič village, including women, children, and elderly persons, were forced onto buses by members of the Yellow Wasps and were told that they would be taken to Muslim territory. In Crni Vrh, the captives were released and allowed to depart on foot. On the basis of these findings, and given that the Yellow Wasps were headed by Vojin Vučković, the Appeals Chamber is satisfied that the Trial Chamber established that he used the principal perpetrators to commit the crime of deportation (Count 7) in accordance with the common purpose.”

Professor Vojislav Šešelj's Comment

Applying the same method, the Appeals Chamber also established deportation and forcible transfer in Bijeljina in paragraphs 276, 277 and 278, from 15 June 1992, and that Ljubiša (Mauzer) Savić as a participant in the JCE used the principal perpetrators.

Hence there is no mention of Professor Vojislav Šešelj's speech anywhere and no quoting of names of persons with whom a link may be established concerning participation in the JCE.

Pursuant to the joint conditions in Article 5 of the Statute, crimes against humanity, it is necessary that the Prosecution prove the "nexus in question":

(i) The commission of a crime which by its nature or consequences objectively constitutes part of the attack; (what crime committed by Professor Vojislav Šešelj, by its nature (beginning with a speech which did not even take place in March 1992) or consequences, objectively constitutes part of an attack; if there was no speech, we do not know what other crime he committed (irrespective of the type of responsibility))?

(ii) The accused knows that an attack on civilians was carried out and that his crime was part of this attack; (Professor Vojislav Šešelj knows about the armed conflict, but it is not clear how his speech, which he did not make, can be his knowledge that his speech which he did not make is part of the alleged attack).

This surely makes no sense, but this is how the Prosecution formulated the charges of crimes against humanity in its indictment. In the Krajišnik case, the dates of crimes against humanity in Zvornik are accurately determined as the end of May 1992 and the end of June 1992. The established facts for the Zvornik location in this case concerning crimes against humanity do not show either a geographic or time component of a link or the impact of any action of Professor Vojislav Šešelj. Indeed, the indictment against Professor Vojislav Šešelj goes outside the framework established in the final judgement in Krajišnik's case relating to the above mentioned locations.

The position of the Appeals Chamber is of importance with regard to the type of responsibility for participation in the JCE:

The Trial Chamber made a mistake by omitting to state in specific terms whether all or just some of the local politicians, military and police commanders and paramilitary leaders mentioned in paragraph 1087 of the judgement had been members of the JCE. Hence this sub-ground was upheld.

The Trial Chamber wrongly applied the law when it did not adopt the conclusions necessary for the guilty verdict against Krajišnik in connection with the following additional crimes which had not been included in the original joint objective of the JCE:

Persecution (Count 3), with the exception of the underlying crimes of deportation and forcible transfer;

Extermination (Count 4); and

Murder (Count 5).

In view of this, the Appeals Chamber partially upheld this sub-ground for appeal and rejected the remaining part. Krajišnik's guilty verdicts for the additional crimes in counts 3, 4 and 5 were consequently overruled.

In relation to the charges against Professor Vojislav Šešelj, everything that pertains to persecution, as being the primary objective of the JCE, in accordance with the final judgement against Krajišnik, was dropped for Bijeljina, Brčko, Greater Sarajevo, Zvornik and Nevesinje (Šamac and Mostar were not in the indictment against Krajišnik). Extermination and murder as crimes against humanity were also dropped.

The Appeals Chamber noted that the Trial Chamber many times omitted to adopt conclusions on a link between the principal perpetrators of the original crimes of deportation, forcible transfer and persecutions, which are based on these crimes, and members of the JCE. Consequently, the Appeals Chamber concluded that the Trial Chamber only adopted the conclusions that the members of the JCE had committed the following original crimes, using the principal perpetrators for the purpose of achieving the joint objective:

Persecution through deportation, Count 3, in Bratunac, Zvornik, Sanski Most, Banja Luka, Bijeljina and Prnjavor;

Persecution through forcible transfer, Count 3, in Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac;

Deportation, Count 7, in Bratunac, Zvornik, Sanski Most, Banja Luka, Bijeljina and Prnjavor; and

Inhumane acts through forcible transfer, Count 8, in Bijeljina, Bratunac, Zvornik, Bosanska Krupa, Sanski Most, Trnovo and Sokolac.

Krajišnik's guilty verdicts for the remaining original crimes in Counts 3, 7 and 8 were hence overturned.

Within the framework of the type of responsibility, participation in the JCE due to the lack of the necessary link between Krajišnik or a leading member of the JCE and a local member of the JCE who used the principal perpetrators of the crime, persecutions through deportation, persecutions through forcible transfer, deportation and the forcible transfer of a large number of municipalities were dropped, but they remain for Zvornik (through Jovo Mijatović and Vojin Vučković aka Žučo) and Bijeljina (through Ljubiša Savić aka Mauzer).

### **Conclusion**

Both cases are important, considering that there were no words or speech of Professor Vojislav Šešelj in Vukovar and Mali Zvornik. Had there been a “speech”, this fact would definitely be established, registered or at least cited in these final judgements (Mrkšić, Šljivančanin and Radić and Krajišnik). Furthermore, it is important that there was not a single crime against humanity in Vukovar, hence it is impossible to charge Professor Vojislav Šešelj with crimes under Article 5 of the Statute. According to the judgement against Krajišnik, crimes against humanity were committed in Zvornik, and we know exactly when they were committed and by whom, and who was the “local component” of responsibility for participation in the JCE. The local components in Zvornik were therefore Major Svetozar Andrić, Jovan Mijatović and Vojin Vučković aka Žučo, who can in no way be placed within the context of a JCE with Professor Vojislav Šešelj, nor did Professor Vojislav Šešelj incite, assist or support them. Not only was not a single piece of evidence presented about this, but there simply is no evidence at all. Considering that there is no responsibility for participation in the JCE, it is interesting to note the position of responsibility for speech as means of instigating, aiding and abetting and directly physically executing a crime. Is it possible to have a situation where Professor Vojislav Šešelj’s speech incited the principal perpetrators of the crime, without knowing who they are, if it was established that the principal perpetrators were used by Major Svetozar Andrić, Jovan Mijatović and Vojin Vučković aka Žučo who were in some way connected or were allegedly recruited by the participants in the JCE who were in positions of leadership in the Republika Srpska.

How could Vojin Vučković aka Žučo or members of his unit be incited by Professor Vojislav Šešelj when they did not even recognise him, and the Vučković lot were expelled from the Serbian Radical Party back in 1991. Apart from this, Professor

Vojislav Šešelj publicly commended the authorities of the Republika Srpska for arresting the Yellow Wasps. Let us recall that the Prosecution, in respect of all crimes in Zvornik, used Professor Vojislav Šešelj's speech at a rally allegedly held in March 1992 in Mali Zvornik as the starting point for his responsibility. Let us recall that there is not a single piece of evidence of a rally in Mali Zvornik in March 1992.

In view of Bijeljina, the situation is identical. Everyone knows that Mauzer was close to Arkan and that he showed great intolerance towards Mirko Blagojević and Professor Vojislav Šešelj. Is it really possible that any speech given by Professor Vojislav Šešelj could have influenced Mauzer in such a way that he committed crimes because of what Professor Vojislav Šešelj had said?

Furthermore, the question arises as to whether it is possible, if a crime was committed as part of the JCE that Professor Vojislav Šešelj, who is not a participant in this JCE, is held accountable, with the alleged speech as the basis of the direct physical execution, instigation, aiding and abetting the same crime? How are we to appreciate that Professor Vojislav Šešelj's speech aided and abetted the local components of the JCE: Svetozar Andrić, Jovan Mijatović and Vojin Vučković aka Žučo and Ljubiša Savić aka Mauzer, who used the principal perpetrators of the crime, or as something else, although no one knows what that something else could be? In any case, on what type of individual criminal responsibility could Professor Vojislav Šešelj be indicted, on the grounds of a speech that never was?

As for the Hrtkovci location, the Prosecution imposes responsibility for alleged crimes against humanity. However, the Prosecution's problem is that it cannot establish a nexus, and that it cannot prove ICTY jurisdiction under Article 5 of the Statute.

It will be difficult to convince anyone that Professor Vojislav Šešelj's speech of 6 May 1992 was the action that was part of an extensive and widespread attack on civilians. An extensive attack implies a great number of persecuted civilians. For the Hrtkovci location, the Prosecution attempted, through an expert witness, to present the list of people born in Hrtkovci as a list of people expelled from there. However, when the Prosecution went for details from witnesses, no one could provide more than eight names of civilians who had allegedly been moved out under duress from Hrtkovci. Can eight people constitute an extensive attack on the civilian population?

The second requirement for an attack is that it be systematic or organised. The Prosecution did not present a single piece of evidence to establish the existence of any

organisation, i.e. that Serbs expelled from Croatia who sought out partners in Hrtkovci for exchanging property belonged to any organisation or that they sought out Croats in Hrtkovci with whom they could exchange property according to some previously devised plan.

Hence the requirement of systematic was not proved. The only thing which was established during the presentation of evidence by the Prosecution is that people were spontaneously exchanging real estate, and in no manner can this be considered an act of persecution.

There is no need to reiterate, but it is good to recall that the Prosecution did not succeed in establishing a nexus during the hearing in the way they were obliged to by the Appeals Chamber, considering that since 2003, the contentious issue has been whether the indictment against Professor Vojislav Šešelj should include the Hrtkovci location. Let us remind ourselves that the Trial Chamber ordered the Prosecution to remove from the indictment all charges relating to the Hrtkovci location and places in the AP /Autonomous Province/ of Vojvodina (the territory of the Republic of Serbia) because it is impossible to find a nexus, and that the Appeals Chamber, acting on the Prosecution's appeal, allowed the charges relating to the Hrtkovci location to remain in the indictment on condition that the Prosecution proves the existence of a nexus under Article 5 of the Statute and that the Appeals Chamber expressed its amazement over whether it was at all possible, but that nonetheless left it all up to the Trial Chamber before which the hearing would take place, considering that the question raised was one of proving jurisdiction under Article 5 of the Statute.

### **Count 1: Persecution as a Crime Against Humanity**

In the pre-trial brief the Prosecution alleges:

“**164.** ‘Persecution’ under Article 5(h) requires that the accused committed an act or omission which:

(1) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and

(2) was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*).

“**165.** Persecutory acts may include all crimes enumerated elsewhere in the Statute. Non-physical acts with economic or legislative consequences may also

constitute persecution. “The persecutory act or omission may encompass physical and mental harm as well as infringements upon individual freedom.”

“There need be no link between persecution and acts of violence. The act of Persecution must be of the same level of gravity as other acts listed in Article 5 of the Statute. A single act may constitute persecution. ‘Hate speech’ which targets a population on the basis of ethnicity or other discriminatory grounds constitutes persecution.

“**166.** The International Criminal Tribunal for Rwanda has found ‘that speech constituting ethnic hatred (or “hate speech”) results from the stereotyping of ethnicity combined with its denigration.’

“The context in which a statement is made is also important when distinguishing between legitimate discussions of ethnic consciousness and the illegal promotion of ethnic hatred. An expression of ethnic generalisation provoking resentment against members of that ethnicity would have a heightened impact in the context of a violent environment and the expression would be more likely to lead to violence. At the same time, the environment would be an indicator that incitement to violence was the intent of the statement.

“**167.** The persecutory act must ‘be discriminatory in fact’. However, it is sufficient that the will to discriminate is effected. Thus a Serb mistaken for a Muslim may still be the victim of persecution directed against Muslims.

“A discriminatory mental state against a group negatively defined such as ‘non-Serb’ or ‘non-Muslim’ can satisfy the ‘discriminatory grounds’ requirement under Article 5.

“**168.** Discriminatory intent may be inferred from the fact that the crime is committed in the context of a generally discriminatory attack, a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.

“**169.** Since the accused acted with discriminatory intent, all crimes committed by him amount to persecution. Thus, persecution has been charged to encompass all crimes covered by other counts in the indictment, in addition to persecutory acts which are not in themselves crimes under the Statute. Persecution in the indictment, thus, encompasses these separately charged criminal acts: (a) murder, (b) unlawful imprisonment and confinement, (c) establishment and perpetuation of inhumane



conditions, (d) torture, beatings and killings (in detention), (e) forced labour, (f) sexual assaults, (g) imposition of restrictive and discriminatory measures, (h) torture, beatings and robbery during and after arrest, (i) deportation or forcible transfer, and (j) destruction of property and cultural and religious sites.”

In the indictment the Prosecution alleges that:

“15. From on or about 1 August 1991 until at least September 1993, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of, or physically committed, persecutions of Croat, Muslim and other non-Serb civilian populations in the territories of the SAO SBWS (Serbian Autonomous District of Slavonia, Baranja and Western Srem), and in the municipalities of Zvornik, Greater Sarajevo, Mostar, and Nevesinje in Bosnia and Herzegovina and parts of Vojvodina in Serbia.

“16. Throughout this period, the Serb forces defined in paragraph 8(a), above, including volunteers recruited and/or instigated by Vojislav Šešelj, attacked and took control of towns and villages in these territories. After the take-over, these Serb forces, in co-operation with the local Serb authorities, established a regime of persecutions designed to drive the non-Serb civilian population from these territories.

“17. These persecutions were committed on political, racial and religious grounds and included:

a. [omitted] murder of many Croat, Muslim and other non-Serb civilians, including women, children and elderly persons, in the municipality of Vukovar, in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, as described in paragraphs 18 to 27 of this indictment.

b. The prolonged and routine imprisonment and confinement of Croat, Muslim and other non-Serb civilians in detention facilities within Croatia and Bosnia and Herzegovina, including prison camps in Vukovar, and in Zvornik, Greater Sarajevo, Mostar, and Nevesinje as described in paragraphs 28 to 30 of this indictment.

c. The establishment and perpetuation of inhumane living conditions for Croat, Muslim and other non-Serb civilian detainees within the said detention facilities.

d. Killings and repeated torture and beatings of Croat, Muslim and other non-Serb civilian detainees in the said detention facilities.

e. Prolonged and frequent forced labour of Croat, Muslim and other non-Serb civilians detained in the said detention facilities or under house arrest in their respective homes in Vukovar, Zvornik, Greater Sarajevo and Mostar. The forced labour included digging graves, loading ammunition for the Serb forces, digging trenches and other forms of manual labour at the front lines.

f. Sexual assaults of Croat, Muslim and other non-Serb civilians by Serb soldiers during their capture and while detained in the said detention facilities.

g. The imposition of restrictive and discriminatory measures against the Croat, Muslim and other non-Serb civilian populations, including persons in Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, and in parts of Vojvodina, Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia), such as restriction of movement; removal from positions of authority in local government institutions and the police; dismissal from jobs; denial of medical care; and arbitrary searches of homes.

h. Torture, beating and robbing of Croat, Muslim and other non-Serb civilians.

i. Deportation or forcible transfer of tens of thousands of Croat, Muslim and other non-Serb civilians from the territories as specified above, and from parts of Vojvodina, Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia) as described in paragraphs 31 to 33.

j. Deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat, Muslim and other non-Serb civilian populations in the municipality of Vukovar in Croatia, and in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina as described in paragraph 34.

k. Direct and public denigration through “hate speech” of the Croat, Muslim and other non-Serb populations in Vukovar, Zvornik and Hrtkovci on the basis of their ethnicities as described in paragraphs 20, 22, and 33.”

#### Professor Vojislav Šešelj’s Comment

Under Article 5 of the Statute, the definition of the crime of persecutions is too broad. However, with regard to the indictment against Vojislav Šešelj for persecutions, we must bear in mind the case law relating to the locations which are repeated in the indictments against Mrkšić, Šljivančanin and Radić (Vukovar) and Krajišnik (municipalities in Bosnia and Herzegovina). For Vukovar, it is important

that it has been established in the final judgement that there was no crime against humanity; hence there is no need to talk about persecution in Vukovar.

With regard to municipalities within the territory of Bosnia and Herzegovina, in the Krajišnik case interesting positions were taken and factual findings made about the existence and about what constitutes persecution. In order to avoid repeating what was said in Schedule B, General Conditions Article 5(b) of the Statute, relating to the final judgement, it is necessary to state how and for what Krajišnik was indicted for persecutions, and these are the paragraphs of the indictment:

“18. Between 1 July 1991 and 30 December 1992, Momčilo Krajišnik and Biljana Plavšić, acting individually or in concert with each other and with Radovan Karadžić, Nikola Koljević and other participants in the JCE, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of persecutions of the Bosnian Muslim, Bosnian Croat or other non-Serb populations of the following municipalities: Banja Luka, Bijeljina, Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboj, Donji Vakuf, Foča, Gacko, Hadžići, Ilidža, Ilijaš, Ključ, Kalinovik, Kotor Varoš, Nevesinje, Novi Grad, Novo Sarajevo, Pale, Prijedor, Prnjavor, Rogatica, Rudo, Sanski Most, Šipovo, Sokolac, Teslić, Trnovo, Višegrad, Vlasenica, Vogošća and Zvornik (hereinafter: ‘the municipalities’).

“19. Bosnian Serb Forces and Bosnian Serb Political and Governmental Organs and their agents committed persecutions in the Municipalities upon Bosnian Muslim, Bosnian Croat or other non-Serb populations. The persecutions included:

a. the imposition and maintenance of restrictive and discriminatory measures including:

- i. the denial of freedom of movement;
- ii. the denial of employment through the removal from positions of authority in local government institutions and the police and the general dismissal from employment;
- iii. the invasion of privacy through arbitrary searches of homes;
- iv. the denial of the right to judicial process; and
- v. the denial of equal access to public services;

b. killings during and after attacks on towns and villages in the Municipalities, including those listed in Schedule A;

- c. cruel or inhumane treatment during and after the attacks on towns and villages in the Municipalities including torture, physical and psychological abuse, sexual violence and forced existence under inhumane living conditions;
- d. forced transfer or deportation;
- e. unlawful detention in detention facilities, including those listed in Schedule C;
- f. killings related to detention facilities, including those listed in Schedule B;
- g. cruel or inhumane treatment in detention facilities including those listed in Schedule C. This treatment included torture, physical and psychological abuse and sexual violence;
- h. the establishment and perpetuation of inhumane living conditions in detention facilities, including those listed in Schedule C. These conditions included the failure to provide adequate:
  - accommodation or shelter;
  - food or water;
  - medical care; or
  - hygienic sanitation facilities
- i) forced labour including digging graves and trenches and other forms of forced labour at front lines and the use of Bosnian Muslim, Bosnian Croat or other non-Serb populations as human shields;
- j) the appropriation or plunder of property during and after attacks, in detention facilities and in the course of deportations or forcible transfers. The appropriation of property included the practice of forcing Bosnian Muslims, Bosnian Croats or other non-Serbs to sign documents turning over their property to Bosnian Serb governmental authorities in order to be allowed to leave the Municipalities; or
- k) the intentional or wanton destruction of private property including homes and business premises and public property, including cultural monuments and sacred sites listed in Schedule D.”

#### Professor Vojislav Šešelj's Comment

Therefore persecution is out of the question for Greater Sarajevo, Zvornik, (there were no persecutions in Mostar, hence it is not included in the indictment) and Nevesinje. It must be noted that the indictment against Krajišnik states that the persecution took place between 1 July 1991 and 30 December 1992. In the case of Vojislav Šešelj, it is alleged that the persecution went on between 1 August 1991 and September 1993, and if forcible transfer and deportation are considered within

persecutions, then the forcible transfer and deportation lasted from March 1992 to September 1993 for Zvornik, from April 1992 to September 1993 for Greater Sarajevo, from June 1992 to September 1993 for Nevesinje and from May to August 1992 for Hrtkovci. This discrepancy in the charges is important both from the view of the indictments for participation in the JCE, which clearly did not happen, and consequently participation in the JCE as a type of responsibility, and from the view of the time frame of these charges which relate to other types of responsibility.

In view of this it is important to compare the charges for persecution against Vojislav Šešelj and Momčilo Krajišnik and establish what if anything remains within the framework of the charges for persecutions against Vojislav Šešelj. In Momčilo Krajišnik's case, paragraphs 18a, 18b, 18c, 18d, 18e, 18f, 18g, 18h, 18i, 18j and 18k were dropped concerning the said locations in Bosnia and Herzegovina. The text of Vojislav Šešelj's indictment in paragraphs 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i and 18j is identical to the above paragraphs in the indictment against Krajišnik. With regard to persecutions, the only comment still required concerns charges on the basis of:

**17k.** The direct and public denigration through "hate speech" of the Croat, Muslim and other non-Serb populations in Vukovar, Zvornik and Hrtkovci on the basis of their ethnicities, as described in paragraphs 20, 22 and 23.

Let us see what direct and public denigration through hate speech in Vukovar Zvornik and Hrtkovci means according to the indictment of the Prosecution:

#### **Vukovar**

**"20.** In November 1991 while Serb forces fought to take over Vukovar, Vojislav Šešelj visited the town. On or about 8 November 1991, Vojislav Šešelj publicly pronounced, 'This entire area will soon be cleared of Ustashas.' On or about 13 November 1991, Vojislav Šešelj, both publicly and privately, pronounced, 'Not one Ustasha must leave Vukovar alive.' These speeches persecuted Croats and instigated the killing of Croats."

#### **Professor Vojislav Šešelj's Comment**

The final judgement against Mrkšić, Šljivančanin and Radić proves that there was no direct and public denigration through hate speech as cited in paragraph 20, since there was no speech, either public or private. Furthermore, even when the Prosecution presented the evidence, there was not a single piece of evidence to

support the charge in paragraph 20. False witnesses and those whose testimonies were not admitted by the judges in the case of Mrkšić, Šljivančanin and Radić and the testimonies in the Ovčara case in Belgrade do not count.

#### **Zvornik**

“22. In March 1992, Vojislav Šešelj gave a speech at a rally in Mali Zvornik, located across the Drina river from Zvornik. Vojislav Šešelj said: ‘Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong.’ This speech persecuted and/or instigated the persecution of non-Serbs in Zvornik.”

#### **Professor Vojislav Šešelj’s Comment**

In March 1992, there was neither a rally nor a speech in Mali Zvornik, hence the charge of direct and public denigration through hate speech is by all means incomprehensible. The only speech or rally in Mali Zvornik was in August 1990, during a promotion of the Serbian Chetnik Movement, and not only are this event and the date not included in the indictment, but they also do not fall within the jurisdiction of the ICTY. Only one false witness testified about this alleged rally and no court on earth would admit his testimony.

#### **Vojvodina – Hrtkovci**

“33. In May 1992, Vojislav Šešelj came to Vojvodina and met with his associates in the SRS. Vojislav Šešelj instructed his associates to contact non-Serbs and threaten them with death if they did not leave the area. On 6 May 1992 Vojislav Šešelj gave an inflammatory speech in the village of Hrtkovci, Vojvodina, calling for the expulsion of Croats from the area and reading a list of individual Croat residents who should leave for Croatia. As a result of this speech, a number of Croat residents decided to leave Hrtkovci. After this speech, supporters and associates of the accused, including members of the SRS and the SČP, began a campaign of ethnic cleansing directed at non-Serbs, particularly Croats, in Hrtkovci. During the next three months, many non-Serbs were harassed, threatened with death and intimidated, forcing them to leave the area. Homes of Croats were looted and occupied by Serbs. Serb families who had been displaced from other parts of the former Yugoslavia often occupied the homes of those non-Serbs who had been compelled to leave.”

#### **Professor Vojislav Šešelj’s Comment**

It is obvious that we need to find answers to the following questions. On 6 May 1992, was there any call for expulsion or was it an election rally at which the authorities were criticised and election pledges made about what would be done when power changed hands? Did Professor Vojislav Šešelj read out a list with names? Was there any direct and public denigration through speech on ethnic grounds? We must also establish under what type of responsibility the Prosecution will place direct and public denigration of the population through hate speech on ethnic grounds.

According to paragraph 5 of the indictment, this is physical commitment through speech which does not come under the case law of the ICTY in the Kordić case, paragraph 209, and it does not rise to the same level of gravity as the other acts enumerated in Article 5 of the Statute and has not attained the status of customary international law. Consequently, the speeches which were not held in Mali Zvornik and Vukovar cannot be included in the indictment, and the speech in Hrtkovci, regardless of its interpretation, does not fulfil the conditions in Article 5 of the Statute.

Speech, or what the Prosecution refers to as “hate speech”, does not feature as a crime anywhere in the ICTY Statute and it does not rise to the same level of gravity as the other acts enumerated in Article 5. Furthermore, criminal prohibition has not attained the status of customary international law, hence the conviction of Professor Vojislav Šešelj for such an offence, formulated as a charge of persecution, would be in breach of the principle of legality.

The only speech offence which is explicitly criminalised under the IMT /International Military Tribunal/ Statute, the Control Council Law No. 10, and the Statutes of the ICTY, ICTR and ICC is direct and public incitement to commit genocide. Professor Vojislav Šešelj is not charged with genocide. The general position in conventional law in relation to this area shows that such speech does not necessarily have to be considered a crime in customary international law.

Citing all types of responsibility invoked by the Prosecution in the indictment is moot, but instigation, aiding and abetting certainly deserve attention, since prosecution for a speech offence which does not rise to the level of incitement is not supported by international jurisprudence, while the ICTY’s jurisprudence has a tendency to equate instigation with aiding and abetting. Hence the issue is whether Professor Vojislav Šešelj’s speech can rise to the level of incitement to commit the alleged crimes under Article 5 of the Statute, and as for the Hrtkovci location, from the position of the general conditions:

- whether there was a widespread or systematic attack against the civilian population, the Croats in Hrtkovci, since if we were to accept the Prosecution's stand that the existence of an attack against the civilian population is sufficient, regardless of its location in former SFRY /Socialist Federative Republic of Yugoslavia/ territory, then we would embark on a topic of why the existence of an "armed conflict" was particularly emphasised in Article 5 of the Statute;

- whether Professor Vojislav Šešelj's conduct/speech was linked to this widespread or systematic attack against the civilian population;

- whether Professor Vojislav Šešelj was aware of the broad context of his conduct/speech; and

- especially in terms of the requirements for the crime of persecution.

During the Prosecution's presentation of evidence, it was established beyond doubt that in the second half of 1991, Croats in Hrtkovci and other parts of Vojvodina undertook an exchange of property with Serbs expelled from Tuđman's Croatia. Thus, there was widespread, organised and systematic persecution of Serbs also from parts of Croatia not affected by armed conflict. The expelled and exiled Serbs from Croatia such as it was then, had to save their lives by going to Serbia or Bosnia and Herzegovina which were not yet affected by armed conflict. What is to be done with the refugees who in order to escape Tuđman's Ustashas flooded the territory not affected by armed conflict, such as Serbia? It is really interesting to see what the Prosecution and ICTY judges think they would have done with the refugees arriving in Serbia; how they would have resolved the issues of refugees. Judging by the fact that to date, no one in Croatia has been indicted for the persecution of Serbs in Zagreb and other places in Croatia in the second half of 1991, which remained free from armed conflict, we can draw a conclusion that the ICTY as a whole believes that no one expelled Serbs from Croatia. A similar situation is that of the Serbs in Western Slavonia, which was affected by armed conflict, and practically all of them were expelled by the end of December 1991. Everyone at the ICTY maintains that there were no persecutions of Serbs from Western Slavonia. What is to be done with these people who were granted a refugee status in Serbia? The International Committee of the Red Cross and UN High Commissioner for Refugees are well aware of it, as Serbia cannot take on 500,000 refugees in one batch and as many as 800,000 Serbian refugees several months later.



We now come to the fact that until 31 December 1991, property in Hrtkovci was exchanged between Serbs expelled from Croatia and the Croats in Hrtkovci. According to the Prosecution's position, this was not the persecution of Croats from Hrtkovci. Why this is not persecution, we do not know, but no one in Serbia was indicted for the persecution of the Croats from Hrtkovci as property was being exchanged with Serbs expelled and exiled from Croatia up until 31 December 1991.

This fact is important, not only as doubt about the possible arbitrariness on the part of the Prosecution when indicting, but also for establishing if the requirement for an extensive and widespread attack against the civilian population existed and on what territory?

Hence the persecution of Serbs from Croatia from places that were free of armed conflict is not incrimination according to the Prosecution.

Furthermore, the persecution of Serbs from Western Slavonia, which was affected by armed conflict, is not incrimination according to the Prosecution.

The question arises as to what invisible requirement for persecution exists when it comes to Professor Vojislav Šešelj's indictment. It is clear that Serbs cannot be the victims of persecution and it seems that Article 5 of the Statute contains an invisible criterion whereby the persecution of Serbs does not exist and that it is an impossible category. Similar to the crime of murder, it exists when victims are other people, but the category of a Serb as victim of the crime of murder does not exist in the ICTY.

These positions of the Prosecution and ICTY judges result in a new view of attack and territory. If there was no extensive, widespread, systematic and organised attack against the Serbian civilian population in Croatia, in areas free from armed conflict and in those affected by armed conflict, then no nexus, as invoked by the Prosecution, can be established in Vojvodina and Hrtkovci. Hence the position that there was an armed conflict somewhere within SFRY territory, perhaps a local one, in just one municipality, is sufficient to establish the nexus required to charge Professor Vojislav Šešelj with the persecution of Croats in Hrtkovci. Let us recall that persecution as a crime was not found in the final judgement against Mrkšić, Šljivančanin and Radić in Vukovar.

Let us recall that a cease-fire under the Vance Plan came into effect in Croatia in January 1992, of which the Prosecution is well aware. In the Third Amended

Indictment against Professor Vojislav Šešelj, in the section /Annex I/ “Additional Historical and Political Facts for Croatia,” the Prosecution states the following:

“In Geneva on 23 November 1991, Slobodan Milošević, Federal Secretary of People’s Defence Veljko Kadijević, and Franjo Tudman entered into an agreement signed under the auspices of the United Nations Special Envoy Cyrus Vance. This agreement called for the lifting of blockades by Croatian forces on JNA barracks and for the withdrawal of JNA forces from Croatia. Both sides committed themselves to an immediate cease-fire throughout Croatia by units ‘under their command, control, or political influence’ and further bound themselves to ensure that any paramilitary or irregular units associated with their forces would also observe the cease-fire.

“On 19 December 1991, the SAO Krajina proclaimed itself the Republic of Serbian Krajina (RSK) with Milan Babić as its first president. On 26 February 1992, the SAO Western Slavonia and SAO SBWS joined it in unilateral declarations by these entities.

“Under the Vance Plan, three United Nations Protected Areas (UNPAs) were created (Krajina, Western Slavonia, SBWS), corresponding with four Sectors (South, North, West and East) in the areas occupied by Serb forces. The Vance Plan called for the withdrawal of the JNA from Croatia, the return of displaced persons to their homes in the UNPAs, and the demilitarisation of these UNPAs. Although the JNA officially withdrew from Croatia in May 1992, large portions of its weaponry and personnel remained in the Serb-held areas and were turned over to the “police” of the RSK. Displaced persons were not allowed to return to their homes and those few Croats and other non-Serbs who had remained in the Serb-occupied areas were expelled in the following months and years.”

Leaving aside the statement about the places occupied by Serbian forces as blatant cynicism, as it turns out that Serbs are occupiers even if they are in their own homes which they inherited from distant ancestors, some other details call for comment. Not a word about returning Serbs to Zagreb or other places in Tudman’s Croatia, or returning to Western Slavonia, and yet it was an agreement signed by Vance the peacemaker. About 500,000 Serbs exiled from Croatia are not an issue for Vance the peacemaker. It is noticeable that if we look for a nexus in Hrtkovci, we must look for it in the events in Croatia and the armed conflict in Croatia. However, from January 1992 to August 1992, Serbian refugees came mainly from Western

Slavonia. Hence the systematic and widespread attack was only on Serbs as the civilian population of Western Slavonia and other places under the control of Tudman's forces. The emphasis is on Western Slavonia, since almost all those who took part in the exchange of property with the Croats in Hrtkovci were Serbs who were either expelled or exiled from Western Slavonia, Zagreb and other places where there were no armed conflicts and places in Croatia that were not under Serbian control.

When we talk about Serbs expelled from Tudman's Croatia, we mean above all the Serbs who were deported or forcibly transferred, who had to flee to save their very lives due to ceaseless continued discrimination. Discrimination against Serbs in Croatia is a permanent process. It started a long time ago, it is measured in centuries, and since 1990, after the Serbs were dropped as a constituent people of the Republic of Croatia from the Constitution when Tudman came to power, the Serbs were left outside the law in respect of every basic right. The consequences of such Croatian policy are visible in Croatia even today. Serbs were not allowed to return to their homes, Serbian singers were banned from having concerts in Croatia, cars with Serbian registration plates were vandalised, Serbian tourists harassed, the very small number of Serbs who remained in Croatia were beaten. If they did not convert to Catholicism their lives were hell every step of the way, and yet Croatia is on the threshold of becoming a member of the European Union. It is as if ICTY judges do not know that a special programme was being applied towards Serbs in Croatia for hundreds of years, i.e. the programme of resolving the Serbian issue: convert one-third of the Serbs to Catholicism, expel one-third and exterminate one-third. The problem of the Serbian issue in Croatia would then no longer exist.

From this point we need to establish whether from January 1992 to August 1992 there was a systematic and widespread attack by Serbian forces on Croats, both in the territory of the Republic of Serbian Krajina and in Serbia. There is not a single shred of evidence to support this claim, and this claim is not even given emphasis by the Prosecution, which behaves as if it is a well-known fact. Admittedly, it has to be recognised that the Prosecution replaced Colonel Ivan Grujić as a compromised expert witness with his employees Anamarija Radić and Višnja Bilić, who testified, allegedly as some kind of expert witnesses, more about the internal organisation of the service where they worked rather than being able to corroborate the thesis on Croatian refugees from Serbia.

This is an opportunity also to comment on the fact that after Operation Storm, in August 1995, a large number of Serbian refugees from the Republic of Serbian Krajina arrived in Serbia and in some situations where refugees had nowhere to go, they would move into Croatian houses in Srem. Without going into details, we must note that no one was indicted for these events, but had for any reason Professor Vojislav Šešelj's indictment stated that he was a member of the JCE until the end of 1995, the Prosecution would have claimed it to be an act of the persecution carried out by Professor Vojislav Šešelj in his election campaign speech on 6 May 1992. The Prosecution's arbitrariness, bias and cynicism in Professor Vojislav Šešelj's indictment are not worthy of any better comments.

One of the requirements being imposed is also the need to establish that Professor Vojislav Šešelj's speech on 6 May 1992 in Hrtkovci was part of a widespread and systematic attack on the civilian population, on Croats, but where in Hrtkovci or in some other place in the territory there was armed conflict /as printed/. If the criterion of an extensive and widespread attack on the civilian population is considered in relation to the Croats in Hrtkovci, then no type of behaviour or act against them is an attack which rises to the level of gravity listed under Article 5 of the Statute. One witness had trouble naming eight Croats from Hrtkovci who he claimed were expelled, and he also put his own name on the list, although he is a Serb who never left Hrtkovci. If we were to accept the number of eight Croats, is it sufficient to meet the requirement for an extensive and widespread attack on the civilian population? If the Prosecution alleges that there was an attack on Croats in Hrtkovci under Article 5 of the Statute, then we must look at the Prosecution's presentation of evidence and we must note that none of those, starting with Ostoja Sibinčić, who are recorded by their first and last names, as having taken part in these events are members of the Serbian Radical Party. Hence no systematic organisation is required for jurisdiction under Article 5 of the Statute. In fact, it has been established that those who exerted the pressure were mostly members of the Serbian Renewal Movement, people who have always been politically at odds with members of the Serbian Radical Party.

The problem that appears here is of a nexus between the actions, behaviour and speech of Professor Vojislav Šešelj and the attack itself, if what happened in Hrtkovci can be classified as an attack at all, since the alleged attackers and participants named in this fabricated attack are members of the Serbian Renewal

Movement, and therefore the Prosecution would not be able to convince anyone in the world that Professor Vojislav Šešelj's speech on 6 May 1992 in Hrtkovci was part of some activity of members of the Serbian Renewal Movement. Is it possible that Professor Vojislav Šešelj can influence members of the Serbian Renewal Movement through a speech? There is no need to waste words on the antagonism that exists between members of the Serbian Radical Party and those of the Serbian Renewal Movement. Furthermore, witness Aleksa Ejić, a local official of the Serbian Renewal Movement during his testimony mentioned the fact that in December 1992 the Serbian Radical Party candidate for deputy came in third by number of votes and that the candidates of the Serbian Renewal Movement and the Socialist Party of Serbia went through into the second round of voting. [REDACTED]

According to the positions of the ICTY, on condition that there was an attack against the civilian population in Hrtkovci, there can be no nexus between Professor Vojislav Šešelj's speech and the alleged attack, but there is no room to suspect that Professor Vojislav Šešelj's speech could have expressed his intention of being part of the attack carried out by members of the Serbian Renewal Movement. This stems from the Prosecution's presentation of evidence and this is why none of it makes sense. The speech, the behaviour and generally the acts of Professor Vojislav Šešelj which are linked to the rally in Hrtkovci on 6 May 1992 and the alleged persecution campaign which was launched at that time and went on for the next three months, as the Prosecution alleges, are so remote from the attack against the civilian population that he simply cannot be held responsible.

Up to now, the discussion has been only hypothetical, as if there were requirements imposed by the Prosecution in respect of persecution, but all of the Prosecution's positions have failed the verification test. Now we need to analyse the events in Hrtkovci, how they unfolded, and we need to establish whether there was any persecution at all.

There was no persecution, forcible transfer or deportation in Hrtkovci and in the AP /Autonomous Province/ of Vojvodina. All Croats exchanged their properties with Serbian refugees, and we must say, to both mutual satisfaction and dissatisfaction including unpleasantness. All Serbs who moved to Hrtkovci and exchanged their property in Croatia with Croats in Hrtkovci had the status of refugees

from Croatia. A refugee is an expelled or deported person, or a person who was forcibly transferred.

It is important to say that, according to the results of the Prosecution's presentation of evidence, initiative to exchange property came from the Serbian refugees, though there were cases where this initiative came from Croats in Hrtkovci.

The Prosecution's presentation of evidence showed that in the contracts on the exchange of property, as parties to the contract the Croats in Hrtkovci always had the upper hand. The Croats in Hrtkovci could chose, they could go to Croatia and check on the spot the property to be exchanged with the Serb, withdraw from the exchange and look for someone else to exchange their property with, haggle, proceed at leisure, wait until their child has completed secondary school in Serbia (the example of Prosecution witness Katica Paulić), go to Croatia a number of times and freely return to Hrtkovci, etc. A Serb taking part in an exchange of property could not afford to pick and choose, since it was not possible to go to Croatia and there was no roof over their heads in Serbia. This is why the Serbian refugees were the more vulnerable and discriminated party in this exchange of property. Even if a refugee Serb did move into an abandoned house of a Croat from Hrtkovci, he would be evicted by the police of the Republic of Serbia. Therefore the refugee Serbs from Croatia were on the receiving end of all the discrimination. Considering that the indictment against Professor Vojislav Šešelj refers to his speech of 6 May 1992 in Hrtkovci as the starting point for all persecutions as acts of discrimination and attack, it follows that the ICTY discriminates against the refugee Serbs, as it turns out that they carried out the attack in Hrtkovci. Therefore, by this imposed approach those who must be protected as victims are regarded as criminals. And this is the most important message of the entire Hrtkovci affair.

We also need to mention here the active role of the Roman Catholic church in the exchange of property between Serbs who fled from Croatia and the Croats from Hrtkovci. A Roman Catholic priest from Hrtkovci, a witness for the Prosecution, testified about this.

Also important for the act of persecution is a discriminatory foundation, i.e. discrimination, in the case of Hrtkovci, one along ethnic lines. The Prosecution did not adduce a single piece of relevant evidence in connection with this, and ICTY case law is familiar with this position from the Kordić case, in which the judgement of the Trial Chamber reads:

“827. The Trial Chamber has already held that the allegations relating to the encouragement and promotion of hatred, etc., and the dismissal of Bosnian Muslims from employment do not amount to persecution for the purposes of this case or, in the case of the latter allegation, at all.”

If we look at the events in Hrtkovci and compare them to all other locations in the territories of Croatia and Bosnia and Herzegovina where the existence of persecutions, deportation or forcible transfer were established in final judgements before the ICTY, we can in no way equate the two. Although violence is not required for the act of persecution, we have to bear in mind that everything mentioned as persecution in Hrtkovci has to rise to the same level of gravity as the other acts listed in Article 5 of the Statute. Is the same level of gravity possible, say, for the murder of civilians as a crime against humanity as for the exchange of the Croats' property in Hrtkovci, which the Prosecution defined as persecution?

With regard to the facts, the charges for Hrtkovci sank without trace. We will discuss this in more detail in the analysis of the Prosecution's presentation of evidence.

### **Counts 10 and 11: Deportation and Forcible Transfer as a Crime Against Humanity**

In its Pre-Trial Brief the Prosecution alleges:

“174. 'Deportation' under Article 5(d) and 'forcible transfer' charged as an inhumane act under Article 5 have the following requirements:

“175. Deportation is the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a *de jure* state border or, in certain circumstances, a *de facto* border, without grounds permitted under international law. The question whether a *de facto* border is enough for the purposes of the crime of deportation should be examined on a case by case basis in light of customary international law.

“176. The term 'force,' when used in reference to the crime of deportation, is not limited to physical force, but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or another person, or by taking advantage of a coercive

environment. The *mens rea* for the crime of deportation does not require intent to displace across the border on a permanent basis.

“177. Consent of the removed persons may justify the removal and render it legal. However, such consent must be real in the sense that it is given voluntarily and as a result of the individual’s free will, assessed in light of the surrounding circumstances.

“178. An occupying power may carry out the lawful movement of a population if the security of the population or imperative military reasons so demand. A population may be evacuated from an area in danger as a result of military operations, or where intense bombing may occur, and the presence of protected persons would hamper military operations, but real necessity must exist; the measures taken must not be merely an arbitrary infliction or intended simply to serve in some way the interests of the Occupying Power. Moreover, evacuees must be transferred back to their homes as soon as hostilities in the area have ceased. Even under these circumstances, transfer should only be within national boundaries unless it is impossible, and people must be transferred humanely, with “satisfactory conditions of hygiene, health, safety and nutrition.”

“179. Forcible transfer is forcible displacement of persons within national boundaries. The *mens rea* does not require the intent to transfer permanently. The absence of genuine choice makes the displacement unlawful. Acts of forcible transfer may be sufficiently serious to amount to ‘other inhumane acts’.”

In the indictment the Prosecution alleges:

“31. From on or about 1 August 1991 until May 1992 in the Serbian Autonomous Districts in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in Vukovar (SAO SBWS) in November 1991, in the municipality of Zvornik in Bosnia and Herzegovina between March 1992 and September 1993, in Greater Sarajevo in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia and Herzegovina between June 1992



and September 1993 and in parts of Vojvodina, Serbia, including the village of Hrtkovci, between May and August 1992.”

Professor Vojislav Šešelj’s Comment

Deportation and forcible transfer are shown here as an independent crime against humanity under Article 5 of the Statute, with regard to all types of individual criminal responsibility for the locations: Vukovar, Zvornik, Greater Sarajevo, Nevesinje and Hrtkovci. Therefore it is not a question of deportation and forcible transfer as an act within the crime of persecution. As far as Vukovar is concerned, in the final judgement against Mrkšić, Šljivančanin and Radić, there was not a single crime against humanity, and accordingly neither deportation nor forcible transfer. As for the locations: Zvornik, Greater Sarajevo and Nevesinje, the responsibility of Krajišnik as a participant in the JCE was only established for the Zvornik location, while the charges for Greater Sarajevo and Nevesinje were dropped. So we only need to examine the Zvornik location in terms of the charges against Professor Vojislav Šešelj, with regard to all types of responsibility which were simply thrown into the indictment.

“32. In order to achieve this objective, Serbian forces, including the White Eagles and *Dušan Silni*, and volunteers recruited and/or incited by Vojislav Šešelj, surrounded Croatian and Bosnian towns and villages and demanded that the inhabitants surrender their weapons, including legally owned hunting rifles. Then, the towns and villages were attacked or otherwise taken-over, even those where the inhabitants surrendered their weapons. These attacks were intended to compel the population to flee. After taking control of the towns and villages, the Serb forces sometimes rounded up the remaining Croat, Muslim and other non-Serb civilian populations and forcibly transported them to locations within Croatia or Bosnia and Herzegovina not controlled by Serbs, or deported them to locations outside Croatia or Bosnia and Herzegovina, in particular Serbia and Montenegro. On other occasions, Serb forces, in co-operation with the local Serb authorities, imposed restrictive and discriminatory measures on the non-Serb population and engaged in a campaign of terror designed to drive them out of the territory. The majority of the non-Serbs that remained were later deported or forcibly transferred from their homes.”

Professor Vojislav Šešelj’s Comment

The Prosecution alleges that Serbian Radical Party volunteers would “surround Croatian and Bosnian towns and villages and demand that the inhabitants surrender their weapons, including legally owned hunting rifles”. The Prosecution adduced evidence in connection with this, but there is not a single piece of evidence on the basis of which we could establish the fact: surrounding (when, where, who and what does this have to do with Professor Vojislav Šešelj?), demands for the inhabitants to surrender their weapons (when, where, who and what does this have to do with Professor Vojislav Šešelj?).

The Prosecution’s allegation that “towns and villages were attacked or otherwise taken over, even those where the inhabitants surrendered their weapons” most probably refers to Vukovar, Zvornik, Greater Sarajevo, Nevesinje and Hrtkovci. With the exception of Hrtkovci, hatred and armed conflict are represented by the attack of Serbian forces on towns and villages with regard to all the other locations cited here. As for Hrtkovci, there is no mention of surrounding, confiscation of weapons from people, takeover or taking control. The Prosecution argues that the intention was to force the population to flee. It is alleged that the subsequent phase was to round up populations and forcibly transport them to a border or outside the control of Serbian forces.

This means that deportation and forcible transfer are described in detail and that everything is clear. Regardless of invoking some of the types of responsibility, there is not a single piece of evidence to link Professor Vojislav Šešelj with these acts, whether directly, through Serbian Radical Party volunteers, or some speech of his as a means of instigating or aiding and abetting.

The Prosecution alleges in its indictment:

“33. In May 1992, Vojislav Šešelj came to Vojvodina and met with his associates in the SRS. Vojislav Šešelj instructed his associates to contact non-Serbs and threaten them with death if they did not leave the area. On 6 May 1992 Vojislav Šešelj gave an inflammatory speech in the village of Hrtkovci, Vojvodina, calling for the expulsion of Croats from the area and reading a list of individual Croat residents who should leave for Croatia. As a result of this speech, a number of Croat residents decided to leave Hrtkovci. After this speech, supporters and associates of the accused, including members of the SRS and the SČP, began a campaign of ethnic cleansing directed at non-Serbs, particularly Croats, in Hrtkovci. During the next three months,

many non-Serbs were harassed, threatened with death and intimidated, forcing them to leave the area. Homes of Croats were looted and occupied by Serbs. Serb families who had been displaced from other parts of the former Yugoslavia often occupied the homes of those non-Serbs who had been compelled to leave. The victims of crimes under counts 1, 10 and 11 in connection with Hrtkovci were non-Serbs from Hrtkovci. Annex XI lists the names of known victims.”

**Professor Vojislav Šešelj’s Comment**

As for the Vukovar charges, after the final judgement against Mrkšić, Šljivančanin and Radić, any comment about the charges of deportation and forcible transfer is moot as not a single crime against humanity has been established. As for the charges of persecution and deportation for any location in the territory of Bosnia and Herzegovina, the fact has been established that there was not even a mention of Professor Vojislav Šešelj’s name.

And finally, we need to comment on speech as physical commitment in Hrtkovci on 6 May 1992, as a result of which, according to the Prosecution, deportation and forcible transfer were carried out in the period between May and August 1992. The Prosecution did not mention with a single word that an exchange of property took place in Hrtkovci, something which all witnesses for the Prosecution confirmed in court. There will be more about the events in Hrtkovci in parts analysing the Prosecution’s presentation of evidence by locations.

**VIII. Analysis of Relevant Evidence – Testimonies**

Before we start to analyse the testimonies of witnesses by locations, we must analyse, if at all necessary, the witness testimony regarding hate speech, specifically regarding propaganda techniques by Anthony Oberschall, since everything that a person of rational judgement can conclude about the facts on the basis of Oberschall’s testimony can further the understanding of the analysis of the testimonies of other witnesses.

**Anthony Oberschall (expert witness for hate speech),**

**11, 12 and 13 December 2007**

In the Prosecution’s Final Pre-Trial Brief this witness was scheduled to testify on II. Šešelj’s Participation in the JCE, as follows:

- In paragraph 4, footnote 8) as the second basic segment of participation: “Šešelj oversaw the recruitment, indoctrination, financing, training, formation,

coordination, supply and assignment of units of 'volunteers' who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories."

We need to note here that it is not clear how an expert witness for "hate speech" or propaganda techniques could establish all this, and it is especially not clear on the basis of what? In footnote 8 witnesses are named, but the expert witness did not contact them. The expert witness boasted that he only analysed Professor Vojislav Šešelj's texts and speeches by conducting a word search. The statements of the accused are also cited, but the statements of the accused are analysed and from their content the Trial Chamber judges establish what is relevant for the judgement. What more could an expert witness establish than that which the judges do not see and cannot establish, although they too must read the statements of the accused? Furthermore, this sentence, packed with the Prosecution's findings, is also proof that the expert witness, could not establish it even he wanted to, since by his own admission he is allegedly an expert on propaganda techniques and not for hate speech, military issues, organisation, etc. If an expert witness on military issues failed to establish the existence of volunteer units of the Serbian Radical Party and the SČP, then it is not clear who an expert witness on propaganda techniques could establish that volunteer units existed? It is absurd even to think that an expert witness on propaganda techniques could testify on frequent participation in crimes, and that is what the Prosecution asked him to do, saying that he would testify about it.

In paragraph 12 with footnote 39 this expert witness was scheduled to testify that: "Through his public hate speech, in the period relevant to this indictment, the accused conditioned and provoked Serbs – soldiers, policemen, volunteers and civilians – to tolerate and/or commit the crimes necessary to achieve the goal of 'Greater Serbia'."

Therefore Professor Vojislav Šešelj, through his public hate speech, conditioned and encouraged them to tolerate and/or commit the crimes. The expert witness said in court that he was not an expert on hate speech but only on propaganda techniques, and the question therefore arises of how he could establish the existence of "public hate speech"?

In paragraph 13 with footnote 40 it was announced that this witness would testify that Professor Vojislav Šešelj led the propaganda effort about the dangers

posed by non-Serbs, therefore he instigated, participated in and contributed to the massive amounts of crimes. The sentence which resulted from the plea bargain between the Prosecution and Milan Babić is cited in support of the facts which may be established through the expert witness. Neither is it clear what it means to lead the propaganda effort. If someone is a leader of a propaganda effort, then he/she is either an editor in charge of this kind of propaganda or has the largest media presence with this kind of propaganda. With regard to this allegation, the expert witness did not present a shred of information on gauging leadership. He even looked ridiculous when he found out in court that Professor Vojislav Šešelj was the only people's deputy of the Serbian Radical Party and when he was told that the Serbian Radical Party during the 1992 elections was not among the first four parties represented in the media. If what is expected of this expert witness were true, that the propaganda effort was about the dangers posed by non-Serbs, then it is not clear how it could incite the massive amounts of crimes committed by Serbs, and it is not clear how Professor Vojislav Šešelj could participate in and contribute to these crimes. The expert witness could not provide a shred of evidence or set out the fact which he needs to establish with regard to this guesswork on which the Prosecution is counting. Therefore this is a question of mere guesswork which is allegedly concealed by the fact that it presented by an alleged expert, therefore his expert testimony is supposed to cover for the lack of evidence and for fabricated and commissioned facts. Therefore, the conclusion follows that the very occupation of the expert witness is the only relevant fact, which is so significant that the occupation covers up all the false findings of the expert witness.

In paragraph 14 with footnote 42 it was declared that this witness's testimony would establish that Professor Vojislav Šešelj, by disseminating his racist propaganda, physically committed persecution and deportation and inhumane acts (forcible transfer) as charged in the indictment. This witness is supposed to deal with the effects of the accused's speech on the Croatian population. Therefore the speech and words, owing to their interpretation by the alleged expert witness ought to carry weight and represent direct physical commitment of the crime. The Prosecution's position, formulated in this way, means nothing and therefore it must be concluded that the Prosecution simply has no case. This situation is punished by way of the judges rejecting all counts of the indictment which are based on a fabricated or non-existent case. The Prosecution admits this, because it multiplies Professor Vojislav

Šešelj's words and speech as each of the possible types of individual criminal responsibility, as an act or an omission applicable to all possible and impossible acts of execution, and at the same time interprets them as the accused's mental outlook on the entire situation. The Prosecution believes that the appearance of an expert in court is sufficient to prove it.

Under VI. Legal Analysis, in paragraph 141 with footnote 483, it is stated that this expert witness is supposed to prove in his report and testimony that Professor Vojislav Šešelj physically committed the crime of persecution in Vukovar, Zvornik and Hrtkovci through his use of "hate speech" targeted at the non-Serb populations of those localities.

With regard to the Report and Addenda of Expert Witness Anthony Oberschall, we must bear in mind that in addition to responding to these reports, Professor Vojislav Šešelj filed three briefs as a separate aspect of defence with the analysis of speeches made by politicians and statesmen, and news articles in the period relevant for Croatia, Bosnia and Herzegovina and for representatives of the international community. Comparison of the words used, the way in which thoughts were conveyed, the context, the circumstances of location, time and events, offer the most convincing proof that since after specifically looking for it and not being able to find it in the statements and words of Professor Vojislav Šešelj, the "hate speech" was allegedly made up.

The Trial Chamber resolved all possible ambiguities in respect of the status accorded to Anthony Oberschall by the judges. That is to say, his status as an expert is not accepted. However, during the testimony, especially during the cross-examination, Anthony Oberschall came close to admitting that an attempt at manipulation was the role assigned to him.

An extensive analysis is necessary because, regardless of the Prosecution classifying this witness as a witness for propaganda manipulation, he is in fact a key expert witness on hate speech.

During his testimony Anthony Oberschall showed himself to be an alleged expert who made assessments easily. His method is totally unreliable since it is based on conducting a computer-based word search of texts of speeches and the imaginary importance of the words used, but without leaving space for other important factors of a speech, such as location, time, motive, event, etc. In his testimony he made arbitrary comments on facts, events and commonly known historical facts. During his

testimony, the Prosecution tried, it will be proved later, to present the speech of August 1990 in Mali Zvornik, although by this logic it could have been any other rally, as having taken place in March 1992. He will be remembered as the expert witness who based his expert testimony on the allegation that a student told him something that this student had been told by some writer a few years ago, without even knowing who the student was, which writer said it to the student and when this conversation took place.

The most important part of his testimony are the clear answers to questions which are directly linked to the counts of the indictment:

**A. Cross-examination on 12 January 2008:**

Professor Vojislav Šešelj: I'm asking you: Did you anywhere in my speeches, in my articles, anywhere, in any public appearance, find a passage where I advocate killing prisoners of war?

Witness Anthony Oberschall: No, killing prisoners of war, you don't advocate that.

Professor Vojislav Šešelj: Mr. Oberschall, did you find any excerpt from any text where I would be advocating the killing of women and children or inciting anyone to do that?

Witness Anthony Oberschall: No, you didn't say it in so many words. I don't recall any passage.

Professor Vojislav Šešelj: Mr. Oberschall, you, as an intellectual, should know that there is a great number of judgements of the Supreme Court of the United States clearly defining what kind of instigation or incitement has to exist to make an act punishable criminally. The incitement has to be direct and immediate. Do you know that?

Witness Anthony Oberschall: I've already said to you and the Court that I'm not a legal expert. If -- if you want to have testimony about the -- the -- you know, the constitutional history of how these legal terms are defined in the case law, you should get a -- a lawyer here to testify whose expertise it is. It's not mine.

Professor Vojislav Šešelj: All right, Mr. Oberschall. When you were doing your expertise, you did not put into your computer programme, into your search engine, attitude toward civilians, attitude to prisoners of war, attitude to the women and children of the opposing side; right?

Witness Anthony Oberschall: No. All we did put into the search engine was "Serb", "Croat", "Muslim", "Albanian", in the -- in the right languages. That's what we searched for. Passages that deal with Serb/non-Serb political relations. We didn't search for anything else, the weather, women, old people, tariffs, agriculture, nothing like that. Just -- just those top -- just those key words.

Professor Vojislav Šešelj: Very well, Mr. Oberschall. I asked you this to let everyone know that you did not get hold of a single statement of mine where I advocate honouring international law of war, humane treatment of civilians, women, children, and elderly of the other side, et cetera. Mr. Oberschall, in your searches of my texts, did you find anywhere a passage where I would advocate, incite, or instigate to unlawful detention? So I'm talking necessarily about civilians. Only they can be unlawfully detained.

Witness Anthony Oberschall: You mean taking hostages?

Professor Vojislav Šešelj: Taking hostages as well, unlawful arrests, or any other way. Any other way that can be used to unlawfully detain civilians, that is, without a court decision.

Witness Anthony Oberschall: I -- I don't recall -- I don't recall any such passages.

Professor Vojislav Šešelj: You don't recall because it doesn't exist. Did you find anywhere in my texts a passage where I advocated, incited, or instigated torture, any form of torture?

Witness Anthony Oberschall: Torture? No.

Professor Vojislav Šešelj: Thank you, Mr. Oberschall. Did you find anywhere in my texts a passage where I advocated, incited others, or instigated cruel treatment?

Witness Anthony Oberschall: Well, it depends on what you mean by "cruel treatment." We had a long session last -- yesterday, actually, on expulsion and exchange and ethnic cleansing of -- of populations, and, you know, your advocacy, your views on that point. And I would say that's cruel treatment of people not in the sense of a narrow definition...

Professor Vojislav Šešelj: Mr. Oberschall, we had agreed at the beginning of this session to distinguish everything that happened in Vojvodina from what happened in the Serbian Krajina, Croatia, Republika Srpska, and Bosnia and Herzegovina. Do you remember? So this exchange of population that relates to Vojvodina, let's leave it aside completely for now. We'll come to that later. Let me tell you, for instance, what



cruel treatment is. Rape is cruel treatment. For example, because there is no precise definition of rape in the international law of warfare, it comes under the category of "cruel treatment." So did you encounter anywhere any advocacy on my part, incitement, or instigation to cruel treatment?

Witness Anthony Oberschall: Like rape?

Professor Vojislav Šešelj: Like rape, let's say, or any other form.

Witness Anthony Oberschall: No, you did -- no. You did not advocate rape, no.

Professor Vojislav Šešelj: Mr. Oberschall, did you anywhere in my texts related to the same areas, Serbian Krajina, Croatia, and Republika Srpska and Bosnia, any examples where I would advocate, incite, or instigate to wanton destruction of villages in populated areas and devastation that is not justified by military need? Did you find anything of the kind anywhere, from what you remember?

Witness Anthony Oberschall: I -- I don't really know quite what you mean by "not justified by military -- by military need." I mean, that's a very loose term. But I would say in general, no, you didn't -- you know, you didn't do a sort of a Genghis Khan act and say we have to destroy everybody and kill everybody and rape everybody and so on. You didn't do that, no. In the text that I looked at, you didn't do that.

Professor Vojislav Šešelj: Thank you, Mr. Oberschall.

Witness Anthony Oberschall: In the texts that I looked at, you didn't do that.

Professor Vojislav Šešelj: Thank you, Mr. Oberschall and thank you for having been concise. Mr. Oberschall, in my texts, in my public speeches, in my written texts, anywhere, did you find me instigating, inciting destroying religious buildings or educational institutions; that is to say, churches, mosques, schools, and so on and so forth?

Witness Anthony Oberschall: There wasn't any in my content analysis.

Professor Vojislav Šešelj: Mr. Oberschall, in excerpts from my speeches, did you find me anywhere advocating the plunder of public or private property or me instigating others to carry out that robbery?

Witness Anthony Oberschall: Well, in your -- in your -- some of your statements, you certainly describe and refer to a lot of plundering and robbery of private and public property that was going on during ethnic cleansing in Bosnia. You, of course, always say, when you describe these events, that Milošević and the army

and the Defence Ministry forces and the special forces were doing it but your volunteers were not doing it and that you were telling them not to do it. Frankly, should we believe that? I mean, that's what you're saying. Was it true? But it's -- but that's what you were saying. And then that is in the statements that I content analysed.

Vojislav Šešelj: Mr. Oberschall, you're not expected to believe or disbelieve something here. You're just supposed to confirm or challenge some factual allegations. Now you've moved a step ahead. You establish that I criticised others for having plundered private or public property, and you do not have a shred of evidence of me advocating that plunder. Am I right? Am I interpreting your words right now?

Witness Anthony Oberschall: Yes, you were accusing others, a lot of others, doing that.

Professor Vojislav Šešelj: If somebody is an inhabitant of Republika Srpska or Republika Srpska Krajina and if they belong to a different ethnic group, if that person differs ethnically from Serbs, did I advocate discrimination against such persons? Have you come across any such thing?

Witness Anthony Oberschall: You mean things like employment discrimination? I didn't -- well, we weren't looking for that, but I wasn't -- I didn't see in your texts anything about employment discrimination.

Presiding Judge Jean-Claude Antonetti: Witness, if I understand you properly, at this juncture, when Mr. Šešelj talks about the 6<sup>th</sup> of May 1992 speech in Hrtkovci, this doesn't cause any immediate reaction. Is that right? Because you mix it up or it is mixed in the 400 other documents. Is that right?

Witness Anthony Oberschall: Yes, it's -- it's in them.

Presiding Judge Jean-Claude Antonetti: Very well.

Professor Vojislav Šešelj: Thank you, Judge. At that point in time, I could not think of such a clever question. With that question of yours, you replaced the ten questions I want to deal with after that. Yes, this does show the competence of the expert. The Prosecution has my entire speech, Mr. Oberschall, and it proposed that the speech be admitted as evidence. And this speech was publicised several times; the last time in my book. So if you had looked for it, you would have found it. You could not have written your expert report without having the text of all the speeches of the rally in Hrtkovci. Right? Because that was the key rally for the indictment.

When asked how many deputies the Serbian Radical Party had in the People's Assembly of the Republic of Serbia on 6 May 1992, the witness could not give the correct answer, and when told that there was only one deputy, Professor Vojislav Šešelj, he replied:

Witness Anthony Oberschall: The conclusion I draw is contingent. If -- if -- if he's elected just from one constituency, I don't know, in Belgrade or someplace with 20,000 votes going to the Radical Party and he's a deputy, that's one thing. And -- you know, in 250 seats for the whole of -- for the whole of Serbia, then that would not make him an important political actor. But as far as I can tell, the Serbian Radical Party, his party, got several hundred thousand votes in -- in all of these elections. I know that somewhat later he got -- he and his party got about a million votes out of something like 3 or 4 million. So whether or not you are alone as to represent your party if you've got 20 -- 20 per cent of the total country's vote, it makes you an important political actor, yes.

Therefore the witness was inclined to claim that on 6 May 1992, Professor Vojislav Šešelj was an important political player, but could not come up with a single fact on the basis of which he had reached this conclusion. When he found out in court that Professor Vojislav Šešelj had been the only deputy of the Serbian Radical Party, he immediately changed his mind and in so doing challenged his entire work, since it now turns out that Professor Vojislav Šešelj "was not an important political player". However he was still significant, since he analysed all speeches, i.e. 400 speeches made by Professor Vojislav Šešelj and in these speeches he did not find any physical commitment, instigation or aiding and abetting per the counts of the indictment. When to the fact that the expert witness failed to find any references to violence, rape, looting, destruction, murder, expulsion and deportation we add the circumstances of time and place, and the fact that Professor Vojislav Šešelj was the only deputy of the Serbian Radical Party in the People's Assembly of the Republic of Serbia, it is really not clear on what the Prosecution is basing its charges.

**B.** During the cross-examination on 13 January 2008, the expert witness demonstrated total ignorance.

In respect of the factual background of the testimony, it is characteristic that this expert witness either does not have the facts or they are superficial and

stereotypical, and largely wrong. Hence no valid context can be found in which he analysed speeches, messages, propaganda techniques, etc.

The Prosecution presented this witness as the key witness for the use of “hate speech” directed against the non-Serbian population in Vukovar, Zvornik and Hrtkovci.

Through this expert witness, the Prosecution intended to prove persecution through hate speech:

(1) his abusive, violent and ethnically coloured speeches (it was not proven that they were outside the framework which is tolerated in the USA, Great Britain, etc.);

(2) the environment in which Šešelj gave his speeches characterised by a fierce ethnic conflict (the speech in Mali Zvornik in August 1990 was presented as if it took place in March 1992. There was no armed conflict in August 1990. There was no speech in Vukovar in November 1991 and no witness heard the sentence that not a single Ustasha must leave Vukovar alive; the speech transmitted from a loudspeaker mounted on an armoured vehicle simply never happened. There was no armed conflict in Hrtkovci in May 1992, and the speech was part of the election campaign for federal elections);

(3) the fact that these crimes (as described above) were committed shortly after Šešelj had given his speeches (he could not commit any war crime in April 1992 in Zvornik because of a speech in Mali Zvornik in August 1990; there was no speech in Vukovar in November 1991; property in Hrtkovci was being exchanged even before 6 May 1992 and after this date, even in 1995 after Operations Flash and Storm). There is no causal link between the crimes in the said locations and Professor Vojislav Šešelj’s speech.

Finally, we ought to bear in mind that Anthony Obershall was not accepted as an expert witness, but as an ordinary witness for the Prosecution testifying to facts. Although his credibility and methods were shattered, he is significant because he specifically challenged all counts of the indictment. When answering specific questions on the charges, he was clear in terms of both commission, i.e. physical commitment of persecution through hate speech, and all forms of complicity (instigation, aiding and abetting, supporting, encouraging, etc.) concerning persecution. Of course, when we say persecution, this includes all charges for acts and

omissions which are classified by counts of the indictment as violations of the laws or customs of war and crimes against humanity.

Here, considering the importance which the Prosecution intended to attach to the testimony of this expert witness, we must bear in mind that this expert witness annulled a large number of paragraphs in the Prosecution's Final Pre-Trial Brief, which formed the basis of all the Prosecution's plans and schemes. The Prosecution's Final Pre-Trial Brief contains some allegations which would have to be proven during the presentation of evidence, at least when the Prosecution presents its evidence.

Witness Anthony Oberschall is nonetheless a precious witness in terms of proving both the intention and the method and means which the Prosecution intended to use. Proof of this is in Section A. Šešelj's Role as Chief Propagandist of "Greater Serbia", and paragraphs 5 to 17 of the Prosecution's Final Pre-Trial Brief, with footnotes 5) to 49).

Paragraph 5 deals with the substantial contribution as the chief propagandist for the establishment by force of Greater Serbia. The criterion is what he did in mid-1990 (footnote 9), but there is not a single word about establishment by force, and texts from 9 February to 25 May 1984, 1985, the summer of 1988 and 18 April 1989 are used. Therefore there is not a single text from 1990. All the dates are before 1 January 1991, when the ICTY allegedly had no jurisdiction according to the Statute and there was no armed conflict.

In the next subparagraph of the same paragraph, there is reference to footnote 10 with texts from 1 July 1990, 25 June 1990 and 8 August 1990. It is noticed that these are indeed texts of his speeches in 1990, but none of the texts mention the establishment by force of Greater Serbia. All the dates are before 1 January 1991, and the ICTY allegedly has no jurisdiction for these dates according to the Statute and there was no armed conflict.

The next subparagraph refers to footnote 11 and texts of the statements of 19 September 1990, November 1990 (it is not clear how this can be mid-1990), December 1990 (it is not clear how this can be mid-1990) and 6 August 1991 (it is not clear how this can be mid-1990). There is not a single word about the establishment by force of Greater Serbia.

Paragraph 6 states that by late 1990 the Accused's public rhetoric had become more inflammatory.

The first subparagraph gives in footnote 12 one of the inaccurate definitions of the term Ustasha. It is not a derogatory term at all. If it had been, members of the Nazi movement in the Independent State of Croatia would not have used it before, during and after World War Two. And as for what kind of a movement it is, it probably suffices to say that even Hitler's Nazis were horrified by the Ustashas. The next footnote (13) cites a warning issued to the new Ustasha authorities in Croatia which were best represented by Franjo Tuđman. The Prosecution alleges that had Franjo Tuđman not died he would have been in the dock in The Hague. What is the difference in opposing Hitler, Pavelić or Tuđman as a protagonist of the Ustashas? Is Professor Vojislav Šešelj on trial because he was the first to oppose the Ustashas and how is this unlawful? Is there a ban on verbally opposing the Ustashas and issuing a timely warning about what could happen if the Ustashas were to start implementing their ideology when they had already come to power in Croatia?

The second subparagraph makes reference to footnote 14 and two sources for the same statement, both from 1992. It is a mistake, since it is impossible to make a statement in December 1992 on an issue that was current in 1991. The statement does not mention force, but emphasises living in brotherhood.

The third subparagraph makes reference to footnote 15 and a statement of 21 April 1991. Therefore it is not the end of 1990 and it contains nothing inflammatory, with the exception of a warning based on experience, a warning against the repetition of what happened between 1941 and 1945, and this concerns genocide against the Serbian people in the very same territory from which Serbs were being expelled.

The fourth subparagraph makes reference to footnote 16 and the statement of 18 July 1991. Hence it is not the end of 1990 and the statement refers to Slovenia and its decision to secede. It is a statement by Professor Vojislav Šešelj, who, seven months before this date, was in prison in Belgrade as an opposition politician.

In paragraph 7, six subparagraphs make reference to footnotes 17, 18, 19, 21 and 22, in which the Prosecution invokes the accused's statements of 6 December 1990, 6 May 1991, 24 May 1991 and 4 June 1991. All cite how the accused kept permeating the topic of Serbian enemies and Serbs being threatened with genocide.

Paragraph 8 alleges that the accused kept repeating these messages throughout the period relevant to the indictment. Let us recall that the indictment refers to the period between August 1991 and September 1993. In order to allegedly prove this, the

Prosecution cites the statements in footnote 23, dated **15 August 1990** (this date is not relevant to the indictment), **23 February 1991** (Basic principles of the Serbian Radical Party Programme, this date is not relevant to the indictment), **3 March 1991** (Programme Declaration of the Serbian Radical Party, this date is not relevant to the indictment), **15 May 1991** (this date is not relevant to the indictment), **June 1991**, (this date is not relevant to the indictment), **4 June 1991** (this date is not relevant to the indictment), **14 June 1991** (this date is not relevant to the indictment), **21 June 1991** (this date is not relevant to the indictment), September 1991 (it is not known whether this date is relevant to the indictment), 14 May 1993 (this date is relevant to the indictment), 14 May 1993 (this date is relevant to the indictment), 15 May 1993 (this date is relevant to the indictment), **13 November 1993** (this date is not relevant to the indictment), **12 December 1993** (this date is not relevant to the indictment), **14 April 1995** (this date is not relevant to the indictment), **2 March 1997** (this date is not relevant to the indictment) and **23 February 2003** (this date is not relevant to the indictment). There is also footnote 24, citing a statement given after the period relevant to the indictment. These are therefore the unwavering political positions Professor Vojislav Šešelj presents in the ICTY courtroom even today.

The first subparagraph of the same paragraph makes reference to footnote 25 citing a statement dated **21 April 1991** (this date is not relevant to the indictment).

The second subparagraph contains a reference to footnote 26, citing a statement dated **24 May 1991** (this date is not relevant to the indictment).

The third subparagraph makes reference to footnote 27, citing a statement dated **24 May 1991** (this date is not relevant to the indictment).

The fourth subparagraph makes reference to footnote 28, citing a statement given after the period relevant to the indictment).

The fifth subparagraph makes reference to footnote 29, citing a statement given in September 1991, containing the political stance of an opposition politician saying that the JNA, which is under attack, should withdraw.

It is not clear what the Prosecution has achieved with Anthony Oberschall's testimony. We know what it wanted to achieve, but Anthony Oberschall negated everything and became a witness for the defence.

Considering that it is impossible to determine if Professor Vojislav Šešelj was a participant in the JCE, and none of the expert witnesses mentioned Professor

Vojislav Šešelj at all while giving expert testimony, attaching any significance to these testimonies is moot.

Military expert witness Theunens, an analyst working in the Office of the Prosecutor, however biased he was during the cross-examination, suffered a fiasco in terms of expertise. His credibility was shattered and the fact remained that Theunens refuted the indictment that he had helped draft. Theunens could not even prove the existence of a volunteer unit of the Serbian Radical Party, because there were none.

Witness Yves Tomić, who was tasked with proving that the idea of creating a Greater Serbia was in essence criminal, had his credibility shattered and the public had a chance to see what ignorant people the Prosecution was using.

Expert witness Ewa Tabeau suffered the same fate, and the findings of all the other expert witnesses were irrelevant to Professor Vojislav Šešelj's individual criminal responsibility with regard to all types of responsibility listed.

### **IX. Locations and Events in the Indictment with Regard to Professor Vojislav Šešelj's Responsibility**

#### **THE BIJELJINA LOCATION**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as annexes to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### **Remarks Concerning Bijeljina in the Indictment:**

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- Counts 2, 3, 5, 6 and 7 were removed from the indictment;
- charges concerning crimes allegedly committed in Western Slavonia were deleted in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of crimes relating to Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and at Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present evidence that does not pertain to the crime base for Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.



As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Bijeljina location no longer exist in the indictment:

- paragraph: part of paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph 26; three parts of paragraph 27, paragraph 29 (c) paragraph 29 (d ), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Bijeljina is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraphs 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia (Croatia), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina in the Republic of Serbia (Serbia), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the SAO Krajina, the SAO Western Slavonia, and the SAO Slavonia, Baranja and Western Srem (after 19 December 1991, the SAO Krajina became known as the RSK; on 26 February 1992, the SAO Western Slavonia and the SAO Slavonia, Baranja and Western Srem joined the RSK), as well as the Dubrovnik Republic. With respect to Bosnia and Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), **Bijeljina**, Mostar, Nevesinje and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Regions in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, **Bijeljina**, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Bijeljina as a crime location, which was changed to a location with witnesses to a consistent pattern of conduct, appears in paragraphs BIJELJINA, 42, 62, 1. BIJELJINA 78, 80 and 81.

#### BIJELJINA

##### Paragraph 42

42. Adhering to the pattern in Croatia, by spring 1991, municipalities of Serbian communities were formed in three regions. Although the Bosnian Serbs claimed that these municipalities were established solely out of economic reasons, this justification was belied by the Croatian SDS's establishment of municipalities that were transformed into Serbian autonomous districts. In BH this pretext was fully exposed in September 1991 when these municipalities were proclaimed as Serbian Autonomous Districts.

##### Paragraph 62

Each sub-section focuses upon one geographic region where the alleged crimes took place: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

##### Paragraphs 78-81:

#### B. Crimes in Bosnia and Herzegovina

##### 1. Bijeljina

78. Bijeljina is located in Northeastern Bosnia and Herzegovina and was a key to the Bosnian Serb leadership's strategic goal of establishing a corridor between Serbia and the Krajina, linking the FRY /Federal Republic of Yugoslavia//Serbia and the targeted regions in Croatia and Bosnia and Herzegovina. In 1991 the population in Bijeljina was 59% Serbs and 31% Muslims. The remainder were Croats and other ethnicities. By 1997 Serbs accounted for more than 90% of the total population.

79. During the six months leading up to the attack on Bijeljina, Serbian forces, including SRS/SČP volunteers, established positions surrounding Bijeljina and erected roadblocks. At the end of March 1992, Serbian forces, including SRS/SČP troops, surrounded and attacked Bijeljina. Approximately fifty men under the command of Mirko Blagojević, thirty of Željko Ražnatović's men (i.e. Arkan's Tigers), and other troops participated in the attack and the subsequent takeover. During the takeover of Bijeljina, non-Serb civilians - in particular Muslims - were arrested and assaulted in various ways.

Local butcher Redžep Šabanović and his wife were killed by Arkan's Tigers and SRS/SČP volunteers.

80. During the period relevant to the Modified Amended Indictment, Šešelj frequently visited Bijeljina. In particular, he visited the *Srbija* café owned by Mirko Blagojević, who was the local commander of the SRS. During these meetings, Šešelj and Blagojević planned the Serbian takeover of Bijeljina municipality, including the destruction of any resistance. These plans included coordinated efforts of SRS/SČP volunteer troops, JNA forces, Arkan's Tigers, and Captain Dragan Vasiljković's troops associated with the MUP of Serbia. The SRS/SČP volunteers received logistical and material support from JNA units in the area throughout the conflict. In May 1993, Šešelj made Blagojević a *vojvoda* /military leader/ for his service to the Serbian people.

81. Brčko is located in the Northeastern Bosnia and Herzegovina, west of Bijeljina, on the south bank of the Sava river. According to the 1991 census, approximately 44% of the inhabitants were Muslims, 25% were Croats, and 21% were Serbs. Like Bijeljina, it was of strategic military importance for the control of the Posavina corridor during the conflict.

### **Summary Regarding Witnesses for Bijeljina**

#### **B. Implementation of the JCE in Bosnia and Herzegovina**

##### **1. Bijeljina:**

Witnesses: VS-1029 (Alija Gušalić), VS-1028 ( [REDACTED] ) and VS-1035 ( [REDACTED] ).

### **Prosecution's Final Revised List of Witnesses and Summaries of Witness Evidence:**

Crime base witnesses for Bijeljina:

VS-1029 (Alija Gušalić), VS-1028 ( [REDACTED] ) and VS-1035 ( [REDACTED] ).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Bijeljina, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his

actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

It is important in light of the reduction of the indictment and the Order of the Trial Chamber that crime based evidence should not be presented in respect of Bijeljina, but only evidence relating to a consistent pattern of conduct by Professor Vojislav Šešelj. This must be viewed in terms of paragraphs 6 and 10e of the indictment to the effect that Vojislav Šešelj participated in a JCE whose purpose was the removal of population through the commission of crimes in the area of Bijeljina, and his concrete involvement is reflected in that he took part in the planning and preparation of the take-over of power on the territory of Brčko.

During the presentation of Prosecution evidence, the following witnesses were heard:

1. [REDACTED], VS-1028, testified *viva voce* on 9 December 2008 under protective measures.
2. [REDACTED], VS-1035, testified *viva voce* on 28 and 29 January 2009 under protective measures.
3. Alija Gušalić, VS-1029, testified *viva voce* on 4 March 2009 without protective measures.

Considering that according to the Prosecution's Pre-Trial Brief and the Prosecution's summaries of witness testimonies, the Prosecution witnesses were obliged to testify on the crime base in Bijeljina, and by the decision of the Trial Chamber of 8 November 2006, after the scope of the indictment was reduced, on the consistent pattern of conduct, it follows that it is important for the Trial Chamber what the witnesses said in the courtroom in relation to Professor Vojislav Šešelj's participation in the JCE. With regard to the Bijeljina location, these are paragraphs 6 and 10e of the indictment.

It follows that paragraph 10e constitutes the case:

“Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two SAOs in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, **Bijeljina**, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.”

To put it simply, this should refer to:

- Planning to take over power
- Preparation for taking over power
- Forced removal of Muslims from Bijeljina.

Professor Vojislav Šešelj's general political views on the reorganisation of Yugoslavia are not proof that he planned to take over power in Bijeljina. Especially if we bear in mind that at the time he was an opposition deputy in the People's Assembly of the Republic of Serbia, the only deputy of the Serbian Radical Party, and he was not in power either in Serbia or in Bosnia and Herzegovina. During the events in Bijeljina, Professor Vojislav Šešelj could not order, recruit, organise, finance or take any action which could be linked in any way to the armed conflict. The Serbian Radical Party in Bijeljina was in its infancy, and the SDS and the SDA were in power. Had the Serbian Radical Party come to power in Bijeljina on the basis of or by way of armed conflict on 4 April 1992, perhaps there would have been some grounds for considering the allegations in the indictment. However, since the Serbian Radical Party was not in power and neither did it come to power after the armed conflict, the allegations in the indictment referring to the planning and preparation of the take-over of power in Bijeljina make no sense at all. If we were to presume that the purpose of the planning and preparation of the take-over of power in Bijeljina was to bring the SDS to power, the error is all the greater, since the SDS was already in power.

Everything that situates Professor Vojislav Šešelj in the context of Bijeljina has been erroneously and tendentiously conceived in order to establish unity and coordination with Arkan's men. The Serbian Radical Party and Professor Vojislav Šešelj did not send volunteers to Bijeljina, nor did anyone ask that they be sent, there was no need for it. By the force of circumstances, Bijeljina features in the indictment against Professor Vojislav Šešelj because of one event which took place at the *Srbija* café owned by Mirko Blagojević, who is a member of the Serbian Radical Party. Before Professor Vojislav Šešelj was indicted by the ICTY, Bijeljina had been resolved as a location where crimes were committed. The ICTY simply knew everything about it and Mirko Blagojević, who had been the concern of the ICTY, was no longer a suspect. In the trial judgement against Momčilo Krajišnik, this is worded: excerpt from the interview with Mirko Blagojević, 1995.

We need to know that the event of 31 March 1992 in Bijeljina preceded what was being prepared by the European Community, now the European Union. It was preparing to recognise Bosnia and Herzegovina, which took place on 6 April 1992,

hence any armed conflict or provocation by armed Muslims could have a negative impact and lead to a conflict. By erecting roadblocks and arming themselves the Muslims clearly intended to arrange the best possible position for action, and their action would have been accepted as of the first day of the recognition of Bosnia and Herzegovina's independence.

Any conflict requires the existence of two sides. The other, Muslim side was prepared (troops, weapons, organisation) and it provoked and challenged. They were clearly looking for a pretext to start an armed conflict. The incident which Alija Gušalić provoked only sparked what had been smouldering in inter-ethnic relations concerning independence as a topic imposed on the Muslims and encouraged by the European Community (now the European Union) against Serbian aspirations to preserve Yugoslavia. The participation of some members of the Bijeljina branch of the Serbian Radical Party in the armed conflict of 31 March 1992 is indisputable, but their participation can only be linked to the fact that they are residents of Bijeljina, and that they had not come from anywhere else or from Serbia, as some have tried to present their involvement. It is important to bear in mind that Mirko Blagojević and the Serbian Radical Party members had the status of opposition politicians in Bijeljina before, after, and during the armed conflict, and they publicly criticised both the authorities in Bijeljina and individuals who acted without authority. Furthermore, at the time and even today in Bijeljina there are Muslims who are members of the Serbian Radical Party, hence the way the Prosecution constructed its charge that Professor Vojislav Šešelj participated in a JCE the purpose which allegedly being the permanent forcible removal of Muslims from Bijeljina and from other towns in Bosnia and Herzegovina is untenable. Not only is it not so, but it is untenable that Muslim members of the Serbian Radical Party advocated and supported the political idea of the removal of Muslims from the territory of Bosnia and Herzegovina. This is how it appears according to the Prosecution's case which is meaningless.

Furthermore, we must bear in mind that Professor Vojislav Šešelj has never been on good terms with the persons who feature in the charges concerning Bijeljina as those with whom he participated in the joint criminal enterprise. This not only refers to Biljana Plavšić and Arkan, but also to all the other allegedly direct perpetrators of the crime. Surely an accomplice in a joint enterprise or activity is protected and not attacked. For instance, in the case of Mauzer, in order to make the story from the indictment stand, Professor Vojislav Šešelj would have to be in a joint

criminal enterprise with Zoran Đinđić through Mauzer. Mauzer was a high-ranking official of Zoran Đinđić's Democratic Party for Republika Srpska. If Zoran Đinđić accepted him, and both he and the public knew very well who Mauzer was and what his wartime past was, then the same indictment, if not a more extensive one, should have been brought against Zoran Đinđić.

This parallel is important because of the fact that in some other locations good soldiers who subsequently joined the Serbian Radical Party were given the title of *vojvoda*. In the same way Mauzer's wartime past was the prerequisite for membership and a high-ranking political position in the Democratic Party. If Zoran Đinđić and the Democratic Party are not charged over this, there is no way Professor Vojislav Šešelj and the Serbian Radical Party can be.

The testimonies of witnesses for the Bijeljina location on the alleged consistent pattern of conduct are based on the hatred of Professor Vojislav Šešelj and Mirko Blagojević. Proof of this is in the fact that in the trial judgement against Momčilo Krajišnik, case IT-00-39-T of 27 December 2006, paragraphs 297 to 309, which relate to the Bijeljina location and footnotes 665 to 701, where the evidence is presented, there is no mention of the name of Professor Vojislav Šešelj's name or his party.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1028,  
[REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1028, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

**Crimes in BH – Bijeljina**

“At the end of March 1992, Serb forces, including SRS/SČP troops, surrounded and attacked Bijeljina.” (footnote 238)

“Approximately fifty men under the command of Mirko Blagojević, thirty of Željko Ražnatović's men (i.e. Arkan's Tigers), and other troops participated in the attack and the subsequent occupation.” (footnote 239)

“Redžep Šabanović and his wife were killed by Arkan's Tigers and SRS/SČP volunteers.” (footnote 243)

“During the period relevant to the indictment, Šešelj frequently visited Bijeljina. In particular, he visited the *Srbija* café owned by Mirko Blagojević, who was the local commander of the SRS.” (footnote 244)

“Other members of the SRS in Bijeljina included Pero Simić and Branislav Filipović aka Šumar.” (footnote 245)

**2. Summary of testimony for VS-1028, [REDACTED]**

Biography: Muslim male from Bijeljina.

The events: The witness will testify to the relationship between Šešelj and Mirko Blagojević in Bijeljina and the murder of several Muslims by Šešelj’s men. He witnessed the murder of the local butcher, Redžep Šabanović, and his wife by Šešelj’s and Arkan’s men.

In the early twenties the witness frequented the *Srbija* café, partly in order to keep up to date with SRS plans. In 1991, non-Serbs were starting to be dismissed from work. Local radio broadcast purported Chetnik songs. In March 1992, he saw Šešelj and Blagojević in the café. He accidentally overheard them talking about instigating a conflict in Bijeljina and murdering anyone who opposed their plans and the creation of Greater Serbia. They also mentioned that such plans would be implemented with help from the JNA, Arkan’s men and Captain Dragan. The witness saw Šešelj in this café twice. In mid-March 1992, the SRS members started appearing in public armed.

On 31 March 1992, a hand grenade exploded in the *Istambul* café, after which there was shooting in Bijeljina. On 1 April 1992 the witness took part in erecting a barricade and in a clash with Arkan’s and Šešelj’s men. After leaving this spot, he saw Šešelj’s and Arkan’s men kill several Muslims. He also saw soldiers killing people and removing the green flag of the Islamic community from the minaret of the mosque. Some of Šešelj’s men wore *šubara* /fur/ hats with cockades, as well as the standard-issue JNA uniforms, while others wore plain clothes with various Chetnik insignia.

Paragraphs: 5-9, 10a, c, e-g, 11, 15, 16, 17a, j, 18, 25, 28 and 34.

Counts: 1-4, 12 and 13.

**3. Content of testimony:**

The witness testified on 9 December 2008 under protective measures.



The witness demonstrated a maximum hatred and nervousness, as he expected to be provided with means to live abroad on the basis of his testimony against Professor Vojislav Šešelj. His credibility was shattered and even what he could have testified about as an eye witness came to nothing. He protected Mauzer and Đurković and attacked the author of the book, commander Vahid Karavelić.

Showing unconcealed and almost pathological hatred of Mirko Blagojević and Professor Vojislav Šešelj, the witness even turned a hearsay story into something he knows about. The witness was a very good opportunity to present to the judges the broad context of what had preceded the armed conflict, all Professor Vojislav Šešelj's visits to Bijeljina and to confirm that there were no volunteers from Serbia.

Everything the Prosecution cited in its Final Pre-Trial Brief and in the summary of this witness's testimony is a predictable story of the Prosecution which came to nothing during the cross-examination of this witness.

#### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10a, 10c, 10e, 10f, 10g, 11, 15, 16, 17a, 17j, 18, 25, 28 and 34, but charges concerning Bijeljina are contained in paragraphs 6 and 10e.

The witness was planned for counts 1, 2, 3, 4, 12 and 13 of the indictment, but Bijeljina is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bijeljina, and the perpetrators of crimes in Bijeljina.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1035, [REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1035, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

#### Crimes in BH – Bijeljina

"At the end of March 1992, Serb forces, including SRS/SČP troops, surrounded and attacked Bijeljina." (footnote 238)

“During the takeover of Bijeljina, non-Serb civilians - in particular Muslims - were arrested and assaulted in various ways.” (footnote 240)

“The Prosecution will lead evidence as to the involvement of Mirko Blagojević in assaulting non-Serb civilians. The Prosecution will also lead evidence that following the attack on Bijeljina town, the bodies of 48 civilians, including women and children, were collected, mostly from around the house of local butcher Redžep Šabanović.” (footnote 242)

“During the period relevant to the indictment, Šešelj frequently visited Bijeljina. In particular, he visited the *Srbija* café owned by Mirko Blagojević, who was the local commander of the SRS.” (footnote 244)

2. Summary of testimony for VS-1035, [REDACTED]

Biography: Muslim male [REDACTED].

The events: The witness will talk about division within the Bijeljina police and the behaviour of Serbian soldiers and civilians towards Muslim policemen.

On 31 March 1992, the witness travelled from Bosanski Šamac to Bijeljina. He passed through about 18 checkpoints between Brčko and Bijeljina and noticed that the town was surrounded by JNA soldiers and reserve forces who were well armed with JNA weapons. Policemen in Bijeljina had to sign a document of loyalty to the Serbian authorities, stating that they would work for the Ministry of the Interior of the Republika Srpska (RS). The policemen were given berets brought from Serbia, identical to those worn by members of the MUP of Serbia, and given instructions to wear them for personal safety.

The witness will testify to the collection of bodies in Bijeljina. He saw that 48 bodies were collected from the streets, including those of women and children. All these people were killed with firearms. Most of them were Muslims, one was a Croat and another one was of a Serbian child. Most of the bodies had wounds to the chest, mouth, temporal bones or back of the head. None of the collected bodies were in uniforms. He saw members of paramilitary units, including Arkan's men, stopping vehicles with the bodies. The witness saw Arkan in Bijeljina twice, once in a JNA Jeep, with Ferid Zečević, whom Arkan had arrested, and also when Arkan welcomed Biljana Plavšić and Fikret Abdić outside the municipal building. After the take-over of power, Arkan and his men occupied the premises in the SDS building.

The witness found out about an official list kept by Serbs at the police station, containing the names of Muslims wanted for certain crimes allegedly committed in the first few days of the takeover. The Serbian colleagues were asked to show the list, but they refused.

Muslims from certain villages near Bijeljina declared themselves as loyal to Republika Srpska. In spite of this, they were later evicted. The mosques in Bijeljina and Atmačići were destroyed.

Paragraphs: 15, 16, 17 (a, e-j), 18, 25, 31, 32 and 34.

Counts: 1-4, 10-14.

### 3. Content of testimony:

The witness testified on 28 and 29 January 2009 under protective measures. He testified in the Milošević case and his testimony was taken into account in the Krajišnik case.

As a former policeman, the witness helped examine the broader context of the events in and around Bijeljina. In his first statements, the witness did not mention either the Serbian Radical Party, or Professor Vojislav Šešelj, or even Mirko Blagojević. In his last statement before testifying, he said that Mirko Blagojević was well-known as someone involved in crime, but he made a mistake about his party affiliation. During cross-examination this was corrected, as was an attempt to plant a forged Blagoje Adžić document, and a document sent to Stanišić associating it with Jovica, although it was in connection with Mićo Stanišić. An interesting part of the examination was information from the witness that Professor Vojislav Šešelj had always followed by the police when he came to Bijeljina.

### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17 (a, e, g, h, i and j), 18, 25, 31, 32, 34, but charges concerning Bijeljina are contained in paragraphs 6 and 10e.

The witness was planned for counts 1, 2, 3, 4, 10, 11, 12, 13 and 14 of the indictment, but Bijeljina is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bijeljina, and the perpetrators of crimes in Bijeljina.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1029,  
ALIJA GUŠALIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1029, Alija Gušalić, was planned as a prosecution witness through whom the following would be proven:

Crimes in BH – Bijeljina

“At the end of March 1992, Serb forces, including SRS/SČP troops, surrounded and attacked Bijeljina.” (footnote 238)

“Approximately 50 men under the command of Mirko Blagojević, 30 of Željko Ražnatović's men (i.e. “Arkan's Tigers”), and other troops participated in the attack and subsequent occupation of the town.” (footnote 239)

“During the takeover of Bijeljina, non-Serb civilians - in particular Muslims - were arrested and assaulted in various ways.” (footnote 240)

“The Prosecution will lead evidence as to the involvement of Mirko Blagojević in assaulting non-Serb civilians.” (footnote 241)

“During the period relevant to the indictment, Šešelj frequently visited Bijeljina. In particular, he visited the Café *Srbija* owned by Mirko Blagojević, who was the local commander of the SRS.” (footnote 244)

**2. Summary of testimony for VS-1029, Alija Gušalić**

Biography: Muslim male from Zvornik, between 20 and 30 years old at the time of the above events.

The events: Arkan's and Šešelj's men arrived in Bijeljina around February 1992. They walked around in uniforms and frequented the *Srbija* café owned by Mirko Blagojević. A day or two before the clash broke out in Bijeljina, on 31 March 1992, a hand grenade was thrown at the *Istanbul* café, injuring seven people. A day later, the witness went to the *Srbija* café where he saw several Arkan's and Šešelj's men. The witness believes that they were amassing forces in order to attack Bijeljina. They spoke with a Serbian accent. The witness was on his way back from the *Srbija* café when he was shot and wounded. While recovering in hospital, Blagojević and three other soldiers beat him. These soldiers wore cockades and had long beards.

Arkan came to his room late in the evening after he was beaten and ordered the hospital staff to give him the medical care he needs. Fikret Abdić and Biljana Plavšić visited the hospital two days later.

The witness will testify to the destruction of the Bijeljina mosque during the war.

In June 1992, the witness was arrested several times. He will give details about the arrests and dwell on his imprisonment in the SUP building and the abuse he suffered there. The witness was then transferred to the Batković camp.

**Batković Camp:** The witness noticed soldiers in the camp; some wore camouflage uniforms, some SMB /olive drab/ ones. There were about 2,000 prisoners in the camp, mainly civilians. The soldiers beat the witness and the others. Apart from beating them, it was extremely hot in the camp, there was not enough ventilation and there were too many people in a small space, sanitary conditions were poor, there was not enough food. Ferid Zečević and Zlatko, last name unknown, died of the beatings. Many died because of the inhumane conditions in the camp. When the witness arrived in the camp he weighed 109 kg. When he left, he had 59 kg and serious injuries. When the ICRC visited the camp the witness was taken to a house outside the fenced complex and kept hidden inside. The witness spent 11 months imprisoned in the Batković camp without medical care. They took him to Dobož/Usora, where he was beaten again. He was given some medical care there. During the 11 and a half months he spent in Dobož/Usora, the witness was used for forced labour, including digging trenches and collecting bodies of Serbian soldiers from the front line. He was also regularly beaten by a man called Đuro Martić. In mid-July 1993, the witness was sent back to Batković. While in the camp, the witness had contact with a Serb who was called *Vojvoda* Pusula, who prepared him for a TV interview. The witness was exchanged on 8 November 1993 and went to Tuzla.

Paragraphs: 5-10a, f, g, 15, 16, 17 (a-e, g-j), 18, 25, 28, 29 (x), 30-32 and 34.

Counts: All.

### 3. Content of testimony:

The witness testified on 4 March 2009 *viva voce*. The witness was so interesting and inspiring that his testimony came to nothing. It was a retarded person who caused more damage to the Prosecution since the practice of the Prosecution was demonstrated through this witness.

### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10a, 10f, 10g, 15, 16, 17 (a, b, c, d, e, g, h, i and j), 18, 25, 28, 29 (x), 30, 31, 32 and 34, but charges concerning Bijeljina are contained in paragraphs 6 and 10e.

The witness was planned for counts 1-14 of the indictment, but Bijeljina is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bijeljina, and the perpetrators of crimes in Bijeljina.

### **THE BOSANSKI ŠAMAC LOCATION**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as annexes to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### **Remarks Concerning Bosanski Šamac in the Indictment:**

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- counts 2, 3, 5, 6 and 7 were removed from the indictment;
- charges concerning crimes allegedly committed in Western Slavonia were deleted in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of crimes relating to Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and at Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present non-crime-base evidence in respect of the crime sites of Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.

As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Bijeljina location no longer exist in the indictment:

- paragraph: part of paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph

26; three parts of paragraph 27, paragraph 29 (c) paragraph 29 (d ), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Bosanski Šamac is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraphs 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia (Croatia), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia (Serbia), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the SAO Krajina, the SAO Western Slavonia, and the SAO Slavonia, Baranja and Western Srem (after 19 December 1991, the SAO Krajina became known as the RSK; on 26 February 1992, the SAO Western Slavonia and the SAO Slavonia, Baranja and Western Srem joined the RSK), as well as the Dubrovnik Republic. With respect to Bosnia and Herzegovina, the areas included **Bosanski Šamac**, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of **Bosanski Šamac**, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**According to the Final Pre-Trial Brief for Bosanski Šamac:**

In the Prosecution's Final Pre-Trial Brief, Bosanski Šamac as a crime location, which was changed to a location with witnesses to a consistent pattern of conduct, appears in the paragraphs BOSANSKI ŠAMAC, 3f, 4, 62, 3. BOSANSKI ŠAMAC 85, 88 and 90.

## BOSANSKI ŠAMAC

Paragraphs 3f and 4

3. Although the process varied from place to place, the take-overs achieved the common goal of establishing Serb control in the targeted territories. Šešelj participated in this process by:

a) publicly and systematically promoting the establishment by force of a unified Serb-dominated state known as Greater Serbia with its western borders along the Karlobag-Karlovac-Ogulin-Virovitica line, thereby including wide parts of Croatia and BH;

b) publicly and systematically inspiring fear and hatred in Serbs that non-Serbs, in particular Croats and Muslims, were their enemies and intended to cause them harm, thereby creating and/or exacerbating an atmosphere conducive to violent acts against targeted non-Serb populations and inciting, participating in and contributing to the crimes alleged in the indictment;

c) recruiting, organising, financing, supporting, directing, encouraging and instigating Serb volunteers affiliated with the SRS/SČP, who committed crimes alleged in the indictment;

d) encouraging and instigating other Serbian forces, such as members of the JNA/VJ /Yugoslav Army/, local units of the Serbian TO and the TO from Serbia, the VRS, SVK and police, to commit the crimes alleged in the indictment;

e) coordinating the activities of the SRS/SČP volunteers and members of other Serbian institutions who committed the crimes alleged in the indictment;

f) participating and assisting in the planning and preparation for taking power in villages in Western Slavonia and Eastern Slavonia, Baranja and Western Srem (SBWS), Croatia, and in the municipalities of Bosanski Šamac and Zvornik, BH, and in the subsequent persecution campaigns;

g) publicly calling for the expulsion of inhabitants of Croatian ethnicity from parts of the Vojvodina, Serbia, thereby instigating his followers and local authorities to engage in a persecution campaign against the local Croatian population;

h) personally and directly causing the expulsion of Croatian residents from villages in Vojvodina, in particular the village of Hrtkovci, by intimidating and insulting Croats in public speeches; and

i) denigrating the non-Serb populations in Vukovar, Zvornik and Hrtkovci through public "hate speech."

4. The accused's participation in the JCE can be divided into three essential segments. First, the accused used his power and popularity as a politician to



constantly promote the goal of the creation of a Serb dominated Greater Serbia by force in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.

Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of volunteers who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories.

Third, in some areas, which will be discussed further in the text, such as Vukovar, Zvornik, Bosanski Šamac and Hrtkovci, the accused personally planned, instigated, ordered and/or carried out these crimes, thereby additionally participating in and contributing to the JCE.

#### Paragraph 62

62. Each sub-section focuses upon one geographic region where the alleged crimes were committed: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

#### Paragraphs 85-90

##### 3. Bosanski Šamac, April 1992 – September 1993

85. The municipality of Bosanski Šamac, lying along the Sava River which divides BH and Croatia, falls within the so-called Posavina Corridor, a territory that linked Serbia with parts of the targeted areas in BH and Croatia. On 12 May 1992, during an Assembly Session, Radovan Karadžić stressed the crucial importance of taking control of this corridor for the members of the JCE when he declared that the establishment of a corridor between the Bosanska Krajina and ultimately the RSK and Serbia, was the second most important strategic goal of the Bosnian Serbs. The Serb leaderships in (S)FRY and RSK were equally aware of the importance of the Posavina Corridor as the lifeline to the Serbian motherland. The RSK leadership was involved in the planning of military operations in the corridor and participated, on the request of the Belgrade leadership, in the take-overs of territories with its troops. In 1991 the census recorded the ethnic makeup of the Bosanski Šamac municipality as 44.7% Croat, 41.5% Serb, 6.8% Muslim and 7% others, the Muslims living mainly in the town of Bosanski Šamac and representing a majority there.

86. Around March 1992, in preparation for the military and political take-over of Bosanski Šamac, Stevan Todorović requested that the SRS send volunteers to that municipality. Tomislav Nikolić, who was the Vice-President of the SRS in

Kragujevac, recommended Srećko Radovanović (aka Debeli), the leader of a group of volunteers from Kragujevac. The SRS War Staff decided to dispatch a group of 30 - 40 men led by Debeli. Šešelj personally approved and helped to arrange for their training by the Serbian DB /State Security/. The War Staff informed Debeli that instead of sending his group of volunteers directly to the war front, they would first be sent for training in Serbia by a special unit of the Serbian MUP. Debeli initially refused to participate in this training, but agreed after speaking with Šešelj.

87. The SDS in Bosanski Šamac established a Crisis Staff on 28 March 1992, with Blagoje Simić as President and Stevan Todorović as chief of police. On 11 April 1992, Debeli's group of DB-trained and armed SRS/SČP volunteers arrived by JNA helicopter in Batkuša, near Bosanski Šamac, to spearhead the take-over of the municipality. Their commanders were Dragan Đordjević (aka Crni), Debeli, and Slobodan Miljković (aka Lugar) of the Serbian DB. The volunteers wore camouflage uniforms, red berets, and a Grey Wolf patch on their arms. Soon after their arrival they were integrated into the JNA's 17<sup>th</sup> Tactical Group – with the agreement of the local JNA command, the Crisis Staff and Stevan Todorović.

88. On 17 April 1992, Serb forces including SRS/SČP volunteers, Bosnian Serb police under the command of Stevan Todorović, and JNA soldiers attacked the town of Bosanski Šamac, quickly taking over the town and neighbouring areas. These Serb forces effected the forcible removal of the non-Serb civilians from the municipality through violence, mass imprisonment, and deportation. While in detention, the detainees were subject to inhuman and cruel treatment by the police and SRS/SČP volunteers, including physical, psychological and sexual torture.

89. In addition to beating and torturing non-Serb civilians, SRS/SČP volunteers, including Debeli and Lugar, also murdered detainees in the camps in Bosanski Šamac. For example, on 26 April 1992, Lugar killed Anto Brandić (aka Dikan), a Croat, by beating him with a wooden club and then shooting him. During this incident, Lugar referred to Šešelj as “my commander.” On 7 May 1992, approximately 50 Croat and Muslim prisoners were taken by police to a warehouse in the village of Crkvina, near the town of Bosanski Šamac. Late that evening, SRS/SČP volunteers, including Debeli, Lugar, and Crni arrived in Crkvina. Several of these people introduced themselves as “members of Šešelj's group.” They beat the non-Serb detainees and shot and killed 16 of them. The people who were beaten were forced to sing Chetnik songs. The prisoners who survived the massacre were ordered to clean

the blood and brain tissue off the floor and bury the bodies of the dead in a mass grave. The SRS/SČP volunteers were notorious for their cruelty. Following their arrest and abuse the Muslims and Croats in detention camps in the municipality and elsewhere were deported to Croatia or transferred to other parts of BH as part of a series of so-called exchanges.

90. Three or more non-Serbs were forbidden from gathering in public places, and all political activity beyond that of the SDS was banned. Private homes and businesses of non-Serbs were systematically looted. Šešelj was informed about the events in Bosanski Šamac following the takeover.

### **Summary Regarding Witnesses for Bosanski Šamac**

#### **B. Implementation of the JCE in Bosnia and Herzegovina**

##### **3. Bosanski Šamac, April 1992 – September 1993**

Witnesses: VS-043 (Milan Babić, deceased), VS-1010 (██████████), VS-011 (Ljubiša Petković, did not testify, defence witness), VS-1002 (██████████), VS-1004 (██████████, did not testify), VS-1000 (██████████), VS-1008 (Stevan Todorović, deceased), VS-1058 (██████████, testified as a defence witness), VS-010 (Zoran Dražilović, did not testify, defence witness), VS-017 (Zoran Rankić, testified as a defence witness).

#### **Prosecution's Revised Final Witness List and Summaries of Witness' Evidence**

Crime base witnesses for Bosanski Šamac turned into witnesses to a consistent pattern of conduct for Bosanski Šamac:

VS-1000 (██████████), VS-1002 (██████████), VS-1004 (██████████, did not testify), VS-1007 (Sulejman Tihic, witness not listed in the Prosecution's Final Pre-Trial Brief, testified in the courtroom), VS-1008 (Stevan Todorović, deceased), VS-1010 (██████████), VS-1058 (██████████, testified as defence witness and the Prosecution planned him to testify to counts which are no longer in the indictment).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Bosanski Šamac, to prove that the general requirements under Articles



conduct when in all these proceedings before the ICTY there were no charges or conviction for participation in a JCE?

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1007,  
SULEJMAN TIHIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1007, Sulejman Tihić was not planned as a Prosecution witness.

2. Summary of testimony for VS-1007, Sulejman Tihić

Biography: Bosnian Muslim, the President of the SDA in Bosanski Šamac at the beginning of the war.

Detention and beating in the SUP and TO buildings: The witness was detained at the SUP in Bosanski Šamac. Whilst there he was interrogated and beaten.

The witness will testify about his detention at the TO building in Bosanski Šamac and the treatment of the detainees there.

The detainees were beaten and the witness identifies Lugar as one of the worst perpetrators. One of the detainees was beaten unconscious and shot by Lugar when Lugar realised that he was still alive. The witness was interrogated by Crni.

Detention in the JNA barracks in Brčko: on 26 or 27 April 1992, the witness was transported to the JNA barracks in Brčko. He will give evidence about his detention there and the presence of Arkan's men and the Red Berets in Brčko at that time. The paramilitary forces cooperated with the JNA, and even the JNA soldiers were afraid of the paramilitary forces. He will testify about the outbreak of war in Brčko, and his transfer, on 1 and 2 May 1992, to the JNA barracks in Bijeljina. The witness will describe interrogations and beatings by JNA soldiers.

Detention in Batajnica/Serbia: the witness was subsequently transported by helicopter to Batajnica in Serbia, where he was detained. He was guarded by young JNA recruits. He will testify about their treatment of him there. He was subsequently taken to the prison in Sremska Mitrovica, Serbia. He will talk about the camp commander, a member of the JNA, and about how he was beaten by the soldiers there.

Paragraphs: 5 - 8, 12, 15, 16, 17 a-d, g-j, 18, 23-28, 31 and 32.

Counts: all counts

**3. Content of testimony:**

The witness testified *viva voce* on 3 and 4 December 2008. Previously he had testified in the Tadić, Šamac Group and Milošević cases. Considering that he did not mention Professor Vojislav Šešelj in a negative context even in passing, the testimony was used for general historical and political issues related to armed conflict.

**4. Summary of testimony:**

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 12, 15, 16, 17(a-d), 17(g-j), 18, 23, 24, 25, 26, 27, 28, 31 and 32, but charges concerning Bosanski Šamac are laid out in paragraphs 6 and 10e.

The witness was planned to testify to counts 1-14 of the indictment, and Bosanski Šamac is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14. He is a witness to the consistent pattern of conduct, and this is probably pertinent to the JCE. Given that he did not even mention Professor Vojislav Šešelj, it is unclear why he was called. Nevertheless, he was used to good effect to describe the situation which allowed for the determination of the political context which enabled the outbreak of the armed conflict.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bosanski Šamac, and the perpetrators of the alleged crimes in Bosanski Šamac.

**ANALYSIS OF THE RULE 92ter TESTIMONY OF WITNESS VS-1000,  
[REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1000, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH - Bosanski Šamac, April 1992 - September 1993

"On 17 April 1992, Serb forces including SRS/SČP volunteers, Bosnian Serb police under the command of Stevan Todorović, and JNA soldiers attacked the town of Bosanski Šamac, quickly taking over the town and neighbouring areas. While in detention, the detainees were subject to inhuman and cruel treatment by the police and

SRS/SČP volunteers, including physical, psychological and sexual torture.” (footnote 267)

2. Summary of testimony for VS-1000, [REDACTED]

Biography: Muslim male, [REDACTED]. He was detained at the SUP in Bosanski Šamac from 5 May 1992 until he was exchanged on 5 November 1992.

Takeover: before the takeover, the Serbian residents of Bosanski Šamac had armed themselves. By February 1992, they had evacuated the women and children from the town. In the early hours of 17 April 1992, the witness heard shooting. The witness saw tanks and soldiers, accompanied by Simo Zarić and Miroslav Tadić, patrolling the town, stopping at houses owned by non-Serbs, they demanded the surrender of weapons. The witness heard radio announcements that Muslims and Croats were prohibited from gathering in groups and were required to wear white arm bands to identify themselves as non-Serbs. Furthermore, non-Serbs were ordered to report to the TO building. When the witness reported to the TO building, he heard screams coming from the SUP building across the street.

Forced Labour: the witness and other non-Serb men and women of all ages were assigned forced labour such as digging trenches, preparing and carrying sandbags, cleaning streets and harvesting wheat, without any food or payment. At times they had to work in dangerous conditions.

Looting: all valuables were stolen from the witness, his family and friends. The witness's jeep was seized and he later saw Lugar driving it. The witness was forced to help during the lootings.

Imprisonment: on 5 May 1992 the witness was taken to the SUP where he was detained in inhumane conditions. He was beaten by many Serbs, including Stevan Todorović. Laki cut off the witness' ear and pierced his right hand [REDACTED]. The witness saw other detainees, [REDACTED], being regularly beaten and abused. The witness and other prisoners were forced to sing Chetnik songs.

Paramilitary forces: in the vicinity of Bosanski Šamac, the witness saw many members of paramilitary forces, including Arkan's Tigers, Grey Wolves */Sivi vukovi/*, and Šešelj's men who wore *šubara* hats with the Chetnik insignia. The witness heard from many Serbs that Šešelj and Arkan were criminals in Serbia who had come because Milošević told them they would be pardoned if they went to Bosnia to fight. Many spoke with a Serbian accent. One of them said: "They brought us here to save

the Serbs who are being killed by Muslims and Croats.” The witness saw Lugar, Crni, Debeli, Laki and others take part in the ill-treatment of prisoners. Lugar used pliers to extract the witness’ teeth. The witness saw him kill a Croat at the stadium. The witness saw Šešelj and Arkan coming to the SUP separately.

Rape: the witness saw Serbian soldiers raping a 17-year-old girl.

Paragraphs: 12, 15-18, 23-28 and 30-32.

Counts: all counts.

### 3. Content of testimony:

The witness testified on 11 December 2008 under protective measures and under Rule 92*ter*. He earlier testified in the Šamac group case. He was planned to testify to the consistent pattern of conduct.

[REDACTED]

### 4. Summary of testimony:

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17, 18, 23, 24, 25, 26, 27, 28, 30, 31 and 32, but charges concerning Bosanski Šamac are contained in paragraphs 6 and 10e.

The witness was planned for counts 1-14 of the indictment, but Bosanski Šamac is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14. The witness was planned to give evidence about a consistent pattern of conduct, but at the end of his testimony it is not clear why he was called to testify.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bosanski Šamac, and the perpetrators of crimes in Bosanski Šamac.

## **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1010, [REDACTED], UNDER PROTECTIVE MEASURES AND IN CLOSED SESSION**



1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1010, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH - Bosanski Šamac, April 1992 - September 1993

"On 17 April 1992, Serb forces including SRS/SČP volunteers (footnote 265) Bosnian Serb police under the command of Stevan Todorović, and JNA soldiers attacked the town of Bosanski Šamac, quickly taking over the town and neighbouring areas."

"In addition to beating and torturing non-Serb civilians, SRS/SČP volunteers, including Debeli and Lugar also murdered detainees in the camps in Bosanski Šamac." (footnote 268)

"Prisoners who survived the massacre were ordered to clean the blood and brain tissue off the floor and bury the bodies of the dead in a mass grave." (footnote 271)

2. Summary of testimony for VS-1010, [REDACTED]

Biography: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 12, 15-18, 23-28 and 30-32.

Counts: all counts.

**3. Content of testimony:**

The witness testified on 11 February 2009 under protective measures and in closed session. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17, 18, 23, 24, 25, 26, 27, 28, 30, 31 and 32, but charges concerning Bosanski Šamac are laid out in paragraphs 6 and 10e.

The witness was planned to testify to counts 1-14, and Bosanski Šamac is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the Indictment. He is a witness to a consistent pattern of conduct, to the participation of the Professor Vojislav Šešelj in the JCE.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Bosanski Šamac.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1058, [REDACTED],  
UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1058, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

**Šešelj's Role in the Recruitment and Coordination of SRS/SČP Volunteers:**

"SRS/SČP volunteers agreed with the goal of creating 'Greater Serbia' by using all necessary means, including violence, because they fervently believed in Šešelj." (footnote 84)

**Šešelj's Intent to Participate in the JCE:**

"On other occasions, commanders of SRS/SČP volunteer units and TO Commanders reported to the War Staff, who in turn informed Šešelj, in great detail, about events and the activities of the volunteers." (footnote 94)

**Crimes in BH - Bosanski Šamac, April 1992 - September 1992**

"While in detention, the detainees were subject to inhuman and cruel treatment by the police and SRS/SČP volunteers, including physical, psychological and sexual torture." (footnote 267)

“Prisoners who survived the massacre were ordered to clean the blood and brain tissue off the floor and bury the bodies of the dead in a mass grave.” (footnote 271)

2. Summary of testimony for VS-1058, [REDACTED]

Recruitment: The witness heard Šešelj speak on television about the formation of a Greater Serbia. According to Šešelj, this goal was to be achieved by “force and the power of weapons.” When the SRS began to form volunteer groups, the witness joined the party and enrolled as a volunteer. The witness will describe how and where he was instructed to report for duty. Šešelj, Ljubiša Petković and Zoran Rankić came to see the volunteer groups several times. The witness viewed Šešelj as his future leader. During his visits, Šešelj stated that the units were being formed to create a Greater Serbia and the objective would be achieved by violent actions. He told the volunteers that they would be assisting the JNA.

[REDACTED]

[REDACTED]

[REDACTED]

Many SRS volunteers believed in Šešelj’s political rhetoric and agenda.

The witness is not aware that Šešelj or any other member of the party leadership disciplined SRS volunteers for misconduct.

Attacks in Croatia, Training by the Red Berets: The witness will testify about the military actions in Croatia from July/August 1991 to October 1991. The witness will speak about a group of SRS volunteers led by Srećko Radovanović aka Debeli. This group of SRS volunteers received two weeks of training at a camp located at Pajzoš, near Ilok. He will speak about the training and the instructors. .

Events in Bosanski Šamac: The witness will testify to the participation of volunteers in Bosanski Šamac and describe the roles of Debeli, Stevan Todorović and Crni. The witness will testify to the takeover of Bosanski Šamac in mid-April 1992 in collaboration with members of the JNA. Milan Simić was present at the briefing prior to the takeover. Following the takeover, the witness observed mistreatment of detainees held at the SUP building.

Crkvina massacre: The witness will testify to the killing of 5-7 civilians in Crkvina by Lugar and Tralja, another Chetnik volunteer. Debeli was present but the witness is not sure if he participated in the killing.

Paragraphs: 5-12, 15, 16, 17a and b, 18, 23-26 and 31.

Counts: 1, 2-4 and 5-9.

**3. Content of testimony:**

The witness testified as a Chamber witness on 9 and 10 March 2010 under protective measures. The witness appeared as a Chamber witness, but there are also statements to the effect that he wanted to be a witness for the Defence. Through this witness the Prosecution did not prove any allegation made against Professor Vojislav Šešelj in the Indictment.

**4. Summary of testimony:**

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 12, 15, 16, 17a, 17b, 18, 23, 24, 25, 26 and 31, but charges concerning Bosanski Šamac are laid out in paragraphs 6 and 10e.

The witness was planned to testify to counts 1, 2, 3, 4, 5, 6, 7, 8 and 9, and Bosanski Šamac is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the Indictment. He is a witness to the consistent pattern of conduct, and this is probably pertinent to the JCE, and since he did not even mention Professor Vojislav Šešelj it is not clear why he was called to testify. He was, nonetheless, used to good effect to describe the situation which allowed for the determination of the political context which enabled the outbreak of the armed conflict.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party, who were not present in Bosanski Šamac, and the perpetrators of the alleged crimes in Bosanski Šamac.

**THE BRČKO LOCATION**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

**Remarks Concerning Brčko in the Indictment:**

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- counts 2, 3, 5, 6 and 7 were removed from the indictment;
- charges concerning crimes allegedly committed in Western Slavonia were deleted in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of crimes relating to Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present non-crime-base evidence in respect of the crime sites of Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.

As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Brčko location no longer exist in the indictment:

- paragraph: part of paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph 26; three parts of paragraph 27, paragraph 29 (c) paragraph 29 (d ), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Brčko is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraph 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE /joint criminal enterprise/. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina", the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic" /*Dubrovačka republika*/. With respect to Bosnia and Herzegovina, the areas included Bosanski

Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and **Brčko**.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and **Brčko** in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Brčko as a crime location, which was changed to a location with witnesses to a consistent pattern of conduct, appears in paragraphs BRČKO, 62, 2. BRČKO 81, 82, 83 and 84.

**BRČKO**

**Paragraph 62**

62. Each sub-section focuses upon one geographic region: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

**Paragraphs 81-84**

**2. Brčko**

81. Brčko is located in the Northeast of Bosnia and Herzegovina, west of Bijeljina, on the south bank of the Sava river. According to the 1991 census, approximately 44% of the inhabitants were Muslims, 25% were Croats, and 21% were Serbs. Like Bijeljina, it was of strategic military importance for the control of the Posavina corridor during the conflict.

82. In early May, Serbian forces comprised of the JNA, local Serb TO, police and paramilitary troops attacked Brčko. These troops included SRS/SČP volunteers and Arkan's Tigers.

Non-Serbs, mostly Muslim civilians, were forced to leave their homes. Many of these civilians were arrested, detained and beaten by the Serb forces, and some were killed. More were executed in Stari Grad square in Brčko by the Serbian forces during the attack in early May.

83. Approximately 200 Muslims from Brčko were arrested and detained for extended periods of time in the Luka camp. The detainees were repeatedly and severely beaten and were kept in a hangar without adequate food, water, or sanitation.

They were forced to do manual labour, including carrying dead bodies and dumping them in the Sava River, and were often forced to watch the killings of other detainees. Many Serbs, including SRS/SČP volunteers, on several occasions brutally raped female detainees. One Serbian soldier, who introduced himself as a member of the SRS from Bijeljina, carved a cross into a Muslim victim's forehead with a knife.

84. The SRS/SČP volunteers were involved in the attack on Brčko and in the operation of the Luka camp. They had a reputation for killing and looting, and participated in rapes of women in the Luka camp. They received ammunition and other logistical support from the JNA.

#### **Summary regarding witnesses for Brčko**

##### **B. Implementation of the JCE in Bosnia and Herzegovina**

##### **2. Brčko**

Witnesses: VS-1034 (dropped by the Prosecution), VS-029 (Vojislav DABIĆ), VS-1033 ( ), VS-015 (Goran STAPARIĆ).

Prosecution's Revised List of Witnesses and Summary of Witness Evidence:

Crime base witnesses for Brčko turned into witnesses to a consistent pattern of conduct: VS-1033 ( ).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Brčko, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

It is important in light of the reduction of the indictment and the Order of the Trial Chamber that crime based evidence should not be presented in respect of Brčko, but only evidence relating to a consistent pattern of conduct by Professor Vojislav Šešelj. This must be viewed in terms of paragraphs 6 and 10e of the indictment to the effect that Vojislav Šešelj participated in a JCE whose purpose was the removal of



population through the commission of crimes in the area of Brčko, and his concrete involvement is reflected in that he took part in the planning and preparation of the take-over of power on the territory of Brčko.

During the Prosecution case, the following witness was examined:

1. VS-1033, [REDACTED], 10 March 2010, with protective measures.

He was the only witness for the Brčko location, which is listed as a location for which witnesses will testify to a consistent pattern of conduct. In addition to [REDACTED], a number of other witnesses testified about this location, such as [REDACTED], Goran Stoparić and witnesses for the Bijeljina location.

In the trial judgment of Momčilo Krajišnik, paragraphs 321 to 337 make references to the crimes in Brčko. Mirko Blagojević is only mentioned in a negative context, but there is not even an allusion that he was engaged through Serbia and Belgrade, but within the framework of the forces from Bijeljina. The Brčko location was also discussed in the judgments and settlements in cases against Ranko Češić and Goran Jelisić.

As with the Bosanski Šamac and Bijeljina locations, it is important with respect to the Brčko location that the fact that some members of the Serbian Radical Party happened to be in some of the units colloquially referred to as the Serbian forces cannot under any circumstances demonstrate causality in relation to Professor Vojislav Šešelj. The important fact is that it has not been proven that the Serbian Radical Party sent its volunteers from Belgrade or from Serbia. This does away with the Prosecution's claims concerning recruitment, dispatch, organising, supplying, ordering, commanding, or any other activity that would constitute a causal link with the presence of a member of the Serbian Radical Party in the specified location. Members of the Serbian Radical Party in the territory of Bosnia and Herzegovina fulfilled their military obligations towards JNA organs and subsequently towards the organs of their entity.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1033,  
[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1033, [REDACTED], as its witness to prove the following:

Crime in BH – Brčko

"Mile Bolero was President of the SRS party in Brčko." (footnote 248)

"The Prosecution will lead evidence of the following crimes: Non-Serbs, mostly Muslim civilians, were forced to leave their homes. Many of these civilians were arrested, detained and beaten by the Serb forces, and some were killed." (footnote 249)

"More were executed in Stari Grad square in Brčko by the Serb forces during the attack in early May." (footnote 250)

"The detainees were repeatedly and severely beaten and were kept in a hangar without adequate food, water, or sanitation." (footnote 251)

"They were forced to do manual labour, including carrying dead bodies and dumping them in the Sava River, and were often forced to watch the killings of other detainees." (footnote 252)

"The Prosecution will lead evidence that SRS/SČP volunteers were amongst the Serb forces at the camp: One Serb soldier, who introduced himself as a member of the SRS party from Bijeljina, carved a cross into a Muslim victim's forehead with a knife." (footnote 253)

"The SRS/SČP volunteers were involved in the attack on Brčko, and in the operation of the Luka camp. They had a reputation for killing and looting, and participated in rapes of women in the Luka camp." (footnote 254)

"They received ammunition and other logistical support from the JNA." (footnote 255)

2. Summary of testimony for VS-1033, [REDACTED]

Biography: [REDACTED]  
[REDACTED].

Events: The witness will testify about the killing of many civilians in Brčko and Luka camp, forced labour imposed on him and torture by Serb forces.

[REDACTED]. From the end of 1991 through the spring of 1992, the witness saw JNA helicopter landings at the JNA barracks in Brčko. They became more frequent at the beginning of 1992. On one

occasion, a group of soldiers wearing red berets emerged from a helicopter. The witness later heard that the "Red Berets" were special units of the JNA. Prior to the referendum in 1992, Karadžić, Krajišnik, Plavšić and Koljević spoke at a rally in Brčko.

On 30 April 1992, two bridges over the Sava river in Brčko were blown up by a JNA unit. On 1 May 1992, members of the SDS in Brčko issued an ultimatum that the municipality be split into three by 4 May 1992. Also, on 1 May 1992, a JNA officer transmitted a message that his military police unit had been mandated to take over control of the town within 48 hours.

On 3 May 1992, the war broke out in Brčko. On 7 May 1992, the witness observed several men, dressed in camouflage and police uniforms, gun down 10-12 civilians in the Stari Grad complex in Brčko. He also saw three civilians being lined up against a wall and shot at close range by a group of police and soldiers. Another group of three or four victims were lined up against the wall of the *Oslobodenje* cinema and shot to death by a police officer. These events took place within 100 meters of the SUP station. During this time, the witness heard of other killings and rape of a woman by Dragan Živković at Laser.

On 12 May, while the witness was forced to perform work duties in the centre of town, he saw several dead bodies. He also observed two soldiers in camouflage uniforms unloading more than 20 bodies from the back of a TAM truck. A bulldozer then covered the bodies with earth.

Detention in the Luka Camp: On 27 May 1992, the witness was taken to the SUP and then to Luka camp where he was kept until 7 June 1992. He was kept in a hangar with between 120 and 200 other detainees. During this-time, he was severely beaten, cut with a knife, and forced to carry dead bodies d in civilian clothing to the Sava River. [REDACTED]

[REDACTED]. He also witnessed one of the guards, a member of the SRS Bijeljina, carving a cross in the forehead of one of the detainees. One day Mirko Blagojević and his escort from Bijeljina came into the camp and introduced themselves as Serbian "Chetniks" or Radicals. [REDACTED]

[REDACTED]  
[REDACTED].

While being kept prisoner in Luka, the witness heard Goran Jelisić boast that he had killed 97 Muslims. [REDACTED]  
[REDACTED].

The witness also observed Vojkan Đurković wearing a JNA uniform. He would arrive in the Luka camp periodically and give speeches.

On 7 June 1992 the witness was released by Captain Dragan.

Paragraphs 15, 16, 17 (a-e, g-i), 18, 29 (i), 32

Counts: 1-9.

### 3. Content of testimony

Although the Prosecution planned to call the witness to testify under Rule 92 *ter*, the Trial Chamber decided that he should testify *viva voce*. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

His entire testimony hardly ever went beyond the statement he had given to the investigators of the Office of the Prosecutor. He could not be precise; instead, he based the parts relating to Professor Vojislav Šešelj on his assumptions.  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

### THE VOĆIN LOCATION IN WESTERN SLAVONIA

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### Remarks Concerning Voćin, Slavonia, in the Indictment:

In its Decision of 8 November 2006, the Trial Chamber reduced the scope of the Modified Amended Indictment, as follows:

- counts 2, 3, 5, 6 and 7 were removed from the indictment;
- counts concerning crimes allegedly committed in Western Slavonia were deleted by the Prosecution in paragraphs 17 (a) to (j), 19, 29 (c) and (d), 31, 32 and 34 of the indictment;
- it was decided that the Prosecution would not present evidence in respect of the crimes concerning Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica;
- it was decided that the Prosecution could present non-crime-base evidence in respect of crime sites of Western Slavonia, Brčko, Bijeljina and Bosanski Šamac and on Boračko Lake/Mount Borašnica.

As a result of this Decision, the following paragraphs or parts of paragraphs concerning the Western Slavonia location no longer exist in the indictment:

- paragraph: part of the paragraph 17 (a), part of paragraph 18, paragraph 19, part of paragraph 22, paragraph 23, part of paragraph 24, paragraph 25, part of paragraph 26, three parts of paragraph 27, paragraph 29 (c), paragraph 29 (d), paragraph 29 (f), paragraph 29 (h), and paragraph 29 (i).

**Western Slavonia is referred to in the indictment as a place where crimes were committed under:**

- individual criminal responsibility (paragraph 6, 10 e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina", the "SAO Western Slavonia", and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic". With respect to Bosnia and

Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Voćin appears in paragraphs 21, 62, 72, 73, 74, 75, 76 and 77 as a crime location which was changed to a location with witnesses to a consistent pattern of conduct.

**VOĆIN**

**Paragraph 21**

21. The Accused also used his special position of political and "moral" authority and hate speech to indoctrinate those who responded to his call to fight for "Greater Serbia". More than once Šešelj told his volunteers that their task was to kill "Ustashas" or "Turks". SRS/SČP volunteers operating in Vukovar, a town in Eastern Slavonia in Croatia, during 1991 understood that their primary goal was to "cleanse the area of Ustashas". The prevailing atmosphere, not surprisingly, was that every Croat was an "Ustasha" and any "Ustasha" who tried to surrender was immediately shot. Volunteers in Voćin, a village in Western Slavonia in Croatia, told a nurse treating a wounded Croat soldier that they "heard that one Ustasha is here. We would like to chop him into pieces." When he dispatched his volunteers to the battlefields, Šešelj used his rhetorical skills to cast these efforts in heroic terms:

"God's help, heroes! Serbian brothers, heroic Serbian Chetniks, today you are going to war. Today you are going to free Serbian Vukovar and to defend Serbian Slavonia. You are going to join hundreds, thousands of our Volunteers. You are going from all parts of today's shrunken Serbia to return glory to the Serbian weapons. You will act with units of the JNA, because that is our army. It is foremost a Serbian army, because of its senior staff and its struggle for the salvation of Serbian lands, of Serbian territories."

**Paragraph 62**

62. Each sub-section focuses upon one geographic region: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

**2. Voćin, August - December 1991**

72. Voćin is a village in the Western Slavonia region of Croatia, located south-west of Podravska Slatina. According to the 1991 census, nearly one-third of the approximately 1,500 inhabitants of Voćin were Croats.

73. On the morning of 19 August 1991, Serb forces including JNA, local Serb TO, and paramilitaries, attacked and took over Voćin.

74. Groups of SRS/SČP volunteers arrived by bus in Voćin during September, October, and November 1991 (many of them travelled through Banja Luka in BiH where the JNA Corps active in Western Slavonia was stationed), to reinforce the local Serb TO, and remained there. The commander of the SRS/SČP volunteers was Radovan Novačić, who was subordinated to the TO commander for Western Slavonia, Lt. Col. Jovan Trbojević. There was extensive co-operation between the local Serb Territorial Defence in Western Slavonia and the SRS.

75. The Prosecution will lead the following evidence of crimes in Voćin: During the occupation of Voćin, Serb forces, including SRS/SČP volunteers, created a climate of fear by looting, threatening, abusing, and killing civilians. For example, in late November or early December 1991, a group of SRS/SČP volunteers forced four Croat boys to carry ammunition to the battlefield and subsequently killed them. One SRS/SČP volunteer marched around Voćin holding the head of a Croatian victim.

76. In November 1991, Ljubiša Petković, chief of the SRS War Staff, contacted Radovan Novačić, informing him that Šešelj was coming to visit his unit in the field. Šešelj came to Voćin and the Sekulinci camp and inspected his volunteer units. He was accompanied by Veljko Vukelić and Ilija Šašić, local Serb TO commanders in Voćin, and Rajko Bojčić, who was associated with the local Serb TO in Voćin. During his visit, Šešelj gave a speech focusing on “Greater Serbia” and its western borders. SRS/SČP volunteers in Voćin repeated Šešelj’s ideology of “Greater Serbia” and the creation of a Serbian border along the Virovitica-Karlovac-Karlobag Line. After Šešelj’s visit, SRS/SČP volunteers became more aggressive in their behaviour and there was a sharp increase in crimes against Croat civilians. SRS/SČP volunteers often stated their intent to target non-Serbs. On one occasion, a group of SRS/SČP volunteers went to an infirmary and said, “Hey, sister, we heard that one Ustasha is here. We would like to chop him in pieces.”

77. The Prosecution will lead further evidence of crimes as follows: On 13 December, with the units of the Croatian Army (HV) approaching, Serb forces withdrew from Voćin and the surrounding villages. As they withdrew, Serb forces,

including SRS/SČP volunteers, assaulted the civilian non-Serb population, killing civilians in Hum and Voćin, burning homes, and blowing up buildings. For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church. Following the withdrawal, bodies of civilians were found strewn across Voćin. Victims were primarily elderly. During December, a joint funeral was held for 45 people killed in Hum and Voćin.

### **Summary Regarding Witnesses for Voćin**

#### **V. Factual summaries of the alleged crimes**

Witnesses: VS-1119 (Julka Maretić, testified), VS-026 ([REDACTED], did not testify, witness for the defence), VS-031 ([REDACTED], did not testify, witness for the defence), VS-1120 (Đuro Matovina), VS-050 ([REDACTED], did not testify, witness for the defence), VS-013 (Mladen Kulić, testified), VS-018 (Jelena Radošević, testified), VS-004 ([REDACTED], testified), VS-007 ([REDACTED], testified), VS-010 (Zoran Dražilović, did not testify, witness for the defence).

### **Final Revised List of Witnesses for the Prosecution and Summaries of Witness' Evidence**

Witnesses to a consistent pattern of conduct for Voćin:

VS-018 (Jelena Radošević testified; she was proposed as a witness for count 2 which does not exist in the indictment, and she will testify about the killing of civilians), VS-031 ([REDACTED] did not testify, [REDACTED]), VS-033 ([REDACTED], testified, false witness), VS-050 ([REDACTED] did not testify, [REDACTED]), VS-1119 (Julka Maretić, will testify to counts 2, 3, 5 and 7, which no longer exist in the indictment, and will testify on expulsion and murders), VS-1120 (Đuro Matovina).

### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Voćin, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions



under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

During the Prosecution case the following witnesses were examined:

1. VS-033, [REDACTED], testified *viva voce* under a pseudonym and with image and voice distortion on 1 and 2 April 2008.

2. VS-1120, Đuro Matovina, testified *viva voce* on 13 and 14 May 2008.

3. VS-018, Jelena Radošević, testified *viva voce* on 23 October 2008 under Rule 92 *ter*.

4. VS-1119, Julka Maretić, testified *viva voce* on 6 November 2008 under Rule 92 *ter*.

Although referred to as insider witnesses, their testimonies related to the Voćin location, and the following witnesses were examined:

1. VS-004, [REDACTED], testified *viva voce* on 7, 12 and 13 February 2008 with protective measures.

2. VS-013, Mladen Kulić, testified *viva voce* on 4, 5 and 6 March 2008.

The following witnesses were not examined:

1. VS-031, [REDACTED];

2. VS-050, [REDACTED].

It must be noted with respect to the Voćin location that in relation to other locations for which the Prosecution should lead evidence of the consistent pattern which is referred to repeatedly in the indictment, the Voćin location is generally not mentioned in the indictment, except in the annex to the indictment. If the consistent pattern of conduct is supposed to serve as proof of participation in the JCE, it must be noted that the Prosecution does not refer to the Voćin location as a location where there was a JCE. Given the Prosecution's efforts to stuff anything and everything into the charges against Professor Vojislav Šešelj, it seems that the Prosecution is trying to make as few references as possible to the Voćin location, but give the impression that it is present. Why is the Prosecution doing this? The answer is simple, it is ludicrous to bring charges simultaneously for both Hrtkovci and Voćin, because it was mostly Serbs expelled from Western Slavonia who exchanged property with the Croats from Hrtkovci.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-033 [REDACTED]  
[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-033, [REDACTED], as its witness to prove the following:

Šešelj's intent to take part in the JCE:

"On other occasions, commanders of SRS/SČP volunteer units and TO Commanders reported to the War Staff, who in turn informed Šešelj, in great detail, about events and the activities of the volunteers." (footnote 94)

2. Summary of witness's evidence for VS-033, [REDACTED]

The witness will testify to the SRS structure from early 1991 onwards including the role of Šešelj. He will speak about the recruitment of volunteers. The SRS would take care of the volunteer's health insurance and arrange for them to take leave from their jobs.

Voćin: the witness will describe the situation in the Sekulinci Lager in September 1991, in particular the actions of Radovan Novačić, the then commander of the volunteers. Novačić did tolerate drunken volunteers and opposed violent behaviour and killing of non-Serbs. Later, however, undisciplined volunteers were sent to Vošin, Novačić was unable to control. The witness will testify that Šešelj recruited convicted persons as SRS volunteers. When convicts enrolled into the SRS their sentence was reduced. The witness will testify that Šešelj knew what was going on in Western Slavonia.

The witness will testify that the local TO was in charge of supplying the volunteers with food, fuel, cigarettes and other. The salaries during the time in Voćin were paid by the JNA.

Šešelj's visit in Voćin: the witness will testify to Šešelj's visit in Voćin. He came to Lager Sekulinci where Novačić had lined up about 50 volunteers. Šešelj gave a short speech saying something to the effect "God bless you brothers, kill them all but do not loot."

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED].

The witness will testify that on 14 December 1991 a huge number of people was leaving the area.

SRS volunteers told him that Topola's men and volunteers from other groups had gone wild killing people. Zoran Mišević's men blew up the Catholic church, the bridge, the petrol station in Voćin and the hotel in Zvečevo.

Paragraphs: 10 a, b, d, e and g, 12, 15, 16, 17 a, b and j, 18, 19 and 31.

Counts 1 - 4, 12 and 13.

### 3. Content of testimony

Witness VS-033, [REDACTED], testified under a pseudonym and with image and voice distortion on 1 and 2 April 2008. Notarised statements of Radovan Novačić and Aleksandar Gajić were used during cross-examination. The witness had obviously been prepared by both the Prosecution and by Nataša Kandić.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

This witness, confirmed next to nothing from the summary of evidence on which the Prosecution counted, and the Prosecution cannot expect to make any use of him with respect of the assertions from the Prosecution Final Pre-Trial Brief. The witness was caught lying several times in the courtroom, with respect to both SMS messages he sent to Aleksandar Gajić and his criminal responsibility for what he did in Serbia.

[REDACTED]. He was persuaded by Ljubiša Petković to become a witness for the Prosecution at the time when Petković was seen as a suspect by the Hague Tribunal. It was established through other witnesses that the Serbian Radical Party volunteers did not have any connection whatsoever to the crimes in Western Slavonia. He lied so much that he even went on to allege that, in addition to Veljko Džakula, Goran Hadžić had also welcomed the volunteers.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 10a, 10b, 10d, 10e, 10g, 12, 15, 16, 17a, 17b, 17j, 18, 19 and 31, but these paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 12 and 13, but Voćin is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1120, ĐURO MATOVINA**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1120, Đuro MATOVINA, to prove the following:

Crimes in Croatia

Voćin, August - December 1991.

"Groups of SRS/SČP volunteers arrived by bus in Voćin during September, October, and November 1991 (many of them travelled through Banja Luka in BiH where the JNA Corps active in Western Slavonia was stationed), to reinforce the local Serb TO, and remained there." (footnote 217)

"The Prosecution will lead the following evidence of crimes in Voćin: During the occupation of Voćin, Serb forces, including SRS/SČP volunteers, created a climate of fear by looting, threatening, abusing, and killing civilians." (footnote 222)

"For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church. Following the withdrawal, bodies of civilians were found strewn across Voćin. Victims were primarily elderly. During December, a joint funeral was held for 45 people killed in Hum and Voćin." (footnote 235)

2. Summary of witness's evidence VS-1120, Đuro Matovina

Biography: The witness is a Croat male, 42-years-old at the time of the take-over. The witness is a police officer, was a resident of Slatina.

**Background:** The witness will testify about the deterioration of relations between Croats and Serbs in Western Slavonia during -1990. At that time the Serb nationalist politician Dr Jovan Rašković founded the SDS. Rašković had a strong impact on the rural Serb population. He advocated that Slatina should become the “Slavonian Knin”, meaning a centre of Serb rebellion. According to the witness it was easy for Rašković to find -support for the idea of Greater Serbia among the rural, often poorly educated Serbs, living in Western Slavonia.

The witness will testify that around 1 June 1990 the first nationalist graffiti appeared on the buildings in Slatina and the surrounding villages. It said: “This is Great Serbia, this will be Serbia, we shall kill Tudman.” At the same time the first Četnik signs appeared.

**Resignation of Serb policemen:** in April 1991 there were mass resignations of Serbian policemen. Serbian JNA reservists were called for military training at the JNA barracks in Western Slavonia. These reservists then formed the Serb Territorial Defence. At the end of their training weapons were given to them.

**Arming of the Serb population:** the witness will describe that a JNA convoy transported weapons and equipment that allegedly was used for military training, however the weapons were distributed to the local Serbs in Voćin. When a Serb inhabitant refused to take the weapons, others shot at his house. When the man attempted to communicate with the police station he was kidnapped and killed. By June 1991, all Serb civilians who lived in the area of Voćin and its surroundings were armed and ready to attack. The Croatian police and local authorities did not have any control over this area.

On 14 August 1991, a Croatian waiter in a hotel in Voćin was kidnapped by Serb irregular soldiers and killed. In 1998 his body was found and identified by a DNA test. On 18 August 1991, the Croatian flag from the police station in Voćin was replaced by the Serbian flag.

**Take-over:** on 19 August 1991, Serb forces took over Voćin. The witness later learned that Croats were gathered in one place, told they must recognise SAO Krajina, and forced to stay in Voćin.

The witness learned that during the end of October 1991, 300-600 members of the SRS came to Voćin and were referred to as White Eagles.

Through his work as a police officer, the witness interviewed numerous Croat civilians detained at Lager Sekulinci and thus gathered information on mistreatment, torture, rape, and murder of detainees.

The witness co-ordinated the investigations of the murder of civilians in Voćin that took place between the 12 and 13 December 1991. He listed around 45 victims. The police learned that a local Serb pointed out the houses of Croats to Serb soldiers who entered and killed the civilians. The perpetrators included 60-80 SRS/SCP volunteers.

After the Serb withdrawal, the witness observed hundreds of homes, public facilities, and a church in Voćin all left in ruins, destroyed by fire, explosives, and shelling.

Paragraphs: 5 - 12, 15, 16, 17a - d, g - j, 18, 19, 24 - 28 and 31 - 32.

Counts: all counts.

### 3. Content of testimony

The witness testified *viva voce* on 13 and 14 May 2008. Voćin and Western Slavonia are listed in the Amended Indictment as places where the crimes occurred, and the witnesses should testify to the consistent pattern of conduct. The witness said that all his information pertaining to the events that may be presented as crimes was hearsay, but he was a witness qualified to testify to the general historical and political circumstances. He tendentiously defended everything the Croats did, and was a valuable witness in terms of filling the gaps and tendentiousness of Mladen Kulić [REDACTED].

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm the paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17l, 17j, 18, 19, 24, 25, 26, 27, 28, 31 and 32, and the se paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, but Voćin is not mentioned in counts in 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-018,  
JELENA RADOŠEVIĆ, UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-018, Jelena RADOŠEVIĆ, to prove the following:

Šešelj's role in the recruitment and coordination of SRS/SČP volunteers

"Volunteers in Voćin, a village in Western Slavonia in Croatia, told a nurse treating a wounded Croat soldier that they 'heard that one Ustasha is here. We would like to chop him into pieces.'" (footnote 82)

Šešelj's intent to participate in the JCE

"Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia) where non-Serbs were being persecuted."

Crimes in Croatia - Voćin, August - December 1991

"For example, in late November or early December 1991, a group of SRS/SČP volunteers forced four Croat boys to carry ammunition to the battlefield and subsequently killed them." (footnote 223)

"After Šešelj's visit, SRS/SČP volunteers became more aggressive in their behaviour and there was a sharp increase in crimes against Croat civilians." (footnote 230)

"On one occasion, a group of SRS/SČP volunteers went to an infirmary and said, 'Hey, sister, we heard that one Ustasha is here. We would like to chop him into pieces.'" (footnote 231)

2. Summary of testimony for VS-0118, Jelena Radošević

Biography: Female, age 40 at the time of the events.

Situation August/September 1991; the witness will testify to the tension between the Serbs and the Croats in Slatina in 1991. News was spread of crimes that ZNG /National Guard Corps/ members committed against Serbs and therefore many Serbs left town fearing for their safety. In order to get to Voćin the witness went through five checkpoints, three manned by Croats and two by Serbs.

Arrival of Volunteer Units in Voćin: in the beginning of October 1991, the witness saw seven buses full of Serb volunteers arrive in Voćin. The buses were from the *Lasta* Belgrade Transport Company. On the front side of at least one of the buses, the witness noted that there were flags bearing the two-headed eagles and the symbol of the skull and the crossed bones. Some of these soldiers had fur hats on their head (with cockades) and some had cartridge belts. They were all dressed in olive-grey uniforms. The soldiers had patches of the *Srpska Dobrovoljačka Garda* /Serbian Volunteer Guard/ (Arkan's Tigers) and the White Eagles on their sleeves. These units were based in the primary school and in the motel in Voćin, as well as in Lager Sekulinci.

The witness spoke to one of the commanders of the volunteers, Radovan Novačić, who came to the kindergarten of the elementary school which served as an infirmary. The witness heard that the soldiers called him *vojvoda* and she concluded that he was the commander of Šešelj's volunteers. Novačić's soldiers were based in the Sekulinci camp.

Volunteers in the Infirmary: in one instance, the witness spoke to a young volunteer, Ivan LNU (born in 1972). He had a patch that said Serbian Volunteer Guard on his sleeve and was from Pančevo (Serbia). He told the witness that he contracted hepatitis in Banja Luka where he was waiting for deployment. When the witness asked him why he was fighting at such a young age, he replied that "for one month I spend on the front, I have four months less to see my sentence in prison."

The witness will testify that she talked to other Serb volunteers that had a white eagle on their sleeve patches. One day, 14 of those came to the witness' work place. They were all very young (up to 25-years-old). They came to pick up a Croat soldier who was wounded in his shoulder. The soldier said: "Hey, sister, we heard that one Ustasha is here. We would like to chop him in pieces." She answered that the Croat prisoner had been taken to Bučje. The soldiers were angry and one of them fired a shot into the ground.

Arrival of Šešelj: Šešelj came to Voćin around the end of November 1991. The witness saw a crowd and several vehicles parked in front of the Voćin command building. The witness was told that Šešelj was inside.

The witness heard from members of the Serb Territorial Defence that Šešelj visited soldiers in the Sekulinci camp, Lisičince and Čeralije. She also heard from members of the TO that volunteers from Serbia were mixed with the TO and were



present at all checkpoints. The volunteers had their own commanders separate from the TO commanders.

Killings in Voćin: the witness was told that the Šešelj's volunteers would not obey the orders of the local TO commander, Rajko BOJIČIĆ. Following Šešelj's visit, the volunteers became more arrogant and the killing of Croat civilians began. According to the witness, the majority of Croat civilians were killed during the two weeks following Šešelj's visit. Four Croat civilians were killed on 3 December 1991. Members of the TO Command were helpless and afraid of the volunteers. The witness opined that the volunteers were responsible for all the crimes that occurred in Voćin.

Forced Labour: the witness observed the so "working group" of Croats. Members of the group had to report every morning to the Civilian Command in the former *Šumarija* building to be given tasks for the day.

Destruction of the Catholic church: the witness will testify that JNA uniforms, weapons and ammunition were stored in the Catholic church in Voćin. The witness later found out that the church was destroyed to prevent the material and weapons inside from falling into the hands of the Croatian forces. Other nearby buildings, including the *Šumarija*, were destroyed by the blast. The witness does not know who was responsible for the explosion.

Paragraphs: 15, 16, 17 a, e, g j 18, 19, 27, 28 and 31.

Counts: 1, 2 - 4, 12 - 14.

### 3. Content of testimony

The witness testified on 23 October 2008 under Rule 92 *ter*. This is a problematic witness who is the common-law wife of Mladen Kulić who simply had to testify because she still lives in the territory of Western Slavonia and is still politically active. In the summary she made incredible and false claims.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm the paragraphs 15, 16, 17a, 17e, 17g, 17j, 18, 19, 27, 28 and 31, but these paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 12, 13 and 14, but Voćin is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1119,  
JULKA MARETIĆ, UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1119, Julka MARTIĆ, to prove the following:

Crimes in Croatia - Voćin, August - December 1991

"On the morning of 19 August 1991, Serb forces including JNA, local Serb TO, and paramilitaries, attacked and took over Voćin." (footnote 216)

"The Prosecution will lead the following evidence of crimes in Voćin: During the occupation of Voćin, Serb forces, including SRS/SČP volunteers, created a climate of fear by looting, threatening, abusing, and killing civilians." (footnote 222)

"For example, in late November or early December 1991, a group of SRS/SČP volunteers forced four Croat boys to carry ammunition to the battlefield and subsequently killed them." (footnote 223)

"For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church. Following the withdrawal, bodies of civilians were found strewn across Voćin. Victims were primarily elderly. During December, a joint funeral was held for 45 people killed in Hum and Voćin." (footnote 235)

**2. Summary of testimony for VS-1119, Julka Maretić**

Biography: Croat female from Voćin, 49 years old at the time of the events.

SAO Krajina: the witness will testify that on 14 January 1991, the head of a SDS party, visited Voćin. He stated that the Serbs had to stick together and that the surrounding area, including Voćin, would become part of the SAO Krajina.

Shooting in Voćin: on the morning of 19 August 1991, the witness was on her way to work at the police station when she was stopped by an armed man who wore a mask. He told the witness to return home. From her home, the witness could hear shooting from machine guns and automatic weapons. The witness believed that this took place in the area of Prevenda street, where most of the Croats lived. After the shooting, a local Croat came to the witness' house and told them that all Croats must surrender their weapons.

The witness will testify that from 19 August 1991, Voćin was blockaded and the witness was unable to return to work. Approximately 8 or 10 days following the start of the blockade, armed local Serbs in JNA uniforms came to the witness' house and stole her television, radio, cassette player and her husband's leather trousers.

Following the escape of many of the young people from Voćin, the Serb authorities ordered that a list be compiled of all Croats living in the village. The Croat inhabitants were threatened that if one Croat ran away, all of them would be killed.

Detention of Croats in the Voćin bank building: the witness will testify that on 22 October 1991, many Croatian men were detained in the basement of the Voćin bank. That morning, armed local Serbs in civilian clothes arrested the witness' husband. Later that day, the witness went to the police station and discovered that her husband had been taken to the bank building. A police officer told the witness that she should bring food and clothes to him as he would spend the night there. The police officer told the witness that "Serbs were arrested and they are held in Slatina and that is why your people must be held here." The witness' husband was released that evening. Her husband told her that during their detention, one man had an epileptic attack. A doctor was summoned and ordered that everyone should be released due to the bad conditions in the basement. The witness will state that to her knowledge, no one during the detention in the bank building was beaten or mistreated.

Arrival of volunteers in Voćin: the witness will testify that Voćin was relatively calm after the Serb take-over until the beginning of November 1991 when more Serb volunteers came from Serbia. The witness saw them arrive in three civilian buses; they were based in the elementary school and bowling hall. Additional buses with more Serb volunteers would arrive in Voćin at a later date.

The witness will testify that these volunteers were dressed in all kinds of clothes, including a mismatch of old JNA uniforms and civilian clothing. The witness remembered seeing that they wore all types of hats, including JNA caps with the five-pointed star, *šajkača*, black knitted caps and fur hats. Some wore badges with eagles, some with skulls and crossbones. They all carried weapons with bayonets and carried one or more knives.

Some volunteers told the witness that they had come to Voćin to kill "Ustashas". One of the volunteers told the witness that he came from the prison in Niš and that if he served one month on the front line, his sentence would be reduced for

one year. The volunteers told the witness that they came from all over Serbia, including Belgrade, Niš, Novi Sad and Svetozarevo.

Killings in Voćin: the witness will testify how on 3 or 4 December 1991, four young Croat men were ordered to work at the Čeralije, a hamlet close to Voćin. They did not come back to Voćin. Several days later, the witness learned that the men were killed. Approximately 4 days after the men went missing, 3 additional people were killed in a house close to the witness' home.

Return to Voćin: the witness and her husband left Voćin on 11 December 1991. They returned 2 days later to discover that many of the buildings in the village, including the bus station, fire brigade, police station and bowling hall were on fire. Later the Catholic church was also destroyed by an explosion.

The witness saw a number of dead bodies in the streets of the village. All of them were civilians, mostly older people.

Paragraphs: 5-12, 15, 16, 17 a-c, 19, 24- 28, and 31-32.

Counts: 1, 2-4, 5, 7 and 10-14.

### 3. Content of testimony

The witness testified on 6 November 2008 under Rule 92 *ter*. The witness is not a Croat at all but a Bulgarian, and the judges determined this during the examination. The most serious problem was the inclusion of irregular statements of this witness, and these statements had been handcrafted.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm the paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17a, 17b, 17c, 17e, 17g, 17i, 17j, 18, 19, 24, 25, 26, 27, 28, 31 and 32, but these paragraphs do not contain charges for Voćin.

The witness was planned for counts 1, 2, 3, 4, 5, 7, 10, 11, 12, 13 and 14, but Voćin is not mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Voćin.

## THE MOSTAR AND NEVESINJE LOCATION

This location is analysed through the positions which the Prosecution advocates, starting from additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, tasks before the Prosecution and what the judges were able to establish in the courtroom.

**Remarks Concerning Mostar and Nevesinje in the Indictment:**

Mostar and Nevesinje are referred to in the indictment as places where crimes were committed under:

- individual criminal responsibility (paragraph 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina" (i.e. the Serbian Autonomous Region of Krajina), the "SAO Western Slavonia", and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic". With respect to Bosnia and Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, **Mostar**, **Nevesinje** and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, **Mostar**, **Nevesinje** and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

- **Count 1: Persecutions (paragraphs 15, 17a, 17b and 17e - only Mostar, 17g and 17j)**

15. From on or about 1 August 1991 until at least September 1993, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of, or physically committed, persecutions of Croat, Muslim and other non-Serb civilian populations in the territories of the SAO SBWS (Slavonia, Baranja and Western Srem), and in the municipalities of Zvornik, Greater Sarajevo, **Mostar, and Nevesinje** in Bosnia and Herzegovina and parts of Vojvodina in Serbia.

17. These persecutions were committed on political, racial and religious grounds and included:

a. The [REMOVED][1] murder of many Croat, Muslim and other non-Serb civilians, including women, children and elderly persons, in the municipality of Vukovar, in the municipalities of Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina, as described in paragraphs 18 to 27.

b. The prolonged and routine imprisonment and confinement of Croat, Muslim and other non-Serb civilians in detention facilities within Croatia and Bosnia and Herzegovina, including prison camps in Vukovar, and in Zvornik, Greater Sarajevo, **Mostar, and Nevesinje** as described in paragraphs 28 to 30.

e. Prolonged and frequent forced labour of Croat, Muslim and other non-Serb civilians detained in the said detention facilities or under house arrest in their respective homes in Vukovar, Zvornik, Greater Sarajevo and **Mostar**. The forced labour included digging graves, loading ammunition for the Serb forces, digging trenches and other forms of manual labour at the front lines.

g. The imposition of restrictive and discriminatory measures against the Croat, Muslim and other non-Serb civilian populations, including persons in Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina, and in parts of Vojvodina, Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia), such as restriction of movement; removal from positions of authority in local government institutions and the police; dismissal from jobs; denial of medical care; and arbitrary searches of homes.

j. Deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat, Muslim and other non-Serb civilian populations in the municipality of Vukovar in Croatia, and in the

municipalities of Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina as described in paragraph 34.

**- Count 4: Murder (paragraphs 18 and 26 - only Mostar, 27 - only Nevesinje)**

18. From on or about 1 August 1991 until June 1992 in the territory of the SAO SBWS in Vukovar, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation, or execution of the [Removed] murder of Croat, Muslim and other non-Serb civilians as specified in paragraphs 20-22, 24, 26, and 27.

#### MOSTAR

26. Between April 1992 and June 1992, Serb forces, including volunteers known as “Šešelj’s men”, attacked and took control of the town of **Mostar** and surrounding villages. Following the attack, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 13 June 1992 Serb forces, including volunteers known as “Šešelj’s men”, arrested and transported eighty-eight non-Serb civilians from the neighbourhood of Zalik and from the villages of Potoci, Kuti Livač, Vrapčići and other nearby villages to Vrapčići football stadium, detained them in the locker room, and subsequently killed them. The bodies of these non-Serbs were found in the dump in Uborak. On or about 13 June 1992, Serb forces arrested eighteen non-Serb civilians from Zalik and transported them to the city mortuary in Sutina. They were subsequently killed in Sutina in the vicinity of the city mortuary and dumped near the Neretva River in a pit. “Šešelj’s men” participated in the detention and killings. The names of identified victims of murder [REMOVED] at Uborak and Sutina are set out in Annex IX to this indictment.

#### NEVESINJE

27. In June 1992, Serb forces, including volunteers known as “Šešelj’s men”, took control of the town of **Nevesinje** and attacked Muslim villages in the municipality. During this time, non-Serbs were routinely detained, beaten, tortured, and killed. On or about 22 June 1992, Serb forces, including volunteers known as “Šešelj’s men”, arrested seventy-six Muslim civilians in the woods in the area of

Velež and took them to the primary school in the village of Dnopolje in Zijemlje Valley. They separated the men from the women and children. The men were killed. Their bodies were found in a place known as Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Forty-four of them were killed at the dump pit at Lipovača. “Šešelj’s men” participated in the detention and killing. Five of the women from the heating factory were further detained at the resort at Boračko Lake, part of the Konjic municipality, which was used by Serb forces, including “Šešelj’s men”, as a military post. Two of the five women detained at that location, Fadila Mahinić and Mirsada Mahinić, were subsequently killed. On or about 26 June 1992, eleven Muslim civilians from the areas of Hrušta and Kljuna were arrested in Teleća Lastva. They were detained and tortured in the primary school in Zijemlje. Seven were taken away and subsequently killed. Their bodies were found in a pit in Zijemlje. “Šešelj’s men” participated in these killings. The names of identified victims of murder [REMOVED] at the Lipovača pit and [REMOVED], as well as the names of identified victims of murder [REMOVED] whose bodies were found at Teleća Lastva and the pit at Zijemlje are set out in Annex X to this indictment.

**- Counts 8 and 9: Torture and Cruel Treatment (paragraphs 29j – only Mostar – and 29k – only Nevesinje)**

29. Serb forces, including those volunteer units recruited and/or incited by Vojislav Šešelj, captured and detained hundreds of Croat, Muslim and other non-Serb civilians. They were detained in the following short- and long-term detention facilities:

j) The city mortuary in Sutina, **Mostar** and the stadium in Vrapčići, Mostar during June 1992, more than one hundred detainees.

k) The basement of the heating factory in Kilavci, **Nevesinje**, the resort at Boračko Lake, Nevesinje, the primary school in Zijemlje, Nevesinje and the SUP building in Nevesinje during June 1992, more than one hundred detainees.

**- Counts 10 and 11: Deportation and Forcible Transfer (paragraph 31 - only Nevesinje)**

31. From on or about 1 August 1991 until May 1992 in the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia,



Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in Vukovar (SAO SBWS) in November 1991, in the municipality of Zvornik in Bosnia and Herzegovina between March 1992 and September 1993, in Greater Sarajevo in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia and Herzegovina between June 1992 and September 1993 and in parts of Vojvodina, Serbia, including the village of Hrtkovci, between May and August 1992.

**- Counts 12 to 14: Wanton Destruction and Plunder of Public or Private Property (paragraph 34 and 34b)**

34. From on or about 1 August 1991 until May 1992 in the territories of the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, **Mostar and Nevesinje** in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the wanton destruction and plunder of public and private property of the Croat, Muslim and other non-Serb populations, acts which were not justified by military necessity. This intentional and wanton destruction and plunder included the plunder and destruction of homes and religious and cultural buildings, and took place in the following towns and villages:

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Mostar and Nevesinje are mentioned as places where crimes were committed in the paragraphs MOSTAR - 62 and 5. MOSTAR 109, 110, 111, 112, 115 and 117, and 7. NEVESINJE, 118, 119 and 120.

**MOSTAR**

**Paragraph 62**

62. Each sub-section focuses upon one geographic region: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

## Paragraphs 109-117

## 5. Mostar

109. Mostar is located in southern Bosnia and Herzegovina. According to the 1991 census, approximately 35% of the inhabitants were Muslims, 34% were Croats, 19% were Serbs and 10% were Yugoslavs. While ethnic Croats were mostly living on the western side of the Neretva river, ethnic Serbs inhabited the eastern parts of the city. Muslims lived on both sides of the Neretva River. Mostar was of special strategic importance in the region and had two large military barracks, an airport and other military facilities. One of the barracks, the so-called Northern Camp, was based in the suburb of Zalik. After the election in 1991, won by the HDZ, Serbs started to leave Mostar and settle in the neighbouring municipality of Nevesinje, which was predominantly Serb. Given the various military facilities in Mostar, there was always a strong JNA presence in the region. However, beginning in autumn 1991 and particularly in 1992, JNA units from elsewhere and reserve troops and volunteers started to arrive. At the same time, the JNA mobilised the local population. Mostly Serbs responded to this mobilisation, while Croats and Muslims left the JNA. By spring 1992, Mostar had become a stronghold for Serb forces, including JNA, Serb TO, MUP Serbia units and volunteer units, including SRS/SČP volunteers.

110. Prior to the war, neither the SRS party, nor the SČP, had a noticeable presence in Mostar. However, in neighbouring Nevesinje, Arsen Grahovac promoted the SČP ideology. From 1991 onwards, his pub "Ravna Gora" became a gathering point for SČP and SRS members and sympathisers. In February 1992, SRS/SČP volunteers began to establish a strong presence in Mostar with the assistance of the JNA troops already in the area. The SRS/SČP volunteers were housed, equipped and armed by the JNA. These volunteers came from Serbia and Montenegro and from the battlefields in Croatia. They were joined by local Serbs who were attracted by their ideology and behaviour. With the arrival of the reservists and volunteers, tensions between the ethnic groups increased and the first incidents of ethnic violence occurred. SRS/SČP volunteers were often involved in such incidents and were particularly prominent in acts of looting. Among the Serb forces and the local population, the SRS/SČP volunteers had a bad reputation. It was known that there were criminals among them who engaged primarily in looting and killing of civilians. They were observed getting drunk and using drugs. The JNA troops originally tasked to prevent ethnic clashes sided with the Serbs, openly considered Muslims and Croats

as enemies and did not prevent the mistreatment of non-Serb civilians. In the spring of 1992, most of the Serb civilians had moved to Nevesinje or elsewhere and many non-Serbs also had left Mostar. After the explosion of a cistern in the vicinity of the JNA North Camp in April 1992, in which both the camp and the Zalik neighbourhood experienced considerable damage, civilians took refuge in a shelter in Zalik.

111. In spring 1992, SRS/SČP volunteers were housed in the Buna holiday resort outside of Mostar. At that time, this facility was frequented by local TO, Red Berets from the Serbian MUP and volunteers. Other SRS/SČP contingents were housed in abandoned homes in Bjelušine and Šehovina and tasked to secure the communications between the JNA facilities in Mostar and the road to Buna and Nevesinje. Among the leaders of Šešelj's volunteers were Mića Pančevac and Vančo Petkovski aka Vranjanac. The latter had a reputation for killing Croats with knife, of the type known as a *kama* knife

112. In mid-May, in an offensive commanded by General Momčilo Perišić that utilised all Serb forces including the SRS/SČP troops, Mostar was indiscriminately shelled for 30 hours. During the military action, "Oliver", one of the leading SRS/SČP commanders with close connections to the SRS leadership, arrived from Belgrade and was present in the military headquarters of the JNA. While there he kept in communication with the SRS/SČP volunteers who participated in the offensive. No distinction was made in this shelling between civilian and military targets. One of the SRS volunteers, Srdan Đurić, specifically targeted the mosques during this offensive. During the offensive, SRS/SČP volunteers were seen torturing and killing a civilian. The offensive was successful for the Serbs. From then onwards, Serb forces were in control of the eastern side of the Neretva River.

113. Throughout the attack and in the time period that followed, all Serb forces acted in full co-ordination. The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command. The JNA gave full logistical and material support to all of these troops including the Red Berets. After the Serb forces took full control of the villages on the eastern banks of the Neretva river, non-Serbs in this area were subjected to a persecution campaign which included restriction of movement, detention under inhumane conditions, looting, burning of houses, rapes, beatings and killings. SRS/SČP volunteers figured prominently among those abusing the non-Serb population.

114. Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month. The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture. Those detained in the Zalik shelter were subjected to forced labour under dangerous conditions. About fifty detainees were forced to clean garbage from the streets while exposed to gunfire. The detainees were often subjected to physical and psychological abuse by the Serb soldiers, in particular by SRS/SČP volunteers.

115. SRS/SČP volunteers were also directly involved in the killing of many of Mostar's non-Serb civilians. On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings. Over the next several days, the prisoners were kept in horrible conditions and tortured. They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically. The bodies of the victims were covered with earth by a bulldozer. Later the bodies were found in a mass grave in Uborak. Another group of victims was killed in a nearby forest.

116. On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva River. The bodies of the victims were later exhumed.

Paragraphs 117 - 120

## 7. Nevesinje

117. The Nevesinje municipality is located in southern Bosnia and Herzegovina. It borders Mostar to the west, Konjić and Kalinovik municipalities to the north, Gacko municipality to the east and Bileća and Stolac municipalities to the south. According to the 1991 census, approximately 74,5% of the inhabitants were Serbs, 23% were Muslims and only 1,3% were Croats. During the late 1980's and early 1990's, there were increasing numbers of Serb nationalist rallies in the region,

including at least one that was attended by Šešelj. In the summer of 1991, the JNA, with the help of the SDS, began to arm the Serb inhabitants of Nevesinje. Šešelj again came to Nevesinje in the summer of 1991. Arsen GRAHOVAC established a unit called *Karadorde*, which set up roadblocks, harassed the local non-Serb population, and set off explosives in several Muslim-owned properties in the Nevesinje region. This unit was comprised of members and sympathisers of the SČP and the SRS. During the period leading up to the attack, Muslims were removed from their jobs, expelled from their homes, disarmed, and at times physically abused by Grahovac's men. Grahovac had between 80 and 100 people in his unit, which operated in the area of Mostar, Bijelo Polje, Buna, and Boračko Lake. This unit was later involved in a persecution campaign conducted against the non-Serb population of Gacko, Buna, Mostar, Bijelo Polje and Pijesci. Their main base was in Nevesinje, where they stayed in the JNA barracks with the Užice Corps.

118. SRS/SČP volunteers started to arrive in Nevesinje as early as May 1991 and continued to arrive throughout 1991 and spring 1992. SRS/SČP volunteers arrived in Buna as well. Šešelj participated in a rally in Nevesinje in 1991. In September 1991, parts of the Užice Corps arrived in the region with JNA reserve soldiers, tanks, APCs, and artillery. In March/April 1992 SRS/SČP volunteers started to arrive in large and small groups in Nevesinje. By April 1992, SRS/SČP volunteers and other volunteer and police troops, including the White Eagles and Red Berets, had established a powerful and oppressive presence in the entire Nevesinje municipality. The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command. The JNA gave full logistical and material support to all of these troops in the region, including the Red Berets. Šešelj again visited Nevesinje in April 1992, where he gave a speech at a rally, exhorting the Serbs to continue to defend Serbia.

119. In June 1992, Serb forces, including SRS/SČP volunteers, attacked Nevesinje and the surrounding Muslim villages. After the attack, these forces conducted a ruthless persecution campaign against the non-Serb – primarily Muslim – population. In June 1992, Serb forces required all non-Serbs in the villages of Donja, Bijenja, Gornja Bijenja, and Postoljani to hand over their weapons. On 21 June, the villages were attacked; those too old or infirm to flee were killed by the Serb forces. The forces responsible for these and other attacks included SRS/SČP volunteers, Red Berets, and White Eagles. Many of these forces were commanded by Arsen

GRAHOVAC. Zdravko KANDIĆ commanded some of the SRS/SČP volunteers during the attack on Bijelo Polje. During and after the attack, non-Serbs were routinely detained, tortured, beaten and killed. Women were subjected to violent and repeated rapes by SRS/SČP volunteers and other Serb forces and the Muslim villages were plundered and destroyed. Seven mosques and all the mesdžids were destroyed in Nevesinje municipality between June and July 1992. Also the big Catholic church in Nevesinje was destroyed, the rubble removed and a parking lot created in its place.

120. On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje Valley where they were detained. The troops responsible for the capture were commanded by Zdravko KANDIĆ and his second in command, Dragan ĐURĐIĆ, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed. Their bodies were later discovered in a place called Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza. The Serb troops threw bombs into the pit with the bodies. Of this group, twenty were children, including a one-month old baby and at least one other child under the age of one. SRS/SČP troops and Red Berets were responsible for this massacre. Five of the women detained in the heating factory at Kilavci were transported to the resort at Boračko Lake, which was used as a military post by Serb forces, including SRS/SČP volunteers. Local SRS leader Arsen GRAHOVAC, SRS/SČP volunteer Petar DIVAKOVIĆ, and other Serb forces, including other SRS/SČP members, violently raped these women and kept some of them imprisoned for years. Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed. After the killing, several Red Beret soldiers, who previously had been part of Captain Dragan VASILJKOVIĆ's unit, bragged about the murders in a café in Nevesinje.

### **Summary Regarding Witnesses for Mostar and Nevesinje**

#### **B. Implementation of the JCE in Bosnia and Herzegovina**

Witnesses: VS-043 (Milan Babić, died), VS-037 (██████████, testified as though a witness for the defence), VS-1061 (Miroslav Deronjić, died), VS-026 (██████████, did not testify, witness for the defence).

6. Mostar:

Witnesses: VS-1020 (██████████), VS-1068 (██████████), VS-029 (Vojislav Dabić, testified almost completely as though a witness for the defence having previously given completely false evidence in his statement to the Prosecution), VS-1069 (Fahrudin Bilić, false), VS-1067 (██████████, false), VS-1026 (Redžep Karišik), VS-1009 (Zoran Tot, died), VS-1022 (██████████, false), VS-015 (Goran Stoparić, false witness).

7. Nevesinje:

Witnesses: VS-015 (Goran Stoparić, false witness), VS-1025 (██████████, did not testify), VS-1022 (██████████, false witness), VS-1024 (Ibrahim Kujan, false witness), VS-1052 (██████████), VS-029 (Vojislav Dabić, was a defence witness, false witness), VS-1051 (██████████), VS-1067 (██████████, false witness), VS-1020 (██████████).

**Prosecution's Revised List of Witnesses and Summaries of Witness' Evidence:**

Crime base witnesses for Nevesinje and Mostar:

VS-029 (Vojislav Dabić, testified almost completely as though a witness for the defence, false witness), VS-1009 (Zoran Tot, died), VS-1020 (██████████, ██████████), VS-1022 (██████████, false witness), VS-1024 (Ibrahim Kujan, false witness), VS-1025 (██████████, did not testify), VS-1026 (Redžep Karišik), VS-1051 (██████████), VS-1052 (██████████), VS-1067 (██████████, false witness), VS-1068 (██████████), VS-1069 (Fahrudin Bilić, false witness).

**Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Brčko, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

During the Prosecution case, the following witness was examined:

1. Redžep Karišik, VS-1026, testified *viva voce* on 1 July 2008.

2. ██████████, VS-1051, testified with protective measures in closed session on 2 July 2008.
3. ██████████, VS-1052, testified *viva voce* on 2 July 2008 with protective measures under Rule 92 *ter*.
4. Fahrudin Bilić, VS-1069, testified *viva voce* on 2 and 3 July 2008.
5. ██████████, VS-1022, testified on 17 July 2008 in closed session.
6. Ibrahim Kujan, VS-1024, testified *viva voce* on 22 July 2008 under Rule 92 *ter*.
7. ██████████, VS-1068, July 26 November 2008 with protective measures, under Rule 92 *ter*.
8. Vojislav Dabić, VS-029, testified *viva voce* on 26 and 27 January 2010.
9. ██████████, VS-1067, testified *viva voce* on 2 February 2010 with protective measures.

The charges for offences in the Mostar and Nevesinje locations are based on all forms of responsibility under Article 7 (1) of the Statute and concern three crimes against humanity and six crimes of violations of the laws and customs of war. According to the structure of evidence led by the Prosecution, evidence was given by seven witnesses, who were also victims, and two witnesses, who were alleged to have taken part in the armed conflict and who knew that crimes had been committed. These two witnesses were not eyewitnesses to the actual crimes, but had second-hand or umpteenth-hand knowledge of them, because they said that they had heard about all the things to which they were planned to testify as eyewitnesses from other people.

It must be clear from the beginning that all the documents relating to these two locations, which were compiled by the Croatian and Muslim authorities in Mostar in 1992 and 1993, do not contain even an indication that Professor Vojislav Šešelj or volunteers of the Serbian Radical Party took part or were in any way involved in the relevant events. Criminal reports, indictments and investigation documents list full names of local Serbs in relation to all the events relevant to the charges against Professor Vojislav Šešelj.

The witnesses/victims and the two alleged participants in an event did not even mention Vojislav Šešelj and volunteers of the Serbian Radical Party in their statements to the investigators in the Office of the Prosecutor. As the trial of Vojislav Šešelj drew closer, however, their original statements were augmented and altered by



inserting the names of Vojislav Šešelj and volunteers of the Serbian Radical Party, who were referred to as Šešelj's men. The initial muddle as to the identity of Arsen Grahovac was untangled during the witness examination. He was an assemblyman of the Serbian Renewal Movement in Nevesinje and never had anything to do with the Serbian Radical Party. A certificate from Nevesinje municipality and witness statements in the court confirmed that Arsen Grahovac had nothing to do with Professor Vojislav Šešelj.

The volunteers of the Serbian Radical Party who were in Mostar were there until the day the JNA withdrew from the Neretva Valley, which was on 15 May 1992, or 19 May 1992 at the latest. Everything which is treated in the indictment as a crime in Mostar took place on 13 and 14 June 1992, a month after the volunteers left Mostar. Thus, the presence of the Serbian Radical Party volunteers at the location of crimes committed by other individuals who may be referred to as members of the Serbian forces cannot be used to infer the responsibility of Professor Vojislav Šešelj, because the volunteers of the Serbian Radical Party were not in Mostar in June 1992. This means that no link can under any circumstances be established between Professor Vojislav Šešelj and the known perpetrators of crimes in Mostar, who are facing criminal prosecution. It would be hard to establish the responsibility of Professor Vojislav Šešelj for the period before June 1992 in respect of looting, destruction, devastation and everything else that took place during the armed conflict as a legitimate military operation because no conclusion has yet been reached on the individual criminal responsibility of any person, whether as a commander or as an individually identified perpetrator. Without this, there can be no liability on the basis of a JCE.

It must be borne in mind that the Momčilo Krajišnik case is all-embracing in terms of locations in Bosnia and Herzegovina, and Mostar is not even mentioned as a location in the trial judgement. It is notable that even in the fall of 1991 Mostar was the capital of Herceg-Bosna and that the indictment against *Prlić et al.* makes no mention of Mostar and as a location where Serbs allegedly committed crimes, persecution, etc. Virtually the only Serb charged with alleged Serbian crimes in Mostar on the basis of participation in a JCE is Professor Vojislav Šešelj. Thus none of the documents of the Prosecution and judgments issued by the Trial Chambers in The Hague contains either allegations or evidence that Mostar was the location of alleged Serbian participation in a JCE. The fact that some Serbs have been suspected,

investigated, indicted and convicted of specific offences before a court in Bosnia and Herzegovina has not until now been considered sufficient grounds to bring charges for participation in a JCE. Additionally, no causal link can be established with Professor Vojislav Šešelj.

As for the Nevesinje location, the situation was resolved the very instant the Trial Chamber was told that there was simply no truth in the allegations from the indictment concerning any connection with Arsen Grahovac. The witnesses/victims did not say anything during the trial that was relevant to Professor Vojislav Šešelj or volunteers of the Serbian Radical Party, apart from reference to participation in a purely military operation which lasted several days on the Podveležje plateau, which does not include any one of the crime locations in the Indictment concerning Nevesinje and which took place before the alleged crimes were committed at the locations in Nevesinje. It was also established that no volunteers of the Serbian Radical Party had ever been at the Boračko Lake location, but at the time of the crimes in Nevesinje not a single member of the Serbian Radical Party was in the territory of that municipality. Nor is there any question of friendly relations between the Serbian Radical Party and Professor Vojislav Šešelj and persons who were on Boračko Lake because the volunteers of the Serbian Radical Party were not there. In that sense, the evidence of Goran Stoparić (for Podveležje) and that of Aleksa Ejić (for Boračko Lake), given as witnesses for the Prosecution who had found themselves at these locations, is important as they confirmed that there were no volunteers of the Serbian Radical Party at Boračko Lake or in the municipality of Nevesinje. Those who were at Boračko Lake could have been on friendly terms with those from the police and civilian authorities in Nevesinje, but not under any circumstances with the military authorities.

Nevesinje featured as a location in the indictment, as well as in paragraphs 668 to 673, with footnotes 1530 to 1540, of the trial judgment in the *Momčilo Krajišnik* case, IT-00-39-T, dated 27 September 2006. Not a single word in the section of this judgment which pertains to Nevesinje refers to Professor Vojislav Šešelj or volunteers of the Serbian Radical Party, or to the Chetniks or Šešelj's men.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

## ANALYSIS OF THE TESTIMONY OF WITNESS VS-1026, REDŽEP KARIŠIK

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1026, Redžep Karišik, as its witness to prove the following:

Crimes in BH - Mostar:

"Among the leaders of Šešelj's volunteers were Mića Pančevac and Vančo Petkovski aka Vranjanac. The latter had a reputation for killing Croats with knife, of the type known as a *kama* knife." (footnote 354)

"SRS/SČP volunteers figured prominently among those abusing the non-Serb population." (footnote 362)

"Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month." (footnote 363)

"The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture." (footnote 364)

"On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings." (footnote 367)

"Over the next several days, the prisoners were kept in horrible conditions and tortured. They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically." (footnote 368)

2. Summary of witness's evidence VS-1026, Redžep Karišik

Biography: Muslim male, from Mostar.

Events: The witness will testify that, in April 1992, Šešelj's men -wearing white hats, long beards, and Kokarda - entered Mostar. Some of Šešelj's men were from Serbia while others were locals who joined the Serbian volunteers. The witness saw JNA troops practicing on the shooting range; these troops also had long hair, beards and had Kokarda on their heads.

The witness and many other local Muslims were forced to work without pay under Milan Koro (former member of the MUP) while exposed to rifle fire from the conflict. While working, the witness saw Red Berets and Šešelj's men.

On 9 April 1992, the witness and 10-12 others were taken to the North Camp and questioned by Captain Milorad Gunjević. They were detained for 28 hours without food or water and were beaten. The witness saw several "Chetniks" wearing JNA reservist uniforms during this detention.

On 3 June, the witness and several others attempted to flee but they were detained by policemen. On 6 June, the witness and other detainees were put into a vehicle and taken first to the town cemetery, and then to the Vrapčići Club locker room. The witness saw 37 other people already detained in the room, some of whom claimed to have been there for 20 days. During the next six days, several more detainees were brought into the locker room by Momo Čančar.

On 13 June, two soldiers with big beards, helmets, and olive grey uniforms took the witness and fourteen others in a white van to an unknown destination approximately ten minutes from the locker room. One of the "Chetniks" opened the door and demanded that the detainees get out of the van. All but the witness got out of the van, and one of the "Chetniks" shot each of them as they exited the van. When the witness was called; he refused to leave the van. The "Chetnik" closed the door.

The witness was then taken to the Sutina cemetery, where he was handcuffed to a heater, beaten severely, and abandoned. He broke the handcuffs after two hours with a pocket-knife and escaped.

He had not had food or water for four days.

He will testify to the mass grave in Sutina and the identification of some 75 bodies.

Paragraphs: 15, 16, 17(a-e and g-i), 18, 26, 28, 29(j) and 30.

Counts: 1 - 11

### 3. Content of testimony

The witness testified without protective measures on 1 July 2008.

The witness confirmed the presence of the JNA reserve forces in April 1992. The soldiers who worked at the shooting range in the neighbourhood of Zalika told the witness that these reservists with beards were the Territorials and that there would be an exercise for seven days.

The witness is a victim and no matter how much confusion he exhibited, he was a valuable witness. The Trial Chamber could learn from him that the JNA withdrew from Mostar on 19 May 1992 and that the witness recognised and identified as criminals local Serbs from Vrapčici. The story about Šešelj's men was foggy and it followed the pattern of attributing all and everything to the Chetniks and so on. Also helpful was the first statement that the witness gave to police investigators in Mostar, which did not mention Šešelj's men.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs, 4, 5, 6, 7, 8, 9, 10a, 10b, 10c, 10d, 10f, 10g, 11, 14, 15, 16, 17g, 17i, 27, 28, 29 and 30, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1051,**

#### **██████████, IN CLOSED SESSION**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1051, ██████████, to prove the following:

#### Crimes in BH - Nevesinje

"On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje Valley where they were detained. The troops responsible for the capture were commanded by Zdravko KANDIĆ and his second in command, Dragan ĐURDIĆ, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed. Their bodies were later discovered in a place called Teleća Lastva.

The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza. The Serb troops threw bombs into the pit with the bodies. Of this group, twenty were children, including a one-month old baby and at least one other child under the age of one.” (footnote 399)

“Five of the women detained in the heating factory at Kilavci were transported to the resort at Boračko Lake, which was used as a military post by Serb forces, including SRS/SČP volunteers.” (footnote 401)

“Local SRS leader Arsen Grahovac, SRS/SČP volunteer Petar Divaković, and other Serb forces, including other SRS/SČP members, violently raped these women and kept some of them imprisoned for years.” (footnote 402)

“Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed.” (footnote 403)

“In mid-June 1992, eleven Muslim civilians from Hrušta and Kljuna were arrested while hiding from Serb forces in the woods in Teleća Lastva. They were detained in a primary school in Zijemlje, where they were tortured. The torture included severe lacerations, beatings, and one man had his teeth pulled out with pliers.” (footnote 405)

“Seven of the prisoners were killed. Their bodies were found in a pit in Zijemlje. SRS/SČP volunteers were present at the detention cell in Zijemlje and participated in the killings.” (footnote 406)

## 2. Summary of witness’s evidence for VS-1051, XXXXXXXXXX

Biography: [REDACTED].

[REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 15, 16, 17(a-i), 18, 27, 28, 29(k), and 30-32.

Counts 1-11

**3. Content of testimony**

The witness testified with protective measures in closed session on 2 July 2008. [REDACTED]

**4. Summary of testimony**

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 27, 28, 29k, 30, 31 and 32, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1052, [REDACTED],  
UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1052, [REDACTED], to prove the following:

Crimes in BH - Nevesinje

"On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje valley where they were detained." (footnote 394)

"SRS/SČP volunteers were present at the detention cell in Zijemlje and participated in the killings." (footnote 406) "The troops responsible for the capture were commanded by Zdravko Kandić and his second in command, Dragan Đurđić, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed." (footnote 396)

"In mid-June 1992, eleven Muslim civilians from Hrušta and Kljuna were arrested while hiding from Serb forces in the woods in Teleća Lastva. They were detained in a primary school in Zijemlje, where they were tortured. The torture included severe lacerations, beatings, and one man had his teeth pulled out with pliers." (footnote 405)

"SRS/SČP volunteers were present at the detention cell in Zijemlje and participated in the killings." (footnote 406)

"Some of the prisoners were taken to the SUP building in Nevesinje, where they were tortured and kept in a tiny cell for more than a week. During that time, the



prisoners, including women and infants, were abused and given insufficient food.”  
(footnote 407)

**2. Summary of testimony for VS-1052, [REDACTED]**

Biography: [REDACTED].

Events: the witness will testify that, around 18 June 1992, he and his family went into hiding in the woods near Hrušta, in the municipality of Nevesinje. On their way to Mostar by foot, they were ambushed and arrested by Serb soldiers wearing Kokardas, Šajkača caps, and “4C” arm patches. They were walked down a hill for half an hour, and then boarded onto a vehicle by 50 soldiers dressed in the same uniforms. Some wore JNA uniforms.

Primary school in Zijemlje: the witness and his group were taken to a primary school in Zijemlje and kept there overnight. During this time, [REDACTED], [REDACTED], and a family friend were taken from the room and severely beaten by Serb soldiers. [REDACTED] was cut across the neck, and a family friend had several teeth pulled with pliers in the presence of the witness.

The next day, several Serb soldiers dressed in former JNA uniforms took everyone away except the witness, [REDACTED]. He never saw [REDACTED].

SUP building, Nevesinje: the witness, [REDACTED] and [REDACTED] were then taken to Nevesinje, where they were detained by Serb police at the SUP building. At one point a guard slapped the witness across the face.

The witness was kept in a 3x2 meters cell for eight or nine days with little food and water. Other detainees were kept in the same cell; [REDACTED]

[REDACTED]  
[REDACTED].

The witness was later released [REDACTED].

Paragraphs: 15, 16, 17(a-d, g-j), 18, 27-28.

Counts: 1-11.

**3. Content of testimony**

The witness testified on 2 July 2008 with protective measure pursuant to Rule 92 *ter*. He neither accused Professor Vojislav Šešelj nor was there any need for him to testify.

**4. Summary of testimony**

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 27 and 28, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1069,  
FAHRUDIN BILIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1069, Fahrudin Bilić, to prove the following:

Crimes in BH - Mostar

"After the explosion of a cistern in the vicinity of the JNA North Camp in April 1992, in which both the camp and the Zalik neighbourhood experienced considerable damage, civilians took refuge in a shelter in Zalik. (footnote 353)

"SRS/SČP volunteers figured prominently among those abusing the non-Serb population." (footnote 362)

"Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month." (footnote 363)

"Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month. The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture. Those detained in the Zalik shelter were subjected to forced labour under dangerous conditions. About fifty detainees were forced to clean garbage from the streets while exposed to gunfire." (footnote 365)

“On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings.” (footnote 367)

“On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva river. The bodies of the victims were later exhumed.” (footnote 370)

## 2. Summary of witness’s evidence for VS-1069, Fahrudin BILIĆ

Biography: Muslim male, living in Mostar at the time of the events in question.

Events: The witness will testify about the detention and killing of many non-Serbs in Sutina.

In the spring of 2002 (as in original, but it should read “1992”) a cistern exploded in Zalik. Soon afterwards, many of Šešelj’s men arrived, wearing long beards and *Kokardas*; some with White Eagle insignia. The soldiers threatened to kill women and children in the community. Šešelj’s men forced the witness, along with approximately 200-300 others into a shelter in Zalik where they were detained for two and a half months. During this time, the detainees were guarded by one of Šešelj’s men in a JNA uniform. The witness and several other detainees were forced to clear the streets of Zalik of rubbish while exposed to sniper fire.

On 13 June 1992, a group of soldiers, including one of Šešelj’s s men and Miloš RADONJIĆ took between 30 and 45 male detainees to the Sjeverni Logor barracks where their identification cards were checked. The detainees were then ordered into trucks, taken to the Sutina cemetery, and locked in a building.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 15, 16, 17(a-e and g-i), 18, 26, 28, 29(j) and 30

Counts: 1-11.

### 3. Content of testimony

The witness testified *viva voce* on 2 and 3 July 2008.

The witness was extremely difficult to examine, often pretending not to understand the questions and spoke about random subjects in order to use up the time, although he took care not to step outside the given framework. Nevertheless, he was a valuable witness for the defence purposes. The witness tried to cover up the truth with respect to tensions and divisions in Mostar, and he tried to do that before Judge Antonetti, who is sitting the Prlić case and who is perfectly familiar with the chronology of events in Mostar, both up to 13 June 1992 and after that date, when there were no more Serbs in the Neretva valley. It was shown beyond doubt that the volunteers of the Serbian Radical Party operated within units of the JNA up to 19 May 1992, when they withdrew with the JNA from Mostar. It is illusory to claim that the Serbs had devised some kind of a plan for the occupation and encirclement of Mostar, the takeover of the civilian government, the expulsion of Muslims and Croats from their homes and other similar objectives that could all be classified as persecution. Simply put, all that can be said about the Neretva valley is that it was ethnically cleansed of Serbs.

With respect to the Mostar location, it must be noted that the armed conflict against the Serbs and the JNA also involved Croatia with its units, in addition to the Croatian-Muslim paramilitary organisations.

In the end, only the crimes in Sutina and Uborak still remain in the indictment against Professor Vojislav Šešelj. This is an important witness because he had never mentioned Šešelj's men in his previous statements to the local authorities and because he confirmed when questioned that the persons whom the local authorities suspected of crimes were from Mostar and the surrounding area and that not a single one of

them was from Serbia or could for any reason be thought of as being a volunteer of the Serbian Radical Party.

Although the witness was planned to testify to the crime of the killing of civilians, he was also used to describe the situation in Mostar before the withdrawal of the Serbs. At moments the witness appeared to be saying that the Serbs shelled shelters on the Serbian territory of Mostar with Serbs in them, while the only volunteer of the Serbian Radical Party whom the witness saw spent months sharpening a knife in the shelter, thereby demonstrating his love for the daughter of Vojo Pejanović, who kept the keys to the shelters.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17e, 17g, 17h, 17i, 18, 26, 28, 29j and 30, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1022,**

#### **██████████, IN CLOSED SESSION**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1022, ██████████, to prove the following:

##### Crimes in BH - Mostar

"On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings. Over the next several days, the prisoners were kept in horrible conditions and tortured.

They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically.” (footnote 368)

Nevesinje:

“Women were subjected to violent and repeated rapes by SRS/SČP volunteers and other Serb forces and the Muslim villages were plundered and destroyed.” (footnote 392)

“On 22 June 1992, 76 Muslim civilians were arrested in the woods in the area of Velež by Serb forces, including SRS/SČP volunteers, and taken to the primary school in the village of Dnopolje in the Zijemlje Valley where they were detained. The troops responsible for the capture were commanded by Zdravko Kandić and his second in command, Dragan Đurđić, and were a mixture of Red Berets and SRS/SČP volunteers. The men were separated from the women and children, and the men were killed. Their bodies were later discovered in a place called Teleća Lastva. The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza. The Serb troops threw bombs into the pit with the bodies. Of this group, twenty were children, including a one-month old baby and at least one other child under the age of one.” (footnote 399)

“Five of the women detained in the heating factory at Kilavci were transported to the resort at Boračko Lake, which was used as a military post by Serb forces, including SRS/SČP volunteers.” (footnote 401)

“Local SRS leader Arsen Grahovac, SRS/SČP volunteer Petar Divjaković, and other Serb forces, including other SRS/SČP members, violently raped these women and kept some of them imprisoned for years.” (footnote 402)

“Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed.” (footnote 403)

**2. Summary of witness’s evidence for VS-1022, [REDACTED]**

Biography: [REDACTED].

[REDACTED]  
[REDACTED].  
[REDACTED]  
[REDACTED]



The counts are not stated, but it can be presumed that this refers to all counts.

**3. Content of testimony**

The witness testified in closed session on 17 July 2008.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**4. Summary of testimony**



Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17f, 17g, 17h, 17i, 18, 26, 28, 29k, 30, 31 and 32, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 11, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1024,**

##### **IBRAHIM KUJAN, UNDER RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1024, Ibrahim Kujan, to prove the following:

Crimes in BH - Nevesinje

"During the late 1980's and early 1990's, there were increasing numbers of Serb nationalist rallies in the region, including at least one attended by Šešelj." (footnote 373)

"In the summer of 1991 the JNA began, with the help of the SDS, to arm the Serb inhabitants of Nevesinje." (footnote 374)

"Arsen Grahovac established a unit called *Karadorđe*, which set up roadblocks, harassed the local non-Serb population, and set off explosives in several Muslim-owned properties in the Nevesinje region." (footnote 375)

"During the period leading up to the attack, Muslims were removed from their jobs, expelled from their homes, disarmed, and at times physically abused by Grahovac's men." (footnote 376)

"In September 1991, parts of the Užice Corps arrived in the region with JNA reserve soldiers, tanks, APCs and artillery." (footnote 381)

"In June 1992, Serb forces, including SRS/SČP volunteers, attacked Nevesinje and the surrounding Muslim villages." (footnote 387)

“The forces responsible for these and other attacks included SRS/SČP volunteers, Red Berets, and White Eagles. Many of these forces were commanded by Arsen Grahovac.” (footnote 390)

“Women were subjected to violent and repeated rapes by SRS/SČP volunteers and other Serb forces and the Muslim villages were plundered and destroyed.” (footnote 392)

**2. Summary of witness’s evidence for VS–1024, Ibrahim Kujan**

**Biography:** Muslim male from Nevesinje municipality.

**Events:** The witness will testify about the Serb attacks upon his village and specifically about the killing of hundreds of Bosnian Muslims in Nevesinje in 1992.

**Establishment of the *Karadorde* unit:** in June 1991, a military unit called *Karadorde* was set up in Nevesinje, commanded by Arsen Grahovac. This unit was associated with the SČP movement. Its members set up road blocks on all roads leading into Nevesinje and physically abused the non-Serb people stopped at the barricades. Those manning checkpoints did not have to pay for their consumptions in certain bars and restaurants. They obtained ammunition, food, refreshment and money from the Police Station commanded by Krsto Savić aka Kićo. The *Karadorde* unit cooperated with the local police. They blew up religious buildings and property belonging to Muslims in Nevesinje with impunity.

When the war in Croatia started there was a general mobilisation call, but non-Serbs in Nevesinje would generally not respond. Those who did not respond were sacked from their jobs, their apartments were entered by force and they were evicted. Non-Serb members of the reserve police were not mobilised. Their posts were taken by Serbs.

**Serb take-over of Nevesinje:** on 19 September 1991, JNA corps including the Užice Corps from Serbia arrived in Nevesinje with many JNA reserve soldiers and a large quantity of military equipment, including tanks, APCs and artillery weapons. They took complete control of the area from Mostar and Trebinje. The commander was General Milan TORBICA. Their infantry never stopped shooting with all types of weapons, including anti-aircraft guns. For non-Serbs, life in Nevesinje became like life in a prison camp.

The witness will testify to a meeting organised by Torbica on 22 September 1991 at which Torbica said that the moment had arrived to fulfil the Serbs’ historic

wishes and that access to the sea and the border along the Osijek - Karlovac - Karlobag line would be achieved within two weeks.

After Torbica's speech, Serbs would carry around automatic rifles. They threatened non-Serbs in the street with their weapons. They told the non-Serbs that it was Serbian territory and that they should leave. They plundered public property and took it to Serbia. Non-Serbs were not permitted to take their savings from the banks. Some of them left Nevesinje.

In the beginning of 1992, a Serb Crisis Staff was established, which took over control of the municipality and replaced the municipal Assembly. The Crisis Staff included Vukan Bratić, Veso Grahovac, Savić, FNU Filmonović, Milan Kapor, and Momo Golijanin who was the direct connection with Karadžić.

In April 1992, big convoys of Serb people from Mostar arrived in Nevesinje. They wanted to enter apartments and houses owned by non-Serbs, threatening their owners with firearms.

The arrests of the non-Serb inhabitants began. In April 1992, the witness and 540 other non-Serbs from Nevesinje fled to the nearby woods.

Military attacks: on 14 and 16 June, the villages in the southern part of the municipality came under military attack. On 18 June, the witness heard heavy explosions coming from the Gacko municipality. On 21 June 1992, the villages, of Postoljani, Donja Bijenja, and Gornja Bijenja were directly attacked by local Serb police, members of the Karadorde unit (consisting of local Šešelj's men), "Chetniks" from Serbia and Montenegro, Arkan's and Šešelj's men and regular army units.

Killings: during the attack on Donja Bijenja, the Serb troops killed eight elderly people. The witness saw these troops wearing red berets and white eagle insignia.

Following the attack on Postoljani, the witness and a group of non-Serb inhabitants walked in the direction of Bjelimići, leaving behind several elderly people who were later killed while trying to get food. The witness interviewed Serbian prisoners of war who told him that all remaining non-Serbs in Nevesinje had been killed. Approximately 350 Muslims and Croats, including 32 children under the age of 14, were killed.

The witness learned that on 26 June 1992, 72 persons were caught trying to escape. They were captured on Velež mountain, near a radio and TV installation. All but three were imprisoned and then killed.

Paragraphs: 5- 8 15, 16, 17 (a, d, i and j), 18, 27, 28, 31, 32 and 34

Counts: 1-4, 7 and 9-13.

### 3. Content of testimony

The witness testified on 22 July 2008 under Rule 92 *ter* and without protective measures. No matter how hard the witness tried to portray himself as being well informed about developments in the municipality of Nevesinje, he succeeded in proving that his testimony was hearsay. His pathological blaming of Serbs went beyond all measure; he would even have us believe that by using a pair of binoculars from the woods he could make out Serbian forces among whom he found Arkan's men and Šešelj' men with red berets and a white double-headed eagles on their sleeves. Arkan's men were never in the territory of Nevesinje and they never used the white double-headed eagle as their insignia. Arkan's men and Šešelj's men acting together is mission impossible. The witness does not know a single Šešelj's man, nor has he ever seen one, other than through binoculars, and everything he said was based on hearsay, i.e. what he had heard from someone else.

The witness nevertheless admitted that Spremo had taken part alongside Grahovac in the formation of the *Karadorde* unit. Notably, this is the only witness who claimed that the attacks on the Muslim villages were led by members of the JNA in June 1992, although it is common knowledge that the JNA had left the territory of Bosnia and Herzegovina as early as 19 May 1992. He accused Svetozar Parežanin and Blagoje Adžić of these attacks, claiming that, as military personnel, they were behind these attacks and that some members of the JNA were Communists in disguise.

In addition to his numerous incredible claims, which Professor Vojislav Šešelj formally challenged in terms of the inclusion of the 1998 and 2004 statements of this witness in the case file, there probably remains another improbable claim which the judges did not verify, and that is that Professor Vojislav Šešelj visited Nevesinje in February or March 1992 and that, on this occasion, he wore a uniform and was accompanied by Božidar Vučurović, Spremo and Grahovac. Allegedly, he arrived there from Gacko, and the witness was told this by two men. He claims that he saw Šešelj for the first time in Sarajevo in the eighties and then a second time at the beginning of 1992 in Nevesinje.

The witness testified that the mosques and the Catholic church in Nevesinje had been destroyed after being captured by some sort of specialist team. The meaning

of the words “after the takeover of Nevesinje” is problematic given that Serbs had been the majority population for a very long time and that the authorities were established after the elections and before the conflict began.

#### 4. Summary of testimony

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 15, 16, 17a, 17b, 17d, 17i, 17j, 18, 27, 28, 31, 32 and 34, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 7, 9, 10, 11, 12 and 13, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1068,**

#### **██████████, UNDER RULE 92 *ter* WITH PROTECTIVE MEASURES**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1068, ██████████, to prove the following:

##### Crimes in BH - Mostar

“After the explosion of a cistern in the vicinity of the JNA North Camp in April 1992, in which both the camp and the Zalik neighbourhood experienced considerable damage, civilians took refuge in a shelter in Zalik.” (footnote 353)

“SRS/SČP volunteers figured prominently among those abusing the non-Serb population.” (footnote 362)

“Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month. The detainees were kept under inhumane conditions, without adequate food or water, and were subject to frequent beatings and torture.” (footnote 364)

“About fifty detainees were forced to clean garbage from the streets while exposed to gunfire.” (footnote 365)

“The detainees were often subjected to physical and psychological abuse by the Serb soldiers, in particular by SRS/SČP volunteers.” (footnote 366)

“On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva river. The bodies of the victims were later exhumed.” (footnote 370)

**2. Summary of witness's evidence for VS-1068, [REDACTED]**

Biography: Muslim [REDACTED], [REDACTED].

Events: The witness will testify that, on 3 April 1992, following the explosion [REDACTED] near the Northern Camp in Mostar, [REDACTED]

[REDACTED]  
[REDACTED] 500-600 others, moved to a shelter in Zalik. [REDACTED]  
[REDACTED].

In May 1992, the Serbs took over the area and restricted the movement of all non-Serbs. On 7 May, several reservist troops entered the shelter [REDACTED]  
[REDACTED]. Ten men were selected and taken away [REDACTED]  
[REDACTED] they were forced to kneel with their heads down throughout the night.

[REDACTED]  
[REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

From 23 May the witness and several other detainees were forced to clean garbage from the city streets while exposed to gunfire. [REDACTED], a [REDACTED] police commander from Zalik, supervised this forced labour.

On 13 June 1992, having heard that the Northern Camp would be mined, the witness and several hundred other detainees gathered at the shelter. [REDACTED]



latest. [REDACTED]  
[REDACTED]  
[REDACTED].

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 26, 28, 29j and 30, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-029, VOJISLAV DABIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-029, Vojislav Dabić, as its witness to prove the following:

Crime in BH - Brčko

"The SRS/SČP volunteers were involved in the attack on Brčko, and in the operation of the Luka camp. They had a reputation for killing and looting, and participated in rapes of women in the Luka camp." (footnote 254) **(This is an error by the Prosecution.)**

"They received ammunition and other logistical support from the JNA." (footnote 255) **(This is an error by the Prosecution.)**

Mostar:

"The SRS/SČP volunteers were housed, equipped and armed by the JNA. These volunteers came from Serbia and Montenegro and from the battlefields in Croatia. They were joined by local Serbs who were attracted by their ideology and behaviour." (footnote 349)



“With the arrival of the reservists and volunteers, tensions between the ethnic groups increased and the first incidents of ethnic violence occurred. SRS/SČP volunteers were often involved in such incidents and were particularly prominent in acts of looting.” (footnote 350)

“Among the leaders of Šešelj’s volunteers were Mića “Pančevac” and Vančo Petkovski aka Vranjanac. The latter had a reputation for killing Croats with a knife of the type known as a *kama* knife.” (footnote 354)

“SRS/SČP volunteers figured prominently among those abusing the non-Serb population.” (footnote 362)

“On that same day, Serb soldiers, including SRS/SČP volunteers, among them a volunteer with the nickname *Šešeljevac* removed a group of men from the Zalik shelter and transported them first to the JNA North Camp and then to the city mortuary in Sutina. There the victims were beaten. Eighteen of them were subsequently murdered. Their bodies were dumped into a pit at the banks of the Neretva river. The bodies of the victims were later exhumed.” (footnote 370)

Nevesinje:

“Arsen Grahovac established a unit called *Karadorde*, which set up roadblocks, harassed the local non-Serb population, and set off explosives in several Muslim-owned properties in the Nevesinje region.” (footnote 375)

“Grahovac had between 80 and 100 people in his unit, which operated in the area of Mostar, Bijelo Polje, Buna, and Boračko Lake. This unit was later involved in a persecution campaign conducted against the non-Serb population of Gacko, Buna, Mostar, Bijelo Polje and Pijesci.” (footnote 377)

“Their main base was in Nevesinje, where they stayed in the JNA barracks with the Užice Corps.” (footnote 378)

“SRS/SČP volunteers started to arrive in Nevesinje as early as May 1991 and continued to arrive throughout 1991 and the spring of 1992.” (footnote 379)

“SRS/SČP volunteers arrived in Buna as well.” (footnote 380)

“The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command.” (footnote 384)

“The JNA gave full logistical and material support to all of these troops in the region, including the Red Berets.” (footnote 385)

“Zdravko Kandić commanded some of the SRS/SČP volunteers during the attack on Bijelo Polje.” (footnote 391)

“The troops responsible for the capture were commanded by Zdravko Kandić and his second in command, Dragan Đurđić, and were a mixture of Red Berets and SRS/SČP volunteers.” (footnote 395)

“The men were separated from the women and children, and the men were killed.” (footnote 396)

“The women and children were transported to and detained in the heating factory in Kilavci, Nevesinje. Subsequently, forty-four women and children were killed and thrown into a mass grave at Lipovača called Breza.” (footnote 397)

“The Serb troops threw bombs into the pit with the bodies.” (footnote 398)

“SRS/SČP troops and Red Berets were responsible for this massacre.” (footnote 400)

“Of the five women imprisoned and sexually tortured at the Boračko Lake camp, two were eventually killed. After the killing, several Red Beret soldiers, who previously had been part of Captain Dragan Vasiljković’s unit, bragged about the murders in a café in Nevesinje.” (footnote 404)

## 2. Summary of testimony for VS-029, Vojislav Dabić

Nevesinje: the witness will provide evidence of actions of the Serb forces against Muslim civilians in Nevesinje. He will detail the forces involved, including volunteers from outside BiH. He will describe the rounding up and killing of civilians and the soldiers involved. He will address the raping-of women and describe -sp killing incidents charged in the indictment. After the end of the war in BiH the witness participated in locating several mass graves. The sites were exhumed and corroborate the account given by the witness.

Paragraphs: 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 26, 27, 28, 29j, 29k and 32.

Counts: 1- 11.

## 3. Content of testimony

The witness testified *viva voce* on 26 and 27 January 2010. The witness gave two statements to investigators of the Office of the Prosecutors and eight statements to the defence team. In his first statement to the Office of the Prosecutor in 2000, which is 37 pages long, the witness described in detail the chronology of events in Mostar and Nevesinje. It was clarified that the group of Arsen Grahovac on the barricades in 1991 was self-organised and that the names of Šešelj and Martić were mentioned as

persons of trust because of their popularity and with reference to the events in Croatia since there was no armed conflict in Bosnia and Herzegovina at that time, only tension.

[REDACTED]  
[REDACTED]  
[REDACTED]. It was clarified that the volunteers of the Serbian Radical Party were under the command of Momčilo Perišić and that they were the intervention unit, and the witness confirmed that Šešelj's men did not walk around the city.

The witness made a correction by saying that the third mention of Šešelj's men in Nevesinje concerned their withdrawal, and this was between 19 and 25 May 1992, because Baret was wounded in Podgorica on 25 May 1992 when a Muslim man threw a bomb at a rally.

The witness confirmed that no volunteer of the Serbian Radical Party took part in the commission of any of the crimes in the territory of Mostar and Nevesinje. Novica Gušić and Branislav Vakić confirmed that 19 volunteers participated in the battles in Podveležje, but this is about 35 kilometres away from where the crimes against the civilian population took place. As for the murder in Mostar, when a grenade was thrown into a manhole, he confirmed that this was by done by an Albanian JNA officer.

In addition to the clarification of the statements given by the witness in 2004, it was demonstrated in the courtroom that the statement had been expanded by inserting Šešelj's name. The witness admitted that the Office of the Prosecutor had promised to resettle him in another country.

The composition of the 2<sup>nd</sup> Light Brigade at Boračko Lake under the command of Bore Antelj was also discussed, as was the conduct of Baža Milošević, who traded contraband goods with the Croats. It was also clarified that not a single volunteer of the Serbian Radical Party was at Boračko Lake.

The witness was valuable because he facilitated going through all the counts of the indictment concerning Mostar and Nevesinje and because he could be examined about the circumstances cited by some other witnesses. [REDACTED]  
[REDACTED]  
[REDACTED]

██  
██  
██  
4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 26, 27, 28, 29j, 29k, and 32, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, but Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1067, ██████████  
██████████, WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, the Prosecution planned to call VS-1067, ██████████, as its witness to prove the following:

Crimes in BH – Mostar

"Mostar had become a stronghold for Serb forces, including JNA, Serb TO, MUP Serbia units and volunteer units, including SRS/SČP volunteers." (footnote 348)

"The SRS/SČP volunteers were housed, equipped and armed by the JNA. These volunteers came from Serbia and Montenegro and from the battlefields in Croatia. They were joined by local Serbs who were attracted by their ideology and behaviour." (footnote 349)

"With the arrival of the reservists and volunteers, tensions between the ethnic groups increased and the first incidents of ethnic violence occurred. SRS/SČP volunteers were often involved in such incidents and were particularly prominent in acts of looting." (footnote 350)

“Among the Serb forces and the local population, the SRS/SČP volunteers had a bad reputation. It was known that there were criminals among them who engaged primarily in looting and killing of civilians. They were observed getting drunk and using drugs.” (footnote 351)

“In mid-May, in an offensive commanded by General Momčilo Perišić that utilised all Serb forces including the SRS/SČP troops, Mostar was indiscriminately shelled for 30 hours.” (footnote 355)

“During the offensive, SRS/SČP volunteers were seen torturing and killing a civilian.” (footnote 359)

“Several hundred non-Serbs, mostly Muslims, were detained in the Zalik shelter, the JNA North Camp, the city mortuary in Sutina and the locker rooms in the stadium in Vrapčići over extended periods from several days up to a month.” (footnote 363)

“On or about 13 June 1992, after the Serb forces had suffered losses on the battlefield, the SRS/SČP volunteers and other Serb forces rounded up and transported 88 non-Serb civilians from the neighbourhood of Zalik and some surrounding villages to the Vrapčići football stadium. These prisoners were subjected to severe beatings. Over the next several days, the prisoners were kept in horrible conditions and tortured. They were then removed from the locker rooms in groups, taken by trucks to the city dump named Uborak and killed systematically.” (footnote 368)

“The bodies of the victims were covered with earth by a bulldozer. Later the bodies were found in a mass grave in Uborak. Another group of victims was killed in a nearby forest.” (footnote 369)

Nevesinje:

“During the period leading up to the attack, Muslims were removed from their jobs, expelled from their homes, disarmed, and at times physically abused by Grahovac’s men.” (footnote 376)

2. Summary of witness’s evidence VS-1067 [REDACTED]

Biography: [REDACTED].

The witness will testify to the military structure during the events and the actions of Šešelj’s men he observed.

Prior to the war, Šešelj and his party were almost unknown in the Mostar area. SRS branch offices did not exist. At the beginning of the war, an SRS office was set up in Bileća. An SRS office was also set up in Nevesinje. The SRS’s first leader was

Ljubo Kapor and then Rade Radević. In 1990, the SČP was established in Nevesinje. The SČP's commander was Arsen Grahovac. Members of Radević's unit told the witness that Radević regularly went to the SRS headquarters in Belgrade for financial and logistical support.

On 6 April 1992, the witness was expelled from his home in Mostar by the Croatian Army. He and his family then went to Bjelušine in east Mostar. On 7 April, he saw approximately 50-60 Šešelj's men, all wearing JNA camouflage and black berets with cockades, arrive in Bjelušine. They spoke the *ekavica* accent, typical for people from Serbia, and were equipped by the JNA with automatic weapons, mortars, and tanks. They stated that they were SRS members and their main commander was Šešelj. Most local Serbs in the area were afraid of Šešelj's men. They drank a lot of alcohol and used drugs. They harassed and humiliated whoever they wanted. Many of them were criminals who came to kill and steal. The witness observed Šešelj's men loot and burn houses in Topla.

During June-August 1992 the witness also observed other paramilitary groups, including the "White Eagles" commanded by Borislav/Branislav Jović and the "Red Berets" commanded by Rašo Soldo. The different paramilitary groups worked together all the time.

The JNA commander was Momčilo PERIŠIĆ. While in Mostar, the witness observed some of Šešelj's men beating a man inside the National Theatre building. Fifteen minutes later, he heard a detonation from the theatre. One of Šešelj's men told the witness that they had put the mail down a drain and thrown a grenade in. Five days later, the witness saw a group of people pulling a man's body out of the drain. During the same period, the witness observed four bodies being thrown into the Neretva river and many bodies of civilians who had been shot lying behind buildings and in the streets of east Mostar.

On 13 June 1992, Rade Matković (the TO unit commander) ordered to round up Muslims and Croats in Mostar for interrogation. The witness will testify to the events following this order. A group of Šešelj's men loaded approximately 20 Muslim and Croat detainees on a truck. These detainees were then taken to a nearby junkyard. He then observed the flashes of weapons and heard gunfire. As he was leaving the area, he saw the dead bodies of the detainees, and a man named Rajko Janjić bulldozing earth over the corpses. The witness also saw a group of Šešelj's men in the junkyard.

The witness later got information that 88 people were killed at the junkyard and 30 near a military institute in Vrapčići 79 people, 30 women and children and 49 men of military age, were gathered in the woods between Zijemija and Mostar. The women and children were kept at a school building in Zijemlja and die men were killed on the road towards Nevesinje. According to the witness' information, these killings were done under the orders of Kandić and that Šešelj's men had assisted in the killings.

July 1992, while the witness was in Bileća, he observed 60 to 70 Muslim male civilians being held in two rooms in the police station. He will testify to the events in the police station.

Paragraphs: 15, 16, 17(a-d and g-j), 18 and 26-28

Counts: 1-11.

The witness testified *viva voce* on 2 February 2010 with protective measures.

This witness confirmed most of the allegations from the evidence given by Vojislav Dabić and contributed to the clarification of numerous details. The most interesting part of his testimony is that proceedings against him were conducted in Mostar in 1996, that he was sentenced to several months' imprisonment and that, based on his testimony, a murder case was resolved in Mostar, where there were no volunteers of the Serbian Radical Party. This witness did not say a single word to accuse Professor Vojislav Šešelj or volunteers of the Serbian Radical Party. The fact was also clarified that some men falsely claimed to be Šešelj's men and that all the evidence of this witness given in the statements to the Office of the Prosecutor was hearsay, including names, events, the barricades and the alleged looting of goods.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 26, 27 and 28, but the charges for Mostar and Nevesinje are contained in paragraphs 6, 10e, 15, 17a, 17b, 17e, 17g, 17j, 18, 26, 27, 29j, 29k, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and Mostar and Nevesinje are mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of the alleged crimes in Mostar and Nevesinje.

### **THE GREATER SARAJEVO LOCATION**

#### **(ILJJA, VOGOŠĆA, NOVO SARAJEVO, ILIDŽA AND RAJLOVAC)**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Bosnia and Herzegovina, as an annex to the indictment, through the Third Amended Indictment, the Prosecution Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

#### **Remarks Concerning the Sarajevo area in the indictment:**

The greater Sarajevo area is referred to in the indictment within the framework of:

- individual criminal responsibility (paragraph 6, 10e)

6. Professor Vojislav Šešelj participated in a JCE /joint criminal enterprise/.

The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia ("Croatia"), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia ("Serbia"), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the "SAO Krajina", the "SAO Western Slavonia", and the "SAO Slavonia, Baranja and Western Srem" (after 19 December 1991, the "SAO Krajina" became known as the RSK; on 26 February 1992, the "SAO Western Slavonia" and the "SAO Slavonia, Baranja and Western Srem" joined the RSK), as well as the "Dubrovnik Republic". With respect to Bosnia and Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

10. Professor Vojislav Šešelj, participated in the JCE in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian Autonomous Region in Croatia and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar,



Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**- Count 1: Persecutions (paragraphs 15, 17a, 17b, 17e, 17g and 17j)**

15. From on or about 1 August 1991 until at least September 1993, Vojislav Šešelj, acting individually or in concert with known and unknown members of the joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of persecutions of Croat, Muslim and other non-Serb civilian populations in the territories of the SAO Western Slavonia and the SAO SBWS (Slavonia, Baranja and Western Srem), and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and parts of Vojvodina in Serbia.

17. These persecutions were committed on political, racial and religious grounds and included:

a. The [REMOVED] murder of many Croat, Muslim and other non-Serb civilians, including women, children and elderly persons, in the municipality of Vukovar, in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, as described in paragraphs 18 to 27.

b. The prolonged and routine imprisonment and confinement of Croat, Muslim and other non-Serb civilians in the detention facilities within Croatia and Bosnia and Herzegovina, including prison camps in Vukovar, in and near Voćin, and in Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and Brčko, as described in detail in paragraphs 28 to 30.

e. The prolonged and frequent forced labour of Croat, Muslim and other non-Serb civilians detained in the said detention facilities or under house arrest in their respective homes in Vukovar, Voćin, Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar and Brčko. The forced labour included digging of graves, loading of ammunition for the Serb forces, digging of trenches and other forms of manual labour at the front lines.

g. The imposing of restrictive and discriminatory measures against the Croat, Muslim and other non-Serb civilian populations, including persons in Voćin in Croatia and Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar and Nevesinje in Bosnia and Herzegovina, and in parts of Vojvodina, Serbia, such as restriction of movement; removal from positions of authority in local government

institutions and the police; dismissal from jobs; denial of medical care, and arbitrary searches of homes.

j. The deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat, Muslim and other non-Serb civilian populations in the municipality of Vukovar and in Voćin, in Croatia, and in the municipalities of Bosanski Šamac, Zvornik, Greater Sarajevo, Bijeljina, Mostar and Nevesinje in Bosnia and Herzegovina as described in detail in paragraph 34.

**- Count 4: Murder (paragraphs 18 and 24)**

18. From on or about 1 August 1991 until June 1992 in the territory of the SAO SBWS in Vukovar, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation, or execution of the [Removed] murder of Croat, Muslim and other non-Serb civilians as specified in paragraphs 20-22, 24, 26, and 27.

Greater Sarajevo

24. Beginning in April 1992, Serb forces, including volunteers known as “Šešelj’s men”, attacked and took control of towns and villages in **the area of Greater Sarajevo**, including the town of Ilijaš and the village of Lješevo in Ilijaš municipality, the village of Svrake in Vogošća municipality and the neighborhood of Grbavica in Novo Sarajevo municipality. Following the take-over, non-Serbs were routinely detained, beaten, tortured and killed. On or about 5 June 1992, members of a unit of “Šešelj’s men” killed 22 non-Serb civilians in the village of Lješevo. During the summer of 1993, members of a unit of “Šešelj’s men” cut off the head of a civilian and killed four prisoners-of-war in the area of Crna Rijeka in Ilijaš municipality. In the summer of 1993, members of a unit of “Šešelj’s men” killed twenty-five non-Serb men who were being used as human shields, and two non-Serb men who refused to act as human shields, at Žuč in Vogošća municipality. On 17 July 1993, members of a unit of “Šešelj’s men” killed two prisoners-of-war, Živko Krajišnik and Rusmir Hamalukić, on Mount Igman in Ilidža municipality. The names of identified victims

of murder/[REMOVED] at Lješevo and Žuč are set out in Annex VII to this indictment.

**- Counts 10 and 11: Deportation and Forcible Transfer (paragraph 31)**

31. From on or about 1 August 1991 until May 1992 in the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in Vukovar (SAO SBWS) in November 1991, in the municipality of Zvornik in Bosnia and Herzegovina between March 1992 and September 1993, in **Greater Sarajevo** in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia and Herzegovina between June 1992 and September 1993 and in parts of Vojvodina, Serbia, including the village of Hrtkovci, between May and August 1992.

**- Counts 12 to 14: Wanton Destruction and Plunder of Public and Private Property (paragraphs 34, 34b)**

34. From on or about 1 August 1991 until May 1992 in the territories of the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, **Greater Sarajevo**, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the wanton destruction and plunder of public and private property of the Croat, Muslim and other non-Serb populations, acts which were not justified by military necessity. This intentional and wanton destruction and plunder included the plunder and destruction of homes and religious and cultural buildings, and took place in the following towns and villages:

b) Bosnia and Herzegovina: Zvornik (hundreds of homes plundered, and many mosques and other places of worship and a religious archive destroyed); **Greater Sarajevo** (homes plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Ilijaš; homes

plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Vogošća); Mostar (many homes plundered and destroyed and several mosques destroyed) and Nevesinje (many homes plundered and destroyed and many mosques destroyed).

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief Greater Sarajevo is referred to as a crime site in the following paragraphs: GREATER SARAJEVO – 62, 5. GREATER SARAJEVO 95, ILIJAŠ 95, 96, 97, 98, 99, 100, 101, VOGOŠĆA 95, 102, 103, GRBAVICA 95, 104, 106, ILIDŽA 95,108.

**GREATER SARAJEVO  
(ILIDŽA, VOGOŠĆA, GRBAVICA, ILIJAŠ)**

**Paragraph 62**

62. Each sub-section focuses upon one geographic region in which these crimes occurred: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

**Paragraphs 95-108**

**5. Greater Sarajevo**

95. Greater Sarajevo consists of several municipalities surrounding the city of Sarajevo, located in Southern BiH. In April and May of 1992, Serb forces, including volunteers known as "Šešelj's men," attacked and took control of municipalities or parts of municipalities in the area of Greater Sarajevo, including the town of Ilijaš and the village of Lješevo in Ilijaš municipality, the town of Vogošća and the village of Svrače in Vogošća municipality, the Grbavica neighbourhood in the Novo Sarajevo municipality and the Ilidža municipality. Following the take-over, throughout the period relevant to the Second Amended indictment, non-Serbs were routinely detained or put under house arrest, beaten, tortured, raped and killed. They were subjected to forced labour inter alia at the front line and under unbearable winter conditions. Non-Serb property and cultural monuments were systematically plundered, looted and/or destroyed.

**(Ilijaš Municipality)**

96. Before the war, the Ilijaš municipality to the Northeast of Sarajevo was comprised of about 45 % ethnic Serbs and 42 % ethnic Muslims. About 7 % were Croats and 6 % belonged to other ethnicities. Beginning in 1992, the SDS party in the

municipality led by Ratko Adžić initiated and succeeded in the separation of the municipality from the district of Sarajevo and annexed it to the so-called Serb Autonomous District of Romanija. At around that same time, Vasilije Vidović (aka Vaske), returned with about twenty other SRS/SČP volunteers from the battlefields in Croatia. Vasilije Vidović originated from Ilijaš. Before the war he ran the restaurant "Oaza" in the Podlugovi neighbourhood of Ilijaš. During the war, he maintained his headquarters above the restaurant. The volunteers who arrived with him in Ilijaš were mostly Serbs from Croatia and Serbia and the local inhabitants called them "Šešelj's Chetniks." Their armed presence, their open display of Chetnik symbols and insignias and their dominant behaviour scared the local non-Serb population.

97. Vasilije Vidović was in close contact and co-operated with Ratko Adžić and the SDS. The SDS granted special privileges to Vasilije Vidović and his men and praised Vasilije Vidović as a "Chetnik hero" on their local radio station. In April 1992, the police in the municipality separated along ethnic lines. Serbs maintained an ethnic homogeneous police station in Ilijaš, while non-Serb policemen unsuccessfully tried to establish a police station in the village of Lješevo.

98. Lješevo is a village in the Ilijaš municipality with a slight Muslim majority. Muslim families, as well as a few Croats, lived in about 120 houses in one part of the village, while the Serb families of Lješevo lived in about 70 houses in Odžak, the other part of the village. After the outbreak of the war in Bosnia and Herzegovina, movement of the non-Serb population was restricted. Fearing an attack, most of the non-Serb population left Lješevo in early June. On 4 and 5 June 1992, Serb forces comprised of Serb TO and VRS soldiers and Vasilije Vidović's men, whom the locals called "Vaske's Chetniks", attacked the part of the village inhabited by Muslim and Croat families. These troops attacked the non-Serb villagers with artillery and infantry although the villagers did not put up any resistance. During and after the take-over of the village, non-Serb houses were looted and afterwards burned down. The villagers were arrested and robbed by the soldiers including SRS/SČP volunteers. They were beaten, humiliated with ethnic slurs and used as human shields. Four of the Muslim villagers were shot dead immediately after their arrest. On 5 June 1992, while 24 Muslim civilians, both men and women, were lined up as human shields, they were shot at "execution style." Twenty-two of them died.

99. Other non-Serb villagers were taken to the *Iskra* warehouse in Ilijaš where they were detained for about three months together with other non-Serb civilians from

the Ilijaš municipality. The conditions in this detention facility were inhumane, with no toilet facilities, no water, no electricity and little food. In August 1992, the detainees were transferred to the detention facility known as "Planja's house" described below. Volunteers under the command of Vasilije Vidović frequented the detention facility. They took detainees out for forced labour, including trench digging and carrying of wounded Serb soldiers on the front lines.

100. The volunteer unit led by Vasilije Vidović, originally comprised of about twenty men, at times included up to seventy SRS/SČP volunteers, depending on the operations in which they participated. At times, volunteers from other SRS/SČP units operated under Vidović's command. Occasionally, White Eagles, volunteers associated with Mirko Jović, fought alongside Vidović. During the fighting in and around Sarajevo during the summer of 1993, members of a unit of SRS/SČP volunteers cut off the head of a civilian and killed four prisoners-of-war ("POW") in the area of Crna Rijeka in Ilijaš municipality. Vasilije Vidović's men also participated in the destruction of the mosques and the Catholic church in the municipality.

101. Vasilije Vidović personally and his men were widely known for their brutality and the murder of civilians and POWs. Vidović frequently drove around in a car with the skull of one of the murdered Muslims affixed on the hood. He was a close associate of the Accused. The Accused would come to Ilijaš and meet with Vasilije Vidović and his men, and he would bring them cigarettes and money. Vasilije Vidović also travelled to Belgrade and met with the Accused. In March 1994, Vasilije Vidović made a visit to the Accused in Belgrade for an interview broadcast on Serb television, during which the Accused praised Vasilije Vidović's actions in Ilijaš. On 20 May 1994, the Accused appointed Vasilije Vidović a *vojvoda* for his achievements in the Greater Sarajevo area.

He remained close to the Accused after the war and acted as his bodyguard.

(Vogošća Municipality)

102. The composition of the municipality of Vogošća, according to the 1991 census, was comprised of 50,8% Muslims, 35,8% Serbs, 4,3% Croats, 7% Yugoslavs and 2,1% other ethnicities. In April of 1992, Serb forces, among them SRS/SČP volunteers, attacked and took control over neighbourhoods and villages in the Vogošća municipality in the Northeast of Sarajevo, among them Svrače, Vogošća town, Semizova and Kamenica. During and after the take over, non-Serb inhabitants, mostly Muslims, were arbitrarily executed, arrested, detained in detention facilities or

kept under house arrest, beaten, raped and subjected to forced labour. Their homes were looted and/or destroyed. Among those persecuting the non-Serb population were SRS/SČP volunteers commanded by Vasilije Vidović. Vidović and his men killed non-Serbs and looted. They were also involved in the destruction of the mosques throughout the municipality.

103. Between April 1992 and September 1993, dozens of non-Serb detainees were kept in "Sonja's house" in the village of Svrake, up to 200 in "Planja's house" in Svrake, dozens in the military barracks in Semizovac and about 50 in the tire repair garage at the Vogošća crossroad. In these detention facilities, the detainees were subjected to beatings, torture, rape and killings. The detention facilities were operated either directly by Vasilije Vidović and his subordinates, or by his close associates Rajko Janković, and Dragan Damjanović. Both the detainees in these detention facilities and non-Serb inhabitants kept under house-arrest in their homes were subjected to forced labour, including heavy physical labour, throughout the period relevant to the indictment. They had to work on the front lines throughout the Vogošća municipality. They had to dig trenches, recover bodies of Serb soldiers who had fallen at the front lines, and had to bury bodies of murdered non-Serbs. They were also forced to act as human shields. While doing so many non-Serbs were killed or injured. On one occasion in summer 1993, when the Serb forces suffered losses during an offensive at the front line in Žuč, Vogošća municipality, the SRS/SČP volunteers murdered 25 detainees who were used as human shields at that time. They shot the detainees "execution style" as revenge for the Serb losses. On the same day these same perpetrators also killed two non-Serb civilians in Žuč who refused to act as human shields.

(Grbavica)

104. In April 1992, volunteers associated with the Accused and the SRS/SČP from BiH and Serbia, along with JNA and local Serb TO units, took over the neighbourhood of Grbavica in the Novo Sarajevo municipality. Following the take-over, SRS/SČP volunteers led by Slavko Aleksić controlled the area of the Jewish Cemetery, situated above the Sarajevo city centre, from which snipers continuously targeted civilians in Sarajevo.

105. During the time period relevant to the indictment, non-Serbs in the Grbavica area were subjected to a persecution campaign which included arbitrary searches of their homes, looting, rapes, beatings and killings. SRS/SČP volunteers

figured prominently among those abusing the non-Serb population and were feared the most. Several hundred non-Serbs, mostly Muslims, were detained or kept under house-arrest. Both men and women were subjected to forced labour. While the women had to work in the fields or had to clean the places occupied by Serb soldiers, the men had to do hard physical labour over long hours, such as fortifying shelters and digging trenches on the front lines. They had to work under inhumane and dangerous conditions and were used as human shields on the front lines. While doing their work, they were often subjected to abuse by the Serb soldiers, in particular by members of the so-called "Ravna Gora Chetnik Detachment" commanded by Slavko Aleksić. Members of this unit threatened, beat and even killed non-Serbs in the forced labour platoon. They forced members of the forced labour platoon to loot non-Serb property for them. More than 80 civilians were killed while performing forced labour.

106. Slavko Aleksić was very close to the Accused. He communicated directly with him and kept the Accused informed about the events in the region. The Accused visited his volunteer units in Sarajevo, including Grbavica several times and met with Aleksić. On 15 May 1993 the Accused promoted Aleksić to the rank of *vojvoda*. After the war, the Accused publicly praised Aleksić and the SRS volunteers in Grbavica, saying they had performed a great service to the SRS and Serb nationalism.

(Ilidža Municipality)

107. Yet another of the Accused's close associates was active in the Greater Sarajevo area: Branislav Gavrilović aka Brne. Gavrilović became the leader of the Serbian Youth Movement for Bosnia and Herzegovina, an organisation that joined the Accused's SRS/SČP movement after Gavrilović met the Accused in Bijeljina in 1991. The Accused later appointed him SRS/SČP volunteer commander in Slavonia, Baranja, and Western Srem. He was also one of the leaders of the SRS Party in Ilidža, where the Accused visited him in the summer of 1992. Gavrilović previously participated in the war in Croatia. He frequently called the Accused from the front line. Gavrilović also discussed with Aleksić the recruitment of more SRS/SČP volunteers. While in Sarajevo in 1991, Gavrilović received his orders from the main SRS office in Belgrade, and on several occasions he met directly with the Accused in Belgrade. In May 1993 the Accused appointed Gavrilović a *vojvoda*. In the summer of 1994, the Accused and Gavrilović attended a celebration in Pale together.

108. On 17 July 1993, Branislav Gavrilović and his SRS/SČP volunteers participated in the fighting in the Ilidža municipality. Serb forces, comprised of VRS



soldiers and Gavrilović's SRS/SČP volunteers, attacked the Bosnia and Herzegovina army positions in Golo Brdo at Mount Igman facing Ilidža. They captured four members of the Sarajevo TO. The Serb soldiers tied up the captured POWs and shot one of them, a 17 year old boy, on the spot. The other POWs were taken downhill to a field where Branislav Gavrilović and more of his men were waiting. On their way they were mistreated and threatened. Gavrilović and one of his subordinates interrogated the POWs, during which the POWs were hit, beaten and kicked by the interrogators. Two of the POWs were murdered after the interrogation. Their bodies were later exhumed.

### **Summary Regarding Witnesses for Greater Sarajevo**

#### **B. Implementation of the JCE in Bosnia and Herzegovina**

Witnesses: VS-043 (Milan Babić, deceased), VS-037 ([REDACTED], testified as if he were a Defence witness), VS-1061 (Miroslav Deronjić, deceased), VS-026 ([REDACTED], did not testify, but wanted to be a Defence witness).

#### **5. Greater Sarajevo:**

Witnesses: VS-1111 ([REDACTED]), VS-1056 (Mujo Džafić, deceased), VS-1055 ([REDACTED], false witness), VS-1060 ([REDACTED]), VS-017 (Zoran Rankić, testified as if he were a Defence witness), VS-034 ([REDACTED], did not testify, but wanted to be a Defence witness), VS-1018 (Perica Koblar, false witness).

### **Final and Revised Prosecution Witness List and Summaries of Testimonies**

#### **Crime base Witnesses for Greater Sarajevo:**

VS-1018 (Perica Koblar, false witness), VS-1055 ([REDACTED], false witness), VS-1056 (Mujo Džafić, deceased), VS-1057 (Safet Sejdić, the witness is not to be found in the Prosecution's Final Pre-Trial Brief, testified, false witness), VS-1060 ([REDACTED]), VS-1111 ([REDACTED]).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Sarajevo, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his

actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

During the presentation of Prosecution evidence, the following witnesses were heard:

1. [REDACTED], VS-1011, testified *viva voce* on 3 June 2008 under protective measures and a pseudonym and with image and voice distortion.
2. [REDACTED], VS-1055, testified *viva voce* on 4 and 5 June 2008 under protective measures and a pseudonym and with image and voice distortion.
3. Perica Koblar, VS-1018, testified *viva voce* on 10 and 11 June 2008.
4. Safet Sejdić, VS-1057, testified *viva voce* on 12, 17 and 18 June 2008.
5. [REDACTED], VS-1060, testified *viva voce* on 24 and 25 June 2008 under protective measures and a pseudonym and with image distortion.

Witness Mujo Džafić, VS-1056, statement tendered into evidence under Rule 92 *quater* by a decision of the Trial Chamber dated 13 May 2009.

Generally viewed all the charges for the location of Sarajevo refer to participation in the JCE, and the alleged responsibility of Professor Vojislav Šešelj is derived from the fact that individuals who were leaders of some units were members of the Serbian Radical Party and that Professor Vojislav Šešelj inquired by telephone about their position and situation. There were such units throughout Bosnia and Herzegovina and they were always part of the Army of Republika Srpska. There is not a single piece of evidence that these units acted autonomously or that anything that members of these units did depended on the Serbian Radical Party and Professor Vojislav Šešelj. It was therefore necessary to prove in this phase of the proceedings that members of the Serbian Radical Party from Bosnia and Herzegovina, as members of the units of the Army of Republika Srpska, neither committed the crimes referred to in the indictment for Sarajevo nor participated jointly in the operations carried out by the units of the Army of Republika Srpska in the locations and at the times when the crimes from the indictment were committed. It must also be noted that the fact that someone is a member of the Serbian Radical Party, that he responded to mobilisation when called-up by the organs of Republika Srpska and that he was a member of a unit of the Army of Republika Srpska cannot in any way represent grounds or even evidence of Professor Vojislav Šešelj's participation in the JCE. Of course, the time frame before 19 May 1992 and after that date must also be taken into account. Professor Vojislav Šešelj was never in uniform during his visits to Republika Srpska,

in contrast to the territory of Croatia before 13 November 1991, when, for instance, he appeared in Vukovar in a JNA uniform wearing a badge with a two-headed eagle on his lapel.

In the Krajišnik case, facts relating to the events which occurred in these locations, i.e. in the municipalities under the common name of "Greater Sarajevo, were established with reference to the criminal responsibility of Momčilo Krajišnik". Not everything can be cited due to the size of the text, but it is sufficient to refer the judges to the following paragraphs of the Trial Chamber's Judgement:

- for Ilidža municipality, "4.4.2 Ilidža" paragraphs 551 to 556,
- for Ilijaš municipality, "4.4.3 Ilijaš" paragraphs 557 to 565,
- for Vogošća municipality, "4.4.8 Vogošća" paragraphs 594 to 606.

Therefore, in this case, where a final judgement has been rendered, there is again no mention of Professor Vojislav Šešelj or Serbian Radical Party volunteers.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1011, ██████████,  
UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1111, ██████████, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH – Greater Sarajevo:

"Beginning in 1992, the SDS party in the municipality led by Ratko Adžić initiated and succeeded in the separation of the municipality from the district of Sarajevo and annexed it to the so-called SAO Romanija."(footnote 312)

"Serbs maintained an ethnic homogeneous police station in Ilijaš, while non-Serb policemen unsuccessfully tried to establish a police station in the village of Lješevo." (footnote 316)

"Muslim families, as well as a few Croats, lived in about 120 houses in one part of the village, while the Serb families of Lješevo lived in about 70 houses in Odžak, the other part of the village." (footnote 317)

"Fearing an attack, most of the non-Serb population left Lješevo in early June." (footnote 318)

“On 4 and 5 June 1992, Serb forces comprised of Serb TO and VRS soldiers and Vasilije Vidović’s men attacked the part of the village inhabited by Muslim and Croat families.” (footnote 319)

“The villagers were arrested and robbed by the soldiers including SRS/SČP volunteers. They were beaten, humiliated with ethnic slurs and used as human shields.” (footnote 320)

“On 5 June 1992, while 24 Muslim civilians, both men and women, were lined up as human shields, they were shot at ‘execution style’. Twenty-two of them died.” (footnote 321)

**2. Summary of testimony for VS-1011, [REDACTED]**

Biography: [REDACTED]

Events: This witness will give unique and compelling testimony of [REDACTED].

Relationships between ethnic groups in the town deteriorated after the introduction of the multiparty system. Serbs wanted a unified Serb municipality and wanted the Muslims to move out. Tensions rose. Serbs began to occupy strategic hilltops around Lješevo in April and May 1992, from where they later fired artillery. A JNA convoy passed through Lješevo around this time. When the convoy left the local Serbs were better armed, and would show off their automatic weapons and grenade launchers.

[REDACTED]

[REDACTED]

Paragraphs: 15, 16, 17 (a), 18, 24, 28.

Counts: 1-4.

### 3. Content of testimony

The witness testified on 3 June 2008 under a pseudonym and with image and voice distortion. He had testified earlier in the Krajišnik case. It is unclear why this witness was called to testify considering that the Prosecution is in a state of confusion, which can be seen by comparing what the Prosecution wanted through this witness, what it was counting on according to the summary for this witness, what the witness said and which counts have been expunged from the indictment. This witness [REDACTED] never said a word about any Serbian Radical Party volunteers, and there were none there. Nor was Professor Vojislav Šešelj there. The judges responded to this remark in such a way that one might conclude that Professor Vojislav Šešelj was responsible for all the crimes with which the Serbian forces, as they are colloquially called, can be charged. During the brief cross examination of this witness the judges did not allow a document from that time signed by Nikola Poplašen to be read out.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1055, [REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1055, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH – Greater Sarajevo:

“Non-Serb property and cultural monuments were systematically plundered, looted and/or destroyed.” (footnote 310)

“Beginning in 1992, the SDS party in the municipality led by Ratko Adžić initiated and succeeded in the separation of the municipality from the district of Sarajevo and annexed it to the so-called SAO Romanija.” (footnote 312)

“Vasilije Vidović was in close contact and co-operated with Ratko Adžić and the SDS.” (footnote 314)

“The SDS granted special privileges to Vasilije Vidović and his men and praised Vasilije Vidović as a “Chetnik hero” on their local radio station.” (footnote 315)

“Serbs maintained an ethnic homogeneous police station in Ilijaš, while non-Serb policemen unsuccessfully tried to establish a police station in the village of Lješevo.” (footnote 316)

“Fearing an attack, most of the non-Serb population left Lješevo in early June.” (footnote 318)

“On 4 and 5 June 1992, Serb forces comprised of Serb TO and VRS soldiers and Vasilije Vidović’s men attacked the part of the village inhabited by Muslim and Croat families.” (footnote 319)

“On 5 June 1992, while 24 Muslim civilians, both men and women, were lined up as human shields, they were shot at ‘execution style’. Twenty-two of them died.” (footnote 321)

“In August 1992, the detainees were transferred to the detention facility known as ‘Planja’s house’ described below.” (footnote 322)

“Vasilije Vidović’s men also participated in the destruction of the mosques and the Catholic church in the municipality.” (footnote 323)

“Vasilije Vidović also travelled to Belgrade and met with Šešelj.” (footnote 325)

“On 20 May 1994, Šešelj appointed Vasilije Vidović a *vojvoda* for his achievements in the Greater Sarajevo area. He remained close to Šešelj after the war and acted as his bodyguard.” (footnote 328)

“Vidović and his men killed non-Serbs and looted. They were also involved in the destruction of the mosques throughout the municipality.” (footnote 330)

“The detention facilities were operated either directly by Vasilije Vidović and his subordinates, or by his close associates Rajko Janković, and Dragan Damjanović.” (footnote 331)

2. Summary of testimony for VS-1055, [REDACTED]

Biography: [REDACTED]  
[REDACTED]

The witness will testify about his detention in Lješevo, the activities of the “Chetnik” troops in that area, and his knowledge of Vasilije Vidović (aka Vaske) who was appointed a *vojvoda* by Šešelj in 1994.

Following the early 1992 decision by the Serb dominated Ilijaš Municipal Assembly to leave the Sarajevo District and join the SAO Han Pijesak-Sokolac-Pale District, the Assembly took over the control of shops. At the end of April, the Serbs from Ilijaš took over the police station. After the takeover, only Serbs could work at these shops and as policemen.

In January 1992, Vaske brought about 20 fully armed men to Ilijaš. Most of them spoke with Serbian accents. They began growing beards and hair and wearing cockades.

On 26 May 1992, the witness’ business in Ilijaš was confiscated by the Serb-controlled municipal authorities. He did not go to Ilijaš any more and remained in Lješevo, a small village close to Ilijaš.

In the evening of 4 June, Lješevo was shelled. The next day, the witness and several other village residents were arrested by Vaske and his men. The soldiers wore white ribbons on their sleeves. Vaske also wore a traditional Serbian cap and a cockade. [REDACTED] was beaten. Soon afterwards, the detainees were taken to a bus, beaten by Neven Adžić and others, and taken to Ilijaš. They were kept in a warehouse named *Iskra* for three months, under the control of Slavko Ristić.

The conditions of their detention were terrible: no toilets, no water, no light, no electricity, and half a loaf of bread every day. The detainees were forced to dig trenches and carry wounded soldiers.

The witness will give details of the following events: the killing of 22 inhabitants of Lješevo; a meeting between Šešelj and Vaske in Ilijaš; and the destruction of all religious buildings in Ilijaš by Vaske’s men.

Paragraphs: 15, 16, 17 (a-e, g, h), 18, 24, 28, 29g, 30, 34.

Counts: 1-11, 13.

3. Content of testimony





## 2. Summary of testimony for VS-1018, Perica Koblar

Biography: Slovenian male, member of the BH Territorial Defence unit, in his early thirties at the time of the events in question.

Events: The witness will testify about his capture and maltreatment by the Serb forces in Sarajevo in 1993.

On 17 July, the witness was captured by three Serb soldiers while on guard duty at Golo Brdo. These soldiers were well-armed and one of them wore a cockade; later, the witness discovered that they were members of Brnislav Gavrilović aka Brne's unit. One of the soldiers, Boro Pajković, repeatedly beat the witness with his rifle and put a knife to his throat.

The witness was taken to a bunker, where he was detained and beaten with three other members of his unit. While being beaten, he observed one of the Serb soldiers shoot Robert Kahrmanović in the back, killing him. The witness also observed a Serb named "Ćopo" shoot and kill Živko Krajišnik, another detainee. Throughout his detention, the witness was severely beaten, at one point with a bat. Boro Pajković later told the witness that he had killed Rusmir Hamalukić, a third detainee.

While imprisoned in the Kula prison for seven months, the witness was forced to work for the Serbs. The witness escaped from prison on 17 February 1994. In August 1994, he saw Šešelj and Gavrilović sitting together on television.

Paragraphs: 15, 16, 17 (a-e), 18, 24, 28, 30.

Counts: 1-9.

## 3. Content of testimony

The witness testified *viva voce* on 10 and 11 June 2008. The witness was shamelessly and openly biased and tried to lie about what had happened at Golo Brdo. He went so far as to praise Brne, solely to conceal that Živko Krajišnik and others had been killed in battle at Golo Brdo, and presented this as a crime committed by persons for whom Brne is responsible as their superior. The witness showed impudence in order to provoke Professor Vojislav Šešelj. The witness could not find his way out of the contradiction with the statements he had given earlier. It is enough to keep in mind that everyone, i.e. all the sides to the conflict, found him suspicious, and he was probably planted as a provocation because he lives in Sarajevo at the same address where Professor Vojislav Šešelj used to live.

The witness was vague, inconsistent, occasionally contradictory and very suspicious to all who participated in the armed clashes. His testimony came close to incident, and it must be said that such is his character: a Bosnian from Berane of Slovenian origin?

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1057,  
SAFET SEJDIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1057, Safet Sejdić, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH – Greater Sarajevo:

“Vidović and his men killed non-Serbs and looted. They were also involved in the destruction of the mosques throughout the municipality.”[330]

“The detention facilities were operated either directly by Vasilije Vidović and his subordinates, or by his close associates Rajko Janković, and Dragan Damjanović.” (footnote 331)

“On one occasion in summer 1993, when the Serb forces suffered losses during an offensive at the front line in Žuč, Vogošća municipality, the SRS/SČP volunteers murdered 25 detainees who were used as human shields at that time. They shot the detainees 'execution style' as revenge for the Serb losses. On the same day these same perpetrators also killed two non-Serb civilians in Žuč who refused to act as human shields.” (footnote 332)

**2. Summary of testimony for VS-1057, Safet Sejdić**

Biography: Muslim male from Svrake. The witness will testify that, in April 1992, Chetnik troops comprised of Šešelj's men, local Serbs, and others attacked the Svrake village. JNA troops were also in the hills around the village and participated in the attack. The troops killed Muslims going from door to door, arrested the villagers and held many of them in detention facilities in the Semizovac barracks, at places called Sonja's camp, Planjo's house at Svrake, in the basement of the prison near the Park Hotel in Vogošća, in the Vogošća Pensioner's Home and in a tire repair garage at the Vogošća crossroad. Many of the detainees were beaten and killed. The witness was taken on a bus to Semizovac, where the men were separated from the women and children. After the fall of Svrake, Serbs took many Muslim girls and women to the camp in Semizovac where they were sexually assaulted.

The witness was placed in a forced labour group and made to chop wood and dig graves in 1992 and 1993. He was also forced to carry ammunition for the troops as they went into battle.

One of Šešelj's men, Vasilije Vidović (aka Vaske), controlled one of the Chetnik units in the area at that time. Vaske had his own unit in Ilijaš, known as the *Vasketova skalamerija*, which was known for killing large numbers of Muslims. The witness' work site was supervised by Rajko Janković, who frequently acted in cooperation with Vaske on military operations.

In the summer of 1992, the witness observed three Chetniks bringing a Muslim from Svrače named Čalton and killing him with automatic rifles. By the end of 1992, all the Muslims in Svrače had been killed or had fled. The witness and other non-Serbs were used several times as a human shield by Dragan Damjanović, particularly in the summer and autumn of 1993. On one of these occasions, the witness was wounded in the back, and several of the other detainees were killed. During this time, he was eyewitness to the following: the killing of 25 detainees by Damjanović and two other Chetniks in Žuč; the killing of two detainees by Damjanović and one other Chetnik: the killing of a Muslim couple by Kosta Nešić in 1992 in Semizovac; the killing of four Bosnian prisoners of war by Janković in Semizovac; the beheading of a Muslim detainee by Vaske in Crna Rijeka; and the bombing of the Muslim population in Srednje by Vaske in late 1993.

In the summer of 1993, the witness heard of the rape of a young Muslim girl by members of Vaske's unit on the Nišićka Plateau. At around the same time, he heard Officer Milenko Lalović order Serbian soldiers to kill every Muslim in the area, and to bring every Muslim woman to him.

In 1994, the witness was made to unearth bodies of Muslims from mass graves, ostensibly needed for exchanges. When the Serbs left the territory of the Vogošća municipality, they looted houses, buildings and factories and then torched them. The witness will testify to the long term physical results of the frequent beatings and other deprivations he endured while in captivity for three years.

Paragraphs: 15, 16, 17 (a-j), 18, 24, 28, 29g, 30, 34.

Counts: all counts.

### 3. Content of testimony

The witness testified *viva voce* on 12, 17 and 18 June 2008.

This is by far the best Prosecution witness for the location of Sarajevo, who has lost all credibility and shown what means the Prosecution has been using. In addition to many statements which have been used thanks to this witness, the judges were also able to hear some incredible combinations which it was almost unnecessary to deny.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1060,  
[REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1060, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH – Greater Sarajevo:

“Non-Serb property and cultural monuments were systematically plundered, looted and/or destroyed.” (footnote 310)

“Following the take-over, SRS/SČP volunteers led by Slavko Aleksić controlled the area of the Jewish Cemetery, situated above the Sarajevo city centre, from which snipers continuously targeted civilians in Sarajevo.” (footnote 333)

“While doing their work, they were often subjected to abuse by the Serb soldiers, in particular by members of the so-called Ravna Gora Chetnik Detachment commanded by Slavko Aleksić. Members of this unit threatened, beat and even killed non-Serbs in the forced labour platoon. They forced members of the forced labour platoon to loot non-Serb property for them. More than 80 civilians were killed while performing forced labour.” (footnote 334)

“Slavko Aleksić was very close to Šešelj. He communicated directly with him and kept Šešelj informed about the events in the region.” (footnote 335)

“After the war, Šešelj publicly praised Aleksić and the SRS volunteers in Grbavica, saying they had performed a great service to the SRS and Serb nationalism.” (footnote 338)

2. Summary of testimony for VS-1060, [REDACTED]

Biography: [REDACTED], from Grbavica, Greater Sarajevo.

Events: The witness will testify about the take-over of Grbavica by Serb troops in 1992-93; in particular, he will relate to his experiences as a detainee and the forced labour he was made to perform.

The war in Grbavica started at the beginning of 1992 when the JNA came to Grbavica with tanks and military equipment. In April 1992, four different armies were stationed in Grbavica: JNA, Šešelj's men (wearing cockades, traditional Serbian caps and long beards), TO members and local Serb troops.

The witness observed Šešelj's men looting apartments in the town. The commander of the JNA tank unit was Fnu Derikonja. Mirko Šarović, the president of the executive board of the Municipality issued documents to the soldiers certifying that the looted goods were theirs.

In the beginning of August 1992, a VRS soldier forced the witness to join a forced labour group called the "work platoon". He had to work every day of the week, digging trenches, cutting wood, building bunkers, cleaning trash and repairing cars. He and his co-workers were beaten nearly every day by the guarding soldiers. He witnessed the killing of one of his fellow detainees. According to the witness, a total of 83 men were killed performing forced labour during the war.

While working in the Jewish Cemetery, the witness observed several of Šešelj's men at the *Četnik café*, although he never dealt directly with any of them during the war. He knew that the leader of Šešelj's men in Grbavica was named *Vojvoda Slavko Aleksić*, who directly reported to Šešelj.

In November 1994, the witness was exchanged and released.

Paragraphs: 15, 16, 17(a, c-e, g-i), 18, 24, 28, 31, 32, 34.

Counts: 1-9.

### 3. Content of testimony

The witness testified on 24 and 25 June 2008 under protective measures

Although the witness showed total confusion with regard to Šešelj's men or the Chetniks, the testimony of this witness is important because the Defence documentation regarding Grbavica and Slavko Aleksić was tendered through him, because he was a member of the police and transferred to a unit of the Army of Republika Srpska only in July 1992, and because he was a member of the Serbian Democratic Party in Sarajevo at the time. Of course, Slavko Aleksić became a member of the Serbian Radical Party in 1992, probably in the summer of 1992, but what is important is that he is from Sarajevo and that no one from the Serbian Radical Party in Belgrade sent him to a unit of the Army of Republika Srpska in Sarajevo.

## THE VUKOVAR LOCATION

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Croatia, as annexes to the indictment, through the Third Amended Indictment, the Prosecution's Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task and what the judges were able to establish in the courtroom.

### Remarks Concerning Vukovar from the Indictment

Vukovar is referred to in the indictment as a place where crimes were committed under:

#### - Individual Criminal Responsibility (paragraph 5)

5. Vojislav Šešelj is individually criminally responsible for the crimes referred to in Articles 3 and 5 of the Statute of the Tribunal and described in this indictment, which he planned, ordered, instigated, committed or in whose planning, preparation, or execution he otherwise aided and abetted. By using the word "committed" in this indictment, the Prosecutor does not intend to suggest that the accused physically committed all of the crimes charged personally. Physical commitment is pleaded only in relation to the charges of persecutions (Count 1) by direct and public ethnic denigration (paragraphs 15 and 17(k)) with respect to the Accused's speeches in **Vukovar**, Mali Zvornik and Hrtkovci, and by deportation and forcible transfer (paragraphs 15 and 17(i)) with respect to the Accused's speech in Hrtkovci, and in relation to the charges of deportation and inhumane acts (forcible transfer) (Counts 10 – 11, paragraphs 31 - 33), with respect to the Accused's speech in Hrtkovci. "Committed" in this indictment includes the participation of Vojislav Šešelj in a joint criminal enterprise as a co-perpetrator. By using the word "instigated", the Prosecution charges that the accused Vojislav Šešelj's speeches, communications, acts and/or omissions contributed to the perpetrators' decision to commit the crimes alleged.

#### - Count 1: Persecutions (paragraphs 17a, 17b, 17e, 17j, 17k)

17. These persecutions were committed on political, racial and religious grounds and included:

a. The [removed] murder of many Croat, Muslim and other non-Serb civilians, including women, children and elderly persons, in the municipality of **Vukovar**, in

the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, as described in paragraphs 18 to 27.

b. The prolonged and routine imprisonment and confinement of Croat, Muslim and other non-Serb civilians in detention facilities within Croatia and Bosnia and Herzegovina, including prison camps in **Vukovar**, and in Zvornik, Greater Sarajevo, Mostar, and Nevesinje as described in paragraphs 28 to 30.

e. Prolonged and frequent forced labour of Croat, Muslim and other non-Serb civilians detained in the said detention facilities or under house arrest in their respective homes in Vukovar, Zvornik, Greater Sarajevo and Mostar. The forced labour included digging graves, loading ammunition for the Serb forces, digging trenches and other forms of manual labour at the front lines.

j. Deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat, Muslim and other non-Serb civilian populations in the municipality of **Vukovar** in Croatia, and in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina as described in paragraph 34.

k. Direct and public denigration through “hate speech” of the Croat, Muslim and other non-Serb populations in **Vukovar**, Zvornik and Hrtkovci on the basis of their ethnicities as described in paragraphs 20, 22, and 33.

**- Count 4: Murder (paragraphs 18, 20 21)**

18. From on or about 1 August 1991 until June 1992 in the territory of the SAO SBWS in **Vukovar**, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation, or execution of the [removed] murder of Croat, Muslim and other non-Serb civilians as specified in paragraphs 20-22, 24, 26, and 27.

**SAO SBWS – VUKOVAR**

20. In November 1991 while Serb forces fought to take over **Vukovar**, Vojislav Šešelj visited the town. On or about 8 November 1991, Vojislav Šešelj publicly pronounced, “This entire area will soon be cleared of Ustashas.” On or about 13 November 1991, Vojislav Šešelj, both publicly and privately, pronounced, “Not

one Ustasha must leave Vukovar alive.” These speeches persecuted Croats and instigated the killing of Croats. On or about 20 November 1991, as part of the overall persecution campaign, Serb forces, including volunteers recruited and/or incited by Vojislav Šešelj, removed approximately four hundred Croats and other non-Serbs from Vukovar Hospital in the aftermath of the Serb take-over of the city. Approximately three hundred of these non-Serbs were transported to the JNA barracks and then to the Ovčara farm located about 5 kilometres south of Vukovar. There, members of the Serb forces beat and tortured the victims for hours. During the evening of 20 November 1991, the soldiers transported the victims in groups of 10-20 to a remote execution site between the Ovčara farm and Grabovo, where they shot and killed approximately two hundred and sixty-four non-Serbs from Vukovar Hospital. Their bodies were buried in a mass grave. The names of the murder victims are set out in Annex III attached to this indictment.

21. After Serb forces took control of **Vukovar** on 18 November 1991, over one thousand civilians gathered at the *Velepromet* facility. Some were compelled to go there by Serb forces and others went voluntarily seeking protection. By 19 November 1991, approximately two thousand people had gathered inside the *Velepromet* facility. The JNA considered about eight hundred of these persons to be prisoners of war. By the evening of 19 November 1991, shortly after the JNA began to transfer the alleged prisoners of war to their Sremska Mitrovica detention facility in Serbia, Serb forces, including volunteers recruited and/or incited by Vojislav Šešelj, separated a number of individuals from the alleged group of prisoners of war. They took these selected individuals out of the *Velepromet* facility and killed them. The bodies of some of those killed were transported to the Ovčara farm and buried there in the mass grave. The bodies of six other victims were left lying on the ground behind the *Velepromet* facility. The names of these six murder victims are set out in Annex IV attached to this indictment.

**- Counts 8 and 9: Torture and Cruel Treatment (paragraphs 29a, 29b)**

29. Serb forces, including those volunteer units recruited and/or incited by Vojislav Šešelj, captured and detained hundreds of Croat, Muslim and other non-Serb civilians. They were detained in the following short- and long-term detention facilities:



a) The *Velepromet* warehouse, **Vukovar**, SAO SBWS, November 1991, run by JNA, approximately twelve hundred detainees.

b) The Ovčara farm, near **Vukovar**, SAO SBWS, November 1991, run by JNA, approximately three hundred detainees.

**- Counts 10 and 11: Deportation and Forcible Transfer (paragraph 31)**

31. From on or about 1 August 1991 until May 1992 in the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in **Vukovar** (SAO SBWS) in November 1991, in the municipality of Zvornik in Bosnia and Herzegovina between March 1992 and September 1993, in Greater Sarajevo in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia and Herzegovina between June 1992 and September 1993 and in parts of Vojvodina, Serbia, including the village of Hrtkovci, between May and August 1992.

**- Counts 12 to 14: Wanton Destruction and Plunder of Public and Private Property (paragraph 34a)**

34. From on or about 1 August 1991 until May 1992 in the territories of the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in the municipalities of Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the wanton destruction and plunder of public and private property of the Croat, Muslim and other non-Serb populations, acts which were not justified by military necessity. This intentional and wanton destruction and plunder included the plunder and destruction of homes and religious and cultural buildings, and took place in the following towns and villages:

a) SAO SBWS: **Vukovar** (hundreds of homes destroyed and many homes plundered).

Victims Annexes III and IV.

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief Vukovar is referred to as a crime site in the following paragraphs: 1, 3i, 4, 11, 20, 21, 22, 26, 33, 37, 39, 40, 62, 1. VUKOVAR, 64, 65, 66, 67, 68, 69, 70, 131, 141, 143, 145, 148.

**VUKOVAR**

**Paragraph 1**

1. Before August 1991 and up to September 1993, the time period relevant to the indictment, the Accused was the President of the SRS and the leader of the SČP. In these capacities, the Accused was one of the most prominent politicians in the former Yugoslavia and exercised substantial political power and influence. Along with Croatian Serb and Bosnian Serb political leaders, Croatian Serb and Bosnian Serb government, military and police officials, high-ranking members of both the JNA/JA and the MUP of Serbia, and with other leading Serbian and Montenegrin political figures and officials, the Accused was one of the chief participants in the formulation, preparation and execution of a JCE to forcibly remove non-Serbs from targeted regions of Croatia, BiH and SFRY/FRY. This objective was achieved through the expulsion of hundreds of thousands of non-Serb civilians from their homes, their extended detention in brutally inhumane conditions, massacres, and a range of other persecutory conduct designed to drive them out of the territories considered to be Serb. The indictment sets forth the Accused's responsibility for inciting, instigating, creating, supporting, directing, coordinating and encouraging the forces that committed the crimes charged in the indictment. The Prosecution also alleges that the Accused physically committed persecution, as a crime against humanity, (through "hate speech") in Vukovar, Croatia, Zvornik, BiH, and Hrtkovci, Serbia. Moreover, the Accused personally committed crimes against humanity, i.e. deportation and inhumane acts, (forcible transfers) in Hrtkovci.

**Paragraph 3 (i)**

3. Although the process varied from place to place, the take-overs achieved the common goal of establishing Serb control in the targeted territories. The Accused participated in this process by:

a) publicly and systematically promoting the establishment by force of a unified Serb-dominated state known as "Greater Serbia" with its western borders

along the “Karlobag-Karlovac-Ogulin-Virovitica line”, thereby including wide parts of Croatia and BiH;

b) publicly and systematically inspiring fear and hatred in Serbs that non-Serbs, in particular Croats and Muslims, were their enemies and intended to cause them harm, thereby creating and/or exacerbating an atmosphere conducive to violent acts against targeted non-Serb populations and inciting, participating in and contributing to the crimes alleged in the indictment;

c) recruiting, organising, financing, supporting, encouraging and instigating Serb volunteers affiliated with the SRS/SČP, who committed crimes alleged in the indictment;

d) encouraging and instigating other Serbian forces, namely JNA/VJ members, units of the local Serbian TOs and TOs from Serbia, VRS, SVK and police forces, to commit crimes alleged in the indictment;

e) coordinating the activities of SRS/SČP volunteers with members of other Serb institutions who committed crimes alleged in the indictment;

f) participating and assisting in the planning and preparation of the take-over of villages in Western Slavonia and Eastern Slavonia, Baranja and Western Srem (“SBWS”) in Croatia and in the municipalities of Bosanski Šamac and Zvornik in BiH, and in the subsequent persecution campaigns;

g) publicly calling for the expulsion of inhabitants of Croat ethnicity from parts of the Vojvodina region in Serbia, thereby instigating his followers and local authorities to engage in a persecution campaign against the local Croat population;

h) personally and directly causing the expulsion of Croat residents from villages in Vojvodina, in particular the village of Hrtkovci, by intimidating and insulting Croats in public speeches; and

i) denigrating the non-Serb populations in Vukovar, Zvornik and Hrtkovci through public “hate speech”.

#### Paragraph 4

4. The Accused’s participation in the JCE can be divided into three essential segments.

First, the Accused used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated “Greater Serbia” by force, both in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.

Second, as the President of the SRS and the leader of the SČP, the Accused oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of "volunteers" who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories.

Third, as discussed below, in some areas, namely Vukovar, Zvornik, Bosanski Šamac and Hrtkovci, the Accused personally planned, instigated, ordered and/or committed these crimes, thereby additionally participating in the JCE and contributing to it.

#### Paragraph 11

11. The Accused's use of hate speech became particularly vitriolic with respect to the presence of Croats in Serbia, where a substantial Croatian and Hungarian minority had lived for centuries. During the first year of the armed conflict in Croatia, thousands of Serbs fled from Croatia to Serbia. Many could not find housing. The Accused publicly proposed to resolve this problem by expelling hundreds of thousands of Croats from Serbia:

- But once we have got rid of the federal organs of power, once we have expelled tens of thousands of federal officials, Slovenians, Croats and Shiptars, we shall have tens of thousands of available flats in Belgrade.

- Another issue: if the Croats are chasing the Serbs away from their homes like this, on a large scale, what are the Croats here in Belgrade waiting for, what are the Croats all over Serbia waiting for? An exchange of population: we chase away as many Croats from Belgrade as there are Serbs whom Tudjman has chased away from Zagreb. When a Serbian family arrives from Zagreb, well, they should simply go to the address of a Croat in Belgrade and give him their keys, go away to Zagreb, an exchange. The Croats in Slankamen, Zemun and in other locations will not sleep in peace until they move out. We will not kill you, that goes without saying, but what we will do is simply pack you up in trucks and trains and you just go off and get along in Zagreb.

- I would expel the Croats for several reasons. First and foremost, because the Croats are extremely disloyal as inhabitants of Serbia, because the vast majority of them are members of the HDZ or act as their foreign collaborators, and that they are doing everything they can to destabilise the internal situation in Serbia. In addition to that, the Croats have proved to be direct collaborators of the Usthas, they made possible the transfer thereof from Vukovar to Hungary via Bačka. Furthermore, we

must apply the measures of retaliation against the Croats because Tudjman has expelled 160,000 Serbs.

- Question: You have been fiercely attacked over your statement that all Croats should be expelled from Serbia, and it is not in the Radical Party's tradition to say such words.

Answer: Never in history has the Serbian Radical Party faced such problems as we are facing now. Being radical means cutting deep at the root of the problem. The Serbian Radical Party has been doing that: tackling matters at their root, hence its popularity among the Serbian people.

Question: Wouldn't you ever withdraw your statement about the Croats?

Answer: Never.

Paragraphs 20, 21, 22

20. The Accused contributed to the JCE by providing this institutional coordination in furtherance of the forcible removal of non-Serbs from territories to create "Greater Serbia". For example, after the SRS and SČP recruited the volunteers, they received training and uniforms at JNA/VJ facilities, and facilities operated by the Serbian DB. Volunteers received weapons at the front lines from the JNA/VJ. While at the front lines, volunteers received the same benefits as regular soldiers. When SRS/SČP volunteers died, the Government of Serbia compensated their families. These arrangements resulted from agreements between the Accused and members of the General Staff of the SFRY Armed Forces (which comprised the JNA and TO, and later the VJ), the leadership of the Serbian MUP, and the head of the Ministry for Relations with Serbs Outside of Serbia. Once at the front lines, the SRS/SČP volunteers were normally subordinated to the local command structure, i.e., the local Serb TO and/or JNA/VJ forces and the VRS/SVK forces. The volunteers, however, considered the Accused to be their supreme commander. The Accused acknowledged that he was "the commander of the volunteer forces over there."

21. The Accused also used his special position of political and "moral" authority and hate speech to indoctrinate those who responded to his call to fight for "Greater Serbia." More than once the Accused told his volunteers that their task was to kill "Ustashas" or "Turks". SRS/SČP volunteers operating in Vukovar, a town in Eastern Slavonia in Croatia, during 1991 understood that their primary goal was to "cleanse the area of Ustashas". The prevailing atmosphere, not surprisingly, was that

every Croat was an “Ustasha” and any “Ustasha” who tried to surrender was immediately shot. Volunteers in Voćin, a village in Western Slavonia in Croatia, told a nurse treating a wounded Croat soldier that they “heard that one Ustasha is here. We would like to chop him in pieces.” When he dispatched his volunteers to the battlefields, the Accused used his rhetorical skills to cast these efforts in heroic terms:

- God’s help, heroes! Serbian brothers, heroic Serbian Chetniks, today you are going to war. Today you are going to free Serbian Vukovar and to defend Serbian Slavonija. You are going to join hundreds, thousands of our Volunteers. You are going from all parts of today’s shrunken Serbia to return glory to the Serbian weapons. You will act with units of the JNA, because that is our army. It is foremost a Serbian army, because of its senior staff and its struggle for the salvation of Serbian lands, of Serbian territories.

22. SRS/SČP volunteers agreed with the goal of creating “Greater Serbia” by using all necessary means, including violence, because they fervently believed in the Accused. Thus, when the Accused visited his volunteers near the battlefields, the volunteers reacted as if “God came to earth”. The Accused’s visits to the front lines provided great motivation to the volunteers, and strengthened their will to kill “Ustashas”. As the armed conflict progressed, the lack of discipline and violent nature of some SRS/SČP volunteers became well-known, both on the battlefield and among the SRS leadership, including the Accused. When the Accused was informed of the atrocities committed in Vukovar by one of the SRS/SČP volunteers, a man called Topola, the Accused responded: “What can I do now? Disarm the man and send him home. He is tired.” Instead, the SRS redeployed Topola to participate in the take-over and ethnic cleansing of Zvornik in eastern BiH. The Accused’s failure to publicly condemn the atrocities committed by SRS/SČP volunteers was yet another sign that violence against non-Serbs was necessary and appropriate.

#### Paragraph 26

26. Even though he knew about the lack of discipline and violent behaviour amongst SRS/SČP volunteers, the Accused never directed the members of the SRS or the SČP to respect the Geneva Conventions or other rules of international humanitarian law, and never distanced himself from the ongoing persecution of non-Serbs in any way. Instead, SRS/SČP volunteers were told that “the less prisoners, the better.” Indeed, the Accused’s directions to SRS/SČP volunteers demonstrate that he intended non-Serbs to be forcibly expelled from their homes and/or killed. As

discussed below, while visiting Vukovar in November 1991, shortly before the city fell to Serb forces, the Accused told an assembled group of SRS/SČP volunteers, members of the Serb TO, and the JNA: "Not a single Ustasha must leave Vukovar alive." Similarly, while meeting with Serb forces in Subotica in late 1991, the Accused told a group of SRS members and police officers about measures that had to be taken to expel Croats from parts of Vojvodina. The Accused told VS-008's group of volunteers that they had "to kill Ustashas". And before dispatching a large group of volunteers to BiH in early 1993, the Accused told VS-026 that he "should kill all the (Muslim) women and children in their cradles so their Turkish seeds would be exterminated."

Paragraph 33

33. In May 1990 the SDS of Slavonia was established and covered the whole of the region from Vukovar to Kutina. On 7 January 1991 the SNC for SAO SBWS was formed in Šidski Banovci. On 26 February, the SNC of SBWS adopted a Declaration on Sovereign Autonomy of the Serbs, proclaiming the Serbs in Croatia to be a sovereign people, with a right to autonomy. In relation to Yugoslavia, the Declaration stipulates that in the event that such a state organisation ceased to exist, the Serbian autonomous region would "exist as a part of its mother state Serbia". In its subsequent statements, the SNC expressed strong anti-Croat resentments and portrayed the Croatian Serbs as persecuted and threatened with genocide.

Paragraph 37

37. As already mentioned in relation to the SAO Krajina, parallel to the creation of separate regional structures, the Serbs in the SAO SBWS built up a separate police and military structure. In March 1991, the Accused personally went to Eastern Slavonia in order to encourage the local Serb residents "to make an uprising". In late April 1991, armed local Serbs together with SRS/SČP volunteers and other Serbian volunteers erected barricades in the village of Borovo Selo near Vukovar. On 1 May 1991, these armed Serbs took hostage a number of Croatian policemen who had been sent to restore law and order in Borovo Selo. On 2 May, the Croatian police authorities in Osijek sent a larger group of heavily armed policemen to Borovo Selo to free the hostages. Local armed Serbs assisted by SRS/SČP volunteers and members of the Serbian MUP ambushed this group of policemen. Twelve Croatian policemen were killed and twenty injured in the fighting.

Paragraphs 39 and 40

39. In August 1991, Serb forces, led by the JNA, attacked and occupied towns in Eastern Slavonia. The Croat and other non-Serb populations of these areas were forcibly expelled. In late August, Serb forces, including SRS/SČP volunteers, laid siege to the city of Vukovar. By mid-October 1991, Serb forces had taken control of all other predominately Croat towns in Eastern Slavonia, except Vukovar. Non-Serbs were subjected to a brutal occupation regime consisting of persecution, murder, torture and other acts of violence.

A large portion of the non-Serb population was eventually killed or forced from the occupied areas.

40. The siege of Vukovar continued until the city fell to JNA-led Serb forces on 18 November 1991. During the three-month siege, JNA shelling largely destroyed the city. Hundreds of persons were killed. When the Serb forces occupied the city, they (including SRS/SČP volunteers) killed hundreds of Croats. Within days of the city falling under Serb control, most of the non-Serb population of the city had been expelled.

#### Paragraph 62

62. Each sub-section focuses upon one geographic region in which these crimes took place: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

#### Paragraphs 64-70

##### A. Crimes in Croatia

##### 1. Vukovar, November 1991

64. The city of Vukovar is located in Eastern Slavonia on the banks of the Danube River, which there marks the border between Croatia and Serbia. In late August 1991, the JNA laid siege to the city of Vukovar. By mid-October 1991, all predominantly Croat towns in Eastern Slavonia had been taken by Serb forces except Vukovar. During the siege JNA shelling largely destroyed large parts of Vukovar and hundreds of persons were killed.

65. In 1991, the Accused decided that the SRS should send as many volunteers as possible to Vukovar. The SRS/SČP volunteers sent to Vukovar were placed under the command of Milan Lančuzanin aka Kameni, commander of the "Leva Supoderica" SČP detachment. Kameni and other members of the detachment often visited the headquarters of the JNA's First Guards Brigade in Vukovar to obtain



orders, and First Guards Brigade Captains Radić and Zirović often attended the Leva Supoderica detachment headquarters to convey orders and tasks from the command.

66. On or about 12 November 1991, the Accused came to Vukovar in order to visit the volunteers and boost their morale. A meeting took place that evening in a house at Ulica Nova 81, which was used as a command post by members of the JNA army and the local Serb TO. Present were the Accused and other leaders of the SRS, JNA officers such as Major Veselin Šljivančanin, Captain Miroslav Radić and Captain Bojkovski, Stanko Vujanović, the commander of the First TO Detachment, Miroljub Vujović, a member of the Vukovar TO Staff, and a number of SRS/SČP volunteers, including Kameni. The Accused told the gathering:

"We are all one army. This war is a great test for Serbs. Those who pass the test will become winners. Deserters cannot go unpunished. Not one Ustasha must leave Vukovar alive. We have accepted the concept of a federal army so that there is no legal basis for interference of foreign powers in our conflict. The army is fighting rebel Croats. The army has shown that it was able to cleanse its ranks. We have a unified command consisting of military experts who know what they're doing."

67. The city of Vukovar fell to Serb forces six days later, on 18 November 1991. When the Serb forces occupied the city, hundreds of Croats were killed and an overwhelming majority of the non-Serb population of the city was expelled within days of the fall of Vukovar. The JNA organised buses and trucks to deport thousands of Croat and other non-Serb inhabitants of Vukovar to Serbia, where they were either detained or transferred to territories controlled by Croatian authorities.

68. On 20 November, members of the JNA, including Major Šljivančanin, as well as Stanko Vujanović, Miroljub Vujović, Kameni, and thirty to forty heavily armed SRS/SČP volunteers gathered at the Vukovar hospital. At that time, the hospital was full of patients, civilians who had taken shelter there and persons who had participated in defence and laid down their arms. It was clear to both the Croats and the Serbs forces present that the volunteers wanted revenge. Major Šljivančanin ordered that the male non-Serbs from the Vukovar hospital, except for hospital staff and their relatives, be loaded onto buses. About two hundred and sixty-four Croats and other non-Serbs, including wounded persons on stretchers, were removed from the hospital and placed onto buses.

69. When the buses containing the victims arrived at the JNA barracks near the *Velepromet* facility, heavily armed members of the local Serb TO, including the

Leva Supoderica SRS/SČP detachment, ran around the buses and cursed the detainees inside. Kameni approached an officer of the JNA military police, who were guarding the buses, and demanded that the JNA "release these Ustashas". The officer refused, but shortly thereafter, the buses left for the Ovčara farm. Major Šljivančanin, who was in charge, was present at the barracks, and reportedly made this transfer possible. The non-Serb detainees taken to the Ovčara farm were brutally beaten and tortured by members of the local Serb TO and SRS/SČP volunteers. Some detainees died as a result this mistreatment. Shortly after dusk, groups of non-Serb detainees were taken out in groups of ten to twenty, transported to a ravine approximately one kilometre from the Ovčara farm, and shot. The killings of at least two hundred and fifty-five Croats and other non-Serbs from the Vukovar hospital continued until 0100 on 21 November. Members of the local Serb TO, including the SRS/SČP volunteers (including members of Kameni's detachment) participated in the killings. On 21 November, Goran Hadžić declared that Vukovar was the capitol of the SAO SBWS.

70. Serb forces used the *Velepromet* facility in Vukovar as a detention facility for Croats and other non-Serbs. Some were taken there by force; others sought shelter there. Croat and other non-Serb detainees were kept inside rooms at *Velepromet*, one of which had a bullet-proof door. Armed SRS/SČP volunteers, including Topola, guarded this room and on the night of 19 November, Topola told members of the JNA military police that the volunteers would not permit the detainees to leave the room. Instead, the detainees would be kept there in order to be punished; that is, "deal with them the way they dealt with the Serbs." Shortly thereafter, Topola and other Serbs began taking detainees out of the room and killed them. Bursts of gunfire were heard.

#### Paragraph 131

131. "Committing" covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law, whether alone or jointly with co-perpetrators. Several perpetrators may "commit" the same crime if each individual fulfils the requisite elements of the crime. The requisite *mens rea* is that the Accused acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.

#### Paragraph 141

141. In addition to the "commission" of all the crimes charged in the indictment as a participant in the JCE, the Accused physically committed the crime of

persecution in Vukovar (Count 1, paragraphs 15 – 17 and 20), Zvornik (Count 1, paragraphs 15 – 17 and 22 of the indictment) and Hrtkovci (Count 1, paragraphs 15 – 17 and 33 of the indictment), through his use of “hate speech” targeted at the non-Serb populations of those localities. The intent of the Accused to commit persecution in these locales is evidenced by: (1) the derogatory, violent and ethnic content of his speeches, (2) the environment of violent ethnic conflict in which the Accused made his speeches and (3) the fact that (as described above) such crimes occurred shortly after the Accused made his speeches.

Paragraph 143

143. In addition to the “commission” of all the crimes charged in the indictment as a participant in the JCE, the Accused physically committed the crime of persecution in Vukovar (Count 1, paragraphs 15 – 17 and 20), Zvornik (Count 1, paragraphs 15 – 17 and 22 of the indictment) and Hrtkovci (Count 1, paragraphs 15 – 17 and 33 of the indictment), through his use of “hate speech” targeted at the non-Serb populations of those localities.

The intent of the Accused to commit persecution in these localities is evidenced by: (1) the derogatory, violent and ethnic content of his speeches, (2) the environment of violent ethnic conflict in which the Accused made his speeches and (3) the fact that (as described above) such crimes occurred shortly after the Accused made his speeches.

Paragraph 145

145. In addition to the other modes of criminal liability contained in Article 7(1), the Accused ordered the crimes of persecution, murder, torture and other inhumane acts, cruel treatment and forcible transfer from Vukovar (Counts 1-9 and 11, paragraphs 15-18, 20 and 28-32 of the indictment) by his instruction that “Not one Ustasha must leave Vukovar alive!” In addition, the Accused ordered the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15-17, 27 and 31-33 of the indictment) during his meetings with associates and supporters in Vojvodina in 1991 and 1992, and, implicitly, in his speech in Hrtkovci on 6 May 1992. The intent of the Accused to order the crimes in Vukovar and Hrtkovci can be inferred from the content of his speeches and discussions, and from the fact that the crimes subsequently occurred.

Paragraph 148

148. In addition to the other modes of criminal liability contained in Article 7(1), the Accused instigated the crimes of persecution, murder, torture, cruel treatment, and forcible transfer in Vukovar (Counts 1, 4, 8-9 and 11, paragraphs 15 – 18, 20 and 28-32 of the indictment), the crimes of persecution, murder, torture, other inhumane acts, cruel treatment, deportation, forcible transfer, wanton destruction and plunder of public or private property in Zvornik (Counts 1, 4, 8-9, 10-14, paragraphs 15 – 18, 22, 28-34 of the indictment) and the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15 – 17, 31-33 of the indictment) by his inflammatory speeches given when he visited those locales or places close to them, such as Mali Zvornik. The Accused's intent to instigate these crimes can be inferred from the same evidence with respect to the Accused's intent to commit persecution and from the Accused's acknowledgements of his ability to incite persons.

#### **Summary Regarding Witnesses for Vukovar**

##### **A. Implementation of the JCE in Croatia**

###### **1. Republic of Serbian Krajina:**

Witnesses: VS-043 (Milan Babić, deceased), VS-037 (██████████), testified as if he were a Defence witness).

###### **2. Parallel structures of Croatian Serbs in the SAO Krajina:**

VS-043 (Milan Babić, deceased).

###### **3. SAO Slavonia, Baranja and Western Srem:**

No witnesses.

###### **4. SAO Western Slavonia:**

Witnesses: VS-050 (██████████, did not testify, but wanted to be a Defence witness), VS-004 (██████████, testified as if he were a Defence witness).

###### **5. Croatian Serb Police and Military Structures:**

Witnesses: VS-043 (Milan Babić, deceased), VS-027 (██████████, testified, false witness), VS-004 (██████████, testified as if he were a Defence witness), VS-002 (██████████, testified as if he were a Defence witness), VS-034 (██████████, did not testify, but wanted to be a Defence witness), VS-1126 (Dragutin Berghofer, testified), VS-022 (██████████, did not testify), VS-020

(Vilim Karlović, testified, and he was also supposed to testify about counts which are not in the indictment), VS-021 (██████████, testified).

V. Summary of the facts on the alleged crimes

A. Crimes in Croatia

1. Vukovar, November 1991:

Witnesses: VS-011 (Ljubiša Petković, did not testify, but wants to be a Defence witness), VS-1126 (Dragutin Berghofer, testified), VS-015 (Goran Stoparić, testified, false witness), VS-021 (██████████, testified), VS-008 (██████████, testified, false witness), VS-1127 (Emil Čakalić, testified), VS-017 (Zoran Rankić, testified as if he were a Defence witness), VS-020 (Vilim Karlović, testified, but he was also supposed to testify about counts which are not in the indictment), VS-027 (██████████, testified, false witness), VS-002 (██████████, testified as if he were a Defence witness), VS-1139 (Ljubiša Vukašinić, testified and wanted to be a Defence witness), VS-022 (██████████, did not testify), VS-1129 (Ljubica Došen, did not testify), VS-051 (██████████, testified).

**Final and Revised Prosecution Witness List and Summaries of Testimonies**

Crime base Witnesses for Vukovar: VS-002 (██████████, testified as if he were a Defence witness), VS-008 (██████████, testified, false witness), VS-016 (██████████, testified, but this witness was not listed in the Prosecution's Final Pre-Trial Brief), VS-020 (Vilim Karlović, testified, but he was also supposed to testify about counts which are not in the indictment), VS-021 (██████████, testified), VS-022 (██████████, did not testify), VS-045 (██████████, did not testify, but this witness is not listed in the Prosecution's Final Pre-Trial Brief), VS-051 (██████████, testified, but he was also supposed to testify about Count 2, which is no longer in the indictment), VS-1126 (Dragutin Berghofer, testified), VS-1127 (Emil Čakalić, testified), VS-1128 (Josip Čakalić, did not testify and this witness is not listed in the Prosecution's Final Pre-Trial Brief), VS-1129 (Ljubica Došen, did not testify), VS-1130 (Miodrag Panić, did not testify, but wanted to be a Defence witness, and this witness is not listed in the Prosecution's Final Pre-Trial Brief), VS-1131 (Milorad Vojnović, testified, but this witness is not listed in the Prosecution's Final

Pre-Trial Brief), VS-1139 (Ljubiša Vukašinić, testified and wanted to be a Defence witness).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Vukovar, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

During the presentation of Prosecution evidence, the following witnesses were heard:

1. [REDACTED], VS-021, testified *viva voce* on 6 March 2008 under Rule 92 *ter* and with image and voice distortion.
2. Vilim Karlović, VS-020, testified *viva voce* on 11 and 12 March 2008.
3. Dragutin Berghofer, VS-1126, testified on 12 March 2008 under Rule 92 *ter*.
4. Emil Čakalić, VS-1127, testified *viva voce* on 18 and 19 March 2008.
5. [REDACTED], VS-002, testified *viva voce* on 6, 7 and 8 May 2008 under protective measures and with image and voice distortion.
6. [REDACTED], VS-051, testified in closed session on 28 and 29 May 2008.
7. [REDACTED] aka Štuka, VS-016, testified in closed session and under protective measures on 28 and 29 October 2008.
8. Vesna Bosanac (without a pseudonym), testified *viva voce* on 4 and 5 November 2008 under Rule 92 *ter*, without protective measures.
9. Milorad Vojnović, VS-1131, testified *viva voce* on 5 and 6 November 2008 under Rule 92 *ter*, without protective measures.
10. Ljubiša Vukašinić, VS-1139, testified *viva voce* on 27 November 2008, without protective measures.
11. [REDACTED], VS-065, testified in closed session and under protective measures on 8 and 9 January 2009.

12. [REDACTED], VS-008, testified in closed session and under protective measures on 13 and 14 January 2009.

The analyses of the testimony contain arguments showing that the Prosecution's position is untenable, both in relation to what is colloquially referred to as hate speech and what is presented as participation in a JCE. In this phase of the proceedings it was important for Professor Vojislav Šešelj to prove that:

1. Professor Vojislav Šešelj and volunteers of the Serbian Radical Party were not personally involved in any way in the commission of the crimes in Vukovar;

2. Professor Vojislav Šešelj and volunteers of the Serbian Radical Party did not have any influence on or any geographical, local, temporal or other connection with the perpetrators of the crimes at Ovčara.

3. Professor Vojislav Šešelj did not personally order, instigate or have any influence as an accessory or co-perpetrator of the crime at Ovčara.

Important in that respect is the judgement in the Mrkšić case, where there was no conviction for the destruction and looting in Vukovar. If Mrkšić was not convicted, then it is unclear how Professor Vojislav Šešelj could be suspected. Therefore, the crime of violations of the laws or customs of war will certainly be dismissed, and it is questionable whether crime against humanity is possible at all on both grounds, particularly as crime against humanity was not established in the Mrkšić case. The Belgrade judgements for the Ovčara case are also valuable in that respect.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty. Thus the evidence adduced, its relevance, reliability and credibility, do not lead to a conviction. In that respect, it is important whether the evidence meets the requirements for drawing a conclusion beyond a reasonable doubt. Since it is the witnesses who are, in fact, the evidence, it is important whether a witness is an eyewitness, a participant in an event or an armed conflict, somebody who heard and from whom he heard it, whether the information and details are from the time of the event or were obtained subsequently, whether it is a matter of an opinion or a personal view without direct knowledge, but rather the result of a system of indirect reasoning.

## CONCLUSION

The case of the Vukovar three is also important for all charges relating to Vukovar. The final judgement in this case is binding and the following must therefore be brought to the attention of the Trial Chamber judges:

Conclusion: The Chamber concludes that in the present case the jurisdictional prerequisites of Article 5 of the Statute have not been established. Mrkšić and Šljivančanin were convicted for aiding and abetting in the crime of violations of the laws or customs of war.

If Mrkšić, Radić and Šljivančanin did not participate in a JCE, it is then impossible for Professor Vojislav Šešelj to have participated in a JCE with any of them. If the location of Vukovar was not part of a JCE for Mrkšić, Radić and Šljivančanin, or for Professor Vojislav Šešelj, as established in the final judgement, it is then unclear how Vukovar and other locations could be part of a JCE in the indictment against Professor Vojislav Šešelj. Moreover, the location of Vukovar was also examined to establish if crimes against humanity had been committed and it was established in the final judgement that these crimes had not been committed. It is therefore simply impossible the indictment against Professor Vojislav Šešelj to allege crimes against humanity with respect to Vukovar.

The situation in relation to the charges of destruction, looting, devastation and other crimes is interesting. If the Prosecution did not accuse Mrkšić *et al* of these crimes, it is then unclear how it could accuse Professor Vojislav Šešelj.

Miroslav Radić was acquitted on all counts of the indictment and it is interesting to note that he was acquitted under Article 7(1) of the Statute of responsibility for aiding and abetting killings, torture and cruel treatment under Article 3 of the Statute – violations of the laws or customs of war.

In addition to the fact that a crime against humanity is not possible, the question is raised as to whether Professor Vojislav Šešelj could have instigated, aided and abetted and directly physically carried out persecution, deportation and forcible transfer with his speeches.

The Prosecution refers to a speech in Vukovar which never took place, but it must be analysed whether any speech by Professor Vojislav Šešelj could have led to these crimes.

If the destruction of a town or deportation and forcible transfer could not be subsumed under persecution as a crime against humanity in the case of the Vukovar three, then this is not possible in the case against Professor Vojislav Šešelj either.



**ANALYSIS OF THE TESTIMONY OF WITNESS VS-021, [REDACTED],  
UNDER RULE 92 TER AND WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-021, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Croatian Serb Police and Military Structures:

"By mid-October 1991, Serb forces had taken control of all other predominately Croat towns in Eastern Slavonia, except Vukovar." [138]

Crimes in Croatia – Vukovar, November 1991:

"The non-Serb detainees taken to the Ovčara farm were brutally beaten and tortured by members of the local Serb TO and SRS/SČP volunteers. Some detainees died as a result of this mistreatment." [207]

2. Summary of testimony for VS-021, [REDACTED]

Biography: [REDACTED]

Events in Vukovar: the witness will testify that he participated in the defence of Vukovar. He will testify about his role in the defence.

On 18 November, the witness went with his parents to the Vukovar hospital because he heard there was going to be an evacuation convoy. The JNA soldiers that had arrived there were a mix of JNA regulars and Territorial Defence.

Between 0730 and 0800 hours the morning after the soldiers arrived, the witness heard a lot of shouting telling everyone to leave the building. The witness was ordered to get on a bus. There were 3-5 buses waiting. The buses were guarded by young JNA soldiers. After the buses were loaded, the buses went to the JNA military base.

At the base were many men from the Territorial Defence. One was singing a song "Prepare yourselves" or "Get ready, Chetniks!" This man was threatening to slaughter the people on the bus.

Ovčara: After about two hours, the buses left the base and went to Ovčara. There the witness saw many soldiers and volunteers all standing around the area where they stopped. These men formed a double line and carried weapons such as rifles, iron bars and large pieces of wood. They used these weapons to beat the bus passengers as they made their way towards the building. When the men left the busses

they were kicked and punched and their possessions were stolen from them. Watches, coats, jewellery were taken and thrown into a pile nearby.

Inside the building were about 300 detainees. A soldier took down names. He looked like a regular JNA soldier. Inside of the building was a man the witness thought was a JNA officer. He had a whistle.

After taking the names, a group of men partly dressed in uniforms came into the building and started beating people up. One person beaten severely was [REDACTED]. The witness concluded that [REDACTED] died from his injuries, because his beating was so bad. The witness saw the group of partially uniformed men kicking him, beating him with weapons and stamping on his head and body. They made him sing Chetnik songs. Another man severely beaten was victim Dado Đukić, who was on crutches. He was beaten with his own crutches. The witness will testify about a JNA officer who had a whistle and who was present all the time the beating lasted. The witness will describe other detainees whom he recognised in Ovčara. The witness will testify that later people were being put into groups of 20 men and led outside. The witness was in the third or fourth group of men selected to go outside. In the witness' group were [REDACTED]. The men were put on a military truck with a canvas covered rear. The witness managed to jump from the rear of the truck and escape.

The witness was eventually captured again. He will testify about what happened to him after he was captured and the beatings he suffered. He was eventually taken to Šid then Mitrovica, and finally ended up in Belgrade.

Paragraphs: 14-16, 17 a-d, 18, 24-26, 27.

Counts: 1-11.

### 3. Content of testimony

VS-021 testified on 6 March 2008 under Rule 92 *ter* and with image and voice distortion.

VS-021 was the first witness to appear in the courtroom as a victim to testify about the crime base in Vukovar. His victim status was established by the Revised Final Witness List with Confidential Annex A of 29 March 2007 – summaries of Prosecution testimony. Therefore, it was testimony under Rule 92 *ter* that opened the crime base for Vukovar at the trial, not *viva voce* witness testimony. This is in contrast with the prescribed structure of presentation of evidence defined by the Trial

Chamber, requiring that the *viva voce* witnesses (several witnesses), victims and eyewitnesses be heard first, and after them witnesses testifying under Rule 92 *ter*, who would thus essentially verify the statements made by the *viva voce* witnesses, and Rule 92 *ter* is applied because they are repeating what the judges have heard from the previously examined witnesses. This was violated and the judges received the first information on the crime base from this witness, who was represented as a victim, through a statement under Rule 92 *ter*, before the judges had received any information from a witness who is a victim from that location and who testified *viva voce*. This means that, regarding the Vukovar location, the judges received biased information in the beginning.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] had been blowing up Serbs' houses in Vukovar for months and were it not for the prisoner exchange in 1992, he would still be serving a prison sentence. [REDACTED] is a war criminal, not a victim.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 14, 15, 16, 17a, 17b, 17c, 17d, 18, 20, 24, 25, 26 and 27, but the charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1 and 11 of the indictment, but Vukovar is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes against the witness.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-020, VILIM KARLOVIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-020, Vilim Karlović, was planned as a Prosecution witness through whom the following was to be proven:

Croatian Serb Police and Military Structures:

“When the Serb forces occupied the city, they (including SRS/SČP volunteers) killed hundreds of Croats.” (footnote 142)

Crimes in Croatia – Vukovar, November 1991:

“The non-Serb detainees taken to the Ovčara farm were brutally beaten and tortured by members of the local Serb TO and SRS/SČP volunteers. Some detainees died as a result of this mistreatment.” (footnote 207)

“The killings of at least two hundred and fifty-five Croats and other non-Serbs from the Vukovar hospital continued until 0100 on 21 November. Members of the local Serb TO, including the SRS/SČP volunteers (including members of Kamenj's detachment) participated in the killings.” (footnote 208)

## 2. Summary of testimony for VS-020, Vilim Karlović

Biography: Croatian male, in his twenties at the time of the events in question.

Events in Vukovar: The witness will testify that the time he was in Vukovar, from the end of September until around the middle of November 1991, there was constant shelling, every minute of the day and night. Around the middle of November 1991, the Croatian defenders agreed that those who wanted to surrender should go to the hospital and hand in their weapons and uniforms. Others decided to try to break out of the city. The witness decided to go to the hospital around 15 or 16 November. While there, he took off his uniform and put on civilian clothing.

Events at the Vukovar hospital: On the morning of 19 November 1991, the JNA surrounded the hospital. The next morning, 20 November 1991, at about 0900, the JNA took over the hospital and separated the heavily wounded from the lightly wounded. Those who could walk, even with crutches, were put with those who were not injured. The JNA soldiers took them out through the back doors of the hospital. They were lined up and physically searched. Some of the detainees were abused and mistreated during this procedure. After that they were loaded on buses. The witness was on the fourth of five buses. Later a sixth bus arrived. Eventually the witness was taken to the JNA barracks.

Events at the JNA barracks: When they arrived at the JNA barracks, JNA guards got onto the buses with a list of names of people, and put these people on the sixth bus. Local Serbs were shouting abuse at people on the buses, and the witness saw some people being taken off the buses by these Serbs and beaten.

Ovčara: The witness will testify that at about 1500 hours, the buses left for a place which he later heard was called Ovčara. When he left the bus at Ovčara, the witness had to walk between two lines of Chetniks who were beating people with wooden poles, chains and gun-butts.

Before it was his turn to go through the line of Chetniks, a JNA soldier approached the witness and asked where he was from. The witness answered and asked the soldier to try to save him. As the witness got nearer to the hangar, he saw on the floor a "press" identification card. When he got in the hangar, he saw guards walking along and beating detainees.

In the hangar the witness was beaten by three soldiers who used their rifle butts. All of a sudden the witness' beating stopped and he saw the soldier whom he had spoken to outside talking to a captain wearing a camouflage uniform and a blue beret. The soldier said to the captain, "Let's try and save this man, I know him." Following that, the witness was taken out of the hangar and put with a group of six other people. The soldier told him his name and nickname.

Outside the hangar the witness heard the noise of heavy machinery and asked the soldier the reason for that. The soldier answered that it was a bulldozer and that they were going to kill all the people inside the hangar.

The witness will testify that while he was outside for about two hours, he could hear the beating of people inside who were screaming and crying. The beatings started just after 1500 and stopped at about 1800 as it was starting to get dark.

After the beating stopped, the witness was told to go into the barracks and to give his name. There was a small table where they were writing down the names of people and calling groups of ten at a time. It was the JNA who were taking the names.

After he gave his name, the witness was taken to the *Velepromet* facility in Vukovar.

Paragraphs: 15, 16, 17 a-d, g-j, 20, 24-26, 27, 28, 31.

Counts: 1, 5-9, 12-14.

### 3. Content of testimony

Witness VS-020, Vilim Karlović, was planned as a Rule 92 *ter* witness, but he testified *viva voce* on 11 and 12 March 2008. The witness had earlier testified as a Prosecution witness in the Dokmanović and Mrkšić cases, and he also appeared as a witness in the Ovčara trial in Belgrade.

Apart from uniforms, cockades and other details, which show that each witness had interpreted this in his own way, resulting in confusion, this witness confirmed that there were no Chetnik units in Vukovar. As a military serviceman he is certainly more competent than the other witnesses who were guessing and assuming that there was a Chetnik unit. This witness is also important because he confirmed that he had not seen any *šubara* fur hats or *šajkača* caps, only helmets, but the *šubaras* and *šajkačas* appeared when Vukovar was liberated.

The witness confirmed that the men who beat people at Ovčara knew the prisoners, which proves that they were predominantly Serbs from Vukovar. The witness gave his wedding ring as a gift to Spasoje Petković aka Štuka, who had saved him, and Štuka was a soldier on military service. It was also explained that Roman Catholics wear the ring on their left hand and members of the Orthodox faith on the right. The witness also confirmed the presence of HOS members.

The weapons which Spasoje Petković aka Štuka had were not standard JNA weapons.

The witness confirmed that the men who took him outside said they were Chetniks, but they did not say that they were Serbian Radical Party volunteers. He confirmed that Mare and Kinez were not from the same unit as the men who tortured him. Mare and Kinez made sacrifices to save and protect the witness from bullies who were trampling on the tradition of old Serbian warriors. The witness heard of the Leva Supoderica Detachment later. The witness said that the Chetniks who tortured him were Serbs from Vinkovci.

The witness confirmed that the voice he heard over the loudspeaker seemed like Vojislav Šešelj's voice to him. The witness confirmed that he did not consider all volunteer detachments to be Chetnik detachments. Through this witness the judges also learned of the Croatian Government's collective document on the investigation into the events in Vukovar with emphasis on various volunteer Chetnik detachments, and heard about claims that there were some who boasted, but in reality "in the slaughter numerous members of the 1<sup>st</sup> Guards Brigade of the JNA took part and the Territorial Defence who were subordinated to it". A document also appeared indicating that the witness had been prepared by the SIS to testify in the case of the Vukovar three.

The witness confirmed that he had never asked for protective measures as a witness in the case against Vojislav Šešelj.

The judges did not allow the use of a list of criminals on the Croatian side which had been published in a newspaper and the cross-examination was therefore discontinued.

During the trial, on 11 March 2008 the Prosecution submitted reports based on the checks which had been conducted establishing that VS-015, Goran Stoparić, had given false testimony regarding events in the village of Gibarac and the exchange of property between Ivica Kopic and Petar Vujaklija, and that there had been no violence. A repeated request was then made that a letter which Stoparić had sent to a friend be examined by a handwriting expert.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 15, 16, 17a-d, g-j, 20, 24-26, 27, 28 and 31, but the charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1, 5, 6, 7, 8, 9, 12, 13 and 14 of the indictment, but Vukovar is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes committed against the witness.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1126, DRAGUTIN BERGHOFER, UNDER RULE 92 TER**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1126, Dragutin Berghofer, was planned as a Prosecution witness through whom the following was to be proven:

Croatian Serb Police and Military Structures:

"When the Serb forces occupied the city, they (including SRS/SČP volunteers) killed hundreds of Croats." (footnote 142)

Crimes in Croatia – Vukovar, November 1991:

"When the buses containing the victims arrived at the JNA barracks near the *Velepromet* facility, heavily armed members of the local Serb TO, including the Leva Supoderica SRS/SČP detachment, ran around the buses and cursed the detainees

inside. Kameni approached an officer of the JNA military police, who were guarding the buses, and demanded that the JNA 'release these Ustashas'. The officer refused, but shortly thereafter, the buses left for the Ovčara farm. Major Šljivančanin, who was in charge, was present at the barracks (footnote 205) and reportedly made this transfer possible."

"The non-Serb detainees taken to the Ovčara farm were brutally beaten and tortured by members of the local Serb TO and SRS/SČP volunteers. Some detainees died as a result of this mistreatment." (footnote 207)

## 2. Summary of testimony for VS-1126, Dragutin Berghofer

Biography: Croat male, shop owner from Vukovar, 51 years old at the time of the events.

Events during the war in Vukovar: The witness will testify that the war in Vukovar started on 24 August 1991. From that day onwards the witness' and his neighbours' houses were shelled by Serb forces. To protect themselves, the inhabitants were forced to move into whatever basement they could find. About 40 people lived in the witness' basement. Because the city was in a state of war, movement was restricted. On 15 September 1991, the witness' daughter was taken away by Chetniks and never seen again. At the beginning of November 1991 the witness' partner was killed by shrapnel. The witness remained in Vukovar until the take over by Serb forces.

Chetniks in Vukovar: The witness will testify to the volunteers participating in the attack on Vukovar, their behaviour and cooperation with the JNA.

Events in Vukovar hospital: On 17 November 1991, the witness and about 350 inhabitants tried to force their way out of Vukovar. Because of the heavy shelling, they had to retreat and the witness together with seven others took shelter in the Vukovar hospital. The following day all the people who were still in Vukovar and capable to walk went to the hospital, as the Serb forces had told them on loudspeakers that they could wait there for the convoy to be brought to Zagreb. There was no more food in the hospital. The witness and the others survived on "Laktovit" which is powdered baby milk. On 19 November 1991, Serb forces arrived at the hospital. The witness, a Croatian doctor and three or four nurses hid in a doctor's office for their own safety. Through the door the witness observed three people from Vukovar dressed as Chetniks. They wore JNA uniforms, carried automatic rifles, pistols and



knives. Later the doctor's son arrived, dressed as a Chetnik and scolded his father for not leaving Vukovar. He said: "I told you that we would burn it down with napalm." During the following night, the witness heard the burst of 18 gunshots.

Evacuation from the hospital: The next morning the witness saw Major Šljivančanin while he was shouting at a doctor. "What are you waiting for? This is a war situation!" Then Šljivančanin ordered the hospital to be evacuated. The patients had to line up in the yard in front of the hospital. The medical staff was separated from the rest. The witness will testify that six buses were parked close to the hospital. Šljivančanin ordered that the patients had to take everything out of their pockets and then were physically searched. The witness did not know the people who did the searches. He understood them to be from outside the region. After the search, the patients had to enter the busses and were driven to the JNA barracks where they waited in the buses about four hours. The witness saw some people taken out of the buses who were kicked and beaten by the Chetniks. Later they were loaded into a military bus and driven in the direction of Negoslavci. The witness will testify to the behaviour of the soldiers outside the buses who were walking around the buses, celebrating their victory, threatening and insulting the people in the bus.

Ovčara: At about 1300 the buses left for Ovčara. Upon their arrival they parked in front of a hangar. Outside the buses, the detainees had to run a gauntlet through a number of Chetniks in order to reach the hangar. They were severely beaten with all kind of tools and most of the detainees were seriously injured. Inside the hangar they were searched and all their belongings were taken and piled up on the ground. Then they were beaten again. The witness managed to protect himself by holding his hands over his head while he ran into the hangar, but he was covered in blood. As a result of these beatings the witness' hearing has been permanently affected. He witnessed how a local Chetnik beat one of the detainees with a baseball bat. Afterwards the witness couldn't see any sign of life and he assumed that the victim was beaten to death. Subsequently, four Chetniks with iron bars came into the hangar and gave the detainees the most severe beating. An older reservist with a whistle entered the room and when he, after about 20 minutes, blew a whistle, the first group of Chetniks was substituted by another group that continued the beating. The witness will give the names of the local Serb soldiers whom he recognised participating in the beating. After some time on the same day, the doctor's son — whom the witness knew from the hospital and who was a member of the Chetnik

movement — arrived and separated the witness and three other detainees. Together with some other selected detainees they were put on a little van and brought to the *Velepromet* facility in Vukovar. As there was no room for them in *Velepromet*, they were then brought to another location in Vukovar, where the witness was kept until March 1992 when he was exchanged.

Paragraphs: 15, 16, 17 a-d, g-j, 18, 20, 21, 24-26, 27, 28, 30 and 31.

Counts: all counts.

### 3. Content of testimony

Witness VS-1126, Dragutin Berghofer, testified on 12 March 2008 under Rule 92 *ter*. He was the third witness examined for the location of Vukovar (the two previous witnesses were ██████████ on 6 March 2008 under Rule 92 *ter*, Vilim Karlović *viva voce* on 11 and 12 March 2008). Apart from the usual confusion regarding the affiliation of persons in different uniforms, it is clear that the testimony primarily refers to the crime at Ovčara committed by Serbs from Vukovar. He was a prisoner of war.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 17j, 18, 20, 21, 24, 25, 26, 27, 28, 30 and 31, but the charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for all counts of the indictment, but Vukovar is referred to in Counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes committed against the witness.

## **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1127, EMIL ČAKALIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1127, Emil Čakalić, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Croatia – Vukovar, November 1991:

“When the buses containing the victims arrived at the JNA barracks near the *Velepromet* facility, heavily armed members of the local Serb TO, including the Leva Supoderica SRS/SČP detachment, ran around the buses and cursed the detainees inside. Kameni approached an officer of the JNA military police, who were guarding the buses, and demanded that the JNA ‘release these Ustashas’. The officer refused, but shortly thereafter, the buses left for the Ovčara farm. Major Šljivančanin, who was in charge, was present at the barracks,[205] and reportedly made this transfer possible.”

“The non-Serb detainees taken to the Ovčara farm were brutally beaten and tortured by members of the local Serb TO and SRS/SČP volunteers. Some detainees died as a result of this mistreatment.” (footnote 207)

“Present at the *Velepromet* facility were JNA military policemen and SRS/SČP volunteers, including Topola.” (footnotes 213 and 214)

## 2. Summary of testimony for VS-1127, Emil Čakalić

Biography: Croatian man, age 56 at the time of the events. The witness was a sanitary inspector for the Vukovar Regional Government.

Events in Vukovar and the Vukovar hospital: On 17 November 1991, the witness learned that the JNA had entered Kidričeva street and started to capture civilians and transport them in military armoured vehicles from their houses to unknown destinations. The witness and his wife decided to leave their building and go to the hospital. At the hospital the witness saw several people he knew.

During the night of 19-20 November 1991, an officer of the JNA came. The witness learned his name was Šljivančanin. He wore a military (JNA) uniform with a rank of major and a military cap called a *Titovka*. Šljivančanin was accompanied by a JNA junior lieutenant named Bogdan Kuzmić. They entered the hospital and went to the office of Marin Vidić. The witness recognised immediately that Šljivančanin was in charge of the operation in the hospital.

On 20 November 1991 at about 0700 hours, all employees of the hospital were gathered in one place. They were told that only personnel of the hospital with official ID cards, with photos, would be allowed to stay at the hospital and later transported to Zagreb in a convoy.

At about 0730 hours, officer Bogdan KUZMIĆ came to the hospital and ordered all men to leave the building of the hospital and gather in the backyard. The

witness saw two soldiers in JNA uniforms with Kalashnikovs guarding the area. They said to the detainees that they would kill them but they could not do that because they had their own soldiers in Croatian hands as POWs and intended to exchange them for these POWs. There were about 250 people at that location.

At 0930 or 1000 hours, they were told by the two soldiers to get on the buses that were parked at the side entrance of the hospital. The witness was sitting on the third of five buses. The buses arrived at the military barracks in Vukovar: The buses were held there until about 1430 hours. Chetniks were coming and going and threatening them.

Ovčara: From the barracks, they were transported to Ovčara. They had to leave the buses by walking between two lines of Chetniks and JNA soldiers, who beat them. When they got to the warehouse, there was another group of soldiers and Chetniks who did the same thing. While leaving the buses, everybody was searched by a captain. The witness was beaten like everybody else. Among those who beat them the witness recognised Slavko Dokmanović who was President of the Vukovar Community and a member of the Serbian Council. The witness also recognised some of the soldiers who were beating them.

The witness saw a group of Chetniks beat Damjan Samardžić and another man called Kemo. They were kicking Samardžić with boots, jumping over his stomach and back and causing bleeding from his nose and mouth. The witness saw a major there named Milan Lukić. He saw Major Lukić threaten to use an electric stick on one of the detainees. Another Chetnik wanted to cut the throat of Stjepan Gunčević.

At that point, a Colonel arrived. The witness later saw a photo of the Colonel in a magazine in Sremska Mitrovica, and he learned the Colonel's name was Mrkšić. He was accompanied by two Lt. Colonels and Major Lukić and the captain who searched the detainees at the buses. It was obvious that Colonel Mrkšić was in charge of everything.

One of the local Chetniks recognised the witness and remembered that he had done him a favour before the war. This Chetnik took the witness away from the group and brought him over by the door of the warehouse. The witness saw a bus of Chetniks arrive. They entered the warehouse, closed the door, and started to beat the detainees inside. The witness could see what happened and could hear the victims screaming. One group did the beatings and another group just stood there. Colonel Mrkšić was inside and he had a whistle, and when he saw that one group was tired he

blew the whistle to indicate that the other group should start the beating. They were there for about half an hour starting about 05.00 p.m. on 20 November 1991.

As soon as the Chetniks left, Colonel Mrkšić started interrogating the witness and six other men. When he finished, the witness and the others were put on a van and transferred to *Velepromet*. In *Velepromet* they were locked in the so-called “Room of Death” together with 38 others for two days. Then the witness was transferred to Sremska Mitrovica.

Paragraphs: 15, 16, 17a-d, g-j, 18, 20, 21, 24-26, 27, 28, 31.

All counts.

### 3. Content of testimony

Witness VS-1127, Emil Čakalić, testified *viva voce* on 18 and 19 March 2008. He is a victim and testified for the Vukovar crime base. He was the fourth witness for the location of Vukovar (the three previous witnesses were [REDACTED] on 6 March 2008 under Rule 92 *ter*, Vilim Karlović *viva voce* on 11 and 12 March 2008 and Dragutin Berghofer on 12 March 2008 under Rule 92 *ter*) and the second one to testify *viva voce*. He testified publicly and without protective measures, and during the cross-examination he admitted that he had never asked for protective measures. The Prosecution had Emil Čakalić registered as a protected witness against his will. The Prosecution announced him as a witness who could not remember all the details and his memory needed to be refreshed.

He had testified earlier in The Hague (Dokmanović, Milošević, Mrkšić) and in Belgrade for Ovčara. This witness is totally confused about the term Chetnik (Montenegrin Chetniks judging by their caps, Vukovar Chetniks, JNA, volunteers and so on). This witness confirmed that he was threatened by the local Serbs who knew him from before (“Give me Čakalić.”).

Emil Čakalić admitted that he had been a Croatian volunteer. In his earlier statements he said that members of the Vukovar TO beat up prisoners at Ovčara, but he and others were taken out of the group according to various criteria (in his case because he had helped someone earlier). In his statement he mentioned the names of officers of the JNA and the local TO. A typical sentence is the one about a Macedonian JNA sergeant who threatened to call Topola, but he gave an incorrect description of Topola. He also mentioned a Serb from Negoslavci who was a JNA

captain and who was addressed as *Vojvoda* Vojin Mišić from Negoslavci. The *vojvoda* regularly dressed in a Tito uniform.

During the cross-examination, the judges were able through this witness to hear information about the demographic and ethnic composition, the political situation and crimes against Serbs, although it was obvious that the witness was trying to avoid answering these questions, and that he was capable of pronouncing everyone a Chetnik.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 17j, 18, 20, 21, 24, 25, 26, 27, 28 and 31, but the charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for all counts of the indictment, but Vukovar is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes committed against the witness.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-002,**

**[REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-002, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's role in recruiting and coordinating SRS/SČP volunteers:

"More than once Šešelj told his volunteers that their task was to kill 'Ustashas' or 'Turks'." (footnote 78)

Šešelj's Intent to Participate in the JCE:

"Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia) where non-Serbs were being persecuted."

Implementation of the JCE in Croatia - Croatian Serb Police and Military Structures:

“The siege of Vukovar continued until the city fell to JNA-led Serb forces on 18 November 1991. During the three-month siege, JNA shelling largely destroyed the city. Hundreds of persons were killed.” (footnote 141)

“Within days of the city falling under Serb control, most of the non-Serb population of the city had been expelled.” (footnote 143)

Crimes in Croatia – Vukovar, November 1991:

“The killings of at least two hundred and fifty-five Croats and other non-Serbs from the Vukovar hospital continued until 0100 on 21 November. Members of the local Serb TO, including the SRS/SČP volunteers (including members of Kameni's detachment) participated in the killings.” (footnote 208)

2. Summary of testimony for VS-002, [REDACTED]

Recruitment and propaganda; toward the end of August or beginning of September 1991, the witness heard appeals for the men from the Vukovar area to join the Serb forces involved in the battle of Vukovar. At the time, the Serbian television stations were reporting that Serbs in Vukovar were being persecuted. These accounts influenced the witness' decision to volunteer for the Serb forces in Vukovar. Later he learned that these reports were exaggerated. The witness will testify to the recruitment process and the units he was assigned to. The witness participated in military actions in Vukovar from the end of September 1991 onwards. While he served in Vukovar, the witness and his unit received orders from JNA officers. The witness will testify about the allegations intentionally spread among the conscripts about atrocities perpetrated by the Croatian side. This caused an incredibly phobic atmosphere among the young conscripts. The stories enraged the young soldiers and made them feel fearful at the same time.

Vukovar TO: The witness will testify to the activities of the Vukovar TO. The commander of this TO was Miroljub Vujović and the TO headquarters was in an area of Vukovar called Petrova Gora. The TO unit received several assignments to “clear” certain areas, i.e. to go from house to house and remove the people in them. Civilians taken from houses were brought to the *Velepromet* warehouse.

SRS volunteers: The witness will testify that there was a group of SRS volunteers in Vukovar. Their number might have been between 100 and 140 men.

They participated in actions with the TO in Vukovar. Their leader, who later assumed the title of a Chetnik *vojvoda*, was Milan Lančužanin, nicknamed Kameni.

[REDACTED]

[REDACTED]

The TO commanders held regular meetings at Stanko Vujanović's house. Among those people attending the meetings was a JNA Captain by the name of Radić, who the witness believes was also staying in the house. The meetings were often held in the evening before an action.

The witness will provide information about an incident involving Cetinje and another man called Kizo who claimed to have killed 165 people at *Velepromet*. The witness will testify that the TO members were deeply involved in looting, as was the JNA.

Vukovar hospital and Ovčara: the witness will testify about what happened at the Vukovar hospital on and after 19 November. On 19 November, he went to the Vukovar hospital. The fighting had stopped either on 17 or 18 November. The witness saw JNA military police at the gate. He also saw TO members on the premises. The witness saw Veselin Šljivančanin in the hospital courtyard. The witness had previously encountered him twice during the military operations in Vukovar. Within the hospital, he saw a group including Stanko Vujanović, several TO members, and one of them threatened to shoot Dr Bosanac. Terrible stories were going around about her, so that the TO member wanted to shoot her on the spot. On 20 November, the witness got information that Vujanović's men had taken custody of a group of "Ustashas" from the JNA soldiers. The witness went to Ovčara. When he arrived at Ovčara, he observed buses full of people parked close to the hangar. He went into the hangar, where he saw several Serbs, among them Miroљjub Vujović, his deputy Đanković, [REDACTED] and several TO members. He did not notice any JNA soldiers in or outside the hangar. TO members from Vukovar formed two parallel lines and forced the detainees to pass the gauntlet. The TO soldiers would severely beat the detainees, using all kinds of objects, and also kick them. The witness realised that the detainees were the people from the Vukovar hospital. The witness saw at one point in time a high-ranking JNA officer, probably a colonel, accompanied by another JNA soldier. The JNA officer tried to prevent TO members from beating the detainees, but the soldiers disobeyed. The JNA officer then left. No JNA intervention followed.





This witness fully verified the premise presented by the Defence in all its aspects: the situation in and around Vukovar before the outbreak of the conflict, recruitment, command, Professor Vojislav Šešelj's visit to Vukovar, events at the hospital and particularly at Ovčara, where he was an eyewitness.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 6, 7, 8, 10g, 12, 14, 15, 16, 17a, 17h, 17j, 18, 20, 27 and 31, but the charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1, 2, 3, 4, 10, 11, 12, 13 and 14 of the indictment, but Vukovar is referred to in Counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-051, [REDACTED], UNDER PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-051, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Croatia – Vukovar, November 1991:

“Armed SRS/SČP volunteers, including Topola, guarded this room and on the night of 19 November, Topola told members of the JNA military police that the volunteers would not permit the detainees to leave the room. Instead, the detainees would be kept there in order to be punished; that is, 'deal with them the way they dealt with the Serbs'.” (footnote 210)

“Shortly thereafter, Topola and other Serbs began taking detainees out of the room and killing them. Bursts of gunfire were heard.” (footnotes 211 and 212)

2. Summary of testimony for VS-051, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 15, 16, 17a-d and j, 18, 20, 21, 24-26.

Counts: 1, 2-9.

**3. Content of testimony**

The witness testified in closed session on 28 and 29 May 2008.

[REDACTED]

[REDACTED]

On the basis of the examination-in-chief and cross-examination it was not possible to establish what had been planned for this witness in the Pre-Trial Brief and partly in the Summary of Evidence. At the time of the events near *Velepromet* and at Ovčara Serbian Radical Party volunteers were not even in Vukovar.

The event at Ovčara certainly could not be pleaded as a charge either on the grounds of participation in a JCE or on the grounds of hate speech. There can be no JCE or executions as part of a criminal plan because all the witnesses have confirmed that they expected the prisoners to be transferred from Ovčara to Sremska Mitrovica. Nor can the executions be a predictable consequence of a criminal plan because there is no causal link between the Serbian Radical Party volunteers and the perpetrators of the crime.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 17j, 18, 20, 21, 24, 25 and 26, but the charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1, 2, 3, 4, 10, 11, 12, 13 and 14 of the indictment, but Vukovar is referred to in counts 1, 2, 3, 4, 5, 6, 7, 8 and 9.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-016,**

[REDACTED]

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-016, [REDACTED], was not planned as a Prosecution witness.

2. Summary of testimony for VS-016, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 5, 6, 9, 10a-c and e, 11, 15, 16, 17a, 17i, 17 k, 20, 28, 29a and 29b.  
Counts: 1-9.

**3. Content of testimony**

The witness testified on 28 and 29 October 2008 in closed session and under protective measures. [REDACTED]

[REDACTED]





[REDACTED]

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 5, 6, 9, 10a, 10b, 10c, 10e, 11, 15, 16, 17a, 17i, 17k, 20, 28, 29a and 29b, but the charges concerning Vukovar are contained in paragraphs 5, 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the indictment, but Vukovar is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes committed at Ovčara.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VESNA BOSANAC UNDER RULE 92 *TER***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, Vesna Bosanac was not planned as a Prosecution witness.

#### 2. Summary of testimony of the witness Vesna Bosanac

There is no summary of evidence because she was not planned as a Prosecution witness. She was subsequently included in the witness list.

#### 3. Content of testimony

The witness testified on 4 and 5 November 2008 under Ruler 92 *ter*, without protective measures. She had testified earlier in the Dokmanović (two days), Milošević (two days) and Mrkšić cases. She testified six days in the Mrkšić case, but

she claimed that it was three days. She testified before the investigating judge of the court in Osijek and in the Bogdan Kuzmić case in Vukovar. In addition to the objection regarding Rule 92 *ter*, Professor Vojislav Šešelj indicated that Vesna Bosanac was such a significant witness for Vukovar and Ovčara that it was inadmissible to have her just walk through the courtroom, notwithstanding the fact that she makes no mention of Professor Vojislav Šešelj in her statement.

As this is a Rule 92 *ter* witness, the judge indicated that the reference was to her statement given on 23 September 2008 and said:

“The written statement is organised in the following manner: There's the first part of the testimony dedicated to the personal background of the witness, her education and career. Then we have a second part dedicated to the Vukovar population under the blockade and regarding the situation in town. Then there is something about looting. Apparently, you were not the one who ordered this, or that is what you say at least. Then we move on to 17 November 1991, 18 November 1991, 19 November 1991. After that, we have 20 November. Then we have two sections dedicated to her detention because she was arrested and detained. Then we have a list of victims, and then we have a section related to submitted documents. So that's it. The only part of the statement which could relate directly to you is the part where she talks about Chetniks in a very general way. We will see what this witness will say.”

The sentence told by Vesna Bosanac is important:

“They sacrificed them deliberately just in a way to take their revenge for I don't know what, for the failure they had experienced, in fact, because they expected to capture Vukovar in a month. I personally heard the accused say on the radio: 'Vukovar must fall in early October. We will plough over everything, make a park here.' He came, he encouraged these Serbian soldiers to destroy the town completely and then they had to let these soldiers enjoy the massacres which they committed against our wounded and our friends, relatives and fellow townsmen. That is my opinion.”

The witness also presented several insinuations against the volunteers and Professor Vojislav Šešelj's political views.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The charges for Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

Vukovar is referred to in Counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

Based on her testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes committed against the witness. If the testimony of this witness is viewed in relation to all the counts of the indictment for Vukovar, then:

- in relation to hate speech, there is no mention of killings, torture or anything similar, just an insinuation which does not even interpret the statement from the indictment;

- in relation to speech on the radio as an incitement for members of the Serbian forces, there are no grounds, because the fact that someone listened to the radio in Vukovar where there was no electricity does not seem probable, and none of the other witnesses referred to speech over the radio;

- there were no Serbian Radical Party volunteers at the hospital, nor did they carry out any evacuation from the hospital;

- in relation to looting and destruction of buildings, the witness accused all Serbian forces, and therefore the Mrkšić judgement should be borne in mind.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1131,**

#### **MILORAD VOJNOVIĆ, UNDER RULE 92 TER**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1131, Milorad Vojnović was not planned as a Prosecution witness.

2. Summary of the testimony of VS-1131, Milorad Vojnović

Biography: the witness was the commander of the Kragujevac-based 80<sup>th</sup> Motorised Brigade (mtbr). The 80<sup>th</sup> Motorised Brigade (mtbr) was deployed in Eastern Slavonia on 29 October 1991, the deployment was completed around 7 November 1991. The witness will testify to the failed integration of volunteers into his brigade. He found that their main interest was looting.

Events in Ovčara: The witness will testify that his brigade, after the cease-fire on 18/19 November 1991, was responsible for the protection of groups of evacuees that passed through Ovčara. These groups of evacuees did not include the detainees from the Vukovar hospital. One group of evacuees, the witness' unit took care of, consisted of nine to ten buses full of non-Serb women, children and the elderly. These civilians stayed on the buses for security reasons and due to the fact that it was very cold in the hangar. It was known that TO members and volunteers in Vukovar were extremely aggressive and undisciplined and posed a threat to evacuees. The witness will testify that he saw the two local TO commanders from Vukovar, Stanko Vujanović and Miroljub Vujović, at Ovčara. The witness did not know that detainees from the hospital, arrived at Ovčara. However, on his way to a daily command briefing at the OG South command, when he passed the hangar, he became aware that at least two additional buses, under the escort of the military police, had arrived from the hospital. The witness noticed about 10 to 15 TO members outside and about 20 TO members inside the hangar, forming two rows, through which the detainees had to pass to get inside the hangar. These TO members kicked, beat and cursed at them. Their personal documents were taken away. The witness will describe his efforts to protect the detainees. The witness spent about 30 minutes inside and outside the hangar, and then left to attend the daily command briefing at the OG South command post in Negoslavci. He relied on the remaining officers that they would establish order and would not let the situation get out of control. At the command briefing he informed Colonel Mrkšić of the situation in Ovčara and the maltreatment of detainees. The witness had the feeling that Mrkšić knew what was going on. When, at about 21.30, the witness returned to his command post, Captain Marček informed him that the military police had withdrawn from the hangar and that the local Serbian TO had taken over responsibility for the safety of the detainees.

Paragraphs: 15, 16, 17a, 17b, 17 h, 20.

Counts: 1, 2, 3, 4.

### **3. Content of testimony**

The witness was a retired JNA colonel and he testified on 5 and 6 November 2008 under Rule 92 *ter*, without protective measures.

He was a Prosecution witness in the Ovčara case in Belgrade and the Mrkšić case in The Hague. He was first planned as a Defence witness in the Mrkšić case and

as the Defence decided not to use him as a witness, he later became a Prosecution witness, but before that he had contacts with the Defence in the Mrkšić case.

He was the commander of the 80<sup>th</sup> Motorised Brigade from Kragujevac, which arrived and was deployed in Vukovar on 7 November 1991 as part of Operations Group South. After the liberation of Vukovar and the withdrawal of the 1<sup>st</sup> Guards Brigade, he became, on Mrkšić's order, the commander of the city of Vukovar. His unit stayed in Vukovar until 28 February 1992.

The witness rationally replied to the judges' questions and in such a way that it was factually concordant with the Defence. The Leva Supoderica Detachment was under JNA command as part of the 1<sup>st</sup> Guards Brigade under Mrkšić's command. No one from Leva Supoderica came to the meetings in Mrkšić's office because the command was above the detachment and military hierarchy was observed. JNA documents referring to subordination of units and containing rational and professional explanations were entered in the case file through this witness. In addition to the rational explanation concerning the volunteers in the JNA, this witness denied the possibility of JNA units jointly coordinating action with a paramilitary formation.

This witness stated that after Ovčara the army conducted an investigation through high-ranking military court officers. With regard to Ovčara, the witness stated that soldiers, officers, TO members and civilians were present, but he spoke in very general terms in respect of the volunteers. The explanation that he was the highest ranking officer at Ovčara is interesting because it corroborates the hypothesis that some other officers with the rank of colonel were also present who are not part of the establishment of the 1<sup>st</sup> Guards Brigade.

The Prosecution's wrong and malicious interpretation regarding the evidentiary documents which were entered in the case file has been successfully thwarted and this was entered into the record.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed:

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17h and 20, but the charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1, 2, 3 and 4 of the indictment, but Vukovar is referred to in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1139, LJUBIŠA VUKAŠINOVIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1139, Ljubiša Vukašinić, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Croatia - Vukovar, November 1991:

"On 20 November, members of the JNA, including Major Šljivančanin, as well as Stanko Vujanović, Miroljub Vujović, aka Kameni, and thirty to forty heavily armed SRS/SČP volunteers gathered at the Vukovar hospital. At that time, the hospital was full of patients, civilians who had taken shelter there and persons who had laid down their arms. It was clear to both the Croats and the Serbs forces present that the volunteers wanted revenge." (footnote 203)

2. Summary of testimony for VS-1139, Ljubiša Vukašinić

Events in Vukovar: The witness will testify to the structure of the JNA Guards Motorised Brigade. He will address the integration of volunteers from Serbia into this Brigade in November 1991. The volunteers received weapons and uniforms from the JNA. The witness will testify to the Serb forces in Vukovar that comprised JNA units and two units of the Territorial Defence that were called TO Petrova Gora and TO Leva Supoderica. The Commander of the TO Leva Supoderica was a certain Milan Lančuzanin aka Kameni. Most of the fighters in these units were local Serbs from Vukovar, but there were also volunteers from Serbia among them. The members of those units had their own weapons, but as they were subordinated to the JNA, the JNA provided them with ammunition, food and other logistic supplies. The regular JNA soldiers did not appreciate these volunteers, because some of them were dangerous people and difficult to control.

Šešelj's visit to Vukovar: the witness will testify that he personally saw Šešelj in mid-November 1991, shortly before the fall of Vukovar when he passed the command post in Negoslavci. Šešelj visited members of his party in Vukovar. The

witness is aware that many members of the TO Leva Supoderica were volunteers of the Serbian Radical Party.

*Velepromet*: the witness will testify that Croats, Serbs and civilians of other nationalities were gathered in the *Velepromet* collection centre, basically all of those who managed to get out of the areas affected by the military operations. The witness believes that most of the people in the centre were civilians.

Vukovar hospital: the witness will testify that he saw Stanko Vujanović, the chief of the Vukovar TO, Miroljub Vujović, the commander of the Vukovar TO and Kameni around the Hospital, accompanied by 30 to 40 of their fighters all armed with automatic assault rifles and hand-grenades. Most of them wore JNA uniforms but instead of a cap with a five-pointed star, they had cockades on their caps. They were all very aggressive and it was clear to the witness and the members of his unit that they wanted to take revenge on members of the Croat forces that had fled into the hospital. The witness will speak about his encounters with these TO members. When all the male inmates from the hospital had entered the buses, the witness observed that approximately 30 to 40 people from TO Petrova Gora and TO Leva Supoderica followed the buses to the JNA Barracks. Again they behaved very aggressively and tried to remove people from the buses to take revenge on them. Military Policemen prevented them from doing so, but were often exposed to swearing, unpleasant situations and even the threats with weapons. At the barracks, Major Šljivančanin produced a list with about 20 names of persons who were in this bus. Major Šljivančanin had these persons removed from the buses and returned to the hospital. The members of the TO opposed this.

Ovčara: the witness will testify to his observations at Ovčara farm. He did not eyewitness any beatings, but when he went into the hangar he saw that many detainees who had arrived with the first three buses were covered in blood and beaten up. He then noticed a group of armed men, in which he recognised Vujanović and Vujović; he also saw Kameni at Ovčara. He noticed that they were quite loud and that they were verbally threatening those in the hangar. However, the JNA officers removed these armed men from the hangar. Then the hangar was closed and military policemen placed in front of the door.

Colonel Mrkšić was informed about the conduct of the mentioned group and the threat these armed men posed to the detainees. The witness will describe the actions that were then taken.

Paragraphs: 14-16, 17a-d, 18, 20, 21 and 24-26.

Counts: 1, 2-9.

3. Content of testimony:

The witness testified on 27 November 2008, without protective measures.

The witness testified several times as a defence witness in the Šljivančanin Case and several times in the Ovčara Case. Probably the best testimony in this case. A qualified witness, eyewitness, and the only one who had enough courage to publicly expose Aleksandar Vasiljević.

4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 14, 15, 16, 17a, 17b, 17c, 17d, 18, 20, 21, 24, 25 and 26, but charges concerning Vukovar are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the indictment and Vukovar is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-065, [REDACTED], IN CLOSED SESSION AND BY VIDEO CONFERENCE LINK**

1. According to the Prosecution's Final Trial Brief of 25 July 2007, [REDACTED] was not planned as a Prosecution witness.

2. Summary of testimony for witness [REDACTED]

There is no summary because [REDACTED] was not planned as a Prosecution witness. He was subsequently included in the witness list.

3. Content of the testimony

The witness testified on 8 and 9 January 2009, in closed session, by video conference link [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





[REDACTED]

4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

Vukovar-related charges are contained in paragraphs 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

Vukovar is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14 of the indictment.

[REDACTED]

[REDACTED]

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-008, [REDACTED]  
[REDACTED], WITH PROTECTION MEASURES AND IN CLOSED  
SESSION**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-008, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's participation in the JCE:

"First, the Accused used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated "Greater" Serbia by force, in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged." (footnote 6)

"Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of volunteers who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories." (footnote 8)

Šešelj Recruited and Coordinated SRS/SČP Volunteers

“More than once Šešelj told his volunteers that their task was to kill ‘Ustashas’ or ‘Turks’.” (footnote 78)

“SRS/SČP volunteers operating in Vukovar, a town in Eastern Slavonia in Croatia, during 1991 understood that their primary goal was to ‘cleanse the area of Ustasha’.” (footnote 79)

“The prevailing atmosphere, not surprisingly, was that every Croat was an ‘Ustasha’ (footnote 80) and any ‘Ustasha’ who tried to surrender was immediately shot.”

Šešelj’s Intent to Participate in the JCE:

“On other occasions, commanders of SRS/SČP volunteer units and TO commanders reported to the War Staff, who in turn informed Šešelj, in great detail, about events and the activities of the volunteers.” (footnote 94)

“Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina (which borders Croatia) where non-Serbs were being persecuted.”

“Šešelj did not take steps to correct these problems or condemn them. He never directed the members of the SRS or the SČP to respect the Geneva Conventions or other rules of international humanitarian law, and never distanced himself from the ongoing persecution of non-Serbs in any way. Instead, SRS/SČP volunteers were told that “the less prisoners, the better.” (footnote 102)

“Šešelj told VS-008’s group of volunteers that they had ‘to kill Ustashas’.” (footnote 105)

Crimes in Croatia - Vukovar, November 1991:

“On or about 12 November 1991, Šešelj came to Vukovar in order to visit the volunteers and boost their morale. A meeting took place that evening in a house at Ulica Nova 81, which was used as a command post by members of the JNA army and the local Serb TO. Present were Šešelj and other leaders of the SRS, JNA officers such as Major Veselin Šljivančanin, Captain Miroslav Radić and Captain Bojkovski, Stanko Vujanović, the commander of the First TO Detachment, Miroљub Vujović, a member of the Vukovar TO Staff, and a number of SRS/SČP volunteers, including Kameni. (footnote 201)

“Šešelj told the gathering: ‘We are all one army. This war is a great test for Serbs. Those who pass the test will become winners. Deserters cannot go unpunished.



[REDACTED]

Paragraphs: 5-9, a, b, d, e, g, 11, 12, 15, 16, 17a, h, j, 18, 20, 27, 28 and 31.

Counts: 1, 2-4, 10, 11 and 12-14.

3. Content of testimony

This witness testified on 13 and 14 January 2009, with protection measures and in closed session. [REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

#### 4. Summary of the testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 6, 9, 9a, 9b, 9d, 9e, 9g, 11, 12, 15, 16, 17a, 17h, 17j, 18, 20, 27, 28 and 31, but charges concerning Vukovar are contained in paragraphs 5, 17a, 17b, 17e, 17j, 17k, 18, 20, 21, 29a, 29b, 31 and 34a.

The witness was planned for counts 1, 2, 3, 4, 10, 11, 12, 13 and 14 of the indictment, but Vukovar is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13, 14.

[REDACTED]

#### **THE ZVORNIK LOCATION**

This location is analysed through the positions advocated by the Prosecution, starting with additional historical and political facts concerning Bosnia and Herzegovina that were annexed to the indictment, through the Third Amended indictment, the Prosecution's Final Pre-Trial Brief, the witness list, testimonies, the tasks of the Prosecution and what could be established by the judges in the courtroom.

#### **Remarks Concerning Zvornik in the Indictment**



Zvornik is mentioned in the indictment as a place where crimes were committed under:

- individual criminal responsibility (paragraphs 5, 6 and 10e)

5. Vojislav Šešelj is individually criminally responsible for the crimes referred to in Articles 3 and 5 of the Statute of the Tribunal and described in this indictment, which he planned, ordered, instigated, committed or in whose planning, preparation, or execution he otherwise aided and abetted. By using the word “committed” in this indictment, the Prosecutor does not intend to suggest that the accused physically committed all of the crimes charged personally. Physical commitment is pleaded only in relation to the charges of persecutions (Count 1) by direct and public ethnic denigration (paragraphs 15 and 17 (k)) with respect to the Accused’s speeches in Vukovar, **Mali Zvornik** and Hrtkovci, and by deportation and forcible transfer (paragraphs 15 and 17 (i)) with respect to the Accused’s speech in Hrtkovci, and in relation to the charges of deportation and inhumane acts (forcible transfer) (Counts 10 – 11, paragraphs 31 - 33), with respect to the Accused’s speech in Hrtkovci. “Committed” in this indictment includes the participation of Vojislav Šešelj in a joint criminal enterprise as a co-perpetrator. By using the word “instigated”, the Prosecution charges that the accused Vojislav Šešelj’s speeches, communications, acts and/or omissions contributed to the perpetrators’ decision to commit the crimes alleged.

6. Vojislav Šešelj participated in a joint criminal enterprise. The purpose of this joint criminal enterprise was the permanent forcible removal, through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia (“Croatia”), and large parts of Bosnia and Herzegovina, and from parts of Vojvodina, in the Republic of Serbia (“Serbia”), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the “SAO Krajina”, the “SAO Western Slavonia”, and the “SAO Slavonia, Baranja and Western Srem” (after 19 December 1991, the “SAO Krajina” became known as the RSK; on 26 February 1992, the “SAO Western Slavonia” and the “SAO Slavonia, Baranja and Western Srem” joined the RSK), as well as the “Dubrovnik Republic”. With respect to Bosnia and Herzegovina, the areas included

Bosanski Šamac, **Zvornik**, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

10. Professor Vojislav Šešelj participated in the joint criminal enterprise in the following ways:

e. Professor Vojislav Šešelj participated in the planning and preparation of the take-over of towns and villages in two Serbian autonomous districts in Croatia and in the municipalities of Bosanski Šamac, **Zvornik**, Greater Sarajevo, Bijeljina, Mostar, Nevesinje and Brčko in Bosnia and Herzegovina and the subsequent forcible removal of the majority of the non-Serb population from these areas.

**- Count 1: Persecutions (paragraphs 15,17a, 17b,17e, 17g, 17j and 17k)**

15. From on or about 1 August 1991 until at least September 1993, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of, or physically committed, persecutions of Croat, Muslim and other non-Serb civilian populations in the territories of the SAO SBWS (Slavonia, Baranja and Western Srem), and in the municipalities of **Zvornik**, Greater Sarajevo, Mostar, and Nevesinje in Bosnia and Herzegovina and parts of Vojvodina in Serbia.

17. These persecutions were committed on political, racial and religious grounds and included:

a. The [REMOVED] murder of many Croat, Muslim and other non-Serb civilians, including women, children and elderly persons, in the municipality of Vukovar, in the municipalities of **Zvornik**, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, as described in paragraphs 18 to 27.

b. The prolonged and routine imprisonment and confinement of Croat, Muslim and other non-Serb civilians in detention facilities within Croatia and Bosnia and Herzegovina, including prison camps in Vukovar, and in **Zvornik**, Greater Sarajevo, Mostar, and Nevesinje as described in paragraphs 28 to 30.

e. Prolonged and frequent forced labour of Croat, Muslim and other non-Serb civilians detained in the said detention facilities or under house arrest in their respective homes in Vukovar, **Zvornik**, Greater Sarajevo and Mostar. The forced labour included digging graves, loading ammunition for the Serb forces, digging trenches and other forms of manual labour at the front lines

g. The imposition of restrictive and discriminatory measures against the Croat, Muslim and other non-Serb civilian populations, including persons in **Zvornik**, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, and in parts of Vojvodina, Serbia (namely Hrtkovci, Nikinci, Ruma, Šid, and other places bordering Croatia), such as restriction of movement; removal from positions of authority in local government institutions and the police; dismissal from jobs; denial of medical care; and arbitrary searches of homes.

j. Deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat, Muslim and other non-Serb civilian populations in the municipality of Vukovar in Croatia, and in the municipalities of **Zvornik**, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina as described in paragraph 34.

k. Direct and public denigration through "hate speech" of the Croat, Muslim and other non-Serb populations in Vukovar, **Zvornik** and Hrtkovci on the basis of their ethnicities as described in paragraphs 20, 22, and 33.

**- Count 4: Murder (paragraphs 18 and 22)**

18. From on or about 1 August 1991 until June 1992 in the territory of the SAO SBWS in Vukovar, from on or about 1 March 1992 until at least September 1993 in the municipalities of **Zvornik**, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed or otherwise aided and abetted in the planning, preparation, or execution of the [Removed] murder of Croat, Muslim and other non-Serb civilians as specified in paragraphs 20-22, 24, 26 and 27.

**ZVORNIK**

22. In March 1992, Vojislav Šešelj gave a speech at a **rally in Mali Zvornik**, located across the Drina river from Zvornik. Vojislav Šešelj said: "Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong." This speech persecuted and/or instigated the persecution of non-Serbs in **Zvornik**. In April 1992, Serb forces, including volunteers known as "Šešelj's men" and "Arkan's tigers", attacked and took control of the town of Zvornik and surrounding villages. During the attack, Serb forces killed many non-Serb civilians.

On or about 9 April 1992, Serb forces, including members of Arkan's unit, executed twenty Bosnian Muslim and Croat men and boys in Zvornik town. Following the take-over, non-Serbs were routinely detained, beaten, tortured and killed. From April to July 1992, hundreds of non-Serb civilians were detained in or near Zvornik in the *Standard* shoe factory, the *Ciglana* factory, the *Ekonomija* farm, the Drinjača Cultural Centre and the Čelopek Cultural Centre. On or about 12 May 1992, at the *Ekonomija* farm, Serb forces, including the leader of a group of "Šešelj's men", beat to death a detainee named Nesib Dautović. Between 12 and approximately 20 May 1992, Serb forces killed at least four other Muslim men at the *Ekonomija* farm. In June or July 1992, Serb forces, including volunteers known as "Šešelj's men", killed a non-Serb male detainee at the *Ciglana* factory. Between 30 and 31 May 1992, Serb forces, including a group of "Šešelj's men", tortured and killed 88 Bosnian Muslim males at Drinjača Cultural Centre. Between 1 and 5 June 1992, Serb forces killed more than 150 Bosnian Muslim males at Karakaj Technical School. Between 7 and 9 June 1992, Serb forces killed more than 150 detainees at Gero's slaughter-house. Between 1 and 26 June 1992, Serb forces killed more than forty non-Serb male detainees at Čelopek Cultural Centre. The names of the identified murder victims at the *Ciglana* factory, Drinjača Cultural Centre, Karakaj Technical School, Gero's slaughter-house, Čelopek Cultural Centre, and the *Ekonomija* farm are set out in Annex V to this indictment.

**- Counts 8 and 9: Torture and Cruel Treatment (paragraph 29e)**

29. Serb forces, including those volunteer units recruited and/or incited by Vojislav Šešelj, captured and detained hundreds of Croat, Muslim and other non-Serb civilians. They were detained in the following short- and long-term detention facilities:

e) The *Standard* shoe factory, the *Ciglana* factory, the *Ekonomija* farm, the Drinjača Cultural Centre, the Karakaj Technical School, Gero's slaughter-house and the Čelopek Cultural Centre, **Zvornik**, Bosnia and Herzegovina between April and July 1992, hundreds of detainees.

**- Counts 10 and 11: Deportation and Forcible Transfer (paragraph 31)**

31. From on or about 1 August 1991 until May 1992 in the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise,

planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in Vukovar (SAO SBWS) in November 1991, in the municipality of **Zvornik** in Bosnia and Herzegovina between March 1992 and September 1993, in Greater Sarajevo in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia and Herzegovina between June 1992 and September 1993 and in parts of Vojvodina, Serbia, including the village of Hrtkovci, between May and August 1992.

**- Counts 12 to 14: Wanton Destruction and Plunder of Public or Private Property (paragraphs 34 and 34b)**

34. From on or about 1 August 1991 until May 1992 in the territories of the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in the municipalities of **Zvornik**, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, Vojislav Šešelj, acting individually or as a participant in a joint criminal enterprise, planned, ordered, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the wanton destruction and plunder of public and private property of the Croat, Muslim and other non-Serb populations, acts which were not justified by military necessity. This intentional and wanton destruction and plunder included the plunder and destruction of homes and religious and cultural buildings, and took place in the following towns and villages:

b) Bosnia and Herzegovina: **Zvornik** (hundreds of homes plundered, and many mosques and other places of worship and a religious archive destroyed); Greater Sarajevo (homes plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Ilijaš; homes plundered and many homes destroyed, and mosques and Catholic churches and other places of worship destroyed in the municipality of Vogošća); Mostar (many homes plundered and destroyed and several mosques destroyed) and Nevesinje (many homes plundered and destroyed and many mosques destroyed).

Victims: Annex V

**According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Zvornik is mentioned as a crime location in the following paragraphs: 1, 3 (f), 3 (i), 4, 22, 27, 47, 53, 62, 91, 92, 93, 4. ZVORNIK, 94, 131, 141, 143 and 148.

## ZVORNIK

### Paragraph 1

1. In the time period relevant to the indictment, between August 1991 and September 1993, the Accused was the President of the Serbian Radical Party and the leader of the Serbian Chetnik Movement. In these capacities, the Accused was one of the most prominent politicians in the former Yugoslavia and exercised substantial political power and influence. Along with Croatian Serb and Bosnian Serb political leaders, Croatian Serb and Bosnian Serb government, military and police officials, high-ranking members of both the Yugoslav People's Army/Yugoslav Army and the Ministry of the Interior of Serbia, and with other leading Serbian and Montenegrin political figures and officials, the Accused participated in the formulation, preparation and execution of a JCE to forcibly remove non-Serbs from targeted regions of Croatia, Bosnia and Herzegovina and the (S)FRY. This objective was achieved through the expulsion of hundreds of thousands of non-Serb civilians from their homes, their extended detention in brutally inhumane conditions, massacres, and a range of other persecutory conduct designed to drive them out of the territories considered to be Serb. The indictment sets forth the Accused's responsibility for inciting, instigating, creating, supporting, directing, coordinating and encouraging the forces that committed the crimes charged in the indictment. The Prosecution also alleges that the Accused physically committed the crime of persecution as a crime against humanity (through "hate speech") in Vukovar, Croatia, Zvornik, BH, and Hrtkovci, the Autonomous District of Vojvodina, Serbia. Moreover, Šešelj personally committed the crimes of deportation and inhumane acts (forcible transfers) in Hrtkovci.

### Paragraphs 3 (f) and 3 (i)

3. Although the process varied from place to place, the take-overs achieved the common goal of establishing Serb control in the targeted territories. The Accused participated in this process by:

a) publicly and systematically promoting the establishment by force of a unified Serb-dominated state known as "Greater Serbia" with its western borders

along the “Karlobag-Karlovac-Ogulin-Virovitica line”, thereby including wide parts of Croatia and BH;

b) publicly and systematically inspiring fear and hatred in Serbs that non-Serbs, in particular Croats and Muslims, were their enemies and intended to cause them harm, thereby creating and/or exacerbating an atmosphere conducive to violent acts against targeted non-Serb populations and inciting, participating in and contributing to the crimes alleged in the indictment;

c) recruiting, organising, financing, supporting, encouraging and instigating Serb volunteers affiliated with the SRS/SČP, who committed crimes alleged in the indictment;

d) encouraging and inciting other Serb Forces, such as the JNA/VJ, local Serb TO units and TO units from Serbia, the VRS, the SVK and the police, to commit crimes alleged in the indictment;

e) coordinating the activities of SRS/SČP volunteers with members of other Serb institutions who committed crimes alleged in the indictment;

f) participating and assisting in the planning and preparation of the take-over of villages in Western Slavonia and Eastern Slavonia, Baranja and Western Srem (SBWS) in Croatia and in the municipalities of Bosanski Šamac and Zvornik in BH, and in the subsequent persecution campaigns;

g) publicly calling for the expulsion of inhabitants of Croat ethnicity from parts of the Vojvodina region in Serbia, thereby instigating his followers and local authorities to engage in a persecution campaign against the local Croat population;

h) personally and directly causing the expulsion of Croat residents from villages in Vojvodina, in particular the village of Hrtkovci, by intimidating and insulting Croats in public speeches; and

i) denigrating the non-Serb populations in Vukovar, Zvornik and Hrtkovci through public “hate speech”.

#### Paragraph 4

4. The Accused’s participation in the JCE can be divided into three essential segments.

First, the Accused used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated "Greater Serbia" by force in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.

Second, as the President of the SRS and the leader of the SČP, the Accused oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of "volunteers" who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories

Third, in certain areas which will be discussed below, such as Vukovar, Zvornik, Bosanski Šamac and Hrtkovci, the Accused personally planned, instigated, ordered and/or committed these crimes, thus additionally participating in and contributing to the JCE.

Paragraph 22

22. SRS/SČP volunteers agreed with the goal of creating "Greater Serbia" by using all necessary means, including violence, because they fervently believed in the Accused. Thus, when the Accused visited his volunteers near the battlefields, the volunteers reacted as if "God came to earth". The Accused's visits to the front lines provided great motivation to the volunteers, and strengthened their will to kill "Ustashas". As the armed conflict progressed, the lack of discipline and violent nature of some SRS/SČP volunteers became well-known, both on the battlefield and among the SRS leadership, including the Accused. When the Accused was informed of the atrocities committed in Vukovar by one of the SRS/SČP volunteers, a man called Topola, the Accused responded: "What can I do now? Disarm the man and send him home. He is tired." (Translated from English) Later, the SRS redeployed Topola to participate in the take-over and ethnic cleansing of Zvornik in eastern BH. The Accused's failure to react adequately to the atrocities committed by SRS/SČP volunteers was yet another indication that violent treatment of non-Serbian population was necessary and appropriate.

Paragraph 27

27. In addition, evidence will show that the Accused and other participants in the JCE knew that crimes such as those alleged in the indictment would likely be committed as a consequence of implementing the JCE. For example, the Accused himself repeatedly called on Serbs to take revenge against non-Serbs. The leadership of the SRS was aware that the SRS/SČP volunteers might "take revenge" against non-Serbs after the take-over of municipalities such as Zvornik in B-H. In addition, many SRS/SČP volunteers were known to be criminals and did not hide it.

Paragraph 47



47. On 19 December 1991, the SDS leadership intensified local organisational efforts to seize power. They distributed to SDS municipal boards “strictly confidential” instructions detailing “tasks, measures and other activities” for implementing the results of the plebiscite (the “19 December Instructions”). The 19 December Instructions, distinguishing between municipalities where Serbs were a majority (“Variant A” municipalities) and those where Serbs were a minority (“Variant B”) were sent to SDS municipal leaders who were ordered, as part of the first of the two stages, to form “crisis staffs”, proclaim Serbian Assemblies and carry out “preparations for the formation of municipal government bodies.” In stage two, SDS leaders were instructed to mobilise Bosnian Serb police and subordinate them to JNA command, which shared the goals of the JCE. They would also call up JNA reserves, local Serb TO units and take other steps. These measures were to be taken upon receipt of an order “given exclusively by the SDS Bosnia president, using a secret procedure.” Just before the Serb take-over of Zvornik, Bijlana Plavšić met members of the Crisis Staff at their headquarters in Zvornik town. She inquired whether they had completed all the preparatory stages directed by Variant B of the 19 December Instructions.

Paragraph 53

53. On 6 April 1992, the European Community recognised BH as an independent and sovereign state. The United States followed the next day. This signalled the onset of military attacks and take-overs by Serb forces. By 12 May 1992, when the Bosnian Serbs held the 16th session of the Serbian Assembly in Banja Luka, many municipalities had been taken over, including Bijeljina on 31 March, Zvornik on 9 April, Bosanski Šamac on 17 April, Sanski Most on 21 April and Doboje on 3 May. SRS/SČP volunteers participated in the takeovers of, inter alia, Zvornik and Bosanski Šamac, and the Accused was often present in BH, where he would meet with the Bosnian Serb leadership and with his volunteers.

Paragraph 62

62. Each sub-section focuses upon one geographic region where crimes took place: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and Hrtkovci.

Paragraphs 91, 92, 93 and 94)

4. Zvornik – April 1992 - September 1993

91. The city of Zvornik is located in Eastern BH on the banks of the Drina River, which there marks the border between BH and Serbia. The 1991 census figures recorded that the population in Zvornik in 1991 was 59% Muslim and 38% Serb. By March 1992, the Bosnian Serb forces had established their own police force in Zvornik, had declared Zvornik a Serbian Municipality, and were preparing to attack Zvornik with the backing of the JNA. That same month, the Accused gave a speech in Mali Zvornik, located across the Drina River from Zvornik. He declared: "Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong.

92. Before the take-over, local Serbs in Zvornik were armed by both the JNA and local Serbs who received weapons from Serbia and distributed them through a pre-established SDS network. In early April 1992, the Accused approved a request to send SRS/SČP volunteers to Zvornik and SRS leaders brought SRS/SČP volunteers from Loznica, Serbia to Zvornik. Subsequently, when the war broke out, local Serbs joined the SRS/SČP volunteers in Zvornik and considered themselves members of the organisation.

93. The takeover of Zvornik town occurred between 8 and 9 April 1992 when Serb forces, including Arkan's men, SRS/SČP volunteers, local Serb TO and police attacked and took over the town. The attack was supported by JNA shelling from Serbia and the Serbian TO from Loznica. Many non-Serb civilians were killed during the takeover. Soon after the take-over, the Accused went to Zvornik or Mali Zvornik where he spoke at an SRS rally. Over the coming weeks other parts of the municipality were taken over by Serb forces including Arkan's men, the JNA and SRS/SČP volunteers. The Accused and the SRS War Staff were informed of developments on the battlefield and the performance of the SRS/SČP volunteers. There is evidence of mass killings of non-Serb civilians in Zvornik – the bodies of 200 Muslims were recovered from the streets of Zvornik following the take-over and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in BH after Srebrenica. There was widespread detention in brutal detention facilities where many non-Serbs were beaten, tortured and killed. At the Čelopek Cultural Centre, Serb forces, including SRS/SČP volunteers, forced Muslim men to engage in sexual activity. Most, if not all, of the mosques in Zvornik were destroyed.

There was a mass displacement of people in Zvornik along ethnic lines and non-Serbs were forcibly deported to Austria and Hungary.

94. There was extensive, organised looting during this period of time, and at least some of the proceeds went to fund the SRS. Around 30th May 1992, a group of SRS/SČP volunteers took charge of the detainees in the *Ciglana* factory and forced them to plunder and loot houses in Zvornik. Throughout this time period, the Accused was regularly provided with information by SRS officials around Zvornik. For example, Miroslav Vuković, also known as Čele, a leader of SRS/SČP volunteers in Zvornik, would call Šešelj from the front lines or send messages through intermediaries.

#### Paragraph 131

131. “Committing” covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law, whether alone or jointly with co-perpetrators. Several perpetrators may “commit” the same crime if each individual fulfils the requisite elements of the crime. The requisite mens rea is that the Accused acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.

#### Paragraph 141

141. In addition to the “commission” of all the crimes charged in the indictment as a participant in the JCE, the Accused physically committed the crime of persecution in Vukovar (Count 1, paragraphs 15 – 17 and 20), Zvornik (Count 1, paragraphs 15 – 17 and 22 of the indictment) and Hrtkovci (Count 1, paragraphs 15 – 17, 29 and 33 of the indictment), through his use of “hate speech” targeted at the non-Serb populations of those localities. The intent of the Accused to commit persecution in these locales is evidenced by: (1) the derogatory, violent and ethnic content of his speeches, (2) the environment of violent ethnic conflict in which the Accused made his speeches and (3) the fact that (as described above) such crimes occurred shortly after the Accused made his speeches.

#### Paragraph 143

143. In addition to the other modes of criminal liability contained in Article 7(1), the Accused planned the crimes of persecution, murder, detention, torture, other inhuman acts, cruel treatment, deportation, forcible transfer, wanton destruction and plunder of public or private property in Vukovar and Zvornik (Counts 1, 4, 8-9, 10-14, paragraphs 15-18, 20-22, 24, 26-34 of the indictment), and the crimes of

persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15 – 17 and 31 – 33 of the indictment). With respect to the Accused's mens rea for planning the crimes in Vukovar and Zvornik, the Accused awareness that such crimes would likely occur may be inferred from:

(1) his inflammatory speeches,

(2) the fact that he approved the dispatch of volunteers to these areas with knowledge that the volunteers often committed crimes at the battlefields and

(3) the fact that the crimes occurred.

With respect to the Accused's mens rea for planning the crimes in Hrtkovci, the Accused's intent is evident from his statements during meetings with SRS supporters and members prior to and during the persecution campaign in Hrtkovci, as well as the fact that the criminal actions encouraged by the Accused during those meetings eventually took place in Hrtkovci.

Paragraph 148

148. In addition to the other modes of criminal liability contained in Article 7(1), Šešelj instigated the crimes of persecution, murder, torture, cruel treatment and forcible transfer in Vukovar (Counts 1, 4, 8-9 and 11, paragraphs 15 – 18, 20, 28-32 of the indictment), the crimes of persecution, murder, torture, other inhuman acts, cruel treatment, deportation, forcible transfer, wanton destruction and plunder of public or private property in Zvornik (Counts 1, 4, 8-9, 10-14, paragraphs 15 – 18, 22, 28-34 of the indictment) and the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15 – 17, 31-33 of the indictment) by his inflammatory speeches given when he visited those locales or places close to them, such as Mali Zvornik. Šešelj's /intent/ to instigate these crimes can be inferred from the same evidence with respect to Šešelj's intent to commit persecution and from Šešelj's acknowledgements of his ability to incite persons.

#### **Summary Regarding Witnesses for Zvornik**

B. Implementation of the JCE in Bosnia and Herzegovina:

Witnesses: VS-043 (Milan Babić, deceased), VS-037 (██████████), testified as if he were a Defence Witness), VS-1061 (Miroslav Deronjić, deceased), VS-026 (██████████), did not testify, but wanted to be a Defence Witness).

4. Zvornik - April 1992 - 1993:

Witnesses: VS-036 ([REDACTED], [REDACTED]), VS-1088 (identity of the witness unknown), VS-037 ([REDACTED], testified as if he were a defence witness), VS-1097 (identity of the witness unknown), [REDACTED] ([REDACTED] VS-2000, [REDACTED], testified), VS-1012 ([REDACTED] [REDACTED], testified), VS-017 (Zoran Rankić, testified, but wanted to be a Defence witness), VS-1066 ([REDACTED], testified), VS-1105 ([REDACTED], testified), VS-1014 (Fadil Kopic, testified), VS-047 (identity of the witness unknown), VS-1100 (identity of the witness unknown), VS-1039 (identity of the witness unknown), VS-02 (identity of the witness unknown), VS-1062 ([REDACTED], testified), VS-039 (Matija Bošković, deceased), VS-043 (Milan Babić, deceased), VS-1086 (identity of the witness unknown), VS-1093 ([REDACTED], testified), VS-1016 (Fadil Banjanović, testified), VS-1065 ([REDACTED], testified), VS-1063 ([REDACTED], did not testify), VS-038 ([REDACTED], testified, false witness), VS-1087 ([REDACTED], testified), VS-1013 ([REDACTED], testified), VS-032 (Nenad Jović, testified, but wanted to be a Defence witness), VS-011 (Ljubiša Petković, did not testify, but wanted to be a Defence witness), VS-027 ([REDACTED], testified, false witness).

**Prosecution's Revised Final Witness List and Summaries of Witness' Evidence**

Crime base witnesses for Zvornik:

VS-036 ([REDACTED]), VS-037 ([REDACTED], testified as if he were a Defence Witness), VS-038 ([REDACTED], testified, false witness), VS-039 (Matija Bošković, deceased), VS-1012 ([REDACTED], testified), VS-1013 ([REDACTED], testified), VS-1014 (Fadil Kopic, testified), VS-1015 ([REDACTED], testified, but the witness is not to be found in the Prosecution's Final Pre-Trial Brief), VS-1016 (Fadil Banjanović, testified), VS-1062 ([REDACTED], testified), VS-1063 ([REDACTED], did not testify), VS-1064 ([REDACTED], testified, but the witness is not to be found in the Prosecution's Final Pre-Trial Brief), VS-1065 ([REDACTED], testified), VS-1066 ([REDACTED], testified), VS-1087 ([REDACTED], testified), VS-1093 ([REDACTED], testified), [REDACTED] ([REDACTED] VS-2000, [REDACTED], testified), VS-1105 ([REDACTED], testified), VS-1106 (the

witness is not to be found in the Prosecution's Final Pre-Trial Brief), VS-1132 (the witness is not to be found in the Prosecution's Final Pre-Trial Brief).

### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Zvornik, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) (complicity, participation in a JCE and direct commission through hate speech).

Essentially, in order to prove the existence of the crimes from the indictment and, naturally, the individual criminal responsibility of Professor Vojislav Šešelj, the Prosecution had to prove each individual crime (action, victim, perpetrator, responsibility of the immediate perpetrator). The Zvornik was mentioned as a location in all counts of the indictment and for all aspects of individual criminal responsibility under Article 7(1) of the Statute.

During the presentation of the Prosecution's evidence, the following witnesses were heard:

1. [REDACTED], VS-1013, testified *viva voce* under protective measures and with image and voice distortion, on 25 and 26 March 2008.
2. [REDACTED], VS-1015, testified *viva voce* on 27 March 2008, under protective measures and with image and voice distortion.
3. Fadil Ković, VS-1014, testified *viva voce* on 9 April 2008, pursuant to Rule 92 *ter*.
4. [REDACTED], VS-1062, testified *viva voce* on 10 April 2008, under a pseudonym and with image and voice distortion.
5. [REDACTED], VS-1065, testified *viva voce* on 22 April 2008, with protective measures.
6. Asim Alić, VS-1106, testified *viva voce* on 15, 20 and 21 May 2008.
7. [REDACTED], VS-1012, testified in closed session on 18 and 19 June 2008, with protective measures.
8. [REDACTED], VS-1064, testified *viva voce* on 25 June 2008, with protective measures.

9. [REDACTED], VS-1105, testified with protective measures on 16 July 2008, pursuant to Rule 92 *ter*.

10. [REDACTED], VS-038, testified *viva voce* on 1 and 2 October 2008, with protective measures.

11. [REDACTED], VS-1093, testified *viva voce* on 12 November 2008, with protective measures.

12. Fadil Banjanović, VS-1016, testified *viva voce* on 2 December 2008.

13. [REDACTED], VS-1087, testified via video conference link from [REDACTED] on 9 January 2009, with protective measures and pursuant to Rule 92 *ter*.

14. [REDACTED], VS-1066, testified in closed session, with protective measures on 3 and 4 February 2009.

15. [REDACTED], VS-2000, testified *viva voce* on 4 and 5 February 2009, with protective measures and a change of pseudonym.

16. [REDACTED], VS-037, testified *viva voce* on 12 and 13 January 2010, with protective measures.

In addition to a degree of confusion regarding its witnesses, it must also be noted that the Prosecution failed to adhere to the structure devised by the Trial Chamber for the presentation of evidence relevant for this location; instead of its key witness, VS-2000, testifying first, the Prosecution intentionally presented him as their penultimate witness because it did not suit them that this false witness, whose testimony was intended to be the foundation for all the charges related to the area of Zvornik, be heard at the beginning.

The Annex contains an analysis of the evidence given by each of the Prosecution witnesses, including the allegations from the Prosecution's Pre-Trial Brief they were going to confirm, summaries of their evidence and what they actually said during the hearing. All charges related to Zvornik are based on a speech delivered by Professor Vojislav Šešelj at a rally allegedly held by the Serbian Radical Party in Mali Zvornik in March 1992 and his words which instigated the commission of all crimes listed as having been perpetrated in Zvornik. The fact that the Prosecution witness who was to confirm this as an eyewitness was only heard on 4 and 5 February 2009, as the final Prosecution witness for Zvornik, tells us that this is a falsification and a trick on the part of the Prosecution. Had he been heard first, the Prosecution's evidence would surely not have been presented because it would have been clear that

the Prosecution did not have grounds for the whole story about Zvornik, particularly in view of the two trials currently under way in Belgrade for the war crimes committed in Zvornik, in which there has been no mention of the Serbian Radical Party, volunteers, or Professor Vojislav Šešelj.

When it was established during the cross-examination of Witness VS-2000, [REDACTED], that no meeting had taken place in Mali Zvornik in March 1992, the judges realised, and the Presiding Judge stressed, the significance of this fact for the upholding of all charges relating to Zvornik. The witness moved the date of the rally of the Serbian Chetnik Movement, which was held on 4 August 1990 in Mali Zvornik, to March 1992.

It can be concluded from this that the charges of direct commission of the crime of persecution through hate speech have collapsed, as have all those related to indoctrination, incitement and aiding and abetting the direct perpetrators of crimes. This is why victim testimonies about the consequences of the hate speech with which Professor Vojislav Šešelj is charged are almost entirely irrelevant.

What remains to be analysed is whether Professor Vojislav Šešelj could be held liable, in the sense of participating in a JCE as a co-perpetrator and co-participant, for even a part of the joint criminal objective and, by virtue of that, the enterprise itself. The issue boils down to whether Professor Vojislav Šešelj can be held responsible for crimes committed by other persons as members of the Serbian forces. This is certainly the central issue, and it is only at first sight that in the context of Zvornik Professor Vojislav Šešelj treated this as a side issue, albeit only to the degree necessary for the Prosecution to fall into a trap and invalidate its own evidence. Professor Vojislav Šešelj forced the Prosecution and its witnesses to clearly state who were the direct perpetrators of the crimes. For almost every count of the indictment, we heard in the courtroom who were the direct perpetrators of the crime (murder, torture, looting, destruction, etc.) when and how it was perpetrated, to whom they belonged and what they looked like. It is important for the purposes of the defence that not a single name of a direct perpetrator, or his description as provided by witnesses, can be linked in any way to the volunteers of the Serbian Radical Party or Professor Vojislav Šešelj.

Furthermore, it is completely clear that the volunteers of the Serbian Radical Party (approximately 100 of them) were in Zvornik from 8 to 26 April 1992 and that they participated in the fighting until the Kula Grad was liberated, after which they



withdrew. The Prosecution witnesses' testimonies about the period leading up to the liberation of Kula Grad contain facts about the fighting, but almost nothing about crimes. Almost all the charges brought against Professor Vojislav Šešelj pertain to the events from May and June 1992, but it was established in the courtroom that there were no volunteers of the Serbian Radical Party there at that time. The Prosecution's attempt to use its witnesses to incorporate the information about the symbols, appearance, cockades, the White Eagles, lists, payrolls, etc. into the existing material relating to Zvornik, and thus build up a case that crimes were also committed by Šešelj's men, has also been thwarted.

Almost no crimes are linked to the JNA, and the volunteers of the Serbian Radical Party, who were with the JNA, left Zvornik before the JNA pulled out. The fact that certain individuals from Mali Zvornik and Loznica joined the police forces of the Zvornik TO of their own free will cannot influence this conclusion. None of these people, whether or not they were members of the Serbian Radical Party at the time or later on, can be linked to Professor Vojislav Šešelj, and no thought of Professor Vojislav Šešelj's liability for their actions can be entertained. In order to absolve Professor Vojislav Šešelj of any responsibility whatsoever, it is sufficient to mention his public criticism of the "Yellow Wasps" in August 1992 and his praise of the action mounted by the Bijeljina police.

In particular, it must be borne in mind that the location of Zvornik had been dealt with by the Trial Chamber Judgement in the Krajišnik case, IT-00-39-T, of 27 September 2006, which does not mention a single word about the volunteers of the Serbian Radical Party and Professor Vojislav Šešelj. It should be noted that the Judgement contains allegations about "Arkan's men" but no allegations about the volunteers of the Serbian Radical Party being together with Arkan's men. Paragraphs 359-374 of the Judgement are proof of that. It must also be said that it would have been impossible to use the Krajišnik case to draw conclusions about Professor Vojislav Šešelj's alleged participation in a JCE in Zvornik. The situation with regard to the Belgrade judgements is almost identical: it is known exactly who directly perpetrated the crimes which may together constitute a crime under the ICTY Statute.

The Prosecution has not presented sufficient evidence to support a conviction. The conclusion is: not guilty. Thus the evidence adduced, its relevance, reliability and the credibility of the witnesses do not lead to a conviction. In that respect, it is important whether the evidence meets the requirements for drawing a conclusion

beyond a reasonable doubt. Since it is the witnesses who are, in fact, the evidence, it is important whether a witness is an eyewitness, a participant in an event or an armed conflict, somebody who heard and from whom he heard it, whether the information and details are from the time of the event or were obtained subsequently, whether it is a matter of an opinion or a personal view without direct knowledge, but rather the result of a system of indirect reasoning.

What should, essentially, be established is whether the actions of Professor Vojislav Šešelj in this period, including the actions which might pertain to the location of Zvornik, were unlawful. This is important because there is no causal link between the direct perpetrators of crimes in the municipality of Zvornik and Professor Vojislav Šešelj. What is more, under no circumstances could an elementary link be established between the direct perpetrators of crimes and Professor Vojislav Šešelj on the basis of the objectives of a JCE. The direct perpetrators of crimes were a threat to the Serbs as well and they looted whatever they could find, and all this was publicly criticised by Professor Vojislav Šešelj. The crimes committed by the direct perpetrators were tried relatively shortly after their commission; even if we were to proceed from the supposition that a joint criminal enterprise actually existed, the acts committed by the direct perpetrators of crimes can in no way be attributed to its objective, nor can a conclusion be drawn about the third category of participation in the JCE. With this in mind, the departure of Muslims from the village of Kozluk takes on a completely new dimension because those who were formally in power could not guarantee their safety and security from groups that were operating outside anyone's control. The fact that, once arrested and expelled from the territory of Republika Srpska, they continued with their criminal activities in Serbia, speaks volumes about the character of this group.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1013, [REDACTED]  
[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1013, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina

Zvornik, April 1992 – September 1993:

“Around 30 May 1992, a group of SRS/SČP volunteers took charge of the detainees in the *Ciglana* factory and forced them to plunder and loot houses in Zvornik.” (footnote 306)

2. Summary of testimony for VS-1013, [REDACTED]

Biography: [REDACTED].

Background: several days before the attack on Zvornik, the witness saw JNA convoys moving around Zvornik and heard there were Serb-operated barricades on the road between Zvornik and Karakaj.

Around the same time, the witness saw reports on Belgrade television claiming that “Green Berets, Kurds and Mujahideen were concentrated in Kula Grad, preparing to attack Zvornik.”

Take-over: the witness observed Serb forces attacking Zvornik on the morning of 8 April 1992. He heard shooting coming from Karakaj, and saw Serbs advancing on Zvornik. There was little resistance. However, Serb forces stayed on the outskirts of town and continued firing their weapons. The witness believes that the purpose of the firing was to scare people into fleeing and to lend credibility to the story that the Mujahideen were in control of Zvornik and the Serbs were fighting against them.

Siege of Kula Grad: on the first day of the attack, the witness fled from Kula Grad, returned to Zvornik and fled to Kula Grad again, where he spent several days. By the afternoon of 9 April 1992, Zvornik was under Serb control.

There were about 40 armed persons in Kula Grad, but they were not organised in a military fashion. During mid-late April, Kula Grad was captured by Serb forces using tanks, helicopters and fixed-wing aircraft.

The witness will testify to the death of Rambo, Arkan’s brother in law and that Arkan executed 80 Muslims in retaliation for Rambo’s death. The witness, when detained in the *Ciglana* factory, was forced to sing the song “Because of Rambo, to the grief of their mothers, 80 Muslims died.”

Fleeing: meeting up with a group in Novo Selo, the witness fled in the direction of Cerska. The witness and others who were fleeing were continuously shelled. They eventually encountered a young man who said he was Muslim and offered to take them to free territory.

The young man led them to the Cultural Centre in Orahovac where a group of Serb men with long beards, wearing fur hats with cockades on them, ambushed the witness and his companions.

Zvornik: the witness and his companions were searched and then turned over to men wearing blue police uniforms with Serbian flags. The police transported the witness and others to Zvornik. The policemen took the detainees to the SUP. The police ordered the witness and other detainees to turn over any documents, watches, money or valuables. The policemen discussed whether to kill the detainees now or later.

The *Standard* factory: after a brief interrogation in the SUP, the witness and other detainees were taken to the *Standard* factory in Karakaj where they were turned over to military police. At the *Standard* factory, the witness saw 11 to 12 SRS volunteers from Kraljevo, 10 "Special Military Police" from Loznica, military police, reconnaissance teams and military commandos.

The "Military Police" from Loznica out-ranked the other groups and reported to Major Marko Pavlović and Brano Grujić. Major Marko Pavlović led the attack on Zvornik by Serb forces. The witness believes that Pavlović was in charge of the Zvornik TO and Grujić was the President of the SDS in Zvornik.

The witness believes that *Vojvoda Čele* was in charge of the group from Kraljevo. Other SRS volunteers included Major Toro, Pufta, Captain Zoks, Major Saša and Sava. The witness saw that Toro carried a military ID, identifying him as a member of "Šešelj's army". The witness heard that he had a JNA ID as well.

During his first five days at *Standard*, the witness was threatened and insulted by irregular soldiers. Detainees were taken out of the detention room and did not return.

On the evening of 9 May 1992, a group of soldiers from Loznica entered the detention room. One of them wore an armband which read "Military Police" in Cyrillic text. This group beat and insulted the detainees. They ordered the witness and others to write down everything they knew about a group of Muslims from Zvornik. While doing so, the detainees were beaten. Involved in this event was also a soldier, who the witness believes worked for Arkan. As the soldiers left, one member of the group from Loznica told the detainees that he would see them at noon at the *Ekonomija*.

That day, military police escorted the witness and others to Zvornik, where they were given passes which would enable them to move around. The group from Loznica arrived, took the passes and showed a document to the military police stating

that the witness and others should be detained at the *Ekonomija*. The military police then transported the witness and his fellow detainees to the *Ekonomija*.

The *Ekonomija*: the witness was transported to the *Ekonomija* where he remained from 9 May 1992 to 12 May 1992. The guards at the *Ekonomija* wore grey JNA uniforms. While at the *Ekonomija*, the group from Loznica repeatedly beat the detainees with clubs, pipes, stakes and hoses. The detainees were forced to beat each other as well. Guards played Russian roulette with detainees. Some detainees died during beatings. At some point in time, the soldiers from Kraljevo were present and humiliated the detainees during the beatings. On another occasion, the group from Kraljevo ordered the detainees to undress, sharpened their knives, and then took [REDACTED] outside to be beaten.

On another occasion, someone came to get prisoners to be used for labour. When *Vojvoda Čelo* told him to look for detainees elsewhere, he responded by saying, "Where? You have slaughtered everyone."

The *Ciglana*: On 12 May 1992, the witness was transferred to the *Ciglana* brick factory where detainees were forced to work. The detainees were told they would be paid and not get beaten, but neither of these claims was true. Guards beat detainees and ordered them to lick their boots and sing Chetnik songs.

On 30 May 1992, the group from Kraljevo took charge of the detainees in the *Ciglana* and used them to plunder building materials and household goods. Serb looters and their associates took some of the stolen goods. Trucks carried looted materials towards Serbia. The witness heard a truck driver say that they were sold through the Jadar Company in Loznica. The witness saw that detainees who were forced to take part in looting were beaten and stabbed..

The witness will testify to his work assignments and to who ordered him to work. On one occasion, while having to clean a car the witness saw that the trunk of the car was covered in blood with marks that looked like they were made by human heads.

On one occasion, the witness saw six buses full of detainees going from Zvornik towards Bijeljina. The witness later learned that they carried 800 men to Pilica, purported to be exchanged. The witness was also told about abuse of detainees in the Čelopek Cultural Centre.

Batković: on 15 July 1992, the Loznica group, which had taken control of the detainees, announced they would be transported to Subotica. The Kraljevo group

objected to this. Eventually, the witness and other detainees were put on buses and brought to Batković. There were 186 detainees from all over Zvornik who were transported to Batković.

In Batković, the witness met detainees, who reported being abused in the Čelopek Cultural Centre by Zoks, Pufta and *Vojvoda* Repić. The witness was released from Batković in December 1992.

Paragraphs: 12, 15, 16, 17 a, 17b, 17c, 17d, 17e, 17g, 17h, 17i, 17j, 18, 22, 24, 25, 26, 27 and 28.

Counts: all counts.

### 3. Content of the testimony

Witness VS-1013, [REDACTED], testified under protective measures and with image and voice distortion on 25 and 26 March 2008.

The witness clearly stated that he had heard about a rally held by the Serbian Radical Party in Mali Zvornik in 1990 or 1991 and about some shooting. This witness will be remembered for his assumption that the war began because of the grand plan devised by the Serbian Academy of Sciences and Arts following the arrival of Dobrica Ćosić, Vuk Drašković, Professor Vojislav Šešelj and Bora Đorđević at that institution, which he also linked with the suicide of Branko Ćopić. This witness armed himself by purchasing a rifle. Through this witness, Professor Vojislav Šešelj managed to go through the most important details of the book written by Himzo Tulić, who described both Muslim preparations for the armed conflict and the anarchy which reigned in the Muslim leadership in Zvornik. The witness did not contest the allegations from the book, but stated that, according to him, everything that was written was probably correct because he respected the author of the book.

The witness confirmed that the fighting for Kula Grad lasted from 8 April to 26 April 1992. The witness was in Kula Grad on the day before it fell.

At first, the witness could not remember the testimony he had given to the Muslim authorities in Vienna in 1993, but he recalled it when it was presented to him. In this written statement, the witness never mentioned “Šešelj’s men”, Professor Vojislav Šešelj, or the Serbian Radical Party. This was the witness’ first statement, given when his memory was the freshest. The statement also mentions *Vojvoda* Čelo from Kraljevo, who does not exist.

It was also included in the record that Prosecutor Mussemeyer had questioned Miroslav Vuković Čele as a suspect and that the Prosecution knew that Čele had come

to Zvornik from the Junaković spa, where he had been undergoing treatment, and that his task was to guard the alumina plant in Zvornik. In 1992 Čele was not a *vojvoda*, and he remained in the Zvornik municipality until 17 May 1992, when the JNA withdrew.

During the hearing of this witness, it was established that none of the persons named by the witness as his torturers belonged to the Serbian Radical Party. Statements given to the defence team by Žuća, Gogić and Miroslav Vuković aka Čele were read out, [REDACTED]

[REDACTED]. The witness provided a completely erroneous description of *Vojvoda* Čele (about everything, in particular about Čele limping) and Žuća. The witness repeated that he had never claimed that Gogić had been a member of the Serbian Radical Party but that this referred to the Kraljevo group.

The witness' claim that Dragan aka Toro from Kraljevo had a black military record booklet which said that he was a member of "Šešelj's army" is nonsense.

Through this witness, the judges heard about the book entitled *Milan Panić mora pasti* /Milan Panić Must Fall/ which contains interviews from 1992. A portion about the press conference of 6 August 1992 was read out.

#### 4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17a, 17b, 17c, 17d, 17e, 17g, 17h, 17i, 17j, 18, 22, 24, 25, 26, 27 and 28, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1-14 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1015, [REDACTED] [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1015, ██████████, was planned as a Prosecution witness through whom the following was to be proven:

2. Summary of testimony for VS-1015, ██████████

Biography: ██████████.

Background: the witness lived in the village of ██████████ ██████████. According to the 1991 census, the village was 75% Serb and 25% Muslim. Ethnic communities in ██████████ lived alongside each other peacefully.

The witness heard on Radio Zvornik that Arkan's men attacked Bijeljina in March or April 1992. Soon after, Serbs set up checkpoints on brigades over the Drina and in places where Serb-populated areas bordered Muslim populated areas. All Muslims were checked.

Two days before the attack on Zvornik, the witness and his family tried to drive to Serbia. Two Serbs stopped them from passing through Zvornik. The witness left his car and, thanks to connections with local Serbs, crossed the Drina in a boat normally used to ferry Serbs who wished to leave Bosnia.

After the take-over: on 10 April 1992, the witness heard on Radio Zvornik that it was safe to return. The witness returned to ██████████, where he heard the Serbian police had been looking for him. The witness heard that Muslims had to turn in all of their weapons and went to the police station to do so.

During the following weeks, it became difficult for Muslims to move freely, and the witness saw Serbs from elsewhere coming to the area.

Detention: on 7 May 1992, three Serbs, ██████████ ██████████, detained the witness, ██████████. They were forced, at gunpoint, into a van, which was stained on the inside with blood. The Serbs drove to a nearby café to pick up two other Serbs, whom the witness believes gave the order to arrest him ██████████. One of these Serbs was referred to as *vojvoda*. The van drove through a barricade near the Cultural Centre in Čelopek. The witness saw JNA tanks around this barricade. The witness, ██████████ were taken to the *Ekonomija* farm where men in JNA uniforms guarded them.



The *Ekonomija*: the witness [REDACTED] were briefly interrogated and then two men took their shoelaces, watches and belts. These men were named Pivarski and Saša. The witness [REDACTED] were placed in a room with 17-18 other men who were bruised and visibly frightened. A group of Šešelj's men from Kraljevo, including Pufta, Sava, Saša and Zoks, would regularly come to this facility to beat the detainees. A group of "special police" from Loznica, including a man named Gogić, beat them as well. The witness was told about [REDACTED] being sodomised by Zoks.

On one occasion, Zoks removed the witness from the detention room and was ordered to answer questions asked by the *vojvoda*, the same man who had been in the van when the witness was detained. The *vojvoda* asked him questions about a Serb selling arms to Muslims while Zoks beat him. The *vojvoda* threatened to rape his family. The witness' [REDACTED] was removed for a similar beating and died soon after. [REDACTED]

On another occasion, the detainees were ordered to pray while the *vojvoda* decided who would live or die. After five minutes, the *vojvoda* entered, wearing a fur hat with a cockade. He declared that they would be spared and sent to work in the *Ciglana*. The *Vojvoda* used words commonly used in Serbia rather than Bosnia. Eventually, "Captain Niški", a leader of a group of Šešelj's men, came and selected a group to go to the *Ciglana* brick factory. The witness was part of that group. During his detention, the witness saw others come to the *Ekonomija*, at least one of which was brought by Pivarski.

The *Ciglana*: at the *Ciglana*, guards placed white arm bands on the witness and his fellow detainees to distinguish them from Serb workers. They worked in four-hour shifts producing bricks. While at the *Ciglana*, the witness and other detainees were also ordered to go to Zvornik and Kozluk to plunder. These plundering missions were usually lead by Majo, Dragan, Toro, Zoks, Pufta, Saša and other men whom the witness believes to be "Šešelj's men". They mainly looted from Muslim homes. Looted goods were eventually sent to Serbia.

On one occasion, Pufta ordered [REDACTED] to remove a crescent tattoo from his arm. He tried to burn it off with matches, but it did not come off. Pufta eventually cut it off. Pufta also murdered another detainee. On one occasion, the witness saw a detainee at the *Ciglana* beaten to death.

While at the *Ciglana*, the witness learned from others about abuse of detainees at the Cultural Centre in Čelopek and about a large number of people detained at the School Centre in Karakaj. The witness heard that local Serbs beat and humiliated other detainees. On 1 June 1992, the witness saw large trucks filled with elderly Muslim men and women pass by the *Ciglana*, heading towards Zvornik. Soon after, he saw the same trucks driving in the opposite direction, empty.

On 2 July 1992, the Special Police from Loznica replaced the Kraljevo Group (Toro, Zoks, Saša, etc.) at the *Ciglana*. By that time, it appeared to the witness that the local Serbian authorities of Zvornik had complete control over the city, and no longer desired the presence of Šešelj's men. The Special Police from Loznica continued the looting operation that had been previously carried out by Šešelj's men. Local Serbs from Zvornik were permitted to enter the *Ciglana* factory complex and humiliate the non-Serb detainees. On 15 July 1992, the witness was forced to take part in a plundering trip to [REDACTED]. He noticed that most Muslim-owned houses, including his, were occupied by Serbs.

Batković: on 15 July 1992, the witness was transferred to Batković. In Batković, there were 86 detainees from Cultural Centre in Čelopek. They spoke to the witness about crimes committed at Čelopek..

The witness was eventually exchanged from Batković.

Paragraphs: 12, 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 22, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

Counts: all counts.

3. Content of testimony:

Witness VS-1015, [REDACTED], testified on 27 March 2008 under protective measures and with image and face distortion. [REDACTED]

The witness could not recall the statement he had given to the Muslim authorities on 22 December 1993, after his release from Batković, but remembered it later on. The statement differed from the one he gave to the Prosecution's investigators. Through this witness a solution was found to the dilemma over attempts to use various witnesses to identify the *vojvoda* as Čele and thus find a link with Professor Vojislav Šešelj. This witness exaggerated when he told the story of Šešelj's

sabotage units. This witness was instrumentalised and his testimony does not correspond to the first statement he gave in 1993.

4. Summary of testimony:

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17a, 17b, 17c, 17d, 17e, 17f, 17g, 17h, 17i, 18, 22, 24, 25, 26, 27, 28, 29, 30, 31 and 32, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1-14 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1014, FADIL KOPIĆ,  
PURSUANT TO RULE 92 *ter***

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1014, Fadil Kopic, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina - Zvornik, April 1992 - September 1993:

"Moreover, there was widespread detention in brutal detention facilities where many non-Serbs were beaten, tortured and killed." (footnote 300)

"Around 30th May 1992, a group of SRS/SČP volunteers took charge of the detainees in the *Ciglana* factory and forced them to plunder and loot houses in Zvornik." (footnote 306)

2. Summary of testimony for VS-1014, Fadil Kopic

Biography: Muslim male.

Background: on 5 May 1992, the witness and a dozen other men, while trying to flee towards free territory, were detained by several police officers.

The witness and his companions were taken to the Serbian village of Vidovići. The witness saw men in civilian, police and military clothes. The detainees were searched and their money, documents, watches and gold were taken. The detainees were ordered to lie on the ground and were beaten. One of the captors, an older man

with a šubara and a long beard said that he would kill the detainees. Another captor declared that their orders were to take the detainees to Zvornik. The policemen restrained the detainees' hands and loaded them on a truck that travelled towards Zvornik.

The truck first stopped at the *Alhos* factory in Karakaj, where the police captors spoke with a group of Serb soldiers in green and grey uniforms. The truck then stopped at the SUP building in Zvornik. At the SUP, the detainees were questioned individually about their background and threatened.

The *Ekonomija*: The witness and other detainees were taken to the *Ekonomija* farm at Karakaj, where they were guarded by men in olive grey JNA uniforms. The witness was placed in a concrete room covered in blood stains. For the first few days, the witness had no bedding. Hay and cardboard was eventually provided. There were two meals a day, no soap and no towels. Some guards allowed the detainees to use toilet facilities.

During this period of detention, a group of men wearing camouflage uniforms entered the room and beat the detainees. They referred to themselves as "White Eagles". Each of these men had at least three pistols, an automatic weapon and a knife stuck in the boot. They threatened, insulted and cursed the detainees and their president. They glorified their leader, Professor Vojislav Šešelj, and according to what they said to the witness, it appeared that they reported directly to Šešelj. The witness later learned that these men were from Kraljevo. The group included Major, Dragan Toro, Zoks, Pufta, Savo and Repak.

A few days later, the witness was joined by more detainees from the *Standard* factory in Karakaj. The group from Kraljevo and a group of five or six military policemen from Loznica beat them as well. Based on what the men from Loznica said, the witness believes that they reported directly to Šešelj. Pivarski later joined these men and took part in the beatings as well.

New detainees arrived and others left. At one time, there were 40 detainees at the *Ekonomija*. All of the detainees were repeatedly beaten by the men from Loznica and Kraljevo. The witness saw one detainee being sexually assaulted and then killed. The guards did nothing to stop this treatment. Local Serbs from Zvornik were permitted to mistreat the detainees.

In one instance, Niški, one of the men from Loznica, lined up detainees and selected the most physically fit. The selected group was then put on a truck and taken to the *Novi Izvor* brick factory, also known as the *Ciglana*.

Pivarski approached the witness and asked if he could pay any money to be released or exchanged. The witness could not locate his family but offered 700 DM which he had carefully hidden. Pivarski took the money but the witness was not released. The next day Niški arrived and told the witness that he could not be released but would be brought to another camp where the detainees were not beaten.

The *Ciglana*: The witness was then taken to the *Ciglana*. In the *Ciglana*, the witness was forced to work with the men from Loznica and Kraljevo to loot empty Muslim houses in the town of Zvornik and neighbouring villages. Trucks transported the looted items across the Drina to Serbia. Other detainees worked in the *Ciglana* to make bricks.

Beating eventually began in the *Ciglana* as well. While in the *Ciglana*, the witness met people who had been detained at Cultural Centre in Čelopek and had been tortured there.

Batković: In mid-July or late July, the witness was transferred to Batković. Sanitary conditions were awful and food was scarce. Detainees were beaten and elderly detainees and children were hidden whenever the ICRC would visit the camp.

Paragraphs: 12, 14, 15,16, 17a, 17i, 18, 22, 24, 25, 26, 27, 28, 30, 31 and 32.

Counts: all counts.

### 3. Content of testimony

Witness VS-1014, Fadil Kopic, testified *viva voce* on 9 April 2008 pursuant to Rule 92 *ter*. [REDACTED]

Having learned from testimonies previously given pursuant to Rule 92 *ter*, the judges concluded that there were discrepancies between this witness' recent statements and the one he gave in 1993, in which he never mentioned "Šešelj's men". Other witnesses considerably clarified who the men referred to as the Kraljevo and Loznica groups were and that they had nothing to do with the Serbian Radical Party or Professor Vojislav Šešelj. Obviously, this witness also was prepared to draw his conclusions about the men who were allegedly "Šešelj's men" from their alleged admission, or, rather, from the fact that they introduced themselves as such. It is characteristic of all witnesses testifying about Zvornik that they did not mention the

Serbian Radical Party or Professor Vojislav Šešelj in their initial statements, but as the trial approached, they suddenly remembered that those were “Šešelj’s men”, if not on account of their uniforms and beards, then because their torturers admitted it to them or allegedly bragged of being Šešelj’s men.

This witness allegedly became the prisoner of “Šešelj’s men” after Kula Grad was liberated, but the judges know that not a single volunteer of the Serbian Radical Party remained on the territory of Zvornik after 26 April 1992.

#### 4. Summary of testimony:

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 14, 15, 16, 17a, 17i, 18, 22, 24, 25, 26, 27, 28, 30, 31 and 32, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1-14 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1062, [REDACTED], [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, VS-1062, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina - Zvornik, April 1992 – September 1993:

“The takeover of Zvornik town occurred between 8 and 9 April 1992 when Serb forces, including Arkan’s men, (footnote 286) SRS/SČP volunteers, local Serb TO and police attacked and took over the town.” (footnote 287)

“The takeover of Zvornik town occurred between 8 and 9 April 1992 when Serb forces, including Arkan’s men, SRS/SČP volunteers, local Serb TO and police attacked and took over the town. The attack was supported by JNA shelling from Serbia and the Serbian TO from Loznica. Many non-Serb civilians were killed during the takeover.” (footnote 290)

“There was a mass displacement of people in Zvornik along ethnic lines (footnote 303) and non-Serbs were forcibly deported to Austria and Hungary.” (footnote 304)

2. Summary of testimony for VS-1062, [REDACTED]

Biography: [REDACTED]

Background: the first indications of the war spreading to Zvornik occurred a few days before the attack on the municipality with small arms being fired from Mali Zvornik and the arrival of tanks in the area.

On 8 April 1992, there was a meeting in Mali Zvornik between Arkan, representing the Serbs, and [REDACTED], representing Bosnian Muslims. After the meeting, Kapidžić told the witness that the situation was grave and she should leave Zvornik.

Attack on Zvornik: On 8 April, Zvornik was shelled from Mali Zvornik. The witness and others in her apartment block took shelter in the basement. In the cellar, there were about 12 men, 15 to 16 women, three children and two babies. None of them had any weapons.

On the morning of 9 April 1992, a group of soldiers in camouflage uniforms broke into the basement. [REDACTED]

[REDACTED] The soldiers searched the occupants for weapons, but no weapons were found. The soldiers separated the men and boys from the women [REDACTED] and lined the men and boys against a wall. The witness heard gunfire from where the men were lined up and believes they were executed. The witness heard from others that they'd seen bodies where the men were assembled earlier.

SUP: The witness and other women were marched to the SUP building. En route, they saw the bodies of several Muslims and heard loud Chetnik music. The witness and others were placed inside the library near the SUP building where they were abused by a group identifying themselves as “Šešelj's men”. These men claimed that they were “good guys”, but the witness believes that “Šešelj's men” took part in the execution at the basement..

Arkan arrived and announced that buses would take them away. The witness and other women were transported to Banja Koviljača, in Serbia. While travelling through Zvornik, the witness saw many dead bodies.

Return to Zvornik: A week later, the witness and another Muslim woman returned to Zvornik and spoke to Dragan Nikolić to find out about her family. He told them to go home.

The witness went to see Grujić, the Serb President of the Municipality, who informed them that he could not help them and that there was no longer a place for Muslims in Zvornik.

The witness returned to her own apartment block. At the site where she had last seen the men from the cellar, she saw her husband's hat and one of her son's sports shoes lying on the ground covered in blood. There was blood on the wall, which was peppered with bullet holes. On the ground the witness saw a number of spent bullets and three or four garrotte wires.

Paragraphs: 12, 15, 16, 17a, 17i, 18, 22, 27 and 28.

Counts: 1, 2, 3, 4, 10 and 11.

### 3. Content of testimony

Witness VS-1062, [REDACTED], testified on 10 April 2008, under a pseudonym and with image and voice distortion. The trial often went into private session. During the hearing, she failed to confirm many details from the Prosecution's Final Pre-Trial Brief and her evidence summary. She did not even try to describe the abuse by "Šešelj's men", and clearly stated that "Arkan's men" took part in the execution. A problem emerged here because no execution had taken place in a cellar or shelter. It is characteristic of this witness that, guided by her open hatred and wish to put the blame on Professor Vojislav Šešelj, she would not confirm that she had never mentioned "Šešelj's men" in her initial statements. She did not hide her hatred and almost never turned towards Professor Vojislav Šešelj during the hearing, but kept looking towards the Prosecution instead. She did not even admit to the signature on what was obviously a statement she had given to the organs of Bosnia and Herzegovina on 3 February 2003 and which the Prosecution had disclosed to Professor Vojislav Šešelj. Professor Vojislav Šešelj therefore interrupted the cross-examination and the judges furiously tried to smooth over this situation in which Professor Vojislav Šešelj was obviously being falsely accused. [REDACTED]

[REDACTED]

What matters is that she did not even mention "Šešelj's men" in her first statement.



#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17a, 17i, 18, 22, 27 and 28, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 10 and 11 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1065, ██████████, WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1065, ██████████, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina

Zvornik, April 1992 - September 1993:

"The attack was supported by JNA shelling from Serbia [288] and the Serbian TO from Loznica." (footnote 289)

"Over the coming weeks other parts of the municipality were taken over by Serb forces including Arkan's men, the JNA and SRS/SČP volunteers." (footnote 293)

"There is evidence of mass killings of non-Serb civilians in Zvornik (footnote 296) – the bodies of 200 Muslims were recovered from the streets of Zvornik following the take-over and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in Bosnia and Herzegovina after Srebrenica." (footnote 299)

"Moreover, there was widespread detention in brutal detention facilities where many non-Serbs were beaten, tortured and killed." (footnote 300)

"At the Čelopek Cultural Centre, Serb forces, including SRS/SČP volunteers, forced Muslim men to engage in sexual activity." (footnote 301)

“There was a mass displacement of people in Zvornik along ethnic lines, (footnote 303) and non-Serbs were forcibly deported to Austria and Hungary.” (footnote 304)

2. Summary of testimony for VS-1065, [REDACTED]

Biography: [REDACTED]

Background: The witness will testify that Serb/Muslim relations in Zvornik were good until a few months prior to the war. In April 1992, the villagers held a protest rally in favour of peace and after the rally established a Crisis Staff to organise their defence. The next day, the witness heard that the Serbs in Zvornik had erected barricades and that the war had started. But nothing happened at the witness' village.

During the month leading up to the attack on Zvornik, the witness saw artillery and tanks on the Serbian side of the bridges near Zvornik.

Take-over: On 8 April 1992, Serbian police blocked the road between Karakaj and Zvornik. Within two days, Serbs took over the town of Zvornik. The witness was in the village of Divič which remained under local control. Throughout May, Major Marko Pavlović repeatedly met with the Divič Crisis Staff, trying to convince them to turn over their weapons.

Sometime during May 1992, Serbs attacked Divič. The witness saw Serb soldiers searching houses for weapons. Zvornik police initially controlled the village and treated civilians well. Around 20 May 1992, the military replaced the Zvornik police. On 26 May 1992, Serb soldiers gave the civilian population two hours' notice to board buses and move out of the village. The witness observed approximately 500 people board 11 buses.

Čelopek: After being kept on these buses for nearly a day, the witness and other civilians arrived in Zvornik. The men were ordered off the buses and taken to a football field where men of military age were separated from the rest. The witness and 173 other men of military age were forced to stay behind as the others left. Later, these men were taken to the *Novi Izvor* mine and placed in a room that had only enough place to stand. After several days, the witness and 161 other Muslim men boarded buses and were taken to the Cultural Centre in Čelopek. The witness was detained there for one month. During much of this time, there was little food and limited access to toilet facilities. Soldiers ordered the witness and other detainees to turn over belts, shoelaces, documents and other possessions. Detainees were later ordered to create a list of their names and their fathers' names. The witness believes

that Dušan Vučković aka Repić was in charge of the group detaining him. Repić wore a fur hat with a cockade. He spoke a dialect spoken in Serbia and carried a long knife.

The witness and others were asked questions about weapons and the locations of particular people. On one occasion, Repić interrogated a group of detainees while other Serbs kicked and hit them. On another occasion, Zoka took several detainees outside and shot them. He then announced that every tenth person would be killed if they didn't answer the questions.

The witness and others observed that Repić and Zoka commanded two different groups of men. One group came from Loznica in Serbia. Both groups tortured the detainees. They forced detainees [REDACTED], to sing Serb songs, perform oral sex on each other [REDACTED]. They threatened, assaulted and killed detainees as well, beating, stabbing and shooting them. They forced the witness and other detainees to carry away bodies and clean up blood. Throughout this period, Serbs continually asked for money. On 26 June 1992, Repić shot and killed 20 people and injured another 22. On 27 June 1992, the witness and other detainees were taken to the Zvornik jail.

Batković: On 17 July 1992, the witness and other detainees were taken to Batković where they had to perform forced labour. They lived in tents for about a month before being moved into hangars. Several detainees died there while performing forced labour.

Paragraphs: 12, 14, 15, 16, 17, 18, 22, 24, 25, 26, 27, 28, 30, 31 and 32.

Counts: 1,2,3,4,5,6,7,8,9, 10 and 11.

### 3. Content of testimony

This witness testified with protective measures on 22 April 2008. [REDACTED] The witness was tortured from 26 May 1992. Professor Šešelj did not cross-examine the witness because his whole argument is that no volunteers of the Serbian Radical Party remained in the territory of Zvornik municipality after 26 April 1992, and the witness never suggested by a single word that there might be a link between Professor Vojislav Šešelj and the volunteers of the Serbian Radical Party on the one hand and the Yellow Wasps on the other.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 14, 15, 16, 17, 18, 22, 24, 25, 26, 27, 28, 30, 31 and 32 but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17f, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1106, ASIM ALIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1106, Asim Alić, was not planned as a Prosecution witness

2. Summary of witness evidence for VS-1106, Asim Alić

Biography: Muslim male, police officer in Zvornik at the time of the events.

Events in Zvornik before the outbreak of the war: Two weeks before the attack on Zvornik, the Serbian population started to move out of the village, taking all their valuables with them. When the witness asked his Serbian colleagues what was happening, he did not receive a reasonable answer. JNA forces The witness will testify that the JNA forces, on their way to the battlefield, fired their weapons as they passed through Zvornik and the surrounding area in order to scare the inhabitants. The first barricades were erected the night of the 5<sup>th</sup> and 6<sup>th</sup> April 1992. Serb forces completely shut down the access roads to Zvornik and it was impossible for the witness to go to the different police stations in Zvornik. He could communicate only over the phone. On 6 April 1992, all Serb police officers left Zvornik and relocated in the *Alhos* factory in Karakaj. The witness became Chief of the Police in Zvornik, because he was simply the highest ranking officer who remained. The Serb policemen had taken almost all of the equipment with them to Karakaj. They destroyed the equipment that they were unable to take.

In the morning of 7 April 1992, two Muslim representatives together with two Serb representatives were invited by Arkan to come to the *Jezero* Hotel in Mali Zvornik. The witness heard that Arkan slapped the faces of all four of them. He threatened one of the Muslim representatives with a pistol and a knife to make him

sign a statement, saying that there were 7,000 Green Berets in the city of Zvornik, who came to expel the Serbian population. Later, Arkan issued an ultimatum to the effect that all the weapons should be surrendered to the TO by the next morning. Otherwise Zvornik would be attacked.

Arrest of four armed Serbs the morning of the attack: About one in the morning on 8 April 1992, four armed Serbs who entered Zvornik were arrested. The witness interviewed them. Two of them were brothers and showed their IDs, identifying themselves as members of the Serbian Chetnik Movement. Their nicknames were Žučo and Repić. The two others belonged to "Arkan's men". The witness collected all the equipment they had on them and put it on the table. They had automatic rifles, pistols, Rambo compass knives, special strangling wires, etc. They wore the JNA Special Forces camouflage uniforms with belts, fingerless gloves, woollen balaclavas and military field boots. The two "Šešelj's men" wore Serbian Chetnik Movement insignia on their arms. The two "Arkan's men" also had some insignia on their arms, but the witness does not remember it. He separated them, placed each of them in a different room and interviewed them. The four men told the witness that they had learned from the Serbian TV that the Serbs in Zvornik were endangered. They had voluntarily come to Zvornik to protect the Serb nation. They were told that Muslim in Zvornik were maltreating and killing Serb people, raping Serb women, burning their houses down, etc. The witness asked them whether they found that information to be correct. They admitted that they were misled by the propaganda, but the witness believed they said so only because they were afraid. They admitted that they were to report to Zvornik SDS based in the *Jezero* Hotel in Mali Zvornik. They mentioned the JNA Major Marko Pavlović. They admitted that they were lost and had accidentally driven into BH Territory. The witness will testify that during the arrest and interrogation of these men, Major Pavlović called several times, indicating that one of the arrested was very important to the Serb forces. Later on, after the four Serbs were released, the witness learned from the statements of detainees at the *Ciglana* camp that the four above-mentioned Serbs had maltreated, tortured and killed Muslim detainees the most.

Attack on Zvornik: The witness will state that, about 1000 hours in the morning of 8 April 1992, the Serbs started to shell Zvornik. All important buildings in Zvornik were targeted, as well as the town centre where most of the population lived.

The Muslim forces did not have the means to resist and withdrew at around 2100 hours in the direction of Kula Grad.

Paragraphs: 5, 6, 7, 8, 10g, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 31 and 32.

Counts: all counts.

### 3. Content of testimony

He testified *viva voce* on 15, 20 and 21 May 2008. Until October 1991 the witness was a policeman in Belgrade and he confirmed that on between 10 and 20 occasions he had participated in the arrest of Professor Vojislav Šešelj in Belgrade. This is invaluable information because it refutes the Prosecution's argument that Professor Vojislav Šešelj participated in the JCE prior to August 1991. This was also the first time that we heard that the Tuzla police had planned to arrest Professor Vojislav Šešelj on his way to Bratunac in early 1992 in order to prevent him from delivering a speech in Bratunac. The witness explained what preventive arrest meant.

It was explained that the Serbian Radical Party had branches in Banja Luka and Bijeljina, and that there had been no rallies in Bosnia in Herzegovina in general and, in particular, no chance that one was held in Bratunac. The witness confirmed that, as he said, unfortunately, Professor Šešelj still had followers and sympathisers in Tuzla today. The witness confirmed that there were sympathisers and followers in Zvornik as well but no members or the Serbian Radical Party and no board. It was established that Professor Vojislav Šešelj had not received two statements that the witness had given to the Prosecution prior to his testifying in Belgrade.

Also discussed were the first armed clash in the village of Sapna on 5 April 1992, the death of a warrant officer 2<sup>nd</sup> class and one local man, and Obrenović's threat that, unless the detained soldiers were released, the army would raze the village to the ground. On 6 April 1992, Colonel Tačić issued an ultimatum, demanding that all weapons owned by Zvornik municipality be surrendered. The witness told a fairy tale of how he drove Tačić from the checkpoint to the municipality in his car for the meeting, which is not true, but in this way he admitted that the Muslims had barricades and that Muslim criminals were armed.

During the attack, which is the term used by the witness, who objects to the use of the term clash, no Muslim policemen were killed, which corresponds to the statement of [REDACTED], because they had all fled.

Professor Vojislav Šešelj confirmed that two buses of Serbian Radical Party volunteers had arrived from Belgrade before the armed conflict began. The witness tried to avoid “Arkan’s men” but confirmed that they had erected barricades near Karakaj, that the JNA controlled four important points in the wider area of Zvornik and that it had mobilised the reserve forces from the territory of Zvornik, who were predominantly Serbs because Alija Izetbegović had ordered the Muslims not to respond to the draft.

The witness was shown the statement of [REDACTED] according to which the witness had been organising Muslim armed forces, which the witness denied, and that two meetings of the SDA Crisis Staff had been held at the police station, which the witness confirmed. The witness confirmed that the Muslims had armed themselves with weapons from the police depot, but alleged that they had broken into the depot and he had not given them the weapons.

The witness denied that he had participated in the formation of the Patriotic League, but confirmed the existence of the plaque in the village of Goduš, referred to by [REDACTED] in his statement as a monument commemorating the formation of the Patriotic League in October 1991. The witness fled from Zvornik to Tuzla, returning on 22 May 1992 to the new municipality of Sapna, where he participated in the expulsion and killing of Serbs from the surrounding villages. In response to a question from the judge, the witness confirmed that the Muslim army had cleansed the Serbian villages and that it was not within his competence to investigate and file criminal reports. The witness was compromised because he had been involved in illegal dealings as a policeman and is currently suspended from his job in Tuzla.

The witness erroneously described an SČP card allegedly found on Žučo and Repić, who were arrested on 6/7 April 1992 at a Muslim barricade in Karakaj. An important detail stood out during the hearing, i.e. that “Šešelj’s men” and “Arkan’s men” had arrived in buses during the previous days. It is unclear how come two of “Šešelj’s men” and two of “Arkan’s men” could have been in the same car.

A report from the Bijeljina police on the criminal activities of three paramilitary groups in Zvornik municipality, signed by Adnan and dated of 20 July 1992, was also introduced. The document contains information about the members of the group, most of whom came from Zvornik municipality, with a remark that Žučo was not a member of the Serbian Radical Party. The witness also knows that the members of the Yellow Wasps also mistreated Serbs.

The witness confirmed that high-ranking police representatives visited them on several occasions because of the situation in the Zvornik police station. When the police force was divided, one Serb remained with the Muslim police and was expelled from the station.

The witness was compromised by Milivoj Ivanišević's document, according to which he took part in an attack on Rožanj village on 2 July 1992 in which Serbs were killed; he was the chief of the Sapna police station at the time. The credibility of this witness was destroyed by the statements of Tačić, Žučo and Milivoj Dukić.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 10g, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 31 and 32, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1012, [REDACTED]**

#### **[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1012, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina - Zvornik, April 1992 - September 1993:

"There is evidence of mass killings of non-Serb civilians in Zvornik – the bodies of 200 Muslims were recovered from the streets of Zvornik following the take-over and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in BiH after Srebrenica." (footnote 298)

"Moreover, there was widespread detention in brutal detention facilities where many non-Serbs were beaten, tortured and killed." (footnote 300)





[REDACTED]

Paragraphs: 12, 15, 16, 17 a, a7b, 17c, 17d, 17g, 17h, 17i, 18, 22, 24, 25, 26, 27, 28.

Counts: 1-11.

### 3. Content of testimony

[REDACTED]

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17 a, a7b, 17c, 17d, 17g, 17h, 17i, 18, 22, 24, 25, 26, 27 and 28, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1064, [REDACTED]**

#### **[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1064, [REDACTED], was not planned as a Prosecution witness.

2. Summary of testimony for VS-1064, [REDACTED]

Biography: [REDACTED]

[REDACTED]

Events in Drinjača: The witness will testify about the rising tension between Serbs and Muslims in the Drinjača area leading up to the 1990 elections and the events that ensued. He will describe the arming of the Serbs who wished to remain in Yugoslavia. The Muslims guarded their villages, such as Kostijerevo and Drinjača, in order to protect themselves, but, in general, they only had a few hunting rifles (although a few individuals were able to purchase other weapons on the black market).

In or around February/March 1992, the witness was at the Municipal Building in Zvornik where he overheard a man dressed in a reservist uniform say that he was part of the Serbian Army based in Čelopek. In mid-March the witness heard that the Serbs had established their own police force in Zvornik, had declared Zvornik a Serbian municipality and were preparing to attack Zvornik with the backing of the JNA.

In early April, Zvornik was attacked by the Serbs and overrun. The Muslims retreated to Kula Grad until the Serbs took Kula Grad on 26 April. The Serbs then demanded that all the Muslim villagers surrender. The day Kula Grad fell, a certain Ljubiša Petrović, who was a Serb policeman, came to Kostijerevo and Drinjača and passed the message that the villagers should surrender all their weapons. Consequently, on 29 April, Major Marko Pavlović came to Drinjača with some former JNA soldiers and some irregular soldiers and oversaw the surrender of all the Muslims' hunting rifles. The JNA tanks had Yugoslav flags on them. Pavlović promised the villagers full security. After this, people from Kostijerevo who went to work were beaten up by Serbs and sent back home. People became afraid and therefore began to stay in the forest rather than at home.

On 30 May it rained heavily so most of the villagers had returned to the village. The witness heard over Serb radio that soldiers were coming to the area and that the villagers should treat them with respect. At about 1000 hours, two military trucks full of soldiers entered the village. Soldiers also surrounded the village and started firing in the air. The soldiers were well armed and wore both camouflage and the former JNA olive drab uniforms. The soldiers rounded up the villagers and gathered them at [REDACTED] house in the centre of the village.

There were about 150 non-Serb men, women and children and the soldiers started beating and cursing them. They were kept outside [REDACTED] house until about noon when the officer in command received orders over the radio to take them

to the Cultural Centre in Drinjača which was about one kilometre away. They were escorted by the soldiers who told them that if they tried to escape they would kill them. They were taken to the Cultural Centre in Drinjača, where later people from surrounding villages such as Sopotnik and Devanja were also brought. Some of the witness' Serb neighbours were armed and in JNA uniform.

An officer, whom the witness later learnt was Lieutenant Branko Studen of the JNA, came in and ordered the women and children to go outside. The men were counted and there were 91 men in total. Studen told them that they "were guilty of nothing" and would be exchanged for Serbs in Zenica. Before Studen left, he told them that some specials would come and ask them some military questions. About 15 minutes after Studen left, paramilitaries arrived and the witness recognised them as "Arkan's men" by the uniforms they wore.

There were about six "Arkan's men" who humiliated the Muslim detainees by forcing them to pray as Christians and sing Serbian songs. Many of the men were dragged to the stage and severely beaten with iron bars and sticks. The "Arkan's men" told the detainees that they were Muslims and that no one would help them. Not Izetbegović, not Boutros Boutros Ghali of the UN.

The men were beaten until they could not walk. Those who passed out were revived with water. About 30 men were beaten in this severe manner. One man was stabbed on the stage. Another begged to be killed as the beating was so intense. Another looked like he had been tortured with electricity. This torture went on for about four hours. The group of "Arkan's men" then left.

About 30 minutes later, another group came in dressed in Chetnik uniforms. They had White Eagle insignia and cockades on their hats. These men demanded 10 volunteers whom they beat before taking them outside. The witness heard bursts of gunfire and presumed that the killing had started.

This process was repeated a number of times until the witness' group was taken out. There were less than half of them left at this time. Outside, five men fired at his group of 10 men. The witness was wounded and fell down and was shot again in order to finish him off.

When the Serbs went in to get more people, despite being surrounded by dead people, the witness managed to get up and head towards his village. He saw about 20 dead people in the school compound which is behind the Cultural Centre. After a

while, the witness stopped in a forest to rest and heard about four further bursts of gunfire coming from the Cultural Centre.

The witness believes that about 88 people were executed just outside the Cultural Centre in Drinjača, including his father and three brothers. When Ramin Grob/Glumina was exhumed, the witness identified his father and three brothers. The witness lists 52 of the people he remembers were executed in the Cultural Centre at Drinjača. Homes of Muslims in Kostijerevo and Drinjača were also set on fire. The witness believes that the Serb plan was to kill all Muslim men in the Zvornik area, to transport the Muslim women and children to Tuzla and to destroy their houses in order to eradicate all traces of the Muslims having lived in Zvornik.

Paragraphs: 12, 14, 15, 16, 17a, 17c, 17d, 17h, 17i, 18, 22, 24, 25 and 26.

Counts: 1, 2, 3, 4, 5, 6, 7, 8 and 9.

### 3. Content of testimony

The witness testified *viva voce* on 25 June 2008 with protective measures. The witness also testified in the Milošević case and gave two statements to Prosecution investigators without ever mentioning “Šešelj’s men”. The witness makes a clear distinction between “Arkan’s men” and all others, whom he describes as Chetniks. During the cross-examination, the witness was asked why he had only mentioned “Šešelj’s men” during the Prosecution’s proofing but never in his previous statements and testimonies, and he was also asked whether his grandfather, a member of the Ustasha army, had been killed by OZNA after WW2.

### 4. Summary of testimony

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 14, 15, 16, 17a, 17c, 17d, 17h, 17i, 18, 22, 24, 25 and 26, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1105, [REDACTED],  
PURSUANT TO RULE 92 *ter* WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1105, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina - Zvornik, April 1992 – September 1993:

“In early April 1992, the Accused approved a request to send SRS/SČP volunteers to Zvornik and SRS leaders brought SRS/SČP volunteers from Loznica, Serbia to Zvornik. Subsequently, when the war broke out, local Serbs joined the SRS/SČP volunteers in Zvornik and considered themselves members of the organisation.” (footnote 285)

2. Summary of testimony for VS-1105, [REDACTED]

Biography: [REDACTED]

Background: The witness will testify that Šešelj spent a night in Zvornik 15-30 days before the war.

Šešelj's role: The witness will testify that soon after the war began, people joined Šešelj's formations, including Žučo's "Yellow Wasps" [REDACTED]

[REDACTED]

Detention: Between 15 and 20 May 1992, the witness was taken by several police officers to the Technical School in Karakaj. [REDACTED]

[REDACTED] The witness was placed in a dark room with 45-50 detainees.

While in detention, the witness met another detainee, Saša, an SRS volunteer who was there because of his role in killing a civilian in Zvornik in order to take revenge for the death of a friend during the attack on Zvornik. Another detainee was taken from the Zvornik hospital. He was wounded by a bullet and therefore accused of having defended Zvornik. The rest of the detainees came from the *Ekonomija* camp.

Other detainees told the witness about being tortured in camps around Zvornik and being forced to loot. The witness was told by one of his captors that younger

detainees were used to load stolen goods onto trucks for transport to Serbia. The witness was abused while in detention. While being escorted between interrogations, he was knocked unconscious and urinated on.

[REDACTED]

Command: The witness will testify to the role of Marko Pavlović, whose real name was Branko Popović. He issued orders over the radio.

Graves: The witness will speak about mass graves in caves in Šahmanske Stijene, where helicopters dropped bodies out of nets. [REDACTED]

[REDACTED]

Paragraphs: 12, 14, 15, 16, 17a, 17b, 17c, 17d, 18, 22, 24, 25, 26, 27, 28, 30, 31 and 32.

Counts: all counts.

### 3. Content of testimony

The witness testified with protective measures, pursuant to Rule 92 *ter*, on 16 July 2008. [REDACTED]

[REDACTED] The witness was not cross-examined. [REDACTED]

[REDACTED] The witness renounced part of his statement according to which Šešelj had allegedly slept in someone's home in Zvornik between 14 and 30 days before the conflict in Zvornik began, but said that Žučo was one of "Šešelj's men". In the first statement he gave to the Muslim authorities in 1993, the witness had said that Žučo was one of "Arkan's men".

Based on the reply of Judge Antonetti, who said that he had asked the witness how he had concluded that Žučá was one of “Šešelj’s men” because he wanted to verify the witness’ earlier statements, it could be concluded that the relevance and probative value of the witness’ previous statements were not going to be uniformly interpreted.

#### 4. Summary of testimony

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 14, 15, 16, 17a, 17b, 17c, 17d, 18, 22, 24, 25, 26, 27, 28, 30, 31 and 32, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18,22, 29e, 31,34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-038, [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, VS-038, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Šešelj’s participation in the JCE:

“Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of "volunteers" who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories.”

[8]

Šešelj’s intent to participate in the JCE:

Commanders of SRS/SČP volunteer units and TO commanders often reported directly to Šešelj about events at the front lines and told him about crimes committed by volunteers. (footnote 93)





[REDACTED]

Paragraphs: 5, 6, 10a, 106, 10e, 10f, 10g, 15, 16, 17a, 17g, 18, 22, 31.

Counts: 1, 2, 3, 4, 12, 13, 14, 15.

### 3. Content of testimony

The witness testified with protective measures on 1 and 2 October 2008. The credibility of this witness was demolished. It turned out that he was a criminal with a thick file who may have gone to the Zvornik area to steal. [REDACTED]

[REDACTED]

[REDACTED] His testimony is of no use to the Prosecution.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 10a, 106, 10e, 10f, 10g, 15, 16, 17a, 17g, 18, 22 and 31, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 12, 13, 14 and 15, of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

## **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1093, [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1093, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina – Zvornik, April 1992 - September 1993.

“There was a mass displacement of people in Zvornik along ethnic lines” (footnote 303) and non-Serbs were forcibly deported to Austria and Hungary.(footnote 304)

2. Summary of testimony for VS-1093, [REDACTED]

Biography: [REDACTED]

[REDACTED]

In early January 1992, a military unit set up by the JNA arrived in the Zvornik area. In February 1992, a JNA armoured brigade stationed in Jastrebarsko, Croatia, before the war, arrived in Dubrave, a place between Zvornik and Tuzla. This unit was commanded by Colonel Tačić who moved his HQ from Dubrave to Šekovići shortly before the conflict commenced in Zvornik. They deployed one battery under the command of Captain Obrenović who had his HQ in Mali Zvornik or Čelopek. Every bridge in Zvornik was secured with one tank and an anti-aircraft gun. The JNA sent and positioned several tanks in the Šeković municipality. General Janković, who was based in Tuzla and allegedly reported directly to Belgrade, was the overall commander.

Between January and March 1992, the Serbs completed setting up their parallel authorities. They formed a Serbian municipality of Zvornik, a Serbian SUP, a Serbian TO. The Serbs simply withdrew from all the municipal bodies based in Zvornik town and they set up premises in companies in Karakaj.

During the first week of April 1992, the witness observed a tremendous military build-up in the area, including tanks, artillery and anti-aircraft guns. In this period, schools were closed and many Serbs left Zvornik.

On 7 April 1992, Muslim police stopped four members of Arkan's unit. The four men were interrogated and said that they had orders to assemble in Mali Zvornik (in the FRY, immediately across the Drina River from Zvornik) and collect weapons. They said they had come to liberate Zvornik. The four men had knives, handcuffs and Magnum pistols. In the JNA, only generals had such pistols. They also had pieces of steel wire with which to strangle people. They said they were well paid, and that they trained at special training grounds provided by the JNA, mainly in Pančevo. They explained that they had come to liberate Zvornik. The four men said busloads of Serbian volunteers had already arrived in Mali Zvornik. The four were released the following day.

One of "Arkan's men" said that the Belgrade media, radio and television continually broadcast reports about the corpses of Serbs floating down the River Drina, about camps set up at football stadiums in Muslim areas, and that every Serb should help to save Serbs in Bosnia. The witness did not observe anything of this nature.

[REDACTED]

[REDACTED], Zvornik was shelled from Serb positions in Mali Zvornik. Most of the shells landed on neighbourhoods and villages inhabited by the Muslim population.

Cleansing: The next day, from a vantage point on the hill overlooking Zvornik, the witness observed, through binoculars, groups of Muslims forced out of their homes by members of the different Serb units. Men and boys were separated from women and children. The witness saw several executions. He saw about 20

people being killed that day. The witness believes that the JNA witnessed these incidents but did not intervene or take action to protect the Muslim people.

Paragraphs: 12, 15, 16, 17a, 17g, 17j, 18, 22 and 31.

Counts: 1, 2, 3, 4 and 12.

### 3. Content of testimony

The witness testified *viva voce*, with protective measures, on 12 November 2008. The witness testified to the events in Zvornik leading up to 9 April 1992 and the subsequent period of fighting. The witness was used to confirm the irrefutable details about the arrest of four men on the barricades and the fact that they were “Arkan’s men”. It remains rather hard to believe that the witness saw “Arkan’s men” killing Sabit Bilalić and his sons from the hill, because it is impossible to see anything from such an enormous distance. His testimony was used to confirm [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Nevertheless, the testimony was heavily biased in favour of the Muslims’ innocence.

### 4. Summary of testimony

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17a, 17g, 17j, 18, 22 and 31, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4 and 12, of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

## **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1016, FADIL BANJANOVIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1016, Fadil Banjanović, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina – Zvornik, April 1992 - September 1993:

“The attack was supported by JNA shelling from Serbia and the Serbian TO from Loznica.” (footnote 289)

“There is evidence of mass killings of non-Serb civilians in Zvornik – the bodies of 200 Muslims were recovered from the streets of Zvornik following the take-over and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in BiH after Srebrenica. Moreover, there was widespread detention in brutal detention facilities where many non-Serbs were beaten, tortured and killed.” (footnote 300)

“There was a mass displacement of people in Zvornik along ethnic lines and non-Serbs were forcibly deported to Austria and Hungary.” (footnote 304)

2. Summary of witness' testimony for VS-1016, Fadil Banjanović

Biography: Muslim male, 29-years-old at the time of the attack. Former mayor of Kozluk.

Background: Prior to the outbreak of war, Serb irregular soldiers started coming into the Kozluk area and set up barricades. They told the witness that Brano Grujić had invited them and that they had come from Serbia. At that time, Brano Grujić was President of the SDS Crisis Staff. These soldiers started giving military training to local Serbs. Brano Grujić was stirring up ethnic tension in the area. Radio Zvornik and Radio Loznica were also broadcasting that the Muslims were heavily armed and were going to attack the Serbs.

By April 1992 military vehicles with “Drina Corps” markings were coming to the Kozluk area, asking the Muslims to surrender their weapons. The witness heard that in the town of Zvornik, the Serb and Muslim police had split, with the Serb police taking most of the weapons, vehicles, equipment and setting up a base in Čelopek.

The people in the main positions in Zvornik Municipality were Brano Grujić (President), Jovo Mijatović (parliamentary deputy for Zvornik municipality in the Serbian Assembly), Jovo Ivanović (President of the Executive Board) and Stevo Radić (deputy president of the municipality). Marko Pavlović, who the witness heard was a State Security agent from Serbia, was made head of the TO. Pavlović also had

connections with the local JNA commanders like General Janković and Colonel Tačić.

On 8 April 1992, Serbs attacked Zvornik. Kozluk was surrounded and cut off. The Kozluk Crisis Staff organised three separate meetings with the Serb hierarchy: two in Kozluk and one in Tabanci. The first meeting was chaired by Boško Milić, the manager of Drina Transport Company, and attended only by local Serbs. The objective of the meeting was to keep good relations between the parties. The other two meetings were held in Kozluk. The second meeting was attended by Branko Grujić, as President of the SDS Crisis Staff, Pavlović and other high-ranking SDS officials. Grujić ordered the non-Serbs to surrender their weapons and accused them of plotting against the Serbs. Following the second meeting, non-Serb villagers from the surrounding villages of Šepak and Skočić, fled to Kozluk because they were being terrorised by the Serb paramilitaries who were demanding weapons which they did not have, taking away people and killing them.

Meeting at *Alhos*: The witness went to the *Alhos* factory to meet with the Serbs in power. At *Alhos* he was introduced to Pejić who seemed to be in charge of the large number of armed soldiers there. The soldiers had close-cropped hair and looked like elite commandos. They were called “Arkan’s men” On another occasion, the witness went to *Alhos* to arrange for the release of non-Serb villagers. They were badly beaten and spoke of witnessing killings and mutilations.

Žučo: Some time in May, Pejić was succeeded by a man called Žučo, who was a paramilitary leader. Things then changed for the worse. Soldiers passing through Kozluk fired in the air, looted, robbed and intimidated the Kozluk villagers. By the end of May 1992, most Muslims had secretly fled the area since the living conditions had become intolerable.

Attack on Kozluk: On 21 June, Kozluk was attacked by local Serbs who threw grenades into the village and fired from small arms. One day before the attack, Marko Pavlović called the Serbs in Kozluk to the churchyard and ordered them to mark all the Serb houses so that they would not be shot at.

Deportation: On 26 June, tanks surrounded Kozluk. At that time, 2,000 soldiers in Kozluk were firing in the air and harassing the non-Serb inhabitants. Houses were set on fire and some people were shot at. Non-Serb residents were given an hour to leave the village. The witness was given a document signed by Major Marko Pavlović, indicating that he and the other people from Kozluk were never

going to be allowed to return. A table was set up where soldiers registered the Muslims and made them sign papers stating that they were leaving voluntarily.

About 1,822 people were loaded onto buses and taken to Loznica. Escorted by the police, they were taken to Ruma, placed on passenger trains and cattle cars which took them to Subotica. In Subotica, the detainees waited in a refugee centre, until most of them were transported to Hungary, Austria and Germany.

Paragraphs: 12, 15, 16, 17, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 17j, 18, 22, 24, 26, 27, 28 and 31.

Counts: All.

### 3. Contents of testimony:

The witness testified *viva voce* on 2 December 2008. He had previously testified in the Milošević case and in the Zvornik case in Belgrade., He mentioned Zoran Subotić in his earlier statements, but not in a negative context. He testified about deportations but without mentioning either “Šešelj’s men” or the volunteers of the Serbian Radical Party. He confirmed that the Serbian authorities had lost control in Zvornik following the departure of the JNA and that the paramilitary formations had taken over. During these events, not a single volunteer of the Serbian Radical party was present in the municipality of Zvornik. This witness was unable to testify to practically anything except for the specific events in Kozluk, which deviated from his planned testimony. The encirclement of Kozluk and the armed conflicts shed a different light on and bring into question the claim that there were deportations or forced relocations.

### 4. Summary of testimony

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 17j, 18, 22, 24, 26, 27, 28 and 31, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.



Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-1087, [REDACTED]  
[REDACTED], PURSUANT TO RULE 92 *ter* WITH PROTECTIVE  
MEASURES AND VIDEO CONFERENCE LINK**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1087, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Bosnia and Herzegovina - Zvornik, April 1992 - September 1993:

"The takeover of Zvornik town occurred between 8 and 9 April 1992 when Serb forces, including Arkan's men, SRS/SČP volunteers, local Serb TO and police attacked and took over the town. The attack was supported by JNA shelling from Serbia and the Serbian TO from Loznica. Many non-Serb civilians were killed during the takeover. (footnotes 290 and 291)

"There is evidence of mass killings of non-Serb civilians in Zvornik (footnote 296) – the bodies of 200 Muslims were recovered from the streets of Zvornik following the take-over and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in BiH after Srebrenica."

"There is evidence of mass killings of non-Serb civilians in Zvornik – the bodies of 200 Muslims were recovered from the streets of Zvornik following the take-over and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in BiH after Srebrenica." (footnote 299)

2. Summary of testimony for VS-1087, [REDACTED]

Biography: Serb [REDACTED] from Zvornik.

The witness will testify to his recruitment into the Serb army. He will describe those involved into the recruiting. At the *Alhos* factory, he saw about 60 paramilitaries dressed as "Arkan's men". Branko Grujić, the President of Zvornik municipality, then turned up with Arkan and Arkan's deputy Pejo. Marko Pavlović was head of the TO.

The witness will testify to the assignments he got. He will detail those giving orders to the soldiers and the co-operation with the local authorities with Arkan and other leaders of groups of irregular soldiers. He will describe the collection of bodies.

[REDACTED]  
[REDACTED]

Bodies were found outside [REDACTED] and in the villages of Kazanbašča, [REDACTED], Šahbegovići, [REDACTED], Drinjača, [REDACTED] and Crni Vrh. The bodies were deposited behind the boilers in *Alhos*. The dead had been shot.

At *Alhos*, the bodies were examined by Dr Zoran Stanković of the JNA and other pathologists from Belgrade [REDACTED]

After the examination, the bodies were buried in the Kazanbašča cemetery in Zvornik. When this cemetery was full, some bodies were dug up with mechanical diggers and re-buried elsewhere. The witness will testify to the graves related to victims from the Cultural Centre in Drinjača, the Karakaj Technical School, the *Ekonomija* farm and Gero's Slaughterhouse. Members of different units, among them Žučo's unit, Pivarski's unit and Niški's unit, would load the bodies onto the trucks prior to their transport.

Paragraphs: 15, 16, 17a, 17b, 17c, 17d, 18, 22, 24, 25, 26.

Counts: 1-9.

### 3. Content of testimony

The witness testified via video conference link from [REDACTED] on 9 January 2009, with protective measures and pursuant to Rule 92 *ter*. The judges questioned the witness. The witness asked to testify as a Defence witness because he had given several statements to that effect to the Defence team. This testimony is important because it proves that pathologists had done some autopsies and that the bodies had been collected and buried by qualified persons and in accordance with the rules. [REDACTED] he did not even mention either "Šešelj's men" or the volunteers of the Serbian Radical Party.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 15, 16, 17a, 17b, 17c, 17d, 18, 22, 24, 25 and 26, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34 and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13 and 14.



[REDACTED]

Paragraphs: 12, 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 22, 24, 25e, 26, 27, 28, 29e, 31.

Counts: all counts.

**3. Content of testimony**

The witness testified in closed session with protective measures on 3 and 4 February 2009. [REDACTED]

[REDACTED]

[REDACTED]

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 12, 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 18, 22, 24, 25e, 26, 27, 28, 29e, and 31, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34, and 34b.

The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13, and 14 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-2000 [REDACTED], [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, [REDACTED], [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's participation in the JCE:

"First, Šešelj used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated "Greater Serbia" by force in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged." (footnote 6)

Crimes in BH – Zvornik, April 1992 – September 1993:

“By March 1992, the Bosnian Serb forces had established their own police force in Zvornik, had declared Zvornik a Serbian Municipality, and were preparing to attack Zvornik with the backing of the JNA. That same month, Šešelj gave a speech in Mali Zvornik, located across the Drina river from Zvornik. He declared: 'Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong.'” (footnote 281)

## 2. Summary of testimony [REDACTED]

Biography: [REDACTED]  
[REDACTED]

The witness will describe the ethnic division in the municipality starting in autumn 1991 and the establishment of Crisis Committee along ethnic lines.

In December 1991, the municipal Office for the National Defence (a JNA local office) released Muslims from the reserve forces of the army and ordered Muslim reserves to return their uniforms.

At that time, barricades were erected and communication between Muslim and Serbian villages was obstructed. The witness heard of secret meetings amongst Serbs and believes they discussed preparations for war.

In March 1992, the witness heard Šešelj's speech at a rally in Mali Zvornik, where he said: “Dear Chetnik brothers, especially you across the Drina river, you are the bravest ones. We are going to clean Bosnia of pagans and show them a road which will take them to the east, where they belong.” The rally was secured by the local police from Mali Zvornik and Loznica, Serbia.

On 7-8 April 1992, Serbs began leaving Zvornik for Mali Zvornik.

Take-over: On 8 April 1992, four men wearing Green berets, whom the witness believes to be “Arkan's men”, went to Zvornik to perform reconnaissance of the town prior to a larger attack by Arkan's men. The witness was told that Serbs from Serbia and Zvornik had attacked Divič. The four “Arkan's men” were arrested and interrogated by the Zvornik police. One of these men told the witness that he and many others were told constantly that Muslims in the Zvornik area were slaughtering, roasting, skinning and salting the Serbs. The men carried wire used for strangling people. The witness later learned that one of these men had the nickname Repić.

Later on 8 April, shooting began in Zvornik. Many Muslims fled to Kula Grad and Liplje. The witness will speak about the attempts of the SDA to organise resistance of the Muslim villages and municipalities. The witness took part in the defence of Liplje. The Muslim defenders were handicapped by a shortage of weapons and a lack of military training. They did not have sophisticated weaponry such as grenades, rocket launchers or mines.

On 26 April 1992, Kula Grad fell, and Serbs went from village to village, demanding that Muslims surrender their weapons. The Serbs assured the villagers that if they complied with this order, their lives would return to normal. The witness did not trust such claims. Residents from several villages agreed with the witness and fled with him into the forest. However, the residents of other villages complied with the Serbian demands. Most of these persons were eventually arrested in May 1992 and detained at "Đuza's house".

The witness heard that on 22 or 23 May 1992, Muslims in Liplje were ordered by the Serbs to come to the school and surrender their identification papers. Almost 750 people went to the school with the hope of getting passes to travel to Zvornik, if they complied with the demand. The Serbs took everybody's ID papers and did not issue any passes. On 25 May 1992, the Serbs started to round up villagers and detained them at Đuza's house. From his observation point on Veljeva Glava Mountain, the witness could observe with binoculars the activities around Đuza's house. On 1 June 1992, the witness saw naked women walking amongst Chetniks. The witness later learned that 483 people were detained at Đuza's house, some of whom were raped and tortured. Early in the morning of 2 June 1992, [REDACTED] group of Muslim soldiers who succeeded in liberating the detainees from "Đuza's house".

During July 1992, the witness communicated by letter with Major Pavlović, the chief of staff of the Zvornik TO. The witness demanded that Pavlović release all the detainees from the *Novi Izvor* building in Zvornik and the "Vezionica" factory in Karakaj. Major Pavlović responded by saying that he was unaware of detainees being held in those buildings and demanded that the witness deliver the bodies of Serbs killed in action. Eventually, the witness arranged the exchange of the bodies of three Serbian soldiers for 12 Muslim civilians. Subsequently, Major Pavlović sent the witness a third letter which ordered Muslims to leave the area and offered transport for this purpose. After a further exchange of letters, the Serbian forces launched an

attack on the village of Liplje in mid-July. The attack lasted three days but did not succeed.

In the first half of October 1992, the Serbian forces again attacked and occupied the villages of Liplje, Novo Selo and Kamenica. On 21 October, however, the Muslim forces re-captured these villages. Major Pavlović oversaw the operations of the Serbian forces from Zvornik. Another serious battle for control of the village of Žlijebac occurred in December 1992. The witness remained in Liplje until February 1993. The exodus of Muslims from the area started in early 1993. On one occasion, 400-500 people left Srebrenica. The witness and several thousand people left for Tuzla in February 1992. The group walked the entire night over the mountains. One hundred people died as a result of the extreme cold.

Paragraphs: 12, 15, 16, 17a, 17b, 17c, 17d, 17f, 17i, 17j, 18, 22, 24, 25, 26, 27, 28, 30, 31, and 32.

Counts: All.

### 3. Content of testimony

The witness testified on 4 and 5 February 2009, with protective measures. This witness is most important for the part of the indictment relating to hate speech in Mali Zvornik in March 1992. His testimony fell apart, because he tried to move to March 1992 the Serbian Chetnik Movement rally held in Mali Zvornik on 4 August 1990. The opportunity was used to introduce Legija's statement and books by Muslim authors from Zvornik. This witness clearly gave false testimony and there is no material evidence that can make his statement plausible. This witness is important, because his statement about the March 1992 rally in Mali Zvornik is used as the basis for almost all allegations regarding Zvornik. That is, not only with regard to the alleged hate speech, but also with regard to participation in the JCE.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed. The witness was asked to confirm paragraphs 12, 15, 16, 17a, 17b, 17c, 17d, 17f, 17i, 17j, 18, 22, 24, 25, 26, 27, 28, 30, 31, and 32, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34, and 34b.



The witness was planned for counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13, and 14 of the indictment. Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-037,**

**1.** According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-037, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Implementation of the JCE in Croatia:

"On 25 July 1990, SDS leaders participated in a Serbian Assembly in Srb, attended by approximately one hundred thousand Croatian Serbs. Šešelj was present at this gathering." (footnote 112).

Implementation of the JCE in BH:

"Just before the Serb take-over of Zvornik, Biljana Plavšić met members of the Crisis Staff at their headquarters in Zvornik town. She inquired whether they had completed all the preparatory stages directed by Variant B of the 19 December Instructions." (footnote 159).

Crimes in BH – Zvornik, April 1992 – September 1993:

"By March 1992, the Bosnian Serb forces had established their own police force in Zvornik, had declared Zvornik a Serbian Municipality, and were preparing to attack Zvornik with the backing of the JNA." (footnote 280)

"Before the take-over, local Serbs in Zvornik were armed by both the JNA and local Serbs who received weapons from Serbia and distributed them through a pre-established SDS network." (footnote 282)

"The takeover of Zvornik town occurred between 8 and 9 April 1992 when Serb forces, including Arkan's men, SRS/SČP volunteers, local Serb TO and police attacked and took over the town. The attack was supported by JNA shelling from Serbia and the Serbian TO from Loznica." (footnote 289)

"Over the coming weeks other municipalities were taken over by Serb forces including Arkan's men, the JNA and SRS/SČP volunteers." (footnote 294)

**2.** Summary of testimony for VS-037, [REDACTED]

Meeting of SDS leaders in the Holiday Inn in Sarajevo: the witness will give evidence about an SDS meeting at the Holiday Inn in Sarajevo held in December 1991, attended by members of the Bosnian Serb leadership including Radovan Karadžić, Momčilo Krajišnik and Biljana Plavšić. During this meeting, a document was distributed which envisaged the division of Bosnian municipalities into Variant A municipalities (where the Serb population was the majority) and Variant B municipalities (where the Serb population was a minority). The Presidents of the SDS Crisis Staff of the Bosnian municipalities were expected to ensure the implementation of the measures allotted to the Variant A or Variant B municipalities.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Arrival of Serb volunteers: By the end of March, or beginning of April 1992, Serbian volunteers started arriving [REDACTED]. Most of these volunteers came from Serbia. The witness will describe the events (such as the declaration of independence of BH and the subsequent decision of the Zvornik Crisis Staff to militarily take over the municipality) that led to the attack on Zvornik, including the arrival of Arkan and his involvement in the events that occurred.

[REDACTED]

[REDACTED]

[REDACTED]

The takeover, crimes committed in Zvornik: the witness will describe the takeover of the municipality by Serb forces, and his knowledge of crimes that were committed by members of those forces including volunteer/paramilitary groups from Serbia. The witness describes many of the irregular soldiers that came to Zvornik as hard-core criminals. When, on 7 April 1992, the decision to attack Zvornik was made, more volunteers from Serbia arrived. Except for Žuća's unit, the volunteer/paramilitary units were brought under the control of the temporary government. This government tolerated the behaviour of the volunteers/paramilitaries because they helped to achieve the goal of securing more territory for the Serb people and obtain the six strategic objectives as laid down by Radovan Karadžić. The witness

will testify that, in April 1992, Biljana Plavšić visited Zvornik twice. The witness will address the killings of detainees at the Karakaj Technical School and the Čelopek Cultural Centre. The witness will give evidence of payments being made to commanders and members of volunteer groups, including members of the Loznica TO, by the municipal authorities. He will describe the involvement of leading SDS members and their links to Serbia, the involvement of the Serbian DB and the JNA in Zvornik. He will talk specifically about individuals including Marko Pavlović, Brano Grujić and Stevo Radić, and the role they played in the events that occurred in Zvornik.

Destruction of cultural monuments: the witness will testify that, after the conflict, all the mosques in Zvornik were either damaged or destroyed.

Paragraphs: 5, 6, 15, 16, 17 a-d, g-j, 18, 22, 24, 25e, 26, 27, 28, 31 and 32.

All counts.

### 3. Content of testimony

The witness testified on 12 and 13 January 2010 as a court witness, with protective measures and in the presence of his defence counsel/lawyer.

[REDACTED]

The witness clarified his previous statements given to the Prosecution. [REDACTED] He testified about Arkan, the first meeting with him in the Cultural Centre in Bijeljina, the participation of Arkan's members, the arrival of volunteers, the establishment of the Serbian police in Karakaj, arming, and the supply of uniforms from TO warehouses.

During cross-examination, the witness was shown parts of the book *Zvornik od izbora do Dejtona* /Zvornik from the Elections to Dayton/, written by Mirzet Hamzić. The arming of the Muslims from July 1991, about 4,000 rifles, the smuggling of weapons, the preparation plans, the plan to blow up the Crveni Mulj dam six kilometres from Zvornik towards Sapna. He confirmed that there was a plan to blow up the dam on the Drina and that the JNA provided security for the dam. Information

was also presented about the Patriotic League plan of 25 February 1992, with the focus on Podrinje. The witness confirmed that the arming of the Serbs was a reaction to the previous arming of the Muslims.

It was described in detail that the Serbs had been previously driven out of Zvornik. The dilemma about volunteers was resolved with the help of Colonel Tačić's statement. First, a group of Serbian Radical Party volunteers came through the JNA from Belgrade and joined the JNA unit in Zvornik, and there were Serbian Radical Party members from Mali Zvornik and Loznica who had come to Zvornik on their own initiative. [REDACTED]

[REDACTED] Mali Zvornik and Zvornik were one place and it was perfectly normal to live in one place, and work on the other side of the Drina. The witness confirmed that Serbian Radical Party volunteers were disciplined, that they did not kill, and that they did not loot.

The witness confirmed that Arkan was in Zvornik twice, that he stayed only a few hours each time, and that he slapped members of the Crisis Staff, but did not slap him. The witness confirmed that there had always been a clash between Šešelj and Arkan, and that Šešelj had no criminal intentions. The witness also discussed the participation of the JNA special unit from Pančevo in the liberation of Kula Grad, which had "red berets" but had nothing to do with the "Red Berets" special police unit created later.

Kula Grad was liberated on 26 April 1992, and then JNA units and Serbian Radical Party volunteers withdrew, and already on 8 May the VRS was formed. When the JNA was withdrawing, there were protests in Zvornik, so the JNA left some weapons and old tanks, and everything else and new tanks were transferred to Vršac. The witness confirmed that three paramilitary groups stayed as part of the TO after 26 April 1992: Niški's, Pivarski's and Žuća's groups, and the volunteers from Loznica with Gogić were part of the police.

Žuća's group was the Igor Marković detachment, which was named after a soldier who was killed in the fighting for Kula Grad, so before 26 April 1992 there could not have been any Žuća's group, which later changed its name to Yellow Wasps.

The witness confirmed that Gogić and Niški had come to Zvornik as “Arkan’s men”, and that Arkan had the habit of leaving one of his men behind on location and then local people would join, and so they made a unit or group. The witness confirmed that this was also the case with Mauzer in Bijeljina.

The witness also confirmed that Mauzer was in Zvornik with his group several times, that he was assistant minister of the interior in Dodik’s first government, that he was the president of the Democratic Party in RS, and that Arkan’s party took part in the 1996 elections and received money for the elections from the OSCE. The witness could not confirm that it was about 300 to 400,000 German marks and that the money was taken to Arkan.

The witness stated that between 10 and 12 Muslims and about two Serbs had been killed in the fighting around Zvornik.

The witness confirmed the absolute intolerance between “Šešelj’s men” and “Arkan’s men”.

The witness explained that he had heard about the killing of the Muslims in the Technical School in Karakaj in June or July 1992 [REDACTED]

The witness confirmed that mosques were torn down in May or June 1992 and that churches were torn down by Muslim members.

The witness confirmed that a group of four people led by Legija, who had gone to arrest Pusula, were arrested, and that Fadil Mujić, who was a friend of [REDACTED], released the group in exchange for his family going abroad via Serbia. The witness saw Legija and friends in the *Jezero* motel and confirmed that Legija then joined “Arkan’s men”.

The witness confirmed that Fadil Mujić told him that Colonel Nedo Bošković had called him and insisted that the four men be released, because they were military policemen.

The witness confirmed that Biljana Plavšić was in Zvornik twice and spoke with members of the Crisis Staff, and that she suggested going to Bijeljina to bring Arkan.

Periša Ivanović’s statement about payment to Arkan was also read out, and the statement was submitted by the Prosecution. A statement about Rade Kostić from Darda, who had warned that Arkan was a criminal, was also read out. During the

questioning, material disclosed by the Prosecution was also used: the statements of Dragan Gotovac and [REDACTED] that these people were suspected of some crimes in Zvornik, but the blame was later put on Professor Vojislav Šešelj.

The witness confirmed that Professor Vojislav Šešelj had held a promotional event before 1991 and agreed that it could have been August 1990. The witness confirmed that he was at the promotional event and that he knew about the fight that took place, but he added that it had been prepared by the police.

Also discussed were the allegations from the transcript of [REDACTED] testimony that this witness had bought freedom from prosecution by the Hague investigators, thus preventing the admission of documents under Rule 92 *quater* into the court record.

Also discussed was a document of 12 May 1992 published in the *Official Gazette of Republika Srpska* on 26 November 1993, where the preamble reads: “National Assembly of Republika Srpska of the Serbian People in Bosnia and Herzegovina.”

The earlier name was the “National Assembly of the Serbian Republic of Bosnia and Herzegovina”, and later it was the “National Assembly of Republika Srpska.” The point at issue is a decision on strategic objectives which was never adopted in the National Assembly and, as such, does not exist in the transcript of the National Assembly session of 12 May 1992, but at the Hague Tribunal it was presented as a document containing a defined objective of the JCE.

The testimony was valuable with regard to all counts of the indictment, because he is a qualified witness, eyewitness and participant in many events.

#### 4. Summary of testimony

Proceeding from the Prosecution’s obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 15, 16, 17a, 17b, 17c, 17d, 17g, 17h, 17i, 17j, 18, 22, 24, 25e, 26, 27, 28, 31, and 32, but charges concerning Zvornik are contained in paragraphs 5, 6, 10e, 15, 17a, 17b, 17g, 17j, 17k, 18, 22, 29e, 31, 34, and 34b.

The witness was planned for all counts of the indictment, but Zvornik is mentioned in counts 1, 4, 8, 9, 10, 11, 12, 13, and 14.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the perpetrators of crimes in Zvornik.

**THE VOJVODINA LOCATION  
(HRTKOVCI, NIKINCI, RUMA, ŠID)**

This location is analysed through the positions which the Prosecution advocates, starting with additional historical and political facts for Croatia and Bosnia and Herzegovina, as annexes to the indictment, through the Third Amended indictment, the Prosecution's Final Pre-Trial Brief, the list of witnesses, testimonies, the Prosecution's task, and what the judges were able to establish in the courtroom.

**Remarks Concerning Vojvodina, with the emphasis on Hrtkovci, from the indictment**

Vojvodina and Hrtkovci, as a crime location, is cited in the indictment as part of:

- individual criminal responsibility (paragraphs 5, 6 and 10d)

5. Professor Vojislav Šešelj is individually criminally responsible for the crimes referred to in Articles 3 and 5 of the Statute of the Tribunal and described in this indictment, which he planned, ordered, instigated, committed or in whose planning, preparation, or execution he otherwise aided and abetted. By using the word "committed" in this indictment, the Prosecutor does not intend to suggest that the accused physically committed all of the crimes charged personally. Physical commitment is pleaded only in relation to the charges of persecutions (Count 1) by direct and public ethnic denigration (paragraphs 15 and 17(k)) with respect to the Accused's speeches in Vukovar, Mali Zvornik and **Hrtkovci**, and by deportation and forcible transfer (paragraphs 15 and 17(i)) with respect to the Accused's speech in **Hrtkovci**, and in relation to the charges of deportation and inhumane acts (forcible transfer) (Counts 10 – 11, paragraphs 31-33), with respect to the Accused's speech in Hrtkovci. "Committed" in this indictment includes the participation of Vojislav Šešelj in a joint criminal enterprise as a co-perpetrator. By using the word "instigated", the Prosecution charges that the accused Vojislav Šešelj's speeches, communications, acts and/or omissions contributed to the perpetrators' decision to commit the crimes alleged.

6. Professor Vojislav Šešelj participated in a JCE. The purpose of this JCE was the permanent forcible removal, through the commission of crimes in violation of

Articles 3 and 5 of the Statute of the Tribunal, of a majority of the Croat, Muslim and other non-Serb populations from approximately one-third of the territory of the Republic of Croatia (“Croatia”), and large parts of Bosnia and Herzegovina, and **from parts of Vojvodina**, in the Republic of Serbia (“Serbia”), in order to make these areas part of a new Serb-dominated state. With respect to Croatia the areas included those regions that were referred to by Serb authorities as the “SAO Krajina”, the “SAO Western Slavonia”, and the “SAO Slavonia, Baranja and Western Srem” (after 19 December 1991, the “SAO Krajina” became known as the RSK; on 26 February 1992, the “SAO Western Slavonia” and the “SAO Slavonia, Baranja and Western Srem” joined the RSK), as well as the “Dubrovnik Republic”. With respect to Bosnia and Herzegovina, the areas included Bosanski Šamac, Zvornik, five municipalities collectively known as Greater Sarajevo (Ilijaš, Vogošća, Novo Sarajevo, Ilidža and Rajlovac), Bijeljina, Mostar, Nevesinje and Brčko.

Professor Vojislav Šešelj participated in the JCE in the following ways:

d. In public speeches Professor Vojislav Šešelj called for the expulsion of Croat civilians from parts of the **Vojvodina** region in Serbia (namely **Hrtkovci, Nikinci, Ruma, Šid**, and other places bordering Croatia) and thus instigated his followers and the local authorities to engage in a persecution campaign against the local Croat population.

- General allegations (paragraphs 12 and 14)

12. At all times relevant to this indictment, a state of armed conflict existed in Croatia and Bosnia and Herzegovina. A nexus existed between this state of armed conflict and the alleged crimes in Croatia, Bosnia and Herzegovina, and **parts of Vojvodina**, Serbia.

14. Conduct charged as a crime against humanity was part of a widespread or systematic attack directed against the Croat, Muslim and other non-Serb civilian populations within large areas of Croatia, Bosnia and Herzegovina and **Vojvodina**, Serbia. With regard to conduct as a crime against humanity, Professor Vojislav Šešelj acted knowing that the civilian population was being attacked and that his acts comprised part of those attacks.

- **Count 1: Persecutions (paragraphs 15, 17g, 17i, and 17k)**

15. From on or about 1 August 1991 until at least September 1993, Professor Vojislav Šešelj, acting individually or as a participant in a JCE, planned, ordered,



instigated, committed or otherwise aided and abetted in the planning, preparation or execution of, or physically committed, persecutions of Croat, Muslim and other non-Serb civilian populations in the territories of the SAO Slavonia, Baranja and Western Srem, and in the municipalities of Zvornik, Greater Sarajevo, Mostar, and Nevesinje in Bosnia and Herzegovina and **parts of Vojvodina** in Serbia.

17. These persecutions were committed on political, racial and religious grounds and included:

g. The imposition of restrictive and discriminatory measures against the Croat, Muslim and other non-Serb civilian populations, including persons in Zvornik, Greater Sarajevo, Mostar and Nevesinje in Bosnia and Herzegovina, and in **parts of Vojvodina**, Serbia (namely **Hrtkovci, Nikinci, Ruma, Šid**, and other places bordering Croatia), such as restriction of movement; removal from positions of authority in local government institutions and the police; dismissal from jobs; denial of medical care; and arbitrary searches of homes.

i. Deportation or forcible transfer of tens of thousands of Croat, Muslim and other non-Serb civilians from the territories as specified above, and from **parts of Vojvodina**, Serbia (namely **Hrtkovci, Nikinci, Ruma, Šid**, and other places bordering Croatia) as described in paragraphs 31 to 33.

k. Direct and public denigration through “hate speech” of the Croat, Muslim and other non-Serb populations in Vukovar, Zvornik and **Hrtkovci** on the basis of their ethnicities as described in paragraphs 20, 22, and 33.

**- Counts 10 and 11: Deportation and Forcible Transfer (paragraphs 31 and 33)**

31. From on or about 1 August 1991 until May 1992 in the SAOs in Croatia and the RSK, from on or about 1 March 1992 until at least September 1993 in Bosnia and Herzegovina, and between May and August 1992 in parts of Vojvodina, Serbia, Professor Vojislav Šešelj, acting individually or as a participant in a JCE, planned, instigated, committed, or otherwise aided and abetted in the planning, preparation, or execution of the deportation or forcible transfer of the Croat, Muslim and other non-Serb civilian populations from their legal domiciles, in Vukovar (SAO SBWS) in November 1991, in the municipality of Zvornik in Bosnia and Herzegovina between March 1992 and September 1993, in Greater Sarajevo in Bosnia and Herzegovina between April 1992 and September 1993, in the municipality of Nevesinje in Bosnia

and Herzegovina between June 1992 and September 1993 and in **parts of Vojvodina**, Serbia, including the village of **Hrtkovci**, between May and August 1992.

33. In May 1992, Professor Vojislav Šešelj came to Vojvodina and met with his associates in the SRS. Vojislav Šešelj instructed his associates to contact non-Serbs and threaten them with death if they did not leave the area. On 6 May 1992 Vojislav Šešelj gave an inflammatory speech in the village of **Hrtkovci, Vojvodina**, calling for the expulsion of Croats from the area and reading a list of individual Croat residents who should leave for Croatia. As a result of this speech, a number of Croat residents decided to leave Hrtkovci. After this speech, supporters and associates of the accused, including members of the SRS and the SČP, began a campaign of ethnic cleansing directed at non-Serbs, particularly Croats, in Hrtkovci. During the next three months, many non-Serbs were harassed, threatened with death and intimidated, forcing them to leave the area. Homes of Croats were looted and occupied by Serbs. Serb families who had been displaced from other parts of the former Yugoslavia often occupied the homes of those non-Serbs who had been compelled to leave. The victims of the offences enumerated in Counts 1, 10, and 11, with respect to **Hrtkovci**, were the non-Serb residents of Hrtkovci. Annex XI sets out the names of the victims that are known.

#### **According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, Hrtkovci and Vojvodina as a crime location is discussed in paragraphs 1, 3h, 3i, 4, 14, 58, 58, 62, 1. HRTKOVCI, 122, 124, 125, 126, 127, 129, 131, 141, 143, 143(3), 145, 148, and 153.

#### **HRTKOVCI – VOJVODINA**

##### **Paragraph 1**

1. Between August 1991 and September 1993, the time period relevant to the indictment, the Accused was the President of the Serbian Radical Party and the leader of the Serbian Chetnik Movement. In these capacities, the Accused was one of the most prominent politicians in the former Yugoslavia and exercised substantial political power and influence. Along with Croatian Serb and Bosnian Serb political leaders, Croatian Serb and Bosnian Serb government, military and police officials, high-ranking members of both the Yugoslav People's Army/Yugoslav Army and the Ministry of the Interior of Serbia, and with other leading Serbian and Montenegrin political figures and officials, the Accused participated in the formulation, preparation

and execution of a JCE to forcibly remove non-Serbs from targeted regions of Croatia, Bosnia and Herzegovina, and the (S)FRY. This objective was achieved through the expulsion of hundreds of thousands of non-Serb civilians from their homes, their extended detention in brutally inhumane conditions, massacres, and a range of other persecutory conduct designed to drive them out of the territories considered to be Serb. The indictment sets forth the Accused's responsibility for inciting, instigating, creating, supporting, directing, coordinating and encouraging the Serb forces that committed the crimes charged in the indictment. The Prosecution also alleges that the Accused physically committed the crime of persecution (through "hate speech") in Vukovar, Croatia, Zvornik, BH, and Hrtkovci, Serbia. Moreover, the Accused personally committed the crimes of deportation and inhumane acts (forcible transfers) in Hrtkovci.

Paragraphs 3(h) and 3(i)

3. Although the process varied from place to place, the take-overs achieved the common goal of establishing Serb control in the targeted territories. The Accused participated in this process by:

(a) publicly and systematically promoting the establishment by force of a unified Serb-dominated state known as "Greater Serbia" with its western borders along the "Karlobag-Karlovac-Ogulin-Virovitica line", thereby including wide parts of Croatia and BH;

b) publicly and systematically inspiring fear and hatred in Serbs that non-Serbs, in particular Croats and Muslims, were their enemies and intended to cause them harm, thereby creating and/or exacerbating an atmosphere conducive to violent acts against targeted non-Serb populations and inciting, participating in and contributing to the crimes alleged in the indictment;

c) recruiting, organising, financing, supporting, directing, encouraging and instigating Serb volunteers affiliated with the SRS/SČP, who committed crimes alleged in the indictment;

d) encouraging and instigating other Serbian forces, such as members of the JNA/VJ, units of the local Serbian TO and the TO from Serbia, the VRS, the SVK and the police, to commit crimes alleged in the indictment;

e) coordinating the activities of SRS/SČP volunteers with members of other Serb institutions who committed crimes alleged in the indictment;

f) participating and assisting in the planning and preparation of the take-over of villages in Western Slavonia and Eastern Slavonia, Baranja and Western Srem (“SBWS”) in Croatia and in the municipalities of Bosanski Šamac and Zvornik in BH, and in the subsequent persecution campaigns;

g) publicly calling for the expulsion of inhabitants of Croat ethnicity from parts of the Vojvodina region in Serbia, thereby instigating his followers and local authorities to engage in a persecution campaign against the local Croat population;

h) personally and directly causing the expulsion of Croat residents from villages in **Vojvodina**, in particular the village of **Hrtkovci**, by intimidating and insulting Croats in public speeches; and

i) denigrating the non-Serb populations in Vukovar, Zvornik and **Hrtkovci** through public “hate speech”.

#### Paragraph 4

The Accused’s participation in the JCE can be divided into three essential segments. First, the Accused used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated “Greater Serbia” by force in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.

Second, as the President of the SRS and the leader of the SČP, the Accused oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of “volunteers” who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories.

Third, in some areas discussed below, such as Vukovar, Zvornik, Bosanski Šamac and **Hrtkovci**, the Accused personally planned, instigated, ordered and/or committed these crimes, thereby additionally participating in the JCE and contributing to it.

#### Paragraph 14

14. Moreover, the Accused directly instigated and/or planned, ordered, aided and abetted particular offences, as discussed below. In addition, the Accused, with knowledge of ongoing offences committed against Croats and Muslims, continued to disseminate his racist propaganda, thereby physically committing persecution and deportation and inhumane acts (forcible transfer) as charged in the indictment:

- I know and I have reliable information, that **Hrtkovci** people are helping the ZNG and the HDZ. All those who are assisting the ZNG we shall load onto buses with no seats and pack them all off to Lijepa Njihova (referring to the beginning of the Croatian anthem). Those who are loyal should not be afraid, no one shall touch them, but those who are helping the HDZ have nothing to do in Hrtkovci. We shall expel all of them. (translation from English)

Paragraph 58

C. Implementing the JCE in Serbia

58. The implementation of the JCE within Serbia is described in the discussion of **Hrtkovci** and surroundings, at page 55.

Paragraph 62

V. FACTUAL SUMMARIES OF THE CRIMES ALLEGED

62. Each sub-section focuses upon one geographic region where the alleged crimes took place: Vukovar, Voćin, Bijeljina, Brčko, Zvornik, Bosanski Šamac, Greater Sarajevo, Mostar, Nevesinje and **Hrtkovci**.

Paragraphs 122-127

C. Crimes in Serbia

1. Hrtkovci, from May to August 1992

122. As of 1990, **Hrtkovci**, a village in the Ruma municipality of Vojvodina, Serbia, was comprised of a majority of Croats with significant Hungarian and Serb minorities. Relations between local Serbs and Croats in Hrtkovci were generally peaceful. Vojvodina is the province of Serbia which borders Croatia, namely Eastern Slavonia, Baranja and Western Srem. Many of the JNA/VJ and MUP units that engaged in the armed conflicts in Croatia and BH were based in Vojvodina. Many SRS/SČP volunteers were recruited from Vojvodina.

123. In the autumn of 1990, the Accused organised the formation of branches of the SRS in towns in **Vojvodina**. Volunteers were recruited and issued membership cards that bore the signature of the Accused. Included among those recruited were high-ranking members of the police. Eventually, Vojvodina would become an SRS stronghold. The Accused visited different locations in Vojvodina on numerous occasions.

124. Ethnic tensions in **Hrtkovci** began to escalate in 1991 when Serb refugees from Croatia started arriving in Hrtkovci. The SRS brought Serb refugees in

buses to Vojvodina. Refugees were referred to Ostoja Sibiñić, an SRS member and associate of the Accused in **Hrtkovci**, who would give them the addresses of houses owned by Croats. In some cases, the owners of the houses were abroad and refugees would simply move in. In other cases, Serb refugees used threats and intimidation to pressure home owners to “swap” their own home in Croatia for the Croat’s home in Vojvodina.

125. In the autumn of 1992, the Accused gave one of his hate speeches at a rally in Subotica, Vojvodina, during which he declared that he would “take out eyes with rusted forks and spoons of non-Serbs, the Croats and Hungarians living in Subotica.” He called for the expulsion of Croats and Hungarians from Serbia and the provision of their homes to Serbs fleeing Croatia. After the rally, the Accused met with high-ranking members of the SRS and SUP. During this meeting, the Accused called for the expulsion and murder of non-Serbs. The Accused specifically agreed to the actions to be taken in the village of **Hrtkovci** to force the non-Serb population to leave and thus make room for Serbs. These measures included the dismissal of non-Serbs from government jobs and threats against non-Serbs in the form of intimidating telephone calls and attacks on their homes and persons.

126. In early 1992, as the number of Serb refugees grew, a campaign of intimidation of non-Serbs, as promoted by the Accused, began in different communities in Vojvodina, including **Hrtkovci**. SRS members from the Šid municipality, an SRS stronghold, travelled to different towns and villages to harass and intimidate Croats. Phone threats were targeted at non-Serbs, particularly those with large houses. In April 1992, in a public speech before the Serbian Assembly, the Accused called for the expulsion of Croats from Vojvodina to Croatia. In May 1992, the Accused met again with SRS associates in Vojvodina, including members of the police. He expressed his admiration for the process of expulsion of non-Serbs then underway in **Hrtkovci**. The Accused declared that Hungarians and Croats should be forced to leave on their own, but if they failed to do so, then more coercive methods should be used. The Accused explained the strategy for expelling non-Serbs and declared that if they will not leave, attacks on their homes and persons should be used as tools of expulsion. The strategy, as stated by the Accused, was to create an environment of fear through the use of explicit threats and public harassment. He specifically stated that in **Hrtkovci**, people should be killed.

127. On 6 May 1992, the Accused was scheduled to speak at a political rally in **Hrtkovci**. The SRS prepared the stage where the rally was to be held and played ethnically biased Chetnik music throughout the day. Two hours before the speech, a bus of SRS/SČP volunteers, dressed in black uniforms and carrying rifles, deployed at the rally, around the town, and in the surrounding woods. In front of several thousand people, including SRS/SČP volunteers and local non-Serbs, the Accused called for a “Greater Serbia” stretching from Virovitica to Karlobag. He declared that all Croats had to be expelled. He said mixed marriages between Croats and Serbs must be cleansed and children of mixed marriages killed. The Accused read out a list of names of prominent non-Serbs who were told that they should leave Hrtkovci.

Paragraph 129

129. As a result of the Accused’s speech, some Croats decided to leave **Hrtkovci**. In addition, soon after the Accused spoke, a massive campaign of harassment and intimidation directed at non-Serbs, particularly Croats, took hold in **Hrtkovci**. Non-Serbs were threatened over the telephone and in person. These included bomb threats against people’s homes and the brandishing of weapons. SRS/SČP volunteers drove around shouting threats to Croats. SRS members from Šid were organised to travel to other communities in Vojvodina, including Hrtkovci, to intimidate Croats there. Mobs of Serbs in Hrtkovci confronted Croats, demanding they “exchange” their houses. Bombs were thrown at homes. At least one person was killed and his body was mutilated. During 1992, seventy percent of local Croats (approximately 900 – 1,000 people) left **Hrtkovci**, either expelled through direct force or left out of fear for their well-being.

Paragraph 131

131. “Committing” covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law, whether alone or jointly with co-perpetrators. Several perpetrators may “commit” the same crime if each individual fulfils the requisite elements of the crime. The requisite *mens rea* is that the Accused acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.

Paragraph 141

141. In addition to the “commission” of all the crimes charged in the indictment as a participant in the JCE, the Accused physically committed the crime of

persecution in Vukovar (Count 1, paragraphs 15 – 17 and 20), Zvornik (Count 1, paragraphs 15 – 17 and 22 of the indictment) and **Hrtkovci** (Count 1, paragraphs 15 – 17 and 33 of the indictment), through his use of “hate speech” targeted at the non-Serb populations of those localities. The intent of the Accused to commit persecution in these locales is evidenced by: (1) the derogatory, violent and ethnic content of his speeches, (2) the environment of violent ethnic conflict in which the Accused made his speeches and (3) the fact that (as described above) such crimes occurred shortly after the Accused made his speeches.

Paragraphs 143 and 143(3)

143. In addition to the other modes of criminal liability contained in Article 7(1), the Accused planned the crimes of persecution, murder, torture, cruel treatment, deportation, forcible transfer, wanton destruction and plunder of public or private property in Vukovar and Zvornik (Counts 1, 4, 8-9, 10-14, paragraphs 15-18, 20-22, 24, 26-34 of the indictment), and the crimes of persecution, deportation and forcible transfer in **Hrtkovci** (Counts 1, 10 and 11, paragraphs 15-17 and 31-33 of the indictment). With respect to the Accused’s *mens rea* for planning the crimes in Vukovar and Zvornik, the Accused’s awareness that such crimes would likely occur may be inferred from:

- (1) his inflammatory speeches,
- (2) the fact that he approved the dispatch of volunteers to these areas with knowledge that the volunteers often committed crimes at the battlefields, and
- (3) the fact that the crimes occurred.

With respect to the Accused’s *mens rea* for planning the crimes in **Hrtkovci**, the Accused’s intent is evident from his statements during meetings with SRS supporters and members prior to and during the persecution campaign in **Hrtkovci**, as well as the fact that the criminal actions encouraged by the Accused during those meetings eventually took place in **Hrtkovci**.

Paragraph 145

145. In addition to the other modes of criminal liability contained in Article 7(1), the Accused ordered the crimes of persecution, murder, torture, cruel treatment and forcible transfer in Vukovar (Counts 1-9 and 11, paragraphs 15 – 18, 20, 28 – 32 of the indictment) by his instruction that “Not one Ustasha must leave Vukovar alive!” In addition, the Accused ordered the crimes of persecution, deportation and



forcible transfer in **Hrtkovci** (Counts 1, 10 and 11, paragraphs 15 – 17, 27, 31-33 of the indictment) during his meetings with associates and supporters in Vojvodina in 1991 and 1992, and, implicitly, in his speech in **Hrtkovci** on 6 May 1992. The intent of the Accused to order the crimes in Vukovar and Hrtkovci can be inferred from the content of his speeches and discussions, and from the fact that the crimes subsequently occurred.

Paragraph 148

148. In addition to the other modes of criminal liability contained in Article 7(1), the Accused instigated the crimes of persecution, murder, torture, cruel treatment, deportation and forcible transfer in Vukovar (Counts 1, 4, 8-9 and 11, paragraphs 15-18, 20, 28-32 of the indictment), the crimes of persecution, murder, torture, cruel treatment, deportation, forcible transfer, wanton destruction and plunder of public or private property in Zvornik (Counts 1, 4, 8-9, 10-14, paragraphs 15-18, 22, 28-34 of the indictment) and the crimes of persecution, deportation and forcible transfer in **Hrtkovci** (Counts 1, 10 and 11, paragraphs 15-17, 31-33 of the indictment) by his inflammatory speeches given when he visited those locales or places close to them, such as Mali Zvornik. The Accused's intent to instigate these crimes can be inferred from the same evidence with respect to the Accused's intent to commit persecution and from the Accused's acknowledgements of his ability to incite persons.

Paragraph 153

153. Alternatively to the other modes of criminal liability contained in Article 7(1), the Accused aided and abetted all of the crimes charged in the indictment (Counts 1-14, paragraphs 15-32) by his wilful and knowing contribution to the commission of the crimes. The required *mens rea* of the Accused is evidenced by:

- his own acknowledgement that he encouraged and boosted the morale of Serb forces,
- the inflammatory content of his speeches calling for violence against non-Serbs, his repeated visits to the battlefields and towns in Vojvodina such as **Hrtkovci**,
- his continuing, in cooperation with other members of the JCE, to dispatch volunteers to the front lines even while knowing they committed crimes, and
- moreover, his ordering the volunteers and other Serb forces to commit crimes,

- and his failure to discipline volunteers for the commission of crimes.

### **Summary Regarding Witnesses for Hrtkovci**

C. Implementing the JCE in Serbia:

The witnesses appear with regard to Hrtkovci.

C. Crimes in Serbia

1. Hrtkovci, from May to August 1992:

The witnesses: VS-026 (██████████, did not testify, but wanted to be a Defence witness), VS-015 (Goran Stoparić, testified, false witness), VS-1141 (formerly ██████████, did not testify), VS-017 (Zoran Rankić, testified, but wanted to be a Defence witness), VS-1136 (Katica Paulić, testified, false witness), VS-1135 (Vesna Kljajić, did not testify, false witness), VS-1134 (██████████, testified), VS-034 (██████████, did not testify, but wanted to be a Defence witness), VS-1133 (Franjo Baričević, testified, false witness), VS-007 (██████████, testified, false witness), ██████████ (now VS-067, ██████████, testified), VS-035 (Aleksa Ejić, testified), VS-043 (Milan Babić, deceased).

### **Prosecution's Revised Final Witness List and Summaries of Witness' Evidence**

Crime base witnesses for Hrtkovci:

VS-035 (Aleksa Ejić, testified), ██████████ (now VS-067, ██████████, testified), ██████████ (now VS-061, ██████████, testified), this witness does not exist in the Prosecution's Final Pre-Trial Brief), VS-1133 (Franjo Baričević, testified, false witness), VS-1134 (██████████, testified), VS-1135 (Vesna Kljajić, did not testify, false witness), VS-1136 (Katica Paulić, testified, false witness), VS-1141 (formerly ██████████, did not testify).

#### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies for Hrtkovci, to prove that the general requirements under Article 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) of the Statute (complicity, participation in a JCE and direct commission through hate speech).

During the presentation of Prosecution evidence, the following witnesses were heard:

1. ██████████, VS-061, testified *viva voce* on 24 and 25 September 2008, with protective measures, a new pseudonym, and image and voice distortion.
2. Aleksa Ejić, VS-035, testified *viva voce* on 7, 8 and 9 October 2008, without protective measures.
3. Franjo Baričević, VS-1033, testified *viva voce* on 14 and 15 October 2008, without protective measures.
4. ██████████, VS-1034, testified on 15 October 2008, with protective measures, under Rule 92 *ter*.
5. Katica Paulić, VS-1136, testified *viva voce* on 19 November 2008, without protective measures.
6. ██████████, VS-067, testified as a Chamber witness on 16 and 17 February 2010, with protective measures and via video link.

Since Hrtkovci is presented in the indictment as a place where three crimes against humanity occurred (persecution, deportation, and forcible transfer), which the Prosecution alleges were directly committed by Professor Vojislav Šešelj through hate speech, but for which he is also responsible on the grounds of his participation in the JCE, it follows that the task of the Prosecution is complicated and difficult with regard to proving the action and crime, but at the same time easy when viewed with regard to how the Prosecution raised the question of Professor Vojislav Šešelj's individual criminal responsibility. The Prosecution believes that, if it cannot prove and establish responsibility on the grounds of "hate speech", then it remains on the grounds of participation in the JCE. These wishes of the Prosecution were buried by the Prosecution witnesses and expert witness Ewa Tabeau.

If we start from the arguments in the indictment, it follows that:

- Professor Vojislav Šešelj called for expulsion, thereby instigating his followers and the local authorities to engage in a persecution campaign against the local Croat population,
- Professor Vojislav Šešelj engaged in the imposition of restrictive and discriminatory measures against the Croatian population, the restriction of freedom of movement, removals from positions of authority in local government institutions and the police, dismissals from jobs, the denial of medical care, and arbitrary searches of homes,

- Professor Vojislav Šešelj engaged in or enabled the deportation or forcible transfer of Croatian civilians from Hrtkovci.

After an analysis of the speech given on 6 May 1992, it is easily concluded that this was a pre-election rally of the Serbian Radical Party before the elections for the Federal Assembly and local self-government held on 31 May 1992. Everything that was said in the speech related to election promises which the Serbian Radical Party would fulfil if it was in power, and to tough criticism of the government led by Slobodan Milošević. The objective of the speech at the rally on 6 May 1992 was not an order or anything that could be interpreted as an incitement to violence; rather, it was purely a pre-election political speech advertising the party and calling on voters to vote for the Serbian Radical Party in 20 days. So he neither called on nor incited his followers (there were few followers at the rally in the village because there was no party organisation, and the Local Board of the Serbian Radical Party was only formed after the rally), and he could not influence the local government, because it was in the hands of another political party. As there was no persecution campaign, it is pointless to prove that he did not join something that did not exist, but it is important that none of the representatives of the local government of Ruma municipality and the Hrtkovci MZ, even as individuals, carried out persecution. On the contrary, there is a great deal of evidence that the local authorities were faced with the problem, insoluble for them, of how to accommodate refugees, and the police with the problem of how to prevent any form of entry into the abandoned houses of Croats in Hrtkovci. There is a great deal of evidence for this assertion in the book *Afera Hrtkovci i ustaška kurva Nataša Kandić / The Hrtkovci Affair and the Ustasha Whore Nataša Kandić*, which published about 350 documents of the relevant organs of authority which, within their powers, took measures to prevent any form of violence.

None of the witnesses were able to declare their position about discriminatory or restrictive measures against Croats, and it is not clear even now how Professor Vojislav Šešelj would have been able to take part in imposing such measures. No evidence suggests that Professor Vojislav Šešelj enabled or implemented deportation or forcible transfer.

The assertion made in the indictment and the Prosecution Pre-Trial Brief that Professor Vojislav Šešelj organised SRS boards in 1990 is untenable, and it has not been confirmed by the witnesses heard, considering that one can talk of the SRS only as of 23 February 1991, and it is sufficient evidence of the situation in Vojvodina that,

for example, the Local Board of the Serbian Radical Party was formed in Hrtkovci only after 6 May 1992.

The assertion that the SRS brought Serb refugees in buses to Vojvodina is so unfounded that it was not confirmed by any of the witnesses heard. Admittedly, there were insinuations, but they also fell apart when faced with well-known facts.

In effect, a good basis for establishing what really happened in Hrtkovci was given by witness Aleksa Ejić in his testimony. The good basis is that which relates to the facts concerning the events in Hrtkovci and, partly, to the background and political situation, but what relates to his opinion and stance is totally unacceptable, although he admitted that there was no evidence for forming such an opinion.

Most importantly, the role and status of Ostoja Sibinčić have been definitively resolved. At the time relevant to the indictment, Ostoja Sibinčić was a member of the SPO /Serbian Renewal Movement/, and he is married to a non-Serb. Also important is the admission of some Prosecution witnesses who present Ostoja Sibinčić as their friend before, at the time, and later. This means that they did not see him as the organiser of persecution, because if he had been that it would be difficult to justify the situation that they remained friends. Friendship in Serbia stops, ends or breaks up for more minor and trivial questions than persecution, no matter what that means and involves.

The witnesses for this location, mostly in their statements given to Prosecution investigators, provided hearsay information, although some of them tendentiously exaggerated and lied. It is important to bear in mind that the lies were exposed, and it was clearly shown that the exaggerations were not based on facts and evidence, but rather on their feeling, opinion and wish for Professor Vojislav Šešelj to be found guilty at any cost. It is also important that departures from Hrtkovci with the exchange of property took place continuously from the second half of 1991 all the way to 1995. It is clear that the cause lay in what was happening to Serbs outside Serbia, that Franjo Tuđman's regime was persecuting them, driving them out of the territory where they lived, and that Serbs were appearing in Serbia as refugees. The role of the Roman Catholic Church has been resolved, but the contents of the book *Kako je umirao moj narod /How My People Were Dying/* has also been called into question. It is clear that the truth about the events is in the book *The Hrtkovci Affair and the Ustasha Whore Nataša Kandić*.

The question of the murder of Mijat Štefanac, which cannot possibly be connected with the speech in Hrtkovci or the Serbian Radical Party, has also been resolved. It is interesting that witness Aleksa Ejić could not give more than eight names /of persons/ who had allegedly been driven out, or who exchanged property under pressure, and he even included himself among the people who had allegedly been threatened and were then driven out. Aleksa Ejić really was an interesting witness, not only because he is a member of the SPO, [REDACTED] [REDACTED], at the time when elections were held at all levels, and he was a candidate for assemblyman, so he knows that the Serbian Radical Party candidate did not make it through to the second round of voting for assemblymen, based on the majority system. He is interesting also because he asked for help from Nenad Čanak, who was unknown at the time, and basically from that point a fierce campaign began against Professor Vojislav Šešelj and the Serbian Radical Party regarding the rally of 6 May 1992.

The testimony of expert witness Ewa Tabeau was, in effect, an attempt at using expertise to bolster and maintain the custom-made media story about the events in Hrtkovci. Her testimony ended in a fiasco, because her list of over 800 people who were allegedly the victims of persecution turned out to be a list of people born in Hrtkovci but currently resident in another territory. So the list included people whose only connection with Hrtkovci was that they were born in Hrtkovci 30 or more years ago and were recorded in the register of births or some records kept by the Roman Catholic church there.

Although he testified as an insider witness, Goran Stoparić also testified about the events in the territory of Vojvodina. His testimony about the Kopic family from Gibarac and the exchange of property with Vujaklija was in effect contested by the Prosecution's sending a report after Stoparić's testimony that the exchange was voluntary and that no bomb had been thrown into the yard of the Kopic family.

The requirements of Article 5 of the Statute have not been met for the Hrtkovci location to be included in the indictment at all, but the facts have been clarified, not only with regard to the direct commission of alleged crimes against humanity, but also with regard to participation in the JCE. It is really not clear with whom Professor Vojislav Šešelj could have been in a joint criminal enterprise.



[REDACTED]

Šešelj's speech in Hrtkovci in May 1992: [REDACTED]

[REDACTED]. The witness did not attend the rally but could hear people shouting "Ustashas out!" [REDACTED]

[REDACTED]



[REDACTED]

Paragraphs: 10d, 15, 17i, 31, and 33.

Counts: 1, 10, and 11.

**3. Content of testimony**

The witness testified *viva voce* on 24 and 25 September 2008, with protective measures, a new pseudonym, and image and voice distortion.

[REDACTED]

The credibility of the witness was called into question during cross-examination, and why, [REDACTED] he did not testify publicly, and his statements given to Prosecution investigators in 2004 and 2006 were compared with regard to the injuries he suffered [REDACTED], of which there was no record [REDACTED]. The judges then realised that, as of July 1991, there was an influx of hundreds of thousands of refugees from Western Slavonia, where there were no armed clashes at the time, but the Serbs had to leave Croatia under pressure and they came to Hrtkovci and the surrounding villages and Vojvodina. The witness confirmed that many Serbs and Croats had exchanged their property even before the Serbian Radical Party rally in Hrtkovci on 6 May 1992. The witness confirmed that there was no Serbian Radical Party in Hrtkovci before 6 May 1992.

The witness confirmed that the police threw out those Serbian refugees from Croatia who had forcibly moved into other people's houses or empty houses. The witness could not give a single example of deportation, or that of a Croat who left Hrtkovci without exchanging his property. The witness confirmed that a Serb who left Croatia with a Yugoslav passport could not in any way return to Croatia.

[REDACTED]  
[REDACTED], the rally and who read out the list of names,  
[REDACTED]  
[REDACTED], the origin of Croats from Hrtkovci, and all other contentious issues were resolved during cross-examination. This witness testified quite truthfully, but he avoided giving direct answers to questions where Franjo Tudman's official policy would be criticised.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 10d, 15, 17i, 31, and 33, but charges concerning Hrtkovci are contained in paragraphs 5, 6, 10e, 12, 14, 15, 17g, 17i, 17k, 31, and 33.

The witness was planned for counts 1, 10 and 11 of the indictment, and Hrtkovci is mentioned in counts 1, 10 and 11 of the indictment.

Based on his testimony, no causal link can be established between the members of the Serbian Radical Party and the alleged perpetrators of crimes in Hrtkovci, and the question is whether there were any crimes at all.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-035, ALEKSA EJIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-035, Aleksa Ejić, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's Role as Chief Propagandist of "Greater Serbia"

"Those who are loyal should not be afraid, no one shall touch them, but those who are helping the HDZ have nothing to do in Hrtkovci. We shall expel all of them." (footnote 43)

Crimes in Serbia – Hrtkovci, May-August 1992:

"The SRS brought Serb refugees in buses to Vojvodina. Refugees were referred to Ostoja Sibinčić, an SRS member and associate of the Accused in Hrtkovci, (footnote 418) who would give them the addresses of houses owned by Croats."

"In some cases, the owners of the houses were abroad and refugees would simply move in. In other cases, Serb refugees used threats and intimidation to pressure

home owners to “swap” their own home in Croatia for the Croat’s home in Vojvodina.” (footnote 421)

“Šešelj’s speech was met with an enthusiastic response accompanied by shouts of ‘Ustashas out!’” (footnote 445)

## 2. Summary of testimony for VS-035, Aleksa Ejić

Intimidation and violence for the purpose of expulsion: The witness will testify that, prior to 1991, there were good relations among the ethnic groups in Hrtkovci. In 1991, Serb refugees from Croatia began arriving. Soon thereafter began the intimidation of non-Serbs in order to make them leave to make room for the Serb refugees. This included in particular the unlawful occupation of homes belonging to ethnic Croats by Serb refugees, which was tolerated and even supported by local authorities. There was an atmosphere of fear created by, in particular, Šešelj and his cohorts. The witness will testify that Šešelj was involved in a rally which promoted fear of and hatred against Croats. Prominent Hungarians and Croats were threatened and intimidated to make them leave the area. Šešelj and the SRS promoted the exchange of populations and the exchange of houses, including the use of force. Violence was used against Croats in their homes to speed up their departure. Because of the persecution campaign against them, approximately one half of the Croat and Hungarian population left Hrtkovci, a process greatly accelerated after Šešelj’s speech in Hrtkovci. The witness will testify to specific incidents of intimidation and violence against the non-Serb population in order to make them leave.

Šešelj’s rallies: The witness will testify that Šešelj held a rally in Hrtkovci on 6 May 1992. The rally was well attended and broadcast over the radio. At the rally, names of local residents who should be expelled were read. The purpose of the rally was to instil fear in the Croats and Hungarians to make them leave. The witness will testify that Šešelj held similar rallies in late 1992. These rallies spread the message that any person not loyal to Serbia should leave. The rallies also promoted the ethnic divide. Šešelj’s rallies were conducted in villages where there was a high percentage of Croat inhabitants.

The witness will confirm that he was personally a target of persecution and will describe the actions of the authorities against him.

Paragraphs: 5-11, 15-17 and 27-29.

Counts: 1, 10 and 11.

### 3. Content of testimony

The witness testified *viva voce* on 7, 8 and 9 October 2008, without protective measures. He testified before the Hague Tribunal for the first time. The witness is important because he was a participant in the events in Hrtkovci and a local official, both in the Local Commune and in the Serbian Renewal Movement in Hrtkovci. He confirmed that there was no branch of the Serbian Radical Party in Hrtkovci before 6 May 1992, but that there were the SPS and the SPO. Before the witness, Ostoja Sibinčić was the president of the SPO Local Board in Hrtkovci, and he was replaced in 1991, when refugees from Croatia started to come.

The witness presented his position that Milošević and Tudman had made an agreement about a population exchange, a secret agreement about which the public was also informed, and that the interest of the Socialist Party was to avoid clashes but for this to be finished anyway. During cross-examination, the witness said that this position was his assumption and his belief. The witness confirmed that at one point there were more refugees than residents of Hrtkovci. As for the alleged illegal activities of refugees, the witness said that they particularly began after the rally in May 1992. The witness said that a branch of the Serbian Radical Party was established after the rally and consisted mostly of the refugees who had arrived.

The witness was a member of the Board at the level of the Hrtkovci Local Commune, who collected aid and gave instructions and advice to refugees. People's assemblies were held concerning the question of safety and the prevention of clashes, and Dobrosav Marković, the president of the MZ and a former policeman, was in contact with the SUP.

The witness was present at the rally on 6 May 1992 and confirmed that the rally was part of a promotion campaign and an election rally for the federal and local elections, that the first speaker was Blagoje Dudić (**not correct**), and the second was Žilić, who read out a list of people whose children were in the ZNG, /and said/ that they were not loyal citizens of Serbia and that there was no place for them in Hrtkovci. Professor Vojislav Šešelj spoke after a woman from Ruma. The problem with the PA system was resolved by his calling on those present to come closer to the stage, noting that there were not many people present anyway. There followed a brief presentation of the party platform. The witness said:

“Since he did not criticise the list that was read out by Žilić, in that way he actually supported the first speaker, along with a remark that he or, rather, his party also knew the names of the children who were in the ZNG, children from Hrtkovci who were members of the ZNG, people who had dodged mobilisation into the Yugoslav Army, in his view, since he stated then that he advocated reciprocity in conduct, as far as the Serb authorities were concerned. He said that all disloyal ethnic Croats and Hungarians whose children were in Croatia, or rather, in the ZNG, there was actually no place for them in Hrtkovci. He also added that they would be more humane; namely, that they would organise bus transportation for them and sandwiches, and so take them to the Croatian border, as opposed to the Tudman regime and the way it treated the Serb population in Croatia. And then the comment was that they could then continue on foot to their homeland, meaning Croatia. But all of those who were loyal, and then he added that according to his information, there were Hungarian residents who had responded to the call and were loyal citizens of Serbia and were loyal to the authorities of Serbia, that there was no reason for them to fear, that they would even enjoy his protection, and that he expected them to win in the local and federal elections, and that they would thus implement their policies which were announced in their programme.”

The witness read out parts of Professor Vojislav Šešelj’s speech from a book, which the judges and the Prosecution considered to be the most important for the charges with regard to the events in Hrtkovci, and these parts read as follows:

“In this village, too, in Hrtkovci, in this place in Serbian Srem, there is no room for Croats. Who are the only Croats for whom there is room among us? Only those Croats and their families who have shed blood together with us on the front lines. They were called Croats in name only, anyway. They have already awakened to the fact that they are, in fact, Catholic Serbs. Some of them even served with our volunteers. They will stay here with us, while all the rest must clear out of Serbia. Including those from here, from Hrtkovci, who locked up their houses and left, reckoning, I suppose, that they would come back one day; but our message to them is: no, you have nowhere to return to. Serbian refugees will move into their houses.

“Serbian brothers and sisters, now that Tudman has expelled more than two hundred thousand Serbs, a part of them will return to the area of Serbian Krajina, but another part cannot settle there. We have to give those Serbs a roof over their heads and feed the hungry mouths. We have no money to build new housing. We do not

have the capacity to create new jobs for them. Very well, then, if we cannot do that, then we should give every Serbian family of refugees the address of one Croatian family. The police will give it to them, the police will do as the government decides, and soon we will be the government. Fine, then. Every Serbian family of refugees will come to a Croatian door and give the Croats they find there their address in Zagreb or other Croatian towns. Oh, they will, they will. There will be enough buses, we will drive them to the border of Serbian territory and they can walk on from there, if they do not leave before of their own accord. Some traitors of the Serbian people in Belgrade....

“I firmly believe that you, Serbs from Hrtkovci and other villages around here, will also know how to preserve your harmony and unity, that you will promptly get rid of the remaining Croats in your village and the surrounding villages, that you will know how to appreciate the fruits of freedom and democracy, that united we shall win, unite all the Serbian lands and overcome the economic and social crisis. To conclude today’s promotional event of the Serbian Radical Party, I salute you with the traditional Serbian greetings: All for the Serb cause – the Serb cause for all. Serbia will live on as long as her children are true to her (cheering). ”

[REDACTED]

The witness testified that he was on bad terms with Ostoja Sibinčić and confirmed that Sibinčić was a member of the SPO, then the SPS, and at present (in 2008) he was a member of the Serbian Radical Party. He testified about Rade Čakmak, a refugee from Grubišno Polje, who was the president of the Hrtkovci MZ, saying he was illegally elected president, and about the change of name to Srbislavci.

On the list of people from Hrtkovci who, the Prosecution asserts, were driven out, the witness marked only eight names and it was included in Exhibit P558.

The witness also testified about court proceedings against Ostoja Sibinčić and Rade Čakmak, contacts with Minister Momčilo Grubač, and reports on the activities of the Serbian Guard.

The role of the Serbian Guard was discussed during cross-examination and an interesting detail came out, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], although, according to the witness, he had allegedly disbanded the SPO Local Board in Hrtkovci, but in December 1992 he was the SPO candidate in the local elections and made it through to the second round with the SPS candidate, and had a narrow defeat. The Serbian Radical Party candidate came in third, with half as many votes as the witness. If he allegedly advocated tolerance in Hrtkovci, [REDACTED]. It is also not clear, if the Serbian Radical Party was so important, why the residents of Hrtkovci elected the SPS candidate and not the Serbian Radical Party candidate as the assemblyman from Hrtkovci.

The judges asked questions about the statements of some witnesses for Hrtkovci concerning black uniforms, buses, weapons, the establishment of the Serbian Renewal Movement, and the formation of the SRS Local Board after the rally of 6 May 1992.

The witness confirmed that there were three waves of refugees from Croatia, and gave the assessment that about 1,000 of the total of 1,500 refugee Serbs who came to Hrtkovci remained, namely those who had exchanged their property and those who were housed in two newly-built refugee colonies. The witness confirmed that those who had fled Western Slavonia in December 1991 came with weapons. The Law on Weapons and Ammunition was passed in the second half of 1992, and it was prescribed as a crime.

The witness remembered the case of Milivoje Vukelja, who was from Bosnia and who was thrown out of the house which he had moved into.

The witness confirmed that he had never heard Professor Vojislav Šešelj say a single bad word about Hungarians. The witness' belief that Professor Vojislav Šešelj had unconsciously been used as a tool by Slobodan Milošević was also discussed.

The witness answered questions about the killing of Mijat Štefanac, and the judges were able to conclude that, after the witness had visited Nenad Čanak, an orchestrated campaign against the Serbian Radical Party and media attacks on the Serbian Radical Party began. Nataša Kandić and Vesna Pešić visited Hrtkovci as part of the campaign. Vesna Pešić convinced Dr Branimir Vuksanić that his name was also on the list that had allegedly been read out by Žilić. The witness said that only eight

people had moved out of Hrtkovci under pressure, and on the list he also circled his own name among the names which he had added to the list. The witness confirmed that he did not know that any member of the Serbian Radical Party put pressure on or threatened the Croats in Hrtkovci. The witness confirmed that nothing was organised, but rather it was random, and he had to agree that the police intervened when called.

The witness quite discredited himself by not admitting that he had stood trial for minor bodily harm inflicted on a Croat.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 27, 28, and 29, but charges concerning Hrtkovci are contained in paragraphs 5, 6, 10e, 12, 14, 15, 17g, 17i, 17k, 31, and 33.

The witness was planned for counts 1, 10 and 11 of the indictment, and Hrtkovci is mentioned in counts 1, 10 and 11 of the indictment.

Based on his testimony, no causal link can be established between the volunteers of the Serbian Radical Party and the alleged perpetrators of crimes in Hrtkovci. Through this witness, dilemmas were also resolved regarding the requirement concerning the scale and systematic nature of the attacks, because about 200,000 Serbs from Croatia sought a safe haven in Serbia, while the number of Croats in Hrtkovci who exchanged their property with them was about 800. One can only talk of individual and isolated cases of violence, which cannot possibly come under persecution, deportation or forcible transfer.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1133, FRANJO BARIČEVIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1133, Franjo Baričević, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's participation in the JCE:

"First, Šešelj used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated 'Greater Serbia' by force in the



media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.” (footnote 6)

Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of ‘volunteers’ who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories.” (footnote 8)

Šešelj’s intent to participate in the JCE:

“Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, as well as parts of Vojvodina (which borders Croatia) where non-Serbs were being persecuted.” (footnote 98)

Crimes in Serbia – Hrtkovci, May-August 1992:

“As of 1990, Hrtkovci, a village in the Ruma municipality of Vojvodina, Serbia, was comprised of a majority of Croats with significant Hungarian and Serb minorities.” (footnote 408)

“Relations between local Serbs and Croats in Hrtkovci were generally peaceful.” (footnote 409)

“Ethnic tensions in Hrtkovci began to escalate in 1991 when Serb refugees from Croatia started arriving in Hrtkovci.” (footnote 416)

“The SRS brought Serb refugees in buses to Vojvodina. Refugees were referred to Ostoja Sibičić, an SRS member and associate of the Accused in Hrtkovci, who would give them the addresses of houses owned by Croats.” (footnote 419)

“In some cases, the owners of the houses were abroad and refugees would simply move in.” (footnote 420)

“The SRS prepared the stage where the rally was to be held and played ethnically biased Chetnik music throughout the day.” (footnote 436)

“In front of several thousand people, including SRS/SČP volunteers and local non-Serbs, Šešelj called for a ‘Greater Serbia’ stretching from Virovitica to Karlobag.” (footnote 439)

“He said mixed marriages between Croats and Serbs must be cleansed and children of mixed marriages killed.” (footnote 441)

“Šešelj read out a list of names of prominent non-Serbs who were told that they should leave Hrtkovci.” (footnote 442)

“Šešelj announced that in three days Croats would be given addresses of homes in Croatia, and if they did not move to those homes, they would be placed on buses and driven there through minefields.” (footnote 443)

“Non-Serbs were threatened over the telephone and in person.” (footnote 449)

“These included bomb threats against people’s homes and the brandishing of weapons.” (footnote 450)

“Mobs of Serbs in Hrtkovci confronted Croats, demanding they ‘exchange’ their houses.” (footnote 453)

#### Legal Analysis

##### Modes of Criminal Responsibility under Article 7 (1) of the Statute:

“With respect to Šešelj’s *mens rea* for planning the crimes in Hrtkovci, Šešelj’s intent is evident from his statements during meetings with SRS supporters and members prior to and during the persecution campaign in Hrtkovci, as well as the fact that the criminal actions encouraged by Šešelj during those meetings eventually took place in Hrtkovci.” (footnote 487)

“In addition, Šešelj ordered the crimes of persecution, deportation and forcible transfer in Hrtkovci (Counts 1, 10 and 11, paragraphs 15-17, 31-33 of the indictment) during his meetings with associates and supporters in Vojvodina in 1991 and 1992, and, implicitly, in his speech in Hrtkovci on 6 May 1992. The intent of Šešelj to order the crimes in Vukovar and Hrtkovci can be inferred from the content of his speeches and discussions, and from the fact that the crimes subsequently occurred.” (footnote 496)

#### 2. Summary of testimony for VS-1133, Franjo Baričević

Rising tensions: The witness, an ethnic Croat, will describe the ethnic tensions arising in the Hrtkovci region in 1990 after the SPO and the SRS, led by Vuk Drašković and Vojislav Šešelj respectively, opened their branches in Hrtkovci.

“Occupation of homes: Ostoja Sibinčić, a strong Serb nationalist, provided locations of homes owned by ethnic Croats living abroad to Serb refugees so that they could move into them. Usually these houses were not abandoned, they had furniture and appliances, and the owners had entrusted their care to relatives. The newly arrived Serbs occupied the houses against the will of their owners.

About one and a half months prior to Vojislav Šešelj’s visit to Hrtkovci on 6 May 1992, another group of 160 Serb refugees came from Slavonia and the number of

new Serbs in Hrtkovci reached 500. These new refugees had been promised empty houses in Hrtkovci. When they realised that they had been victims of fraud, they asked for a session of the SRS and the arrival of Šešelj. Ostoja Sibinčić organised this event.

Šešelj's speech in Hrtkovci: About two hours prior to Šešelj's arrival in Hrtkovci, a bus of *Beli Orlovi* /White Eagles/, Šešelj's security or paramilitary police, came from Šabac. The White Eagles wore black uniforms and carried automatic rifles. The regular police were in the centre of the village about 800 meters away from where the rally was held, but did not attend the rally. The witness was standing about 30-40 meters from Šešelj at the rally and heard Šešelj's entire speech. The witness had feared that the Croats were to be evicted from their homes, a fear that was confirmed during Šešelj's speech. During the speech, Šešelj referred to the Karlovac-Karlobag-Virovitica line and said that this territory was to be Serb. He claimed that the Serbs in Croatia were endangered while the Croats in Serbia were living well. Šešelj read out a list with about ten names, the witness's name included, and said that they did not need Croats there and that they should leave. Within three days Croats would be given addresses or keys, and if they would not leave, the Serbs would put them on buses and send them to Croatia through the minefields.

The list contained names of prominent Croat and Hungarian inhabitants from Hrtkovci, doctors and directors of companies whom Šešelj wanted to replace with Serbs. It was obvious to the witness that the list had been prepared by local members of the SRS in advance of the rally. Šešelj approved and read out those names. The people mentioned on the list were: Zdenko Barišić – head of the Local Commune, at that time relieved of his duties, Branko Vuksanić – village doctor, Mato Šamo – director of the sawmill in Hrtkovci, Ante Grizelj – director of a Hrtkovci agricultural company, Jure Grdić – whose sons were living in Croatia and of whom Šešelj claimed that they were in the ZNG, Antun Ilić, and the witness, because he was a member of the Municipal Assembly, and some others.

When Šešelj read out the list of names, he also declared that mixed marriages between Croats and Serbs must be cleansed and children of mixed marriages killed. He incited hatred and called for mass expulsion of Croats and Hungarians. He targeted on this occasion only inhabitants of the Catholic faith. He did not mention any other ethnic groups in Hrtkovci.

Life in Hrtkovci after Šešelj's visit: After Šešelj's speech, life became difficult for the Croats and Hungarians in Hrtkovci. They were constantly threatened over the telephone, at work and in person by unknown persons. Groups of Serbs went around the village "requesting" the "exchange" of houses and giving people only a few hours to move out. The witness' daughter was threatened in the street by a person who said that only her or her brother would be allowed to leave with their father. The witness complained to the Ruma police but was told by Slavko Kulundžić, the Chief of State Security in Ruma, that he could do nothing. Following the witness' complaints to Kulundžić, approximately three days after Šešelj's speech, the witness moved his wife and children to Croatia, to his father-in-law's residence in Feričanci, Našice municipality. He feared for the safety of his family.

So-called "exchange" of houses: On 19 May 1992, the witness joined his family in Croatia. Three days later, in Požega, the witness signed a contract for the so-called "exchange" of houses at the office of lawyer Mira Primorac, who compiled the document. The document said that the witness exchanged his two houses, including business premises, located at 19 Savska Street in Hrtkovci, for the house of Branko Milosavljević located at 7 Pavla Radića Street, Jakšić, Croatia. A judge from Požega, Stanka Stepanović, who was the daughter of Branko Milosavljević, went to live in the witness' new house in Hrtkovci while her parents moved into his old house. The witness will testify to his motives for this "exchange".

The witness opined that Ostoja Sibinčić had regular contacts with Vojislav Šešelj and reported to him about the situation in Hrtkovci. Sibinčić was the main organiser of the expulsion campaign in Hrtkovci.

Paragraphs: 5-9, 10 (a-d), 14-16, 17 (g) and (i), and 27-30.

Counts: 1, 10 and 11.

### 3. Content of testimony

The witness testified *viva voce* on 14 and 15 October 2008, without protective measures. The witness testified before the Hague Tribunal for the first time. The witness stated that the Serbian Radical Party had its branch in Hrtkovci in late 1991 and that Ostoja Sibinčić was in charge. He said that Sibinčić had first been in the SPO and that Aleksa Ejić had replaced him as the leader of the SPO in Hrtkovci.

The witness said that a woman from Ruma, a member of the Serbian Radical Party, came to Hrtkovci on (Catholic) Good Friday in 1992 and held a meeting with

Serbian refugees who were dissatisfied and wanted to talk to Professor Vojislav Šešelj. During cross-examination, it was clarified that this was Divna Ičić, the President of Ruma Municipality. The female member of the Serbian Radical Party who spoke at the rally on 6 May 1992 was Marica Pačanin. The witness failed on well-known facts.

They were dissatisfied with Ostoja Sibinčić. The Serbian refugees from Slavonia had been deceived that there were empty Croatian houses in Hrtkovci, that the Croats had moved out and left empty houses (gone abroad, children in the ZNG). The witness worked at the MZ and had the keys to the premises, and on 6 May 1992 he gave the PA system of the MZ for use at the Serbian Radical Party rally, because a decision had been made to give space and the PA system to political parties.

The witness asserts that the stage was, in fact, a trailer, that Chetnik music was played, that a bus came with White Eagles, Šešelj's security guard, in black uniforms and with long-barrelled weapons, and that the bus was parked by his house. He did not hear this from them, but heard it when he was beside the stage. The police were one kilometre away and controlling traffic.

The witness went to the rally with his half-brother from abroad, and, according to him, about 2,000 people from Hrtkovci and elsewhere were present. The witness asserts that the first speaker was Žilić, who read out the list of Croats from Hrtkovci who were already in Croatia or abroad. All the details are in the text entitled "The Vital Importance of the May Elections".

The witness testified about Professor Vojislav Šešelj's speech and said that Šešelj had read out names, including his name. Although the witness did not give statements to the media, his case of threats was published in *Večernje Novosti* on 14 May 1992. The witness gave his example of the exchange of property and said that he had been defrauded in the exchange, that 460 households had been moved out of Hrtkovci, and that 300 households had been moved out in the first month after the rally alone.

According to the statement by Slavko Kolundžić, the witness was a DB informer, and the witness was a member of the SKJ /League of Communists of Yugoslavia/ for a long time, not only because of employment, as he maintains, but also because his father, Ivan Baričević, was in Ustasha units during the Second World War.

In May 1992, the witness exchanged his property with a family from Jakšić village in the territory of Slavonska Požega. The property exchange contract was discussed, and the following were included in the full story concerning this witness: Ilija Šutalo, a member of Paraga's military units which drove the Serbs out of Slavonska Požega; Zvonko Paulić, nephew or son of Katica Paulić; Ante Grizelj; Ante Stipić; Nikola Lulić; and Marko Kalić, as witnesses before the court who enabled the witness to take land that was not included in the exchange contract. The examples of the property exchange of the Paulić and Kalić families were also discussed, and some other details /to the effect/ that there was no persecution.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10a, 10b, 10c, 10d, 14, 15, 16, 17g, 17i, 27, 28, 29, and 30, but charges concerning Hrtkovci are contained in paragraphs 5, 6, 10e, 12, 14, 15, 17g, 17i, 17k, 31, and 33.

The witness was planned for counts 1, 10 and 11 of the indictment, and Hrtkovci is mentioned in counts 1, 10 and 11 of the indictment.

Based on his testimony, no causal link can be established between the members of the Serbian Radical Party and the alleged perpetrators of crimes in Hrtkovci, but, more importantly, this witness has lost his credibility.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1134, ██████████,**

#### **UNDER RULE 92 *ter*, WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1134, ██████████, was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Serbia – Hrtkovci, May-August 1992:

“As of 1990, Hrtkovci, a village in the Ruma municipality of Vojvodina, Serbia, was comprised of a majority of Croats with significant Hungarian and Serb minorities.” (footnote 408)

“Relations between local Serbs and Croats in Hrtkovci were generally peaceful.” (footnote 409)

“Ethnic tensions in Hrtkovci began to escalate in 1991 when Serb refugees from Croatia started arriving in Hrtkovci.” (footnote 416)

“As a result of Šešelj’s speech, some Croats decided to leave Hrtkovci. In addition, soon after Šešelj spoke, a massive campaign of harassment and intimidation directed at non-Serbs, particularly Croats, took hold in Hrtkovci.” (footnote 448)

“These included bomb threats against people’s homes and the brandishing of weapons.” (footnote 450)

2. Summary of testimony for VS-1134, [REDACTED]

SRS and SČP in Hrtkovci: The witness will testify to the activities of members of the SRS and the SČP before and after 6 May 1992, in particular to their involvement in the expulsion of the Croats from Hrtkovci and other areas of Vojvodina. [REDACTED] The witness will testify to his knowledge of the so-called “exchange” of houses in other regions of Vojvodina.

[REDACTED]

[REDACTED]

Arrival of Serb refugees: During the autumn of 1991 and spring of 1992, a large number of Serb refugees came to Hrtkovci. The arrival of these Serb refugees was organised by the SRS. The local SRS must have had help from persons in higher positions in Belgrade. Ostoja Sibinčić could not have organised this process alone. The refugees were told that there were empty houses for them in Hrtkovci.

[REDACTED]

[REDACTED]

[REDACTED]

Presence of armed “Chetnik” groups: At the beginning of 1992, the witness saw armed “Chetnik” groups meeting at a bar in the centre of Hrtkovci

[REDACTED]

[REDACTED] The “Chetniks” carried automatic guns and knives. They had peaked caps with cockades. The local Croats felt intimidated by the presence of these “Chetnik” volunteers in their village.

Šešelj’s arrival in Hrtkovci: Šešelj came to Hrtkovci on 6 May 1992. He read a list of names in public and stated that the Croats would have to leave with only “plastic bags” in their hands. The witness was not present during the speech but was told by other people that Šešelj had read a list of names of prominent Croats who were





Leaving Hrtkovci: As a result of the death of [REDACTED] and the “exchange of houses” by his immediate neighbours, the witness decided to leave Hrtkovci. He and his parents packed their belongings and left for Croatia, finally settling in Jakšić, where the witness “exchanged” his house with a Serb, [REDACTED], who still lives in Hrtkovci.

[REDACTED]  
[REDACTED]  
[REDACTED].

Sibinčić’s role in house “exchange”: Ostoja Sibinčić organised the so-called “exchange of houses” in Hrtkovci. The Serb refugees who arrived in the village spoke to Sibinčić to get the addresses of houses that they would occupy. Sibinčić would provide these refugees with the necessary information to locate a house and to evict the Croatian occupants. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Paragraphs: 5-9, 10 (a-d), and 14-16.

Counts: 1, 10 and 11.

### 3. Content of testimony

The witness testified *viva voce* on 15 October 2008, with protective measures, under Rule 92 *ter*. The only relevant part of the testimony of this witness is where he describes how he exchanged property [REDACTED] at his own initiative, after having stated that relations in Hrtkovci had stabilised in July 1992. The witness confirmed that the number of Serbs from Croatia who came to Hrtkovci was much larger than the number of Croats from Serbia who went to Croatia through a property exchange. He confirmed that the property exchange had not been to his detriment, because he also received money, 2,000 DM. The witness decided for the exchange after the killing of [REDACTED], and as for the rally of 6 May 1992, he admitted that everything he said he had heard from others, as he was not present at the rally, because he had farmed his land on that day.

### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10a, 10b, 10c, 10d, 14, 15, and 16, but charges concerning Hrtkovci are contained in paragraphs 5, 6, 10e, 12, 14, 15, 17g, 17i, 17k, 31, and 33.

The witness was planned for counts 1, 10 and 11 of the indictment, and Hrtkovci is mentioned in counts 1, 10 and 11 of the indictment.

Based on his testimony, no causal link can be established between the members of the Serbian Radical Party and the alleged perpetrators of crimes in Hrtkovci. This testimony is important because the witness confirmed the exchange of property by his own example, while the facts about everything else that he admitted was hearsay evidence have been clarified through other eyewitnesses.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-1136, KATICA PAULIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-1136, Katica Paulić, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's participation in the JCE:

Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of "volunteers" who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories." (footnote 8)

Crimes in Serbia – Hrtkovci, May-August 1992:

"As of 1990, Hrtkovci, a village in the Ruma municipality of Vojvodina, Serbia, was comprised of a majority of Croats with significant Hungarian and Serb minorities." (footnote 408)

"Relations between local Serbs and Croats in Hrtkovci were generally peaceful." (footnote 409)

"Ethnic tensions in Hrtkovci began to escalate in 1991 when Serb refugees from Croatia started arriving in Hrtkovci." (footnote 416)

“The SRS brought Serb refugees in buses to Vojvodina. Refugees were referred to Ostoja Sibinčić, an SRS member and associate of the Accused in Hrtkovci, (footnote 418) who would give them the addresses of houses owned by Croats.”

“Phone threats were targeted at non-Serbs, particularly those with large houses.” (footnote 429)

“Two hours before the speech, a bus of SRS/SČP volunteers, dressed in black uniforms and carrying rifles, deployed at the rally, around the town, and in the surrounding woods.” (footnote 437)

“In front of several thousand people, including SRS/SČP volunteers and local non-Serbs (footnote 438), Šešelj called for a ‘Greater Serbia,’ stretching from Virovitica to Karlobag.”

“Also on the stage were at least one Serb refugee from Croatia (footnote 444) and Ostoja Sibinčić.”

“As a result of Šešelj’s speech, some Croats decided to leave Hrtkovci.” (footnote 447)

## 2. Summary of testimony for VS-1136, Katica Paulić

Background; a female ethnic Croat who lived in Hrtkovci, Ruma municipality, Vojvodina, Serbia, until 29 May 1992.

The SRS in Hrtkovci: Around spring 1992, Slavko Miršić, a member of the local branch of the SRS, started talking about ethnic cleansing of Croats from Hrtkovci. However, the witness and other Croats in Hrtkovci did not believe it would ever happen. Before Vojislav Šešelj gave a speech in Hrtkovci, the sympathisers of his party would gather in private houses. Ostoja Sibinčić was the main organiser of the SRS activities in Hrtkovci. Sibinčić was employed in the Municipality in Ruma.

“Exchange” of houses: Around spring 1992, Serbian refugees from Croatia started arriving in Hrtkovci. Every day Jovo (LNU), a Serb, would bring different groups of Serbs to see the witness’ house. Jovo showed these Serbs houses in Hrtkovci and acted as if the refugees had the opportunity to choose the houses in Hrtkovci. The system appeared to be very well organised. On one occasion, a Serb came to the witness’ store and said something to the effect of: “Well, it is not ours but it will do” The witness became very frightened because at this time she was also receiving phone threats stating: “Take care of your child. We will be coming.” The

witness understood these threats to be directed to her younger son. Many other Croats received similar threats.

First the Serbs targeted those with better houses. The owners of smaller houses were initially not subjected to this form of intimidation. Hungarians who lived in the village were also targeted in a similar manner.

Šešelj's speech: On 6 May 1992, Vojislav Šešelj came to Hrtkovci to give a public speech. That was the first time the witness saw groups of armed men in the village. These men were "Chetnik" soldiers wearing black uniforms and hats with cockades and carrying ammunition and rifles. A large number of these "Chetnik" soldiers were present in Hrtkovci that day. Some were present at the rally, while the others were moving around the village and in the woods. Regular police were not present in the area where the rally took place.

During the speech Šešelj said: "Croats must leave. Serbian refugees from Croatia will move into the Croatian houses. The houses of people who live abroad must be opened." Šešelj read a list of more than ten names including Mato Šamu, director of the sawmill, the witness' brother Franjo Baričević, a member of the Local Commune, Anto Grizelj, director of the agricultural company, Zdenko Barišić, member of the Local Commune, Branko Vuksanić, the village doctor, and several others. Šešelj declared that the people on the list had to resign from their positions and leave Hrtkovci and that other people would replace them. Šešelj intended to put his people in the local commune leadership.

Šešelj also stated: "All Croats must go to Croatia. They will be put on buses and taken to the border. From there they can go on foot, they will be put on the buses by the authority, and we will be that authority!" Šešelj placed his right hand on his chest and declared: "We will be the authority!" The audience applauded and yelled, "Ustashas out!" The witness was very frightened hearing this. Even the children who had climbed the trees around the gas station started applauding. Šešelj added that mixed marriages had to be annulled.

The speech was full of hatred, and lasted about an hour. It was attended by around 1,000 people. It caused a lot of fear among non-Serbs, and afterwards Croats started leaving in large numbers. The pressure on the Croats became more intense, and violent incidents against Croats increased during the days following the speech. For example, houses that were temporarily empty would be looted and occupied by

Serb refugees. The owners of these houses were abroad, but the houses were furnished.

Leaving Hrtkovci: Ten days before the witness left for Croatia, a Serb woman moved into the witness' house with her son, actually taking it over against the witness' will. The woman slept in the witness' bedroom while the witness was still there. This refugee woman, like many other Serb refugees, had the complete support of the SUP. The police did not do anything to prevent the Croats from being deprived of their houses. When the witness' husband complained to a policeman about telephone threats, the policeman told him to disconnect their phone.

Under this pressure, on 29 May 1992 the witness moved to Zagreb with her younger son. Her husband joined them on 10 June 1992. They "exchanged" their house in Hrtkovci with a Serbian family that had been living in Zagreb.

Paragraphs: 3-9, 10a-d, f and g, 11, 14-16, 17g, i, and 27-30.

Counts: 1, 10 and 11.

### **3. Content of testimony**

The witness testified, without protective measures, on 19 November 2008. The witness asserts that the problems started with the arrival of refugees from Slavonia after the fall of Vukovar. The witness' neighbour Slavko Miražić (a member of the SPO, not the SRS) said that ethnic cleansing was to follow. The witness spoke about an event when a house whose owners were working abroad was broken into before Professor Vojislav Šešelj's arrival in Hrtkovci. The witness asserts that he /as printed/ attended the rally on 6 May 1992 and that Šešelj's speech lasted one hour. The witness has been totally discredited, because he practically admitted that he was motivated by self-interest and therefore exaggerated in his testimony. The witness gave false testimony in court about the rally and everything that took place.

### **4. Summary of testimony**

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 3, 4, 5, 6, 7, 8, 9, 10a, 10b, 10c, 10d, 10f, 10g, 11, 14, 15, 16, 17g, 17i, 27, 28, 29, and 30, but charges concerning Hrtkovci are contained in paragraphs 5, 6, 10e, 12, 14, 15, 17g, 17i, 17k, 31, and 33.

The witness was planned for counts 1, 10 and 11 of the indictment, and Hrtkovci is mentioned in counts 1, 10 and 11 of the indictment.

Based on his /as printed/ testimony, no causal link can be established between the members of the Serbian Radical Party and the alleged perpetrators of crimes in Hrtkovci. The witness has been discredited, but it was very useful to establish how the system of accusation was devised.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-067 (formerly [REDACTED]), [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Crimes in Serbia – Hrtkovci, May-August 1992:

“As of 1990, Hrtkovci, a village in the Ruma municipality of Vojvodina, Serbia, was comprised of a majority of Croats with significant Hungarian and Serb minorities. Relations between local Serbs and Croats in Hrtkovci were generally peaceful.” (footnote 409)

“In some cases, the owners of the houses were abroad and refugees would simply move in. In other cases, Serb refugees used threats and intimidation to pressure home owners to “swap” their own home in Croatia for the Croat's home in Vojvodina.” (footnote 421)

“Šešelj's speech was met with an enthusiastic response accompanied by shouts of 'Ustashas out!' Non-Serbs took Šešelj's threats very seriously” (footnote 446)

“During 1992, seventy percent of local Croats (approximately 900 – 1,000 people) left Hrtkovci, either expelled through direct force or leaving out of fear for their well-being” (footnote 457)

2. Summary of testimony for [REDACTED]

Biography: The witness is a [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He will speak about the rally in Hrtkovci on 6 May 1992. The witness will testify that he took the fact that a list was read very seriously, because he had no reason to doubt that Šešelj would force the Croats to leave the area. Šešelj came to Hrtkovci in order to speed up the transfer of populations, and his speech and propaganda in Hrtkovci worsened the tensions between ethnic groups in the village. He will testify about violence and intimidation committed against Croats in Hrtkovci, such as threats and beatings. He will also testify about Ostoja Sibinčić, who was one of Šešelj's men in the SRS,

[REDACTED]

[REDACTED]

Paragraphs: 5, 6, 7, 8, 9, 10a, 10d, 14, 15, 16, 17g, 17i, 27, 28, 29, and 30.

Counts: 1, 10 and 11.

### 3. Content of testimony

The witness testified on 16 and 17 February 2010 as a Chamber witness, with protective measures and via video link.

The witness was not present at the rally in Hrtkovci on 6 May 1992, and in relation to his statements given to Prosecution investigators, he admitted that these statements contain what he thought had happened, what somebody else had told him, and so on, but he also demonstrated that he believed everything Professor Vojislav Šešelj pointed out in his refutation. Considering how sensible and reasonable his manner of discussion was, this witness could also be a Defence witness.

His name was not read out at the rally, and it also turned out that Vesna Pešić has never been in Hrtkovci.

Many statements of people who gave statements to the Defence team were presented through this witness, and they pertain to both the role of Aleksa Ejić and the status of Ostoja Sibinčić, who was not a member of the Serbian Radical Party.

The opportunity also arose to inform the judges through this witness about the historical background of how Albanians became Croats in Hrtkovci, and many details regarding the rally, how people were invited to attend, organisation, police security, the speech, and the speeches of Professor Vojislav Šešelj in the National Assembly on 1 and 2 April 1992.

#### 4. Summary of testimony

Proceeding from the Prosecution's obligation for the witness to repeat everything stated in the provided summary of witness testimony, and the issues proved thereby, the following must be observed.

The witness was asked to confirm paragraphs 5, 6, 7, 8, 9, 10a, 10d, 14, 15, 16, 17g, 17i, 27, 28, 29, and 30, but charges concerning Hrtkovci are contained in paragraphs 5, 6, 10e, 12, 14, 15, 17g, 17i, 17k, 31, and 33.

The witness was planned for counts 1, 10 and 11 of the indictment, and Hrtkovci is mentioned in counts 1, 10 and 11 of the indictment.

Based on his testimony, no causal link can be established between the members of the Serbian Radical Party and the alleged perpetrators of crimes in Hrtkovci. The witness avoided being totally discredited, but it was very useful to establish how the system of accusation was devised.

#### **INSIDER WITNESSES**

The Prosecution specifically singled out insider witnesses and gave them the basic role of testifying to the circumstances of Professor Vojislav Šešelj's participation in the JCE, and that is why their testimonies touch on some locations previously analysed. If anything is repeated with these witnesses, it is because the Prosecution did not present evidence in accordance with the scheme set out by the Trial Chamber.

#### **According to the Prosecution's Final Pre-Trial Brief**

In the Prosecution's Final Pre-Trial Brief, insider witnesses are practically listed for most of the paragraphs, and they are also planned for locations as a crime base or locations where evidence of a consistent pattern of conduct is presented. These witnesses are to confirm the allegations from the Pre-Trial Brief under: II. The Accused's Participation in the JCE; A. The Accused's Role as Chief Propagandist of "Greater Serbia"; B. The Accused Recruited and Coordinated SRS/SČP Volunteers; and C. The Accused's Intent to Participate in the JCE.

#### **Summary Regarding Insider Witnesses**

Witnesses: VS-004 [REDACTED], VS-007 [REDACTED], VS-009 Aleksandar Stefanović, VS-010 Zoran Dražilović, VS-011 Ljubiša Petković, VS-012 Aleksandar Filković, VS-013 Mladen Kulić, VS-014 [REDACTED], VS-015 Goran Stoparić, VS-017 Zoran Rankić, VS-026 [REDACTED], VS-027 [REDACTED],



VS-032 Nenad Jović, VS-034 [REDACTED], VS-043 Milan Babić – deceased, VS-048 Nebojša Stojanović, and VS-1061 Miroslav Deronjić – deceased.

### **Prosecution's Revised Final Witness List and Summaries of Witness' Evidence**

According to the final list, the witnesses are:

VS-004 [REDACTED], VS-007 [REDACTED], VS-009 Aleksandar Stefanović, VS-010 Zoran Dražilović, VS-011 Ljubiša Petković, VS-012 Aleksandar Filković, VS-013 Mladen Kulić, VS-014 [REDACTED], VS-015 Goran Stoparić, VS-017 Zoran Rankić, VS-026 [REDACTED], VS-027 [REDACTED], VS-032 Nenad Jović, VS-034 [REDACTED], VS-043 Milan Babić – deceased, VS-048 Nebojša Stojanović, VS-1061 Miroslav Deronjić – deceased.

### **Task of the Prosecution**

The task of the Prosecution was to establish, through witnesses, the facts submitted in the Prosecution's Pre-Trial Brief, to have the witnesses at least confirm in the courtroom what the Prosecution is referring to in the summaries of witness testimonies, to prove that the general requirements under Articles 3 and 5 of the Statute have been met, and that Professor Vojislav Šešelj is liable for his actions under Article 7(1) of the Statute (complicity, participation in a JCE and direct commission through hate speech).

During the presentation of Prosecution evidence, the following witnesses were heard:

1. Goran Stoparić, VS-015, testified *viva voce* on 15, 16, 17, 22, 23 and 24 January 2008, without protective measures.
2. [REDACTED], VS-004, testified *viva voce* on 7, 12 and 13 February 2008, with protective measures.
3. Mladen Kulić, VS-013, testified *viva voce* on 4 and 5 March 2008, without protective measures.
4. [REDACTED], VS-007, testified *viva voce* on 15, 16 and 17 April 2008, with protective measures.
5. Nebojša Stojanović, VS-048, testified *viva voce* on 22 and 23 July 2008, without protective measures.
6. Aleksandar Stefanović, VS-009, testified *viva voce* on 25 and 26 November 2008, via video link from Belgrade and without protective measures.

7. Jovan Glamočanin, VS-044, testified *viva voce* on 10 and 11 December 2008, via video link from Belgrade and without protective measures.

8. [REDACTED], VS-027, testified on 7 and 8 July 2009, via video link from [REDACTED], with protective measures.

9. [REDACTED], VS-034, planned to testify on 30 March 2010 as a Chamber witness, but his testimony was not heard [REDACTED]  
[REDACTED]

10. Zoran Rankić, VS-017, testified on 11 and 12 May 2010 without protective measures.

11. Nenad Jović, VS-032, testified on 6 and 7 July 2010, via video link from [REDACTED] and without protective measures.

Although the criterion for assigning insider witness status to these witnesses is not clear, it must be noted that the so-called insiders could be Glamočanin, Stefanović, and possibly Rankić (until December 1991), while Stoparić, Stojanović, [REDACTED] and [REDACTED] may be witnesses who heard something, but as for all the others, it is not known how they could be insiders and how they could have obtained confidential information at all.

The witnesses who were heard and those who were not heard had to serve as a connection, that is, they had to show a causal link between the Serbian Radical Party, as a political party and an organisation headed by Professor Vojislav Šešelj, and people organised by the Serbian Radical Party who were sent to places of armed conflict and who committed crimes referred to in the indictment or who were close to members of the Serbian forces who were direct perpetrators of the crimes.

The Prosecution failed to prove this argument through these witnesses.

Glamočanin knows nothing about what happened in places of armed conflict, and he has never been in some of the places where the Prosecution alleges he was. Gathering and sending volunteers was as far as they could go, but he is much more important as a witness that the Serbian Radical Party was constantly being persecuted.

Stefanović is almost the same witness as Glamočanin, but he testified even better about attempts after the year 2000 to accuse Professor Vojislav Šešelj at any cost. The situation is similar with Glamočanin.

Stoparić is a special story. However much he tried to cause damage with false testimony about the events in Vojvodina, the Prosecution tried just as much to disprove him with its subsequent submission of documents. Stoparić is very important

for the locations of Mostar and Nevesinje, where he testified quite properly. His testimony about Vukovar is untenable in the extreme, and in some parts he had to deny what the Prosecution said he had allegedly told investigators. As for the Vukovar location, one part of his testimony is important, but as far as Ovčara and the *Ovčara* case in Belgrade are concerned, it is insignificant and inadmissible. He is important because he proved how the Prosecution obtains witnesses through Nataša Kandić.

██████████ was sunk again, ██████████, so there is no point in paying any attention to him.

██████████ testified properly, although it is not clear how key evidence of Professor Vojislav Šešelj's participation in the JCE can be adduced through the Western Slavonia location, where evidence of Professor Vojislav Šešelj's consistent pattern of conduct as part of the JCE is presented. This is even more unusual knowing that ██████████ did not utter a single accusation against Professor Vojislav Šešelj.

It was similar with Mladen Kulić, who was totally discredited as a witness for Western Slavonia.

As for Nebojša Stojanović, it is not clear why the Prosecution called him as a witness at all, when he has no connection with the Serbian Radical Party. But he is important because, through him, trial attorney Daniel Saxon was questioned about how statements are taken from witnesses.

██ is such a discredited witness that it is totally clear that he applied to be a witness for personal gain, and as for any information that he has, it is below the hearsay level.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-015, GORAN STOPARIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-015, Goran Stoparić, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's role in recruiting and coordinating SRS/SČP volunteers

"Once at the front lines, the SRS/SČP volunteers were normally subordinated to the local command structure, i.e., the local Serb TO and/or JNA/VJ forces and the VRS/SVK forces." (footnote 73)

“More than once Šešelj told his volunteers that their task was to kill ‘Ustashas’ or ‘Turks’.” (footnote 78)

“As the armed conflict progressed, the lack of discipline and violent nature of some SRS/SČP volunteers became well-known, both on the battlefield and among the SRS leadership, including Šešelj.” (footnote 87)

Šešelj’s intent to participate in the JCE

“Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia), where non-Serbs were being persecuted.” (footnote 98)

“Kameni and other members of the detachment often visited the headquarters of the JNA’s First Guards Brigade in Vukovar to obtain orders, and First Guards Brigade Captains Radić and Zirojević often visited the detachment headquarters.” (footnote 200)

Crimes in Brčko

“Mile Bolero was President of the SRS party in Brčko.” (footnote 248)

“The SRS/SČP volunteers were involved in the attack on Brčko, and in the operation of the Luka camp. They had a reputation for killing and looting, and participated in rapes of women in the Luka camp.” (footnote 254)

“They received ammunition and other logistical support from the JNA.” (footnote 255)

Crimes in Mostar

“With the arrival of the reservists and volunteers, tensions between the ethnic groups increased and the first incidents of ethnic violence occurred. SRS/SČP volunteers were often involved in such incidents and were particularly prominent in acts of looting.” (footnote 350)

“Throughout the attack and in the time period that followed, all Serb forces acted in full co-ordination. The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command.” (footnote 360)

“The JNA gave full logistical and material support to all of these troops, including the Red Berets.” (footnote 361)

Crimes in Nevesinje

“The SRS/SČP volunteers were fully integrated in the local Serb TO, which in turn was subordinated to the JNA command.” (footnote 384)

“JNA gave full logistical and material support to all of these troops in the region, including the Red Berets.” (footnote 385)

Crimes in Serbia – Hrtkovci

“Many SRS/SČP volunteers were recruited from Vojvodina.” (footnote 411)

“Eventually, Vojvodina would become an SRS stronghold.” (footnote 415)

“SRS members from the Šid municipality, an SRS stronghold, travelled to different towns and villages to harass and intimidate Croats.” (footnote 428)

“SRS members from Šid were organised to travel to other communities in Vojvodina, including Hrtkovci, to intimidate Croats there.” (footnote 452)

Legal Analysis

“With respect to Šešelj’s *mens rea* for planning the crimes in Hrtkovci, Šešelj’s intent is evident from his statements during meetings with SRS supporters and members prior to and during the persecution campaign in Hrtkovci, as well as the fact that the criminal actions encouraged by Šešelj during those meetings eventually took place in Hrtkovci.” (footnote 487)

“In addition, Šešelj ordered the crimes of persecution, deportation and forcible transfer in Hrtkovci during his meetings with associates and supporters in Vojvodina in 1991 and 1992, and, implicitly, in his speech in Hrtkovci on 6 May 1992. The intent of Šešelj to order the crimes in Vukovar and Hrtkovci can be inferred from the content of his speeches and discussions, and from the fact that the crimes subsequently occurred.” (footnote 496)

“Alternatively to the other modes of criminal liability contained in Article 7 (1), Šešelj aided and abetted all of the crimes charged in the indictment by his wilful and knowing contribution to the commission of the crimes. The required *mens rea* of Šešelj is evidenced by:

- his repeated visits to the battlefields and towns in Vojvodina such as Hrtkovci.” (footnote 521)

## 2. Summary of testimony for VS-015, Goran Stoparić

VS-015 will describe the organisation of the SRS party in his hometown in Serbia and the use of SRS party members from his hometown to harass and intimidate Croats in parts of Vojvodina, including Hrtkovci, during 1992. Witness VS-015 will describe the influence of Vojislav Šešelj on young Serb males. The witness will also describe the events in Vukovar in 1991, the visit of Šešelj to Vukovar, the cooperation

between SRS/SČP volunteers and members of the JNA, and the participation of SRS/SČP volunteers in the massacre at Ovčara farm in November 1991.

VS-015 will testify to the participation of SRS/SČP volunteers in an operation to secure the so-called “corridor” through Bosnia and Herzegovina connecting the Croatian Serb territories with Serbia. Prior to going into action, General Mladić addressed the volunteers and told them *inter alia* that “he didn’t care what we did in terms of the civilians, but we were not to harm civilians in Livno itself”. Mladić instructed SRS volunteers to remove their “Chetnik” insignia saying: “Carry this in your heart, not on your head.”

VS-015 will testify that Žika Cmogorac came to the Brčko area and selected men for training by the Red Berets. VS-015 will describe the relationship of the Red Berets to the other paramilitary and volunteer groups committing crimes in Bosnia and Herzegovina.

Paragraphs: 5-11, 15-18, 20-21, 24-31 (the following was dropped: part of paragraph 24; paragraph 25; part of paragraph 26; three parts of paragraph 27; paragraph 29 (c); paragraph 29 (d); paragraph 29 (f); paragraph 29 (h); paragraph 29 (i)).

Counts: all counts (Counts 2, 3, 5, 6 and 7 were dropped).

### 3. Content of testimony

The witness testified *viva voce* on 15, 16, 17, 22, 23 and 24 January 2008. Professor Vojislav Šešelj cross-examined him from 22 to 24 January 2008.

The witness was wounded in 1999 in Kosovo and Metohija and had the status of a disabled war veteran, but this status was subject to review, and he lost it when he failed to appear for the review of his status because he had moved abroad. Between 2000 and 2004 he lived on his invalidity benefit, which he says was about 50 euros per month, and the help he received from his two brothers in Šid. In 2004, he went abroad and was in the protection programme of the Hague Tribunal for two years, receiving monthly payment of about 900 euros. Then he got a job, and worked and received a salary for one year, and now, one year before his appearance in court, he has his own company.

The dilemma about the Hitler salute was resolved during cross-examination. The witness denied that he had said it like that, but he admitted that he had read through his statement where this is alleged quickly, because he wanted to leave as

soon as possible, since the interviews with Prosecution investigators were difficult and long.

It was resolved that the first rally of the Serbian Radical Party in Šid was on 15 May 1992, as part of the election campaign, and not in the summer of 1991, as the witness said in his statement. The Municipal Board of the Serbian Radical Party was established on 5 November 1991. This means that the witness could not have gone to the front either as a result of Professor Vojislav Šešelj's speech at the rally in the summer of 1991 or through the Serbian Radical Party.

The witness is proud of his participation in the war and does not think that he is part of a monstrous plan. His decision to go to war was not influenced by Professor Vojislav Šešelj's speech, but rather by his own patriotic feeling.

Asked whether he thought that Professor Vojislav Šešelj had lied to him and to others when he called for the defence of the Serbian Krajina, the defence of Republika Srpska, and the defence of Kosovo and Metohija, the witness said: I consider to this day that had fate made you president, everything might have looked a little different. Asked specifically whether he thought that Professor Vojislav Šešelj had lied, the witness said: I don't think you lied to us. You said what you felt, and it's up to us to believe you or not. I personally did believe you.

The witness clarified that his disappointment at the trial was caused by the allegation in his alleged statement that there was a monstrous plan linked to Slobodan Milošević, and that it was not about this.

The witness confirmed that he joined the Slavonia TO as a volunteer in the offices in Šid, and that these were not Serbian Radical Party offices. He confirmed that the Serbian Radical Party was established in Milenko Petrić's house. It was clarified that only in March 1992 did the Serbian Radical Party obtain premises in a building housing all political parties.

The witness confirmed that the training he received in Lipovača had nothing to do with the Serbian Radical Party and that various people presented themselves as Chetniks, but he had never heard that an organ of the Serbian Chetnik Movement held a session after 23 February 1991, when the Serbian Radical Party was formed. So the Serbian Chetnik Movement as a section never operated and acted independently, but rather the Serbian Radical Party did.

The witness confirmed that Kameni was from Vukovar, that he was a reserve officer of the JNA, that he participated in the fighting around Vukovar even before the

witness joined his unit, and that the Leva Supoderica unit had men from Vukovar, volunteers of the Serbian Radical Party, and various other volunteers.

It was resolved that cockades were not made by the Serbian Radical Party, and that they could be bought on the street, and that there were people who bought cockades and gave them to soldiers at the fronts. The importance of a cockade's design was relativised, especially the one with the skull and crossbones, which was out of fashion, although this was precisely the one that the witness had. It was confirmed that volunteers and reservists, about 90% of them, took the five-pointed stars off their helmets and put on other insignia, and in some units everyone had a cockade of his own choice. It was confirmed that Professor Vojislav Šešelj wore a cockade in his lapel.

The witness confirmed that during his speech in Vukovar Professor Vojislav Šešelj encouraged the soldiers, asked for discipline, and did not call for violence against civilians and prisoners. The witness confirmed that it was not exactly a speech, but rather Professor Vojislav Šešelj's conversation with the soldiers during his visit.

It was clarified that Professor Vojislav Šešelj had not said that bodies should be burned, but rather buried, because there was a risk of epidemics, or animals could tear the bodies apart. The Croatian paramilitaries had been killed in combat, that is, they were not victims of a crime.

Through the question that Professor Vojislav Šešelj was in Vukovar in November 1992 on the anniversary of the liberation of Vukovar, and that Radić, Šljivančanin, Professor Vojislav Šešelj and others met in Stanko Vujanović's café, which the witness confirmed, the dilemma of a witness who claimed that Professor Vojislav Šešelj was at a meeting with officers in Stanko's house in November 1991 was resolved. The witness confirmed that he was not aware of such a meeting taking place in November 1991. The witness remembers very well the throwing of a grenade at the house where Professor Vojislav Šešelj slept in November 1991, which the soldiers talked about.

The witness confirmed that Kameni was a strict commander, that he did not tolerate indiscipline, and that he did not order killings or torture, but he also confirmed that the only measure at his disposal was to remove someone from the unit, which he did with Topola.



The witness confirmed that volunteers returned to Serbia immediately after the liberation of Vukovar, but that he stayed because for him it was about 30 kilometres to Šid. The witness confirmed that some stayed in Vukovar of their own free will: Katić (got married and was in the TO), Mali Džo (opened a bookshop). It was also clarified that even if Katić had suggested that some should advance, this referred to the recommendation of the JNA, which decided on it, and the role of Ljubiša Petković was to communicate with the JNA part for mobilisation.

The witness described Kamení as someone who was against what happened at Ovčara and who always condemned it.

With regard to *Velepromet*, the witness confirmed that this place had nothing to do with the Leva Supoderica detachment, that people went there to get food, because the warehouses were there, and that the Leva Supoderica detachment stood guard on the first line, and never at *Velepromet*. Leva Supoderica was a combat unit. The witness confirmed that they handed prisoners over to the JNA, and then the JNA worked according to some kind of plan.

With regard to prisoners of war, the witness remembered only one incident with Topola, who had stolen a prisoner from *Velepromet* and taken him to a house where a soldier was celebrating St Archangel Day, which was on 21 November 1991, that is, after the liberation of Vukovar. The witness confirmed that he was at this patron saint's day celebration and that Kinež saved the prisoner from Topola. The witness confirmed the truth of the statements of bus drivers who took volunteers, mostly from the Serbian Radical Party, from Vukovar to Serbia. The witness also confirmed the procedure for crossing the borders, with all the checks.

The witness confirmed that he joined the Serbian Radical Party in early 1992 in Šid, in Milenko Petrić's house, but he thinks that he had signed the membership form while he was still in Vukovar. The witness remembers that Kamení joined the party and that he signed the membership form in Vukovar. The witness confirmed that membership was voluntary, and that nobody was required to join.

With regard to the next time that he went with the volunteers, the witness was not sure whether it was first with Branislav Vakić, or whether he had gone to Bihać before that.

The words from a Prosecution internal memorandum used for disclosing a witness statement to the accused were also discussed. The witness confirmed that he did not understand and did not use some newly-coined Croatian words.

The witness also clarified what it means when someone takes the oath, compared to the situation when they give a solemn declaration.

The witness remembered that he was Branislav Vakić's deputy in Trebinje, and that there was rivalry between Vakić and Ljuba Ivanović, who later left the unit. The witness remembered that he was at Ljuba Ivanović's funeral in Niš, and he corrected his previous statement that it was Professor Vojislav Šešelj's telegram of condolence that was read out, and not a message. Posthumous promotion or something similar was also discussed, because Professor Vojislav Šešelj never did that. Also described through this witness was the event that took place at the funeral of Mirko Lavadinović Vučo, who was a volunteer of the Serbian Radical Party and then joined Arkan, and this was the only case that Professor Vojislav Šešelj was at the funeral of someone who was not a volunteer of the Serbian Radical Party, and he met Arkan at the cemetery then.

The witness was of great help in clarifying all the details of the charges for Mostar and Nevesinje.

The witness was also valuable with regard to the multiethnic composition of Serbian Radical Party volunteers.

The witness also clarified that the Serbian Radical Party neither sent nor had volunteers in the territory of Brčko municipality. The only link with the party was humanitarian and other aid in food and cigarettes that came from Šid, but it was intended not only for the army, but also for the hospital and for others. While he was in Brčko in late 1992, the witness and his units provided help to Croatian units in Žepa for a month, pursuant to the order of the VRS in Brčko.

The opportunity was also used to present Professor Vojislav Šešelj's position regarding the fighting that broke out between the Croats and the Muslims. The leadership of Republika Srpska tried to establish cooperation with the Croats, but Professor Vojislav Šešelj criticised that and asked that the Serbs cooperate with the Muslims. This detail is important, because it challenges the allegations about the participants and purpose of the JCE.

The witness confirmed that he trained Muslims in Velika Kladuša for combat against other Muslims, and not against Croats.

In early 1993, the witness was expelled from the Serbian Radical Party for cooperation with State Security. The witness was led to say that the reason for his expulsion was that he did not respect the policy of the party, but he stood by his

answer that it was because there was suspicion that he cooperated with State Security. This part of the testimony of the Prosecution witness is important because it exposes the participants and therefore the purpose of the alleged JCE.

During the questioning of this witness, a story about the events planned to act as the finger on the trigger was introduced: [REDACTED]

[REDACTED]

About the events regarding the Kopic family from Kukujevac, or rather, as it later turned out, from Gibarac, [REDACTED] A property exchange contract from 1995 and a copy of the land register were presented, and it was shown that Kopic and Vujaklija were still on good terms, and that there had been no violence or threats. The Prosecution subsequently submitted documents about checks and refuted Stoparić's statement.

The relationship between the witness and Nataša Kandić since 2003 was specially analysed, particularly the fact that the witness, in addition to his frequent contacts with Nataša Kandić, admitted to the Mounted Police in one country that he brought to Nataša Kandić people who would change their statements for the court. The witness had keys to Nataša Kandić's apartment, and she put him in contact with people from the American Embassy.

Nataša Kandić sent messages to the witness during his testimony in The Hague (how are you, the Radicals are causing chaos).

The question of the Black Troikas and the Black Hand was discussed, and it was concluded that in Vojvodina it was not organised by the Serbian Radical Party. The witness tried to back out of that part of the testimony which he had been prepared for and entrusted with, that is, to make accusations for the area of Vojvodina, and as for all the other locations, to say whatever he knew, because in that part it was not possible to create a perfect lie.

The witness was shown his letter sent to a friend whom Professor Vojislav Šešelj had announced as a Defence witness.

It was also clarified that the rally in Kukujevci village was not held in 1991, but rather in 1993, and that Jovica Stegić, who sent a statement and a photocopy of his military booklet, could not possibly have been a sponsor, because he was in the RSK Army in Knin at the time. It was also clarified that there had been no expulsion, but rather the exchange of property between Serbs and Croats, with the help of the Roman

Catholic church. The witness confirmed that houses had not been set on fire or blown up, or damaged in other ways.

The witness was shown criminal records revealing that, between 1990 and 1999, he was sentenced 17 times in misdemeanour proceedings and several times in criminal proceedings for illegal possession of weapons. The witness was shown Ceca's statement from prison in Belgrade, where he accuses the witness of lying about their meeting in 2003, because Ceca had been arrested before that and he could not have possibly met the witness.

The witness admitted that he had been prepared as a witness in the *Milošević* case and that Judge May did not accept him.

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-004, [REDACTED]  
[REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-004, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's role in recruiting and coordinating SRS/SČP volunteers

"The support, coordination and direction of these volunteers required that Šešelj be in contact with other members of the 'JCE', such as leading politicians and officials in the targeted territories and in Belgrade, including Milošević." (footnote 52)

Šešelj's intent to participate in the JCE

"Šešelj was aware of public accusations that SRS/SČP volunteers were committing crimes." (footnote 96)

Implementation of the JCE in Croatia – 4. SAO Western Slavonia

"Soldiers from Vojvodina, Serbia and BiH fought in Western Slavonia under the JNA. During 1991, Šešelj visited SRS/SČP volunteers as well as Serb military and political leaders in Western Slavonia and provided encouragement to the volunteers. During the last months of 1991, Serb control over territory in Western Slavonia gradually diminished in the face of counter-attacks by Croat forces. During this period, Serb forces in Western Slavonia, including SRS/SČP volunteers, committed crimes against civilians and destroyed Croatian property and religious objects." (footnotes 124, 125, 126 and 127)

Implementation of the JCE in Croatia – 5. Croatian Serb police and military structures

“By August 1991, local Serb TO, volunteer and police forces in these regions were being supplied, trained and partly led by the JNA and officials of the Serbian MUP, such as Jovica Stanišić, Franko Simatović, Radovan Stojičić, also known as 'Badža,' Željko Ražnatović, also known as 'Arkan,' and Radmilo Bogdanović.” (footnote 133)

Crimes in Voćin, August – December 1991

“Groups of SRS/SČP volunteers arrived by bus in Voćin during September, October, and November 1991 (many of them travelled through Banja Luka in BiH where the JNA Corps active in Western Slavonia was stationed) to reinforce the local Serb TO, and remained there.” (footnote 217)

“Šešelj came to Voćin and the Sekulinci camp and inspected his volunteer units.” (footnote 226)

“On 13 December as they withdrew, Serb forces, including SRS/SČP volunteers, assaulted the civilian non-Serb population, killing civilians in Hum and Voćin, burning homes, and blowing up buildings.” (footnote 232)

“For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church.” (footnote 233)

## 2. Summary of testimony

Promoting Greater Serbia: The witness will testify to Šešelj's public appearances and his notion of a homogeneous Greater Serbia. Greater Serbia would include all the so-called Serbian lands. Croats living within Greater Serbia would have to leave.

Killings in Voćin: The witness will describe the presence of paramilitary formations in Okučani and Voćin. He will provide the information he received about the killings committed in Voćin and the neighbouring villages and about the perpetrators. He was told by residents that “Šešelj's men” were responsible for the killing of civilians in Voćin in December 1991 and that Croat houses were pointed out to “Šešelj's men”. The witness himself observed the arrival of SRS/SČP volunteers in Western Slavonia, and was aware that Šešelj visited his volunteers in Voćin and that Šešelj's volunteer units were present in the area during the events.

Relationship between the SRS and the SDS: The witness will state that there were close contacts between the Serbian Democratic Party (SDS), the Socialist Party of Serbia (SPS), and the Radical Party of Serbia (SRS).

Arrival of Šešelj in Zvečevo: The witness will testify that Šešelj came to Western Slavonia in late October or early November 1991, specifically to Zvečevo and the region of Podravska Slatina. Šešelj was accompanied by Veljko Vukelić, the then commander of the Western Slavonia TO, who organised the deployment of Šešelj's volunteers. When Šešelj arrived in Zvečevo, he was with an entourage of 8 to 10 of his men. They were all wearing camouflage uniforms and Šešelj was armed with a pistol. Šešelj stated that he was going towards Podravska Slatina the following day to visit his men. The witness understood that Šešelj had come to the region to provide moral support to his people.

Activities of Šešelj and "Šešelj's men" in Western Slavonia: The witness will testify that in Western Slavonia, there were extreme Serb nationalists who appreciated Šešelj's radical nationalist stance and were influenced by what he said. Šešelj encouraged the use of the military option in his speeches. The people in Western Slavonia were promised that the army would come to protect them, but when "Šešelj's men" arrived many people, including Croats and Serbs, began leaving the area out of fear of "Šešelj's men". The witness describes the conduct of "Šešelj's men" as reflecting the attitude exhibited by Šešelj in his speeches: extremely negative, without tolerance and very arrogant. In addition, the witness will testify that he constantly saw Šešelj on television giving emotional speeches in which he routinely mentioned the Karlobag-Karlovac-Ogulin-Virovitica line as the western borders of Greater Serbia.

Paragraphs: 5-9, 10 b, c, d, e, g, 11, 12, 14-16, 17 a, j, 18, 19, and 31.

Counts: 1, 2-4, and 12-14.

### 3. Content of testimony

██████████ testified on 7, 12 and 13 February 2008, with protective measures. ██████████ is not a crime base witness, because Western Slavonia has been dropped from the indictment, but he can testify about the consistent pattern of conduct and, as part of that, about aspects of the JCE.

Important details from the testimony of 12 February 2008:

- Šešelj did not make derogatory comments about minorities, and his views were criticised in Serbia,

- rivalry and mutual recrimination between him and Arkan,

- the conflict between the police forces and the TO,

- volunteers started arriving in early October 1991, and they were all called SRS volunteers,

- the killing in Četekovac in September 1991, that is, one month before the arrival of the volunteers,

- the Prosecutor insisted on this with regard to the JCE, although there were no volunteers?

- 19 December 1991, the White Eagles and the killing in Hum, they were all referred to as “Šešelj’s men”, probably because Šešelj was the only politician from Serbia who came to Western Slavonia,

- the Serbs who had been driven out went via Banjaluka to Vojvodina, and there were cases of people coming to Hrtkovci,

- Professor Vojislav Šešelj has no connection with Lukić and Radosavljević,

- in the list of 78 suspects there are local Serbs, and the Croatian authorities assert that they are Chetniks, and it all relates to a period before the arrival of SRS volunteers,

- Croats from Vojvodina came to Croatia as volunteers or they exchanged their property,

- they could not exchange in the territory of Western Slavonia, because all the Serbian houses had been demolished or burned down,

- the question about Branko Popović, who later went to Zvornik.

Important details from the testimony of 13 February 2008:

- Radmilo Bogdanović was included in the story about arming to cover up for Dušan Pekić,

- ██████████ admitted that he had never told investigators that Professor Vojislav Šešelj was responsible for the killings in Voćin, or that he had ordered the killing,

- he never told investigators that the volunteers would have killed him if he had by any chance visited them, and if he spoke about this it related to Jovo Vezmar’s threats,

- Šešelj did not present himself as the commander of the volunteers,

- there is not a single volunteer of the Serbian Radical Party in the list of 68 suspects of the crimes in Voćin,

- Šešelj never called for expulsion from Western Slavonia.

The Prosecution cannot use a single word from the testimony of this witness to support its charges against Professor Vojislav Šešelj. This is a good opportunity to repeat that virtually none of the witnesses confirmed in court the story which the Prosecution had commissioned and presented in the preliminary statements of these witnesses allegedly given to Prosecution investigators. Another submission is probably needed to list the parts of witness statements given to Prosecution investigators and cited in the Prosecution's Final Pre-Trial Brief which the witnesses did not repeat in court or which, during cross-examination, they denied ever having said to the Prosecution.

#### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-013, MLADEN KULIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-013, Mladen Kulić, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's intent to participate in the JCE:

"Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia) where non-Serbs were being persecuted."

Crimes in Croatia - Voćin, August – December 1991

"Groups of SRS/SČP volunteers arrived by bus in Voćin during September, October, and November 1991 (many of them travelled through Banja Luka in BiH where the JNA Corps active in Western Slavonia was stationed), to reinforce the local Serb TO, and remained there." (footnote 217)

"Šešelj came to Voćin and the Sekulinci camp and inspected his volunteer units." (footnote 226)

"He was accompanied by Veljko Vukelić and Ilija Sašić, local Serb TO commanders in Voćin, and Rajko Bojčić, who was associated with the local Serb TO in Voćin." (footnote 227)

"As they withdrew on 13 December 1991, Serb forces, including SRS/SČP volunteers, assaulted the civilian non-Serb population, killing civilians in Hum and Voćin, burning homes, and blowing up buildings." (footnote 232)



“For example, SRS/SČP volunteers massacred a group of civilians in Hum, executed a Croatian prisoner of war, planted explosives in the police station in Voćin, and blew up the Catholic church.” (footnote 233)

“Following the withdrawal, bodies of civilians were found strewn across Voćin. Victims were primarily elderly.” (footnote 234)

## 2. Summary of testimony for VS-013, Mladen Kulić

**Nationalism:** The witness will testify about the political situation in the former Yugoslavia in 1990 and 1991. He will explain how Milošević used the build-up of nationalism in other republics (Slovenia and Croatia) in order to strengthen Serbian nationalism.

**SDS:** The witness will testify to the rise of the SDS in Croatia and the role of its main players.

**SAO Western Slavonia:** The witness will speak about the formation of the SAO Western Slavonia on 31 October 1991 and its organs. He will specify its territory, including about 200 villages in ten municipalities, among them Pakrac, Slatina and Virovitica. He will speak about the relations between the SAO Western Slavonia, and later the RSK, and the SFRY.

**Western Slavonia TO:** The witness will testify that the Western Slavonia TO Main Staff was located in Zvečevo. The commanders of the Main Staff were: Veljko Vukelić, Milan Lončar and Colonel Jovan Trbojević (from the Novi Sad Corps). There was a TO HQ near Voćin (Sekulinci) which Boro Lukić led until 30 September 1991 when he was promoted to the Main Staff in Zvečevo and replaced by Boro Radosavljević. The witness will testify to the composition and operations of the Western Slavonia TO. At the end of 1991 about 3,000 TO soldiers and volunteers were deployed in the territory of Western Slavonia. The witness will describe the links between the Western Slavonia TO and the JNA. The JNA coordinated the supply of weapons, ammunitions and logistics. TO Main Staff and the Banja Luka JNA Corps commanders met constantly throughout 1991 and especially between September and December 1991.

**JNA:** The witness will testify to the role and composition of the JNA Banja Luka Corps in Western Slavonia, the location of its garrisons and its confrontations with the Croatian forces in 1991.

Ilija Sašić: Ilija Sašić was the representative of the RSK Government in Belgrade from the end of 1991 or beginning of 1992. The RSK offices in Belgrade were not diplomatic representations but acted more like liaison offices (“as if the RSK was part of Serbia”).

The witness will speak about the relationship between Ilija Sašić and Professor Vojislav Šešelj. When Šešelj came to visit Western Slavonia Sašić accompanied him. He will testify how Sašić received military support from the SFRY.

Presence of volunteers: The witness will testify that, in October 1991, the first volunteers arrived in Western Slavonia. Some wore “Chetnik” insignia. The TO commander in charge of them boasted about the arrival of these volunteers. The TO commander was in possession of a paper stating that these men were recruited in Belgrade and that Šešelj’s Serbian Radical Party (SRP) carried out the recruitment through the RSK Belgrade Office. Another five or six groups of volunteers of 40 to 50 people each arrived in Western Slavonia in October and November 1991. They had their own agenda and tended to operate independently from their TO commanders.

The witness will testify that, in November 1991, in a place called Miokovićevo (now Đulovac), located in the vicinity of Voćin, about 20 to 25 volunteers arrived from Ruma (Vojvodina) and were accommodated in the local motel. JNA Colonel Jovan Trbojević approved the arrival of these volunteers. It was common knowledge that volunteer groups had committed crimes previously.

The volunteers wore different kinds of uniforms and looked unkempt. They had long beards and hair and wore woollen caps bearing an insignia that was not familiar to the witness but was referred to as a “Chetnik” insignia. These soldiers came with their own weaponry and ammunition that were the same as the JNA ones such as *Zolja* and *Osa*. They also had private weapons, such as sniper rifles or hunting rifles.

The witness will testify that Serbian companies, political parties and the Orthodox Church financed the volunteers in Western Slavonia. Political parties like Šešelj’s Serbian Radical Party and the SDS distributed money to the volunteer groups and the JNA. The salary of the TO members came from the JNA.

Šešelj’s visit: The witness will testify to Šešelj’s visit to Voćin, Okučani and Đulovci in or around November 1991. He was in the company of Veljko Vukelić, Ilija Sašić and Rajko Bojčić. Šešelj took part in a meeting that the witness believes was held to discuss the deployment of volunteers in the territory.

Crimes in Western Slavonia: The witness will testify about his knowledge of crimes committed in Western Slavonia. He will speak of the killings of Croatian civilians in Četekovac, Balinci and Čojluk in September 1991 and the units involved in this. The witness saw one house in Voćin burned and saw a group of volunteers near the house that he believes were responsible. The witness will testify to the killing of four young Croatian civilians in Voćin on or around 4 December 1991. The victims were part of the "Working Brigade" formed and supervised by the TO.

The witness will describe that the local Serb population withdrew with the retreating Serb forces as a consequence of information reported by Serbian media that described the action of the Croatian forces and created panic amongst local Serbs.

The witness will testify to the killing of Croatian civilians in Voćin during the withdrawal of the Serb forces on 13 December 1991. The witness heard that "Chetniks" came to inquire if there were houses in the villages inhabited by Croats. Local Serbs pointed the Croatian houses out to the volunteers so they could enter and kill people.

Paragraphs 6-12, 14-19, 24-28, 31-32.

Counts: all counts.

### 3. Content of testimony

The witness testified *viva voce* on 4, 5 and 6 March 2008.

The witness was absolutely demolished and destroyed, with practically nothing of his testimony remaining, i.e. none of the allegations and claims that the Prosecution counted on can be accepted as having been corroborated by him.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-007, [REDACTED], WITH PROTECTIVE MEASURES**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-007, [REDACTED], was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's participation in the JCE:

"Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of volunteers who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories." (footnote 8)

Šešelj's role in the recruitment and coordination of SRS/SČP volunteers:

"The primary goal of SRS/SČP volunteers operating in Vukovar, a town in Eastern Slavonia in Croatia, during 1991 was to "cleanse the area of Ustashas". The prevailing atmosphere, not surprisingly, was that every Croat was an "Ustasha" and any "Ustasha" who tried to surrender was immediately shot." (footnote 81)

"SRS/SČP volunteers agreed with the goal of creating Greater Serbia by using all necessary means, including violence, because they fervently believed in Šešelj." (footnote 84)

Šešelj's intent to participate in the JCE:

"Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia) where non-Serbs were being persecuted."

"As discussed below, while visiting Vukovar in November 1991, shortly before the city fell to Serb forces, Šešelj told an assembled group of SRS/SČP volunteers, members of the Serb TO, and the JNA: 'Not a single Ustasha must leave Vukovar alive.'" (footnote 103)

Crimes in Croatia – Voćin, August – December 1991:

"One SRS/SČP volunteer marched around Voćin holding the head of a Croatian victim." (footnote 224)

Crimes in Serbia – Hrtkovci, May – August 1992:

"As of 1990, Hrtkovci, a village in the Ruma municipality of Vojvodina, Serbia, was comprised of a majority of Croats with significant Hungarian and Serb minorities." (footnote 408)

"The SRS brought Serb refugees in buses to Vojvodina. These refugees were referred to Ostoja Sibinčić, an SRS member and associate of the Accused in Hrtkovci, (footnote 418) who would give them the addresses of houses owned by Croats."

"Non-Serbs were threatened over the telephone and in person. These included bomb threats against people's homes and the brandishing of weapons." (footnote 450)

"Groups of Serbs in Hrtkovci confronted Croats, demanding they "exchange" their houses. Bombs were thrown at their homes" (footnote 454).

Legal analysis:

"Alternatively to the other modes of criminal liability contained in Article 7(1), Šešelj aided and abetted all of the crimes charged in the indictment by his wilful



[REDACTED]

[REDACTED]

[REDACTED]

Paragraphs: 5-7, 10 a-e, g, 11, 15, 16, 17 a, e, h, j, 18-21, 27-29, 31.

Counts: 1, 2-4, 10, 11, 12-14.

**3. Content of testimony**

Witness VS-007, [REDACTED], testified with protective measures on 15, 16 and 17 April 2008, in closed session. [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**ANALYSIS OF THE TESTIMONY OF WITNESS VS-048, NEBOJŠA  
STOJANOVIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, it is not known if VS-048, Nebojša Stojanović, is planned to be a Prosecution witness.

2. Summary of testimony for VS-048, Nebojša Stojanović

Recruitment: The witness will testify that in 1991 the Serbian media constantly reported on alleged incidents in Croatia, permanently sending the message that the Serbs in Croatia were endangered. He will describe how these reports worked in favour of Šešelj's political intentions, whereby the SRS was growing stronger and stronger. A lot of people were under the influence of Šešelj at the time. In spring 1991, Šešelj participated in a rally during which he boasted in his speech that his radicals had killed the Ustashas in Borovo Selo, he propagated the creation of a Greater Serbia along the Karlovac-Karlobag-Virovitica line and said that everyone who cherished Serb patriotism should go to Croatia and help their Serb brothers in the defence of Serbian land. As a result of that speech, the witness and other people subsequently enrolled as SRS volunteers.

Training Centre in Erdut: The witness will testify that in summer 1991 he got call-up letters for a military exercise. He was supposed to appear fully armed in Bujanj Potok. There he noticed a great number of volunteers waiting to be issued with uniforms from the JNA and he observed the departure of SRS volunteers to the front. From Bujanj Potok the witness was sent to the Erdut Training Centre. Shortly after his arrival the centre was taken over by Željko Ražnatović aka Arkan and his men. In August 1991, Šešelj, accompanied by three buses full of volunteers, arrived at the centre. Šešelj introduced himself to Arkan, they shook hands. Also Goran Hadžić was present. Šešelj had his volunteers lined up and gave a short speech, mentioning Greater Serbia and its boundaries, Karlovac-Karlobag-Virovitica, and called upon the audience to kill all Ustashas, because it was Serbian territory. Šešelj did not make any difference between Croatian civilians and armed Croatian forces, for him all Croats were Ustashas. The volunteers who had accompanied Šešelj looked scruffy, they wore



long beards and cockades. *Arkan* ordered that volunteers who wanted to stay had to shave and tidy up, otherwise they would be returned to Serbia.

Events in Vukovar, killing of Croats: The witness will testify about the events in Vukovar and the involvement of volunteers in them. He will speak about a TO unit commanded by *Kameni*. He will describe how members of this unit looted the houses in the area they controlled. For most of them, looting was the main reason to enrol as a volunteer. The witness will testify that *Kameni* was the first to issue an order for every Croat bearing arms to be killed on the spot and later he ordered that every Croat should be killed on the spot. Volunteers engaged in the cleansing openly claimed that they had killed Croats, armed or not, on the spot, because there was no time to take them to the collection centre at *Velepromet*. These Croats had surrendered and laid down their arms. They were literally slaughtered, the Chetniks first beat them up and then slit their throats.

*Velepromet*: The witness will testify that at the end of the fighting in Vukovar every day between 1,000 and 2,000 people had to undergo a check at *Velepromet*. All valuables and documents were seized from the Croats. Often Croats were maltreated by their former Serb neighbours. The witness observed a big man from *Kameni*'s unit who maltreated the Croatian detainees being taken for interrogation. The witness does not remember the name of that "Chetnik", whom he describes as a big man with a dark complexion, a beard, scruffy hair and a big knife. The witness will state that members of the Vukovar TO took Croat detainees out of *Velepromet* and then disappeared somewhere. The witness was present when two twin brothers disappeared overnight. Later the witness learned that they were killed. He observed a member of *Kameni*'s group taking out one Croat detainee and killing him on the spot. Another detainee, suspected of being a sniper, was beaten so badly with a rifle butt that the butt broke from the blows to his head. Then a "Chetnik" nicknamed "Kinez" killed him with a shot to the head.

Šešelj's visit to Vukovar: The witness will testify that he personally saw Šešelj when he visited Vukovar. Šešelj was accompanied by *Branislav Vakić* and *Kameni* and his men. Among *Kameni*'s men was also *Kinez*.

Vukovar hospital: The witness saw when Major Šljivančanin and his entire command had a meeting in the Vukovar hospital. The witness will testify who participated in that meeting.

Ovčara massacre: The witness was not at Ovčara; he learned about the massacre only a few days after the event. He learned that Kameni boasted “that the Croats from the hospital were taken to a place where they listen to the grass grow”, which means that they had been executed.

Paragraphs: 5-10, 15, 16, 17, a-d, h-j, 18, 20, 21, 24-26, 27, 28, 31.

Counts: all counts.

### 3. Content of testimony

The witness testified *viva voce* on 22 and 23 July 2008. He had been registered as a witness for the Defence as well, but appeared as a witness for the Prosecution in order to avoid problems. With regard to the Prosecution, he buried their case and caused a veritable scandal, so that Daniel Saxon of the Office of the Prosecutor also had to be questioned. He was a witness for the Defence to the end, and more or less refuted by valid arguments many of the allegations that the Prosecution had counted on this witness to corroborate.

## **ANALYSIS OF THE TESTIMONY OF WITNESS VS-009, ALEKSANDAR STEFANOVIĆ**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, VS-009, Aleksandar Stefanović, was planned as a Prosecution witness through whom the following was to be proven:

The creation and structure of the SRS:

“On 23 February 1991, Šešelj was elected President of the newly founded Serbian Radical Party.”(footnote 182)

### 2. Summary of testimony for VS-009, Aleksandar Stefanović

The witness will testify about the establishment and structure of the SRS and the organisation of the SČP. Many SRS members were also members of the SČP. Šešelj was the leader of both organisations and was the *vojvoda*, which means the military leader of all the “Chetniks”. The witness will testify to the close relationship between Šešelj and Milošević. He will describe Šešelj’s close relations with the State Security Service of Serbia. According to the witness, Šešelj used his propaganda linked to the idea of a “Greater Serbia” as a tool for achieving his political aims. His propaganda influenced thousands of people to volunteer to go to the front. The witness will testify to the involvement of the War Staff of the SRS in the recruitment and transfer of volunteers to the battlefields from April 1991 onwards. Šešelj often

gave a speech, before volunteers set out for the front, reminding them that 30 years earlier “Ustaša” had killed Serbs just because they were Serbs, and exhorted the volunteers not to let the story be repeated.

Paragraphs: 5-9, 10 a, b, c, e, f, g, 11-16, 17 a.

Counts: 1.

### 3. Content of testimony

The witness testified *viva voce* on 25 and 26 November 2008, via video link from Belgrade. He had been planned as a witness for the Prosecution but got in touch with the Expert Team for Preparation of the Defence and volunteered as a witness for the Defence, as he indeed demonstrated during his testimony. The witness seriously accused the Prosecution and the DOS /Democratic Opposition of Serbia/ authorities in Serbia which had forced him to get in touch with Prosecution investigators. He denied almost everything from his alleged statements given to the Prosecution, so that it is not clear whether the indictment still stands.

## **ANALYSIS OF THE PUBLIC TESTIMONY OF WITNESS VS-044, JOVAN GLAMOČANIN, VIA VIDEO LINK**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, VS-044, Jovan Glamočanin, was not planned as a Prosecution witness.

2. There is no summary of evidence for VS-044, Jovan Glamočanin, as the Prosecution first decided not to call him as a witness and subsequently changed its mind.

### 3. Content of testimony

The witness testified on 10 and 11 December 2008, via video link from Belgrade. He volunteered to be a witness for the Defence, of which the Prosecution and the Trial Chamber were informed. His testimony was honest, inspired and served the Defence to prove that no JCE existed. The witness destroyed the Prosecution to such an extent that nothing remained of the charges the Prosecution had counted on.

## **ANALYSIS OF THE TESTIMONY OF WITNESS VS-027, ██████████ ██████████, WITH PROTECTIVE MEASURES, IN CLOSED SESSION AND VIA VIDEO LINK**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, VS-027, ██████████, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's participation in the JCE:

“Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of volunteers who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories.” (footnote 8)

Šešelj's role in the recruitment and coordination of SRS/SČP volunteers:

“The support, coordination and direction of these volunteers required that Šešelj be in contact with other members of the JCE, such as leading politicians and officials in the targeted territories and in Belgrade, including Milošević.” (footnote 51)

“In addition, Šešelj, directly and with the assistance of his subordinates in the SRS and SČP, coordinated the efforts and activities of SRS/SČP volunteers with other individuals and groups within the JCE, such as Radmilo Bogdanović, one-time Minister of the MUP of Serbia, Jovica Stanišić and Franko Simatović of the DB of the Serbian MUP, a high-ranking officer of the JNA, the VRS and the SVK, Milan Babić, the President of the SAO Krajina and subsequently RSK, Goran Hadžić, the President of the SAO SBWS and subsequently the President of the RSK, Milan Martić, the Minister of Internal Affairs of the RSK, Colonel Jovan Trbojević, commander of the TO for Western Slavonia, Radovan Karadžić, the President of the SDS of BiH and the President of Republika Srpska, and representatives of Serbia's Ministry of Defence and Ministry for Liaison with Serbs Outside of Serbia.” (footnote 58)

“The prevailing atmosphere, not surprisingly, was that every Croat was an “Ustasha” (footnote 80) and any “Ustasha” who tried to surrender was immediately shot.

Šešelj's intent to participate in the JCE:

“Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front lines on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia) where non-Serbs were being persecuted.”

“As discussed below, while visiting Vukovar in November 1991, shortly before the city fell to Serb forces, Šešelj told an assembled group of SRS/SČP volunteers, members of the Serb TO and the JNA: “Not a single Ustasha must leave Vukovar alive.”(footnote 103)

Croatian Serb police and military structures:

“A large portion of the non-Serb population was eventually killed or forced from the occupied areas.” (footnote 140)

“When the Serb forces occupied the city, they (including SRS/SČP volunteers) killed hundreds of Croats.” (footnote 142)

Crimes in Croatia – Vukovar, November 1991:

“Šešelj told the gathering: “We are all one army. This war is a great test for Serbs. Those who pass the test will become winners. Deserters cannot go unpunished. Not one Ustasha must leave Vukovar alive. We have accepted the concept of a federal army so that there is no legal basis for interference of foreign powers in our conflict. The army is fighting rebel Croats. The army has shown that it was able to cleanse its ranks. We have a unified command consisting of military experts who know what they’re doing.”(footnote 202)

“When the buses containing the victims arrived at the JNA barracks near the *Velepromet* facility, heavily armed members of the local Serb TO, including the Leva Supoderica SRS/SČP detachment, ran around the buses and cursed the detainees inside. Kameni approached an officer of the JNA military police, who were guarding the buses, and demanded that the JNA “release these Ustashes”. The officer refused, but shortly thereafter, the buses left for the Ovčara farm. Major Šljivančanin, who was in charge, was present at the barracks, and reportedly organised their transfer there.”(footnote 206)

“The killings of at least two hundred and fifty-five Croats and other non-Serbs from the Vukovar hospital continued until 0100 hours on 21 November. Members of the local Serb TO, including the SRS/SČP volunteers (including members of Kameni’s detachment) participated in the killings.” (footnote 208)

Crimes in BH – Zvornik, April 1992 – September 1993:

“Over the coming weeks other municipalities also were taken over by Serb forces including Arkan’s men, the JNA and SRS/SČP volunteers.” (footnote 293)

“There is evidence of mass killings of non-Serb civilians in Zvornik – the bodies of 200 Muslims were recovered from the streets of Zvornik following the takeover and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in BiH after Srebrenica.” (footnote 299)

“Throughout this time period, Šešelj was regularly provided with information by SRS officials around Zvornik. For example, Miroslav Vuković, also known as









“In addition, Šešelj, directly and with the assistance of his subordinates in the SRS and SČP, coordinated the efforts and activities of SRS/SČP volunteers with other individuals and groups within the JCE, such as Radmilo Bogdanović, one-time Minister of the MUP of Serbia, Jovica Stanišić and Franko Simatović of the DB of the Serbian MUP, (footnote 56) a high-ranking officer of the JNA, (footnote 57) the VRS and the SVK, Milan Babić, the President of the SAO Krajina and subsequently RSK, Goran Hadžić, the President of the SAO SBWS and subsequently the President of the RSK, Milan Martić, the Minister of Internal Affairs of the RSK, Colonel Jovan Trbojević, commander of the TO for Western Slavonia, Radovan Karadžić, the President of the SDS of BiH and the President of Republika Srpska, and representatives of Serbia’s Ministry of Defence and Ministry for Liaison with Serbs Outside of Serbia.”

“While at the front lines, volunteers received the same benefits as regular soldiers.” (footnote 70)

“Šešelj also used his special position of political and “moral” authority and hate speech to indoctrinate those who responded to his call to fight for “Greater Serbia.” (footnote 77)

Šešelj’s intent to participate in the JCE:

“In mid-1991, a written report about the undisciplined behaviour of SRS/SČP volunteers was made to the SRS Volunteer Detachment Staff, which was overseen by Šešelj.” (footnote 92)

“Commanders of SRS/SČP volunteer units and TO commanders often reported directly to Šešelj about events at the front lines and told him about crimes committed by volunteers.” (footnote 93)

“On other occasions, commanders of SRS/SČP volunteer units and TO commanders reported to the War Staff, who in turn informed Šešelj, in great detail, about events and the activities of the volunteers.” (footnote 94)

Parallel structures of Croatian Serbs in SAO Krajina:

“By August 1991, local Serb TO, volunteer and police forces in these regions were being supplied, trained and partly led by the JNA and officials of the Serbian MUP, such as Jovica Stanišić, Franko Simatović, Radovan Stojičić, also known as Badža, Željko Ražnatović, also known as Arkan, and Radmilo Bogdanović.” (footnote 133)

Crimes in BH – the general area of Sarajevo:



[REDACTED]

Paragraphs: 5-9, 10 a-g, 15, 16, 17 a, i, 18, 22, 24, 28, 29 b, e, 31-33.

Counts: 1-11.

### 3. Content of testimony

The witness was scheduled to testify on 30 March 2010. He appeared in the courtroom, but he did not testify [REDACTED] [REDACTED] the Trial Chamber [REDACTED] decided not to hear this witness, which certainly is an unheard-of scandal.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-017, ZORAN RANKIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, VS-017, Zoran Rankić, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj's participation in the JCE:

"Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of volunteers who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories." (footnote 8)

Šešelj's role in recruiting and coordinating SRS/SČP volunteers:

"Under the direction of Šešelj, the SRS War Staff dispatched thousands of volunteers to fight for Serb control over areas in Croatia and BH." (footnote 50)

"The support, coordination and direction of these volunteers required that Šešelj be in contact with other members of the Joint Criminal Enterprise, such as leading politicians and officials in the targeted territories and in Belgrade, including Milošević." (footnote 51)

"In addition, Šešelj, directly and with the assistance of his subordinates in the SRS and SČP, coordinated the efforts and activities of SRS/SČP volunteers with other individuals and groups within the JCE, such as Radmilo Bogdanović, one-time Minister of the MUP of Serbia, Jovica Stanišić and Franko Simatović of the DB of the Serbian MUP, a high-ranking officer of the JNA, the VRS and the SVK, Milan Babić, the President of the SAO Krajina and subsequently RSK, Goran Hadžić, the President of the SAO SBWS and subsequently the President of the RSK, (footnote 60) Milan Martić, the Minister of Internal Affairs of the RSK, (footnote 61) Colonel Jovan Trbojević, commander of the TO for Western Slavonia, Radovan Karadžić, the President of the SDS of BiH and the President of Republika Srpska, and

representatives of Serbia's Ministry of Defence (footnote 64) and Ministry for Liaison with Serbs Outside of Serbia."

"Once at the front lines, the SRS/SČP volunteers were normally subordinated to the local command structure, i.e., the local Serb TO and/or JNA/VJ forces and the VRS/SVK forces." (footnote 73)

"The volunteers, however, considered Šešelj to be their supreme commander." (footnote 74)

"More than once Šešelj told his volunteers that their task was to kill 'Ustashas' or 'Turks'." (footnote 78)

"When Šešelj was informed of the atrocities committed in Vukovar by one of the SRS/SČP volunteers, a man called Topola, Šešelj responded: 'What can I do now? Disarm the man and send him home. He is tired.'" (footnote 88)

Šešelj's intent to participate in the JCE:

"Šešelj knew or must have known that his inflammatory speeches and public appearances at the battlefield would provoke Serb SRS/SČP soldiers and volunteers to commit violent acts." (footnote 91)

"In mid-1991, a written report about the undisciplined behaviour of SRS/SČP volunteers was made to the Volunteer Detachment Staff, which was overseen by Šešelj." (footnote 92)

"Commanders of SRS/SČP volunteer units and TO commanders often reported directly to Šešelj about events at the front and told him about crimes committed by volunteers." (footnote 93)

"On other occasions, commanders of SRS/SČP volunteer units and TO commanders reported to the War Staff, who in turn informed Šešelj, in great detail, about events and the activities of the volunteers." (footnote 94)

"Šešelj and members of the War Staff exchanged information with the Serbian DB, the JNA/VJ, Serbia's MOD and Serbia's Ministry for Liaison with Serbs Outside of Serbia." (footnote 95)

"Šešelj personally visited SRS/SČP volunteer units and other Serb forces at the front on many occasions, (footnote 97) as well as parts of Vojvodina, Serbia (which borders Croatia) where non-Serbs were being persecuted."

"Šešelj did not take steps to correct these problems or condemn them. He never directed the members of the SRS or the SČP to respect the Geneva

Conventions or other rules of international humanitarian law, and never distanced himself from the ongoing persecution of non-Serbs in any way.” (footnote 101)

“As discussed below, while visiting Vukovar in November 1991, shortly before the city fell to Serb forces, Šešelj told an assembled group of SRS/SČP volunteers, members of the Serb TO and the JNA, ‘Not a single Ustasha must leave Vukovar alive.’” (footnote 103)

The creation and structure of the SRS:

“On 23 February 1991, Šešelj was elected President of the newly founded Serbian Radical Party.”(footnote 182)

“Šešelj served as the leader of both organisations and made all important decisions concerning the policies and operations of the SRS and the SČP.” (footnote 186)

“The War Staff met daily or weekly to discuss the organisation of volunteer units and their dispatch to the front lines.” (footnote 189)

“Šešelj either attended the meetings of the War Staff or was informed of them.” (footnote 190)

Crimes in Croatia

Vukovar, November 1991:

“On or about 12 November 1991, Šešelj came to Vukovar in order to visit the volunteers and boost their morale. A meeting took place that evening in a house at Ulica Nova 81, which was used as a command post by members of the JNA and the local Serb TO. Present were Šešelj and other leaders of the SRS, JNA officers such as Major Veselin Šljivančanin, Captain Miroslav Radić and Captain Bojkovski, Stanko Vujanović, the commander of the 1<sup>st</sup> TO Detachment, Miroљjub Vujović, a member of the Vukovar TO Staff, and a number of SRS/SČP volunteers, including Kameni.” (footnote 201)

Šešelj told the gathering:

“We are all one army. This war is a great test for Serbs. Those who pass the test will become winners. Deserters cannot go unpunished. Not one Ustasha must leave Vukovar alive. We have accepted the concept of a federal army so that there is no legal basis for interference of foreign powers in our conflict. The army is fighting rebel Croats. The army has shown that it was able to cleanse its ranks. We have a

unified command consisting of military experts who know what they're doing.”  
(footnote 202)

#### Crimes in BH

Bosanski Šamac, April 1992 – September 1993:

“On 11 April 1992, a group of DB-trained and armed SRS/SČP volunteers led by “Debeli” arrived by JNA helicopter in Batkuša, near Bosanski Šamac, to spearhead the takeover of the municipality. Their commanders were Dragan Đorđević (aka Crni), Debeli, and Slobodan Miljković (aka Lugar) of the Serbian DB.” (footnote 263)

Zvornik, April 1992 – September 1993:

“In early April 1992, the Accused approved a request to send SRS/SČP volunteers to Zvornik, (footnote 283), and SRS leaders brought SRS/SČP volunteers from Loznica, Serbia, to Zvornik.” (footnote 284)

“Soon after the takeover, Šešelj went to Zvornik or Mali Zvornik where he spoke at an SRS rally.” (footnote 292)

“Šešelj and the SRS War Staff were informed of developments on the battlefield and the performance of SRS/SČP volunteers.” (footnote 295)

“Throughout this time period, Šešelj was regularly provided with information by SRS officials around Zvornik. For example, Miroslav Vuković, also known as Čele, a leader of SRS/SČP volunteers in Zvornik, would call Šešelj from the front lines or send messages through intermediaries.” (footnote 308)

The general area of Sarajevo:

“Gavrilović also discussed with Aleksić the recruitment of more SRS/SČP volunteers.” (footnote 342)

“While in Sarajevo in 1991, Gavrilović received his orders from the main SRS office in Belgrade, and on several occasions he met directly with Šešelj in Belgrade.” (footnote 343)

#### Crimes in Serbia

Hrtkovci, May – August 1992:

“Eventually, Vojvodina would become an SRS stronghold.” (footnote 415)

#### Legal analysis

“Alternatively to the other modes of criminal liability contained in Article 7(1), Šešelj aided and abetted all of the crimes charged in the indictment by his

wilful and knowing contribution to the commission of the crimes. The required *mens rea* of Šešelj is evidenced by:

- his repeated visits to the battlefields and towns in Vojvodina such as Hrtkovci, (footnote 521)

- his continuing to dispatch volunteers to the front lines even while knowing they committed crimes, (footnote 522)

- his failure to discipline volunteers for the commission of crimes.”(footnote 524)

### 3. Content of testimony

Zoran Rankić testified *viva voce* on 11 and 12 May 2010. During his testimony the witness denied all the allegations from the statements which the Prosecution represented as his statements given to Prosecution investigators. He did not confirm a single fact for which the Prosecution had counted on this witness, and he refuted everything with sensible answers which corresponded to well-known facts. Everything that the Prosecution intended to do with its witnesses, i.e. to pressure and threaten witnesses into repeating in the courtroom the text of previously commissioned statements, was proved by the example of this witness. This witness is also interesting because of the sort of torture he was subjected to in contacts with Prosecution investigators, and this will be the subject of special contempt of court proceedings conducted against the most responsible persons from the Office of the Prosecutor.

### **ANALYSIS OF THE TESTIMONY OF WITNESS VS-032, NENAD JOVIĆ**

1. According to the Prosecution’s Final Pre-Trial Brief of 25 July 2007, VS-032, Nenad Jović, was planned as a Prosecution witness through whom the following was to be proven:

Šešelj’s role in the recruitment and coordination of SRS/SČP volunteers:

“The volunteers, however, considered Šešelj to be their supreme commander.”  
(footnote 74)

Šešelj’s intent to participate in the JCE:

“Commanders of SRS/SČP volunteer units and TO commanders often reported directly to Šešelj about events at the front lines and told him about crimes committed by volunteers.” (footnote 93)

Crimes in BH



Zvornik, April 1992 – September 1993:

“The takeover of Zvornik town occurred between 8 and 9 April 1992 when Serb forces, including Arkan’s men, SRS/SČP volunteers, local Serb TO and police attacked and took over the town. The attack was supported by JNA shelling the town from Serbia and the Serbian TO from Loznica. Many non-Serb civilians were killed during the takeover.” (footnote 291)

“There is evidence of mass killings of non-Serb civilians in Zvornik – the bodies of 200 Muslims were recovered from the streets of Zvornik following the takeover, (footnote 297) and 750 men were massacred at the Karakaj Technical School in the second biggest massacre in BiH after Srebrenica.”

“Around 30 May 1992, a group of SRS/SČP volunteers took charge of the detainees in the *Ciglana* factory and forced them to plunder and loot houses in Zvornik. Throughout this time period, Šešelj was regularly provided with information by SRS officials around Zvornik.” (footnote 307)

2. Witness Nenad Jović testified on 6 and 7 July 2010. The witness had informed earlier that he wished to be a witness for the Defence, and his entire testimony consisted of refuting or explaining the claims of the Prosecution which are represented in Prosecution materials as the witness’ statements or testimony.

#### **EXPERT WITNESSES**

The Prosecution counted on the following expert witnesses:

1. Colonel Ivan Grujić (Croatian refugees),
2. Professor Anthony Oberschall (hate speech),
3. Dr Andras Riedlmayer (destruction of religious facilities),
4. Dr Zoran Stanković (forensic medicine),
5. Dr Davor Strinović (forensic pathologist),
6. Osman Kadić (forensic pathologist),
7. Dr Ewa Tabeau (demographer),
8. Reynaud Theunens (military analyst),
9. Yves Tomić (historian),
10. VS-1112, [REDACTED] (intercepted conversations).

The Trial Chamber decided that Colonel Ivan Grujić be replaced by:

- Višnja Bilić, who testified *viva voce* on 18 and 19 November 2008, as the 52<sup>nd</sup> witness, and

- Anamarija Radić, who testified *viva voce* on 20 November 2008, as the 54<sup>th</sup> witness.

The following testified in the courtroom:

- Professor Anthony Oberschall, hate speech, as the 1<sup>st</sup> witness, on 11, 12 and 13 December 2007, *viva voce*,

- Andras Riedlmayer, destruction of cultural heritage, as the 21<sup>st</sup> witness, on 21, 22, 27 and 28 May 2008, *viva voce*,

- Dr Zoran Stanković, forensic pathologist, as the 66<sup>th</sup> witness, on 15 January 2009, *viva voce*,

- Dr Davor Strinović, forensic pathologist, as the 50<sup>th</sup> witness, on 11 November 2008, *viva voce*,

- Dr Ewa Tabeau, demographer, as the 44<sup>th</sup> witness, on 21, 22 and 23 October 2008, *viva voce*,

- Reynaud Theunens, military expert, as the 5<sup>th</sup> witness, on 14, 19, 20, 21, 26, 27 and 28 February 2008, *viva voce*,

- Yves Tomić, historian, as the 3<sup>rd</sup> witness, on 29 and 30 January 2008, and 5 and 6 February 2008, *viva voce*,

- VS-1112, [REDACTED], intercepted conversations, as the 34<sup>th</sup> witness, on 8, 9, 10, 15 and 16 July 2008, protected witness,

- Osman Kadić, doctor, did not testify.

### **ANALYSIS OF THE TESTIMONY OF EXPERT WITNESS YVES TOMIĆ**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, Yves Tomić was planned as a Prosecution expert witness through whom the following was to be proven:

Introduction:

Although the process varied from place to place, the takeovers achieved the common goal of establishing Serb control in the targeted territories. Šešelj participated in this process by:

a) publicly and systematically promoting the establishment by force of a unified Serb-dominated state known as "Greater Serbia" with its western borders

along the “Karlobag-Karlovac-Ogulin-Virovitica line”, thereby including wide parts of Croatia and BiH. (footnote 4)

Participation of the Accused in the JCE:

First, the Accused used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated “Greater Serbia” by force in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.

Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of volunteers who often participated in crimes that resulted in the permanent forcible removal of non-Serbs from the targeted territories. (footnotes 5, 7 and 8)

On page 5, footnote 12, it is written that the word “Ustasha” is a derogatory term suggestive of the fascist government of Croatia in the Second World War.

The creation and structures of the Serbian Radical Party:

As its leader, Šešelj directed the SČP as a military party organisation that followed the military traditions and the political objectives of the earlier Chetnik movement that was active during the Second World War. (footnote 191)

2. According to the summary of the testimony of 29 March 2007, the Prosecution planned to prove its allegations from the indictment for all counts from 1 to 14 and paragraphs from 1 to 10 through the testimony of expert witness Yves Tomić.

He will testify to the origin, development and nature of Serbian nationalism, especially the “Greater Serbia” ideology and the Serbian Chetnik Movement during the 19<sup>th</sup> and 20<sup>th</sup> centuries.

3. Yves Tomić testified *viva voce* on 29 and 30 January 2008 /and/ on 5 and 6 February 2008.

In the cross-examination this witness was demolished, crushed and belittled as a would-be historian to such an extent that nothing remained of his expert report and testimony. He simply demonstrated ignorance. His ignorance was all the more tendentious and simply offensive because he

represented the pearls and pride of the Serb nation as the protagonists of a criminal policy with criminal objectives. Vuk Karadžić, Ilija Garašanin, Stevan Moljević, Slobodan Jovanović, Draža Mihailović and the SANU were criticised by the expert as the architects and followers of national policy.

In point of fact, the expert was unable to list relevant sources of information for his positions.

The only one who advocated positions on a Greater Serbia was Professor Vojislav Šešelj and his Serbian Radical Party. No one else either supported or advocated it, while many objected from the outset and not only criticised but in fact persecuted Professor Vojislav Šešelj on that account.

#### **ANALYSIS OF THE TESTIMONY OF EXPERT WITNESS REYNAUD THEUNENS**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, expert witness Reynaud Theunens was planned as a Prosecution witness through whom the following was to be proven:

Introduction:

Although the process varied from place to place, the takeovers achieved the common goal of establishing Serb control in the targeted territories. Šešelj participated in this process by:

a) publicly and systematically promoting the establishment by force of a unified Serb-dominated state known as "Greater Serbia" with its western borders along the "Karlobag-Karlovac-Ogulin-Virovitica line", thereby including wide parts of Croatia and BiH. (footnote 4)

Participation of the Accused in the JCE:

First, the Accused used his power and popularity as a politician to constantly promote the goal of the creation of a Serb dominated "Greater Serbia" by force in the media and directly to the public, and to create a climate of ethnic fear and hatred that prepared the ground for the crimes alleged.

Second, as the President of the SRS and the leader of the SČP, Šešelj oversaw the recruitment, indoctrination, financing, training, formation, coordination, supply and assignment of units of "volunteers" who often participated in crimes that

resulted in the permanent forcible removal of non-Serbs from the targeted territories.(footnotes 5, 7 and 8)

On page 5, footnote 12, it is written that the word “Ustasha” is a derogatory term suggestive of the fascist government of Croatia in the Second World War.

The creation and structures of the Serbian Radical Party:

As its leader, Šešelj directed the SČP as a military party organisation that followed the military traditions and the political objectives of the earlier “Chetnik” movement that was active during the Second World War. (footnote 191)

2. According to the summary of the testimony of 29 March 2007, the Prosecution planned to prove its allegations from the indictment for all counts from 1 to 14 and paragraphs from 1 to 10 through the testimony of expert witness Reynaud Theunens.

3. Reynaud Theunens testified *viva voce* on 14, 19, 20, 21, 26, 27 and 28 February 2008.

The witness, who is at the same time employed in the Prosecutor’s Office, tried, as some kind of an expert, to portray Professor Vojislav Šešelj’s role in the JCE through the organisation of the Serbian Radical Party and the Serbian Chetnik Movement, as consisting of the following:

- overseeing the recruitment,
  - indoctrination,
  - financing,
  - training,
  - formation,
  - coordination,
  - supply, and
  - assignment of volunteer units,
- which frequently participated in crimes resulting in the permanent forcible removal of non-Serbs from the targeted territories.

Thus, the organisation of the Serbian Radical Party and the Serbian Chetnik Movement was represented as a channel through which volunteer units departed for

the battlefield, where they committed crimes, the objective being the permanent removal of non-Serbs.

As there is no evidence to that effect, that is, since there did not exist a single independent volunteer unit under the control of the Serbian Radical Party, and as not a single piece of evidence exists to show that a Serbian Radical Party volunteer committed a crime, the participation of Serbian Radical Party volunteers in armed actions with members of some other units from the corpus of the Serb forces who committed a crime has been resorted to.

That is obviously the principal theme, and this expert only served to articulate the situation in order for volunteers from some other unit within the corpus of the Serb forces to be possibly accused of a crime, which would be quite sufficient.

In addition to demolishing the credibility of this witness, who publicly demonstrated himself to be ridiculously ignorant, during cross-examination other objectives which touch upon the very essence of the charges for the JCE were accomplished as well.

First of all, we insist that the witness failed to prove any illegality in respect of the regulations on defence and the army. That is, the witness failed to present a single piece of evidence that the Serbian Radical Party or the Serbian Chetnik Movement had done anything in contravention of the regulations on defence and the army. It is difficult to prove and believe that compliance with JNA regulations can give rise to a criminal organisation.

In that sense, it is important that the Crisis Staff, and then also the War Staff of the Serbian Radical Party can on no account be represented as a paramilitary institution, nor even as a military institution. Drawing up lists of persons and sending and transporting them to the responsible JNA command can on no account be a punishable act. If this were unlawful, then the send-off of recruits organised by a municipality, or the organising of farewell parties for sons leaving for their military service, or a party calling upon its members and sympathisers to donate badly needed blood for surgery and taking them to the blood bank would all be unlawful.

Secondly, the lists drawn up by the Serbian Radical Party comprised only persons who had done their military service and had military service booklets. The same is required of other persons during mobilisation. The JNA manned its units according to its plans, which varied depending on numerous circumstances affecting

manning. One of the legal variants for manning was cooperation with other actors in the defence system.

Formerly, in the single-party system, this was the League of Communists, while following its demise its place was filled by all the registered political parties active in the multi-party system. Ergo, nothing unlawful there either.

Every Serbian Radical Party volunteer had his wartime service entered in his military service booklet, and their pay was identical to that of any mobilised reservist.

They were clothed and armed by the JNA or another organisational form within the JNA.

Volunteers of the Serbian Radical Party were almost always deployed on the front lines, and never or seldom in the rear.

Volunteers of the Serbian Radical Party, as members of units, always received orders and commands from the responsible JNA officers or other responsible commands.

The Serbian Radical Party never even sent its volunteers to some of the locations referred to in the indictment, such as Bosanski Šamac, Brčko, Bijeljina and Sarajevo. The fact that someone who was a member of the Serbian Radical Party went to those or some other locations of their own accord has nothing whatsoever to do with the Serbian Radical Party and Professor Vojislav Šešelj.

Not a single piece of evidence has been presented to show that the Serbian Radical Party or Professor Vojislav Šešelj issued any orders or commands. Those who issued orders and commands at each of the locations referred to in the indictment are known, and they were always the responsible commands of the relevant army: the JNA, the VRS, or the VRSK.

The witness also attempted to ascribe responsibility to Professor Vojislav Šešelj in the matter of the discipline and indiscipline of Serbian Radical Party volunteers on the battlefield, without, however, being able to refer to any punishments that the Serbian Radical Party could possibly pronounce, except for expulsion from the party. Topola was cited as an example, with all Prosecution witnesses stating that he had been removed by the unit commander when word reached him of what he had done.

The locations that volunteers of the Serbian Radical Party went to separately from the JNA up until July 1991 are not in the indictment at all, although there were armed conflicts (Borovo Selo). In the second half of 1991 and up until 19 May 1992,

volunteers of the Serbian Radical Party were always part of JNA or TO units under the command of the JNA. Thus, Vukovar and Voćin in Croatia /were/ under the command of the JNA.

In Zvornik, volunteers of the Serbian Radical Party were within the framework of the JNA from 7 April to 26 April 1992, and they withdrew to Serbia together with the JNA.

Volunteers of the Serbian Radical Party were in Mostar until 19 May 1992, and they withdrew from Mostar with the JNA.

After 19 May 1992, volunteers of the Serbian Radical Party were part of units of the Army of Republika Srpska.

In Sarajevo, members of the Serbian Radical Party from Sarajevo were mobilised and assigned to units of the Army of Republika Srpska.

From the standpoint of participation in the JCE, the time frame of the commission of the crimes is also of interest, namely:

- Mostar, crime committed on 13 June 1992, while volunteers of the Serbian Radical Party had left Mostar before 19 May 1992,

- Nevesinje, crimes committed predominantly in villages belonging to Mostar municipality, between Mount Velež and Boračko Lake, while there were no Serbian Radical Party volunteers in Nevesinje. Vakić's group participated in the fighting at Podveležje (35 kilometres away from the scene of the crime), where it sustained heavy losses over several days of fighting,

- Zvornik, alleged crimes committed in May and June 1992, predominantly in detention facilities, while Serbian Radical Party volunteers had withdrawn from Zvornik with the JNA on 26 April 1992.

- Vukovar, the crime at Ovčara took place between 20 and 21 November 1991, while Serbian Radical Party volunteers had returned their weapons and set off in buses towards Belgrade and places in Serbia on 18 and 19 November 1991.

Everybody was said to be a volunteer of the Serbian Radical Party, and the culmination was when Kameni /from/ Vukovar and a JNA reserve officer, was presented as a volunteer even though he was not a member of the Serbian Radical Party. Professor Vojislav Šešelj's attitude towards Arkan and others demonstrates that coordinated action with his units or with the units of Vuk Drašković had in fact never been possible. During the testimony of this witness, voluminous documentation



pertaining to Sarajevo was presented, from which it is easily ascertainable that Vaske's, Brne's and Slavko's units were comprised within the VRS.

**ANALYSIS OF THE TESTIMONY OF EXPERT WITNESS ANDRAS  
RIEDLMAYER**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, expert witness Andras Riedlmayer was planned as a Prosecution witness through whom the following was to be proven:

Crimes in BH

Zvornik, April 1992 – September 1993

“At the Čelopek Cultural Centre, Serb forces, including SRS/SČP volunteers, forced Muslim men to engage in sexual activity. Most, if not all, of the mosques in Zvornik were destroyed.” (footnote 302)

The general area of Sarajevo: “Non-Serb property and cultural monuments were systematically plundered, looted and/or destroyed.” (footnote 310). “Vidović and his men killed non-Serbs and looted. They were also involved in the destruction of the mosques throughout the municipality.” (footnote 330)

Nevesinje: “Seven mosques and all the mesdžids were destroyed in Nevesinje municipality between June and July 1992.” (footnote 393)

2. Summary of testimony for Dr Andras Riedlmayer

The witness directs the Documentation Center of the Aga Khan Program for Islamic Architecture at the Fine Arts Library, Harvard University, and is a recognised expert on the cultural heritage of the Ottoman-era Balkans. The witness will testify as an expert to the destruction of cultural and religious property in specified communities in Croatia and Bosnia and Herzegovina between 1991 and 1993. The religious and cultural sites he surveyed included, but were not limited to, places of worship, libraries, educational buildings and cultural and historical sites. In addition to a careful inspection of each of the sites visited, an effort was made to collect pre-war and post-war photographs and other information from the local community and from other sources.

The witness has prepared a written statement in accordance with Rule 94 *bis*, which will be filed in due course.

Paragraphs: 31 and 32.

Counts: 12-14.

### 3. Content of testimony

The expert witness testified *viva voce* on 21, 22, 27 and 28 May 2008. He had testified in the Milošević case earlier. His expert report was extremely one-sided. According to its main title, the report referred to the destruction of the cultural heritage in Bosnia and Herzegovina, with the sub-title specifying that it referred to Roman Catholic and Islamic buildings. The explanation that buildings of the Serbian Orthodox Church were not included because Professor Vojislav Šešelj was not charged with the destruction of those buildings, and that he could possibly use this in leading evidence in the defence case, is unacceptable in view of the judicial role of the Prosecution.

The entire report and testimony were based on the travelogue method, making use of a camera and notes on what his collocutors told him during the tour. The intention of the Prosecution and of the witness was to prove that places of worship were in fact destroyed by Serb forces after the fighting, i.e. that these structures were destroyed intentionally as part of a policy to remove traces of buildings attesting to the existence of Muslims and Croats in specific areas. Although allegedly trying to be objective, the witness made entries on the dates of destruction and persons allegedly responsible for it for a large number of buildings as well. He simply represented every building as cultural heritage.

He classified damage to buildings in five categories. The expert witness did not include localities from the indictment for Croatia in his report, because the Prosecution had not in fact charged him with that task.

The status of the expert witness, and in particular his impartiality and objectivity, were contested in the cross-examination, as it was shown that he was biased and had, before his expert testimony, publicly spoken and commented on events not only in a prejudiced manner but also using data established to be incorrect, which he even admitted in the courtroom. No causal link with volunteers of the Serbian Radical Party could be established for a single building, and in respect of almost all the structures it has been established that there were no Serbian Radical Party volunteers on that territory at the time of their destruction.

As the judges were informed, the witness was biased and non-objective in his presentations before a Congressional Committee and he testified in favour of Bosnia

and Herzegovina before the International Court of Justice in The Hague in the case brought against Serbia for genocide, where he deliberately misstated the date on which the mosque in Bijeljina was demolished, and he is also known for his published anti-Serbian texts. The cross-examination of Andras Riedlmayer, expert on the cultural and historical heritage of BH, on 28 May 2008 showed that this expert witness was biased, non-objective, superficial, and motivated by self-interest. Evidence of this is the transcript with the following questions, answers and observations:

Professor Vojislav Šešelj: “Genocide in Bosnia and Herzegovina: Hearing before the Commission for Security and Cooperation in Europe, relevant pages” and then the same thing in English. And I was handed this document yesterday.

So, it’s not the OSCE, the international organisation which goes by that acronym, but it’s rather a US Congressional Commission on Security and Cooperation in Europe. But perhaps these questions could be asked of Mr. Riedlmayer, since he’s in a better position to give a statement in that connection.

Professor Vojislav Šešelj: Mr. Riedlmayer, I read both this document from the US Congress and another article of yours. The title is: “From the Ashes of the Past, the Future of the Cultural Heritage of Bosnia-Herzegovina.”

Professor Vojislav Šešelj: And now, before you here and before the public, I want to crush his moral credibility. I have already managed to do so in one segment. I have shown you how he falsely represents different periods of Bosnian history to the world public. I have other evidence here. I have a text which shows that he advocated the arming of the Bosnian Muslims and the lifting of the arms embargo, which also shows that he can in no way be an objective witness, setting aside the fact that he’s no expert at all.

Professor Vojislav Šešelj: The witness represented himself here as a historian by his basic education, and I used a detail here, a notorious historical fact which everybody in the Balkans is well aware of, to show how he did not objectively inform the Western public about the events in Bosnia, and now I’m done with it. Now I want to ask him whether it is true that he was actively involved in lobbying and sending requests to the Clinton administration for the embargo on exports of arms to the Muslims to be lifted.

Witness Riedlmayer: I assume you’re referring to the document that was disclosed in the Milošević case, more specifically where Bosnia is concerned. This is

a letter I wrote in July of 1995, urging the Clinton administration to consider lifting the arms embargo, and my rationale for that was Article 51 of the United Nations Charter, which says that every state has the right to self-defence until the Security Council takes such measures as to assure the establishment of peace. At that point, the war in Bosnia was already three years old. Srebrenica had just been overrun, and I think I was not alone in being a concerned international citizen, in urging some sort of action. I don't think it speaks to my report, which was done for different purposes and at a different point in time.

Professor Vojislav Šešelj: At the end of this text, Mr. Riedlmayer, to refresh your memory, you say: "The only thing that Karadžić and his brigands are still afraid of is that their victims might find a way to get the means to defend themselves." Do you recall this sentence of yours, "...Karadžić and his brigands..."?

Witness Riedlmayer: I don't recall the phrasing, but in the aftermath of the fall of Srebrenica, that was not phrasing that I consider inappropriate.

Professor Vojislav Šešelj: Did you ever – in any of your public appearances, did you use the term "Izetbegović and his brigands"?

Witness Riedlmayer: No.

Professor Vojislav Šešelj: Do you know that more than 6,000 Serb civilians were killed in Sarajevo that was ruled by Izetbegović?

Witness Riedlmayer: I don't know that for a fact.

Professor Vojislav Šešelj: You don't know that, but these were civilians whose names are all recorded, as opposed to the Srebrenica falsifications where the execution of 1,000 or 1,200 prisoners was built up to a figure of 7,000 - 8,000.

Mr. Riedlmayer, we again have here your text *The Holocaust and the Book*. At a particular point in that text you say, as you describe what happened in Srebrenica, that Serbian Radio Pale played a song, with the following lyrics: "Let the scum die, the Serbs are champions, go out on your balconies and greet the white Serbian race." Is that what you wrote in your text?

Witness Riedlmayer: If you look carefully at the document, that was a direct quote from a news article. Those are not my words.

Professor Vojislav Šešelj: This is not a direct quotation. It is just this verse that is in quotation marks. The rest is your text. So you are quoting a song that was allegedly played on Radio Pale, and in footnote 37 you refer to a book by one Charlotte Eagar, *From Heaven to Hell*, or an article from *The Observer*, it is not a

book but an article from *The Observer* from 1995, is that right? So you took this over from her, right?

Witness Riedlmayer: From a news article in *The London Observer*, yes.

Professor Vojislav Šešelj: Considering it to be true, and you did nothing to check whether something like that was possible at all, although you had numerous contacts with the Balkans and although you travelled there often. You just took it for granted, this fabrication from a newspaper, without double-checking it, and you simply incorporated it in your scholarly paper that was published by the University of Massachusetts Press. Is that right? This shows what kind of a scholar you are and what you resort to. It's as if I were to take over the worst possible texts from tabloids in the US, UK or France, and quote them in my scholarly work as authentic material. That's the kind of scholar you are.

Now let's see what you did as you testified before the International Court of Justice in The Hague. The question was asked, and you answered the question. Mr. Riedlmayer, as you testified before the International Court of Justice, in paragraph 8 of your statement, you said that Islam came to Bosnia-Herzegovina almost six centuries ago. Is that right?

Witness Riedlmayer: Yes.

Professor Vojislav Šešelj: When the army of the Ottoman sultans breezed through the Balkans all the way to Hungary, does that mean that the army of the Ottoman sultans breezed through Bosnia on their way to Hungary?

Witness Riedlmayer: "Breezed" was not the word I used, but in fact that was the sequence of events. Between the end of the 14th century and the middle of the 15th century the Ottoman armies pretty much conquered what is now the Balkans, and at that point they were on the border of Hungary, which at that time was the Sava River.

Professor Vojislav Šešelj: In paragraphs 30 and 31 of your statement, you falsely claimed that the Old Bridge on the Neretva was damaged, that its structure was seriously weakened by JNA soldiers and that the Croats only finished it off, as well as that all the mosques in Mostar were destroyed, that most of the damage was sustained during the JNA siege, and what the Croatian forces could do to the buildings in the old city, most of them were in ruins anyway, was just to raise dust. That's what you stated, right?

So that was a lie too, wasn't it, because all the mosques on the west bank of the Neretva were destroyed by the Croats, whereas the old city is on the eastern bank, and the Croats from the western bank were firing at it while the JNA was there. You lied about this on purpose before the International Court of Justice, and regrettably Serbia was not properly represented there. [REDACTED]

[REDACTED]

[REDACTED]

Witness Riedlmayer: Well, first of all, both before the International Court of Justice and before this Court, I'm testifying under oath, so I am taking great care to tell the truth to the best of my knowledge. With regard to the Old Bridge, I spoke about it in some detail during the direct examination, the kind of damage that was sustained by it, and indeed it is true it was damaged in the JNA siege and it was the main casualty of the 1993-1994 Croat siege of the old city of Mostar. Secondly, I do not have or know of any credible evidence that the mosque in Mostar was bombarded by Croats during the JNA siege. I would also point out that the mosque which we discussed in great detail, the Mosque of Sevir Hadji Hasan, is indeed on the west bank of the Neretva, and the damage you saw on that – on those photos dates from 1992. It is in the Donja Mahala district of Mostar, on the right bank of the river, right below Hum Hill, just like the Franciscan monastery. Both the monastery and that mosque were, in fact, damaged in the spring of 1992, during the JNA siege of Mostar. So it is, in fact, true, what I asserted. Furthermore, I'm not the only one who has asserted this. The reports from the Council of Europe, i.e. its rapporteur, Dr Kaiser, go into some detail. I quote him in my report. They, namely, speak about the destruction in Mostar. He states that all but one of the mosques in the old city were severely damaged. He describes the damage in considerable detail, so it is not merely my opinion, but also the opinion of another expert who was there in 1992 and had a chance to observe it firsthand and before the Croat siege. So any damage he observed cannot have been sustained during the Croat siege. Does that answer your question?

Professor Vojislav Šešelj: Mr. Riedlmayer, tell me briefly, when were the mosques in Bijeljina destroyed?

Witness Riedlmayer: They were destroyed in the spring of 1993.

Professor Vojislav Šešelj: Is what you stated in this report correct, namely, that they were destroyed in March 1993? That's what it says in your report, that they were destroyed in March 1993.

Witness Riedlmayer: Yes, yes. March is the beginning of spring, so in March of 1993.

Professor Vojislav Šešelj: That they were destroyed in March 1993, but why did you lie, in paragraph 45 of your statement before the International Court of Justice, that they were destroyed on the 13th of May 1993, and that immediately after that, while bulldozers were clearing the rubble, the Assembly of Republika Srpska was in session in Bijeljina? You lied, it says here on page 22 of your statement that they were destroyed on the 13th of May.

Professor Vojislav Šešelj: Mr. President, what I have before me is this transcript. He makes a statement there, a very lengthy statement, and it's marked by paragraphs. He confirmed here what he stated in his expert report, and that is an undeniable fact, that the Bijeljina mosques were destroyed in March 1993. When he testified before the International Court of Justice in The Hague, he misstated that it was on 13 May 1993, so that he would artificially associate this with the session of the National Assembly. And we know who it was that destroyed the Bijeljina mosques. However, I have very little time and cannot patiently wait for his lengthy answers before we move on to the core of the matter. The core of the matter is that before the International Court of Justice he claimed that this happened on the 13th of May, and that's when he lied. However, this is not my question to him, I've finished with that question.

Witness Riedlmayer: Yes, yes, I would like to answer your question. When I testified before the International Court of Justice, I was provided the preliminary transcripts, the rough, uncorrected transcripts, to which I made corrections. This was one of those transcripts where transcription errors occurred. The mosques in Bijeljina were destroyed on the 13th of March, and the transcript said May. I didn't say that. There were a number of other things that were wrong. I handed in my corrections, but unfortunately it is the practice of the International Court of Justice to immediately post the uncorrected transcripts on their web site for the benefit of the press, and they never posted the corrections. So it is all on the Internet with the original mis-transcriptions and misspellings, in its uncorrected form.

Professor Vojislav Šešelj: Mr. President, if that were actually true, he would not refer to the session of the National Assembly of Republika Srpska, which took place either in late May or the beginning of June 1993, after the well-known Pale session when the Vance-Owen Plan was rejected, two or two and a half months after the destruction of the mosques. If you believe him, that this is a mistake in the transcript, that is your own affair, however, I caution you, not a single one of the witnesses here admitted that they lied, except for that one who the Prosecutor caught out during the proofing. Do I really expect him to admit now that he lied on purpose? What I want to show to you and the public is what the transcript says. This is an official transcript. I got it from the Prosecutor. I didn't write this transcript. What do I care why this transcript wasn't corrected? I only have this transcript, which is the official one. Of course, nobody is going to admit that they are that much of a liar and come and say that before you here. I don't really expect a Prosecution witness to do that.

Mr. Riedlmayer, why did you lie that the Serb forces, after the taking of Srebrenica, killed about 8,000 men and boys, when reliable information shows that about 2,500 corpses in all were exhumed, and that only around 1,000 out of that number were really executed and the rest were killed under different circumstances and in fighting? Why did you lie that it was 8,000?

Professor Vojislav Šešelj: Mr. President, probably it is not Mr. Riedlmayer himself who is to be blamed for this lie. This is a lie that has been spread all around. Some Trial Chambers in this Tribunal and some Prosecutors have been spreading this lie. This lie was taken over by all the Western media. This lie was used as a basis for this incredible judgement of the International Court of Justice, stating that genocide was committed in Srebrenica, and serious lawyers all over the world are appalled by that. But, a lie, whoever is to blame, must be branded a lie. But it's not Mr. Riedlmayer who is to be blamed directly for this lie. Many people who are above him on the social ladder are to be blamed for that lie. But it is a lie, because 8,000 people were not executed. And everybody knows now that that's a lie. However, both the International Court of Justice and some Trial Chambers of this Tribunal, and many others accept that lie, and it was falsely established that genocide occurred in Srebrenica and you know that on the basis of the Convention on Genocide what happened in Srebrenica can on no account be termed genocide, even if 8,000 people had been executed, because only men and prisoners of war were executed. One



thousand of them were executed, and that is a generally known fact, and many of those who featured on the lists later on turned out at the polling stations to vote.

Witness Reidlmayer: I would simply remind him of what he said about notorious facts. I think that when the United Nations Criminal Tribunal for the Former Yugoslavia and the International Court of Justice had made certain findings and they had become public knowledge, merely to repeat something that repeats these findings is merely to state what has become a well-known fact. Any rulings that the International Court of Justice made with regard to Srebrenica, they certainly did not make on the basis of my statement.

Professor Vojislav Šešelj: Mr. Riedlmayer, on page 39 of this transcript, I see that you made yet another lie. You say that it is a fact that "As far as I know, Mostar was shelled only by the Yugoslav Army from 1992 onwards." You lied about that, too, because the JNA withdrew from Mostar before 19 May 1992 and the fighting between Croats and Muslims in Mostar went on almost until 1995, isn't that right? It's on page 39, in the first paragraph.

Witness Riedlmayer: I'm sorry, I do not have that transcript in front of me. If I were provided with it, I could see where you took that quote from. I assume it's taken out of context. I'm well aware that there were two distinct sieges of Mostar. I spoke about them both in this courtroom and in the International Court of Justice. The siege of Mostar by the Serb forces and the JNA lasted from April to the beginning of June. This siege by Croat forces took place in 1993-1994. They were two distinct occurrences and occurred in two separate periods, and I do not think that this is a matter that I could have confused or tried to mislead anyone about.

Professor Vojislav Šešelj: What it says here is that from 1992 onwards, Mostar was shelled only by the Yugoslav People's Army. The Prosecution has that, so you discuss it with them later. And now you're taking it back. Okay, fine, better late than never.

Further, Mr. Riedlmayer, do you know of a US agency that is called "Radl and Finn"? Have you heard of this agency? That is an agency for public relations.

Witness Riedlmayer: I've heard it mentioned. I believe the name is "Ruder and Finn", but I've no more than heard it referred to.

Professor Vojislav Šešelj: Do you know that the Muslim government throughout the war engaged this agency in pursuing a propaganda war in their

interests, particularly in relation to the thesis on the destruction of cultural monuments? Do you know about that?

Witness Riedlmayer: No.

Professor Vojislav Šešelj: You do not. All right then if you do not know.

Mr. Riedlmayer, do you know that many mosques in the territory of Bosnia-Herzegovina were built on the foundations of former Orthodox churches?

Witness Riedlmayer: I do not know that for a fact.

Professor Vojislav Šešelj: Have you heard, with regard to the Atik mosque in Bijeljina, and you talked about its destruction, when the renewal of this mosque began, the foundations of an old Orthodox church and Serbian tombstones were found around it, and that is why the reconstruction stopped? Do you know about that?

Witness Riedlmayer: I know there was considerable uproar about that in the press. I followed it to the best of my ability. As far as I recall, the only non-controversial part of that was that indeed some medieval tombstones were found in the vicinity of the mosque. The Commission on Monuments was engaged. They sent out experts, and as far as I know, there was never any confirmation that there was a pre-existing building on the site. But it was reported as such in the press.

Professor Vojislav Šešelj: Judges, I have to turn to you. On page 43 of the transcript of the testimony of Mr. Riedlmayer before the International Court of Justice, he says this: "I am a scholar, and I deal with Ottoman history, and I am conscious of the fact that when the Ottomans took control of towns, they would generally take the main church in the place they came to and turn it into a mosque, leaving the lesser churches to the Christian communities, the ones that were left." That's what he said before the International Court of Justice. And here, before you, in response to your question, he's giving quite a different answer. Now, I'm not asking you to state publicly that this witness is lying, but I can very well assume what's in your minds.

Professor Vojislav Šešelj: When you were in Bijeljina, I see that you spent quite some time there and received information about who destroyed the Bijeljina mosques. Did you hear, Mr. Riedlmayer, that the Serbian Radical Party, which had its branch in Bijeljina, and it had one in very few places in Bosnia-Herzegovina but it did have it first in Bijeljina, sharply protested because of the destruction of the Bijeljina mosques already in 1993? Did you hear about that?

Professor Vojislav Šešelj: One of your financiers is the Aga Khan, is that right? He's financing some of your projects where you work at the university?

Witness Riedlmayer: He's not financing any of my projects, as you put it. He was a graduate of Harvard College, graduated in the late 1950s, and like many of our graduates, he established a chair for the study of architecture. He made an endowment to Harvard University in the 1970s. I've been working there since 1985, and the income from that endowment supports both the professorship and the documentation centre which I direct. So, that money doesn't finance my projects but pays for my salary when I work there. What I do here for the Tribunal is on my own time and with my own resources, with my expenses covered by the Tribunal at its standard rates.

Professor Vojislav Šešelj: Mr. Riedlmayer, when you set out to investigate the destruction of religious buildings in Kosovo and Metohija, you contacted the OTP of The Hague Tribunal and asked whether they were interested. Their answer was, yes, but that they did not wish to finance your research, is that right? That's what you said when you testified in the Milošević case?

Witness Riedlmayer: That is correct.

Professor Vojislav Šešelj: So you had to find your own resources to do your research. However, when you came up with results, they were so pleased that on the basis of that, they expanded the Milošević indictment. Isn't that right, too?

Witness Riedlmayer: Yes.

Professor Vojislav Šešelj: When you undertook your own research into the situation in Kosovo and Metohija, you did research into the destruction of both Muslim and Orthodox religious buildings, right?

Witness Riedlmayer: That's right.

Professor Vojislav Šešelj: After that, the OTP issued you assignments connected to the Milošević indictment for Bosnia-Herzegovina, the Krajišnik indictment, all that and some more municipalities, and so on and so forth, and at that time it was the Prosecution that financed you, right?

Witness Riedlmayer: That is correct.

## **ANALYSIS OF THE TESTIMONY OF EXPERT WITNESS EWA TABEAU**

1. According to the Prosecution's Final Pre-Trial Brief of 25 July 2007, Ewa Tabeau was planned as a Prosecution expert witness through whom the following was to be proven:

Implementation of the JCE in BH: “On 6 April 1992, the European Community recognised BiH as an independent and sovereign state. The United States followed the next day.

This signalled the onset of military attacks and takeovers by Serb forces. By 12 May 1992, when the 16<sup>th</sup> session of the Serbian Assembly was held in Banja Luka, many municipalities had been taken over, including Bijeljina on 31 March, Zvornik on 9 April, Bosanski Šamac on 17 April, Sanski Most on 21 April and Doboј on 3 May. SRS/SČP volunteers participated in the takeovers of, *inter alia*, Zvornik and Bosanski Šamac, and Šešelј was often present in BiH, where he would meet with the Bosnian Serb leadership and with his volunteers. Over the next few years, hundreds of thousands of non-Serbs were forcibly expelled from their homes. (footnote 172)

Crimes in BH – Zvornik, April 1992 – September 1993: “There was a mass displacement of people in Zvornik along ethnic lines (footnote 303) and non-Serbs were deported to Austria and Hungary.

### 2. Summary of testimony for Dr Ewa Tabeau, demographer

The witness holds a PhD in statistics and works for the OTP. She will provide expertise on the demographic changes in the province of Vojvodina, Serbia, after 1991. Specifically, the witness will present a report describing changes in the ethnic composition of the population of Vojvodina during the armed conflict in the former Yugoslavia, and the level of migration of the Croat minority from Vojvodina after 1991. The witness will prepare a written statement in accordance with Rule 94 *bis*, which will be filed in due course.

Paragraphs: 15, 16, 17 (i) and 27-30.

Counts: 1, 10 and 11.

### 3. Content of testimony:

The witness testified *viva voce* on 21, 22 and 23 October 2008. Let there be no confusion, a genuine discrepancy between the Prosecution’s Final Pre-Trial Brief and the summary offered for this witness is in question. The witness also submitted an expert report in respect of Hrtkovci. The testimony was demolished, both in terms of methodology and in terms of virtually all data found in the attachment to the Third Amended Indictment, as the list of victims from Hrtkovci. In addition to statements, the book *The Hrtkovci Affair and the Ustasha Whore Nataša Kandić* was also used.

**ANALYSIS OF THE TESTIMONY OF EXPERT WITNESS DR DAVOR  
STRINOVIĆ, forensic pathologist**

1. This expert witness is not even mentioned in the Prosecution's Final Pre-Trial Brief.

2. Summary of testimony

The witness is a forensic expert employed at the Institute for Forensic Medicine of Zagreb University.

The witness will testify to the role of the Croatian Ministry of Health in connection with autopsies and identification of remains found in the territory of the Republic of Croatia. Specifically, the witness will explain the reasons pathologists in Croatia were activated to undertake these tasks. The witness will describe his position as the Chief Medical Examiner in Croatia, the role he played in supervising the pathological and identification processes, and the geographical area under his mandate in Croatia. He will also speak about relations with the Office for Detainees and Missing Persons in Croatia. He will testify to the methods applied at the exhumation sites and during the transport of the remains. The witness will discuss the various methodologies utilised to conduct the autopsies and identify bodies. This will include the identification of bodies at the exhumation site and the treatment of those remains that could not be identified in this way.

In particular, the witness will speak about the use of anthropologists in the process, and the criteria for establishing the cause of death. The witness will also give evidence on the role of dental experts in the identification process. Other methods and means that will be discussed include X-rays employed for the identification of shells or other items found with the remains. The witness will also give evidence on how family members assisted in the identification and indicate the places where bodies were found and the persons present at the time to assist in the identification process, and the use of DNA analysis in the identification process.

Finally, the witness will speak about the review of all pertinent autopsy reports related to the victims detailed in the indictment, and how those reports were retained for future reference.

The witness has prepared a written statement in accordance with Rule 94 *bis*, which will be filed in due course.

Paragraphs: 14, 17 (a) and (d), 18-21.

Counts: 1-4.

### 3. Content of testimony

The witness testified *viva voce* on 11 November 2008.

The most important thing for the Defence is that the witness was unable to confirm that a single body was that of a victim whose throat had been cut, or that a single body was that of a victim shot in the head from a pistol to make sure that he was dead. These statements of the witness helped discredit witnesses for Ovčara who claimed that people had had their throats cut and that “Kinez” shot people in the head with a pistol to make sure they were dead.

## **ANALYSIS OF THE TESTIMONY OF EXPERT WITNESS DR ZORAN STANKOVIĆ**

1. According to the Prosecution’s Final Pre-Trial Brief, this witness had not been planned.

### 2. Summary of testimony

Basic information: The witness is a forensic pathologist. During the events in question he conducted forensic examinations on behalf of the Belgrade Military Court.

The witness will testify about the forensic examinations he performed on victims of war in Zvornik, Vukovar and elsewhere in Croatia and Bosnia and Herzegovina. He will describe the circumstances in which he performed the examinations and the working conditions, in particular in Zvornik, because for some time the Military Court was not interested in his reports /as printed/. He kept records of his findings. He will testify about his methods of examination of bodies and his procedures for communicating with the families of the victims. He will also testify to his general experience in examining the bodies of victims in other parts of the former Yugoslavia.

His expert witness statement will be filed pursuant to Rule 94 *bis* in due course.

Paragraphs: 5-8, 15-17 a, d, 18 and 22.

Counts: 2-4.

### 3. Content of testimony

The witness testified *viva voce* on 15 January 2009.

The testimony of this witness was used in order for data on Serbian victims to be heard at last.

**ANALYSIS OF THE TESTIMONIES OF EXPERT WITNESSES VIŠNJA  
BILIĆ AND ANAMARIJA RADIĆ**

1. These witnesses are not in the Prosecution's Final Pre-Trial Brief, for the intention of the Prosecution had evidently been to hear Colonel Ivan Grujić in the capacity of an expert witness. As he has been absolutely discredited as an expert witness, he was replaced by Višnja Bilić and Anamarija Radić, members of his staff.

2. The summaries of evidence for expert witnesses Višnja Bilić and Anamarija Radić are identical.

The witnesses will testify about the establishment, structure and responsibilities of the Office for Detainees and Missing Persons in Croatia. They will describe all the changes in the operation of the Office and explain what brought these about, and they will also speak about the scope of activity, basic tasks and autonomy of the Office. The witness /as printed/ will specifically describe the methodology employed to draw up a missing persons questionnaire, and generally how the numbers of missing and killed persons in Croatia during the relevant period were established. This involved dispatching field investigation teams, computer data processing, interviews with victims' family members, collection of data on camp detainees, identification of mass grave locations, finding remains, exchanging remains and cooperating with the Government of Serbia, conducting court-supervised exhumations and identification procedures, and establishing material evidence such as missing persons questionnaires, photo files, official court records and video footage.

The witnesses will testify about concrete methods of exhuming and handling remains, about the final removal of remains and the identification process, including the scientific standards used, the establishment of DNA matches, and laboratory accreditation, as well as the ways in which family members performed identification.

The witnesses will also give evidence about the total number of persons killed, detained in camps or taken from their homes, and people still unaccounted for.

These testimonies will relate to Croatia generally, and the information given will be classified by the so-called Serbian Autonomous Districts to which they refer, namely the SAO Krajina, the SAO Western Slavonia, or the SAO Eastern Slavonia, Baranja and Western Srem, as well as by specific crime base locations. In connection

with the detention camps, the witnesses will provide data on the age, sex and ethnicity of the detainees, as well as whether they were members of the armed forces (where such data is available).

The witnesses will also testify about the number of persons of Croatian ethnicity expelled from their homes in Vojvodina generally, and from the village of Hrtkovci in particular, after which these people settled in Croatia.

Paragraphs: 14, 17 a-d, i, 18-21, 24-28.

Counts: 2-4 (counts 2 and 3 were dropped)

### 3. Content of testimony

Expert Witness Višnja Bilić testified *viva voce* on 18 and 19 November 2008, and expert witness Anamarija Radić testified *viva voce* on 20 November 2009.

As Colonel Ivan Grujić had been discredited, he was replaced by expert witnesses Višnja Bilić and Anamarija Radić, who are civil servants in the Ministry of the Republic of Croatia /as printed/ and who primarily testified about the organisational structure of the Ministry and the jobs they perform.

The testimony was used in cross-examination to present data about Serbs being victims as well.

The testimony of these witnesses can in no way call into question the data on Serbian refugees from Croatia. Even today (**August 2011**), twenty years later, the following facts, as a consequence of Franjo Tudman's policy, are common knowledge:

#### 1. Official site of the Government of the Republic of Serbia – April 2010: **Refugees in Serbia**

Following the outbreak of the wars in Croatia and Bosnia-Herzegovina there were huge migrations of people of Serbian and/or Montenegrin ethnicity, who found refuge in their motherlands, Serbia and Montenegro.

Depending on the severity of the conflicts and the source of data, the number of refugees and displaced persons varied, ranging from 350,000 to 800,000. Terrorist activities by the so-called Kosovo Liberation Army, the NATO air campaign and the arrival of KFOR troops forced the non-Albanian population to flee the territory of Kosovo and Metohija.



At the beginning of 2000, the registration of displaced persons from Kosovo and Metohija started in the Republic of Serbia, in cooperation with UNHCR. Over 200,000 internally displaced persons had been registered in Serbia by July 2001.

In April 2001, the Serbian Commissariat for Refugees, in cooperation with UNHCR, resumed the registration in the Republic of Serbia of refugees, displaced persons and others who had fled the war.

The first analyses of the data from July 2001 showed that 451,980 persons were registered in Serbia, of whom 377,731 had official refugee status, while 74,249 persons affected by the war did not meet the necessary conditions to acquire this status under international law. The largest number of refugees were from Croatia (about 63%), while the percentage of those from Bosnia and Herzegovina dropped to 36%.

Irrespective of the possibilities for their return, the largest number of refugees and displaced persons opted for integration in the former State Union of Serbia and Montenegro, namely, 60.6% of the refugees and displaced persons from Croatia and 59.8% of the refugees from Bosnia and Herzegovina.

In 2001, 408 collection centres were registered in the territory of the Republic of Serbia, accommodating 30,056 people. Of this number, 20,949 were refugees and displaced persons, with 9,107 displaced persons from Kosovo and Metohija. About 10,000 lived in unregistered collection centres, while others were either tenants or lived with their relatives or friends.

The largest concentration of refugees and displaced persons was recorded in Vojvodina, in the territory of Belgrade, and in Loznica and Šabac municipalities.

Displaced persons from Kosovo and Metohija were, for the most part, accommodated in central Serbia, with the largest number in Belgrade, Kraljevo, Kragujevac, Niš, Smederevo, Kruševac, Leskovac, Vranje and Kuršumlija.

In a new process of refugee registration in Serbia, conducted from 27 November 2004 to 25 January 2005, 139,483 persons with refugee and displaced person status were registered, which is 50% less than the number of refugees registered in 2001.

The number of approximately 140,000 refugees does not mean that there are half as many refugees in Serbia today as compared to 2001, but that approximately 100,000 people have acquired citizenship, while a smaller number returned to their countries of origin or went to third countries.

The last registration showed that around 140 collection centres, including 19 in Kosovo and Metohija which housed 1,000 displaced persons, were home to a total of 11,000 of the worst affected refugees and displaced persons.

There are three basic ways to permanently resolve the problem of refugees:

- repatriation to the communities from which the refugees originally came;
- integration into the communities to which the refugees have fled;
- migration to a third country.

### **Repatriation**

Annex 7 of the Dayton Peace Agreement and the Agreement on Normalisation of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia, as part of efforts to permanently resolve the refugee question, reaffirmed the right of refugees to return.

Repatriation, as the long-term and most acceptable solution for refugees, is the priority of our state. Putting into practice such a lasting arrangement requires that prior guarantees be undertaken by the international community and the governments of the countries to which the refugees are returning, to the effect that the participants in this process will be accepted in the local communities and that conditions for a safe and dignified life will be provided for them.

In April 1998, the Governments of the Federal Republic of Yugoslavia and the Republic of Croatia signed the Protocol on the Procedure for the Organised Return of Refugees and Displaced Persons to Croatia. By signing this Protocol, UNHCR's role as the leading international organisation was recognised, one which would, in accordance with its mandate, assist in mutual implementation of the agreed procedures. 7,550 refugees returned to their homes in this way, and a further 7,350 persons returned to Croatia on their own.

On 6 October 2003, the Agreement on the Return of Refugees Located on the Territory of SCG or BH was signed in Belgrade between the former State Union of Serbia and Montenegro and Bosnia and Herzegovina. The Agreement was signed by the Minister for Human and Minority Rights of the former SCG, Rasim Ljajić, and the BH Minister for Human Rights and Refugees, Mirsad Kebo. This document created the legal basis for accelerating the process of the return of refugees and facilitating their exercise of tenancy and other property-related rights.

### **Integration**

Although repatriation is considered to be the principal way of addressing the refugee problem on a lasting basis, our country recognises the fact that a large number of refugees will permanently settle in it.

In 1994, the Government of the Republic of Serbia and the Commissariat for Refugees of the Republic of Serbia started preparing a programme for the permanent settlement of refugees on its territory.

Already in 1997, on the basis of the aforementioned programme, the Government of the Republic of Serbia launched a programme for building settlements for permanent accommodation of refugees on the territory of the Republic of Serbia. Considerable funds were also earmarked from the budget for that purpose. During the same year, a similar programme was also implemented in the FRY by the Office of the UN High Commissioner for Refugees. This programme is almost identical to the programme of the Government of the Republic of Serbia, but in this case the donor is UNHCR, which secured finances for the construction of housing facilities, while the state, that is, the municipalities in which the settlements are being built, provide the infrastructure and a job for one member of each refugee family.

Persons provided for in this way were granted citizenship in what was then the FRY. The municipalities in which the settlements were built provided a job for a family member in non-agricultural households. Large families, disabled persons and single mothers had priority in the provision of permanent housing.

### **Migration to third countries**

Another possible option for permanently solving the refugee issue is migration to third countries. Most of those who decided to emigrate did so through the International Organisation for Migration (IOM) and UNHCR. Most refugees migrate to Canada, Australia and the United States of America.

Within its ability, the Commissariat for Refugees of the Republic of Serbia will continue to work in parallel on the repatriation and integration of refugees, the two most important and completely equal avenues for a lasting solution to the refugee question in this area.

### **2. The refugee situation in 2007:**

#### **Serbia Holds Record in Number of Refugees – 22 October 2007**

Belgrade – Rasim Ljajić said that Serbia held the European record for the number of refugees, and announced changes to the Strategy and the Law on Refugees.

The Minister of Labour and Social Policy said that Serbia, the countries of the region and the international community were responsible for the fact that the problem of refugees had not been solved. "Some headway has been made compared to last year, but we have moved two millimetres from the Sarajevo Declaration on the Closing of Refugee Files, signed in January 2005," he said.

Opening the gathering entitled "Local Integration of Refugees in Serbia", Ljajić said that 500,000 people were confronted with problems associated with refugee status, and that 30% of the refugees had returned to their countries of origin.

"Regrettably, most of the people will stay on to live in Serbia. Regrettably, in the sense that for a variety of reasons it will be impossible for them to return to their places of origin, and we have to face that – to provide all the elements for such integration, including addressing their legal status, housing and employment issues, and access to other rights," said Ljajić.

He added that, in resolving the issue of refugees, Serbia expected a more constructive approach by countries in the region and the help of the international community.

The Commissioner for Refugees, Dragiša Dabetić, said that there were 209,579 internally displaced persons from Kosovo in Serbia at the moment, which is 1,500 more than last year, while the number of refugees had decreased due to registration, and at present was 98,104.

Dabetić pointed out that the return of refugees to Croatia was at a "serious standstill" and that the difficulties of refugees in local integration, including the exercise of housing rights, resulted from inadequate legislation.

### **The Refugee Question in Serbia**

The integration of refugees who wish to remain in Serbia would mean a major step forward towards finding permanent solutions for displaced persons throughout the region, international agencies assess.

Representatives of the Office of the High Commissioner for Refugees (UNHCR) and the OSCE mission in Serbia participated in a gathering which presented the results of the study entitled "Local Integration of Refugees in Serbia – Legislation, Practice, Recommendations." The head of the OSCE mission, Hans Ola Urstad, emphasised that "the closing of the so-called refugee chapter in the region was the key task of the OSCE".

He said that this issue “could be solved only at the regional level”, where the OSCE is closely cooperating with the governments signatory of the Sarajevo Declaration (BH, Croatia, Serbia and Montenegro), UNHCR, and the delegations of the European Commission in the region.

“However, in situations of protracted displacement, the great desire (of refugees) to return often changes into a great desire to integrate,” said Ambassador Urstad.

Emphasising that local integration was a two-way street – with aid to refugees going one way, and the state’s restrictions and difficulties in receiving them the other way, he assessed that Serbia had made positive efforts in “the area of citizenship law and the area of naturalisation” of refugees.

The head of UNHCR in Belgrade, Lennart Kotsalainen, pointed out that UNHCR “remained committed to the implementation of the Sarajevo Declaration”, but added that the study had shown that most of the 97,000 citizens whose refugee status had been confirmed would opt for staying in Serbia.

“We are pleased that refugees here have an opportunity to be naturalised without problems, and we call upon the authorities to expedite the issuance of identity cards for former refugees,” said Kotsalainen.

He added that UNHCR was aware that “the greatest responsibility for integration lay with the Government”, in a situation when the poverty and unemployment rates were high and the economy fragile.

### 3. Refugee Day Marked in Serbia in 2008

#### **Serbia first in Europe in number of refugees – RTS, Friday, 20 June 2008**

Serbia ranks first in Europe according to the number of refugees, and thirteenth in the world, the US Committee for Refugees and Immigrants announced on the occasion of World Refugee Day. Today in Serbia there are about 100,000 registered refugees from the areas of Bosnia and Herzegovina and Croatia.

According to data from UNHCR and the Republican Commissariat for Refugees, in Serbia there are also about 206,000 internally displaced persons from Kosovo and Metohija.

UNHCR offices abroad and in Serbia received a total of 75,000 new applications for refugee status last year.

In Serbia there are around 75 refugee collection centres in which some 6,000 people live, while the rest of the refugees have found private accommodation or are housed with relatives.

In 1996, the number of persons with refugee status was 550,000. In the meantime, a large number of them have obtained Serbian citizenship. A special problem in Serbia is the duration of the refugee situation, which has lasted as long as 17 years.

**Tadić:** Integration in the EU also resolves the problem of refugees

On the occasion of World Refugee Day, the President of the Republic of Serbia, Boris Tadić, stated that the accession of all of the Balkan countries to the European Union would solve the problem of refugees and displaced persons in the best possible way, through their integration and return.

“The grave economic situation and unemployment in countries in the area of the former SFRY greatly aggravate the already difficult position of refugees and displaced persons. A permanent solution to the problem lies in the integration of our countries in the EU,” said Tadić, and added that this would make possible prosperity, equal opportunities for all citizens, economic certainty, jobs and education.

In his statement sent to the media on the occasion of World Refugee Day, the President of Serbia assessed that Belgrade, Sarajevo and Zagreb had to make additional efforts to address the issue of refugees and displaced persons, of whom there are several hundred thousand in Serbia alone.

“Serbia supports the initiative of the UN High Commissioner for Refugees for the Sarajevo Process to be revived, that is, to find permanent solutions for refugees in the region of the former SFRY. Serbia is prepared to fully implement the Sarajevo Declaration, and I hope that the authorities in Croatia and Bosnia and Herzegovina are prepared to do likewise,” added President Tadić.

**Ljajić:** The refugee problem – far from a solution

The Minister of Labour and Social Policy, Rasim Ljajić, said today on the occasion of World Refugee Day that the “refugee file” is far from being closed soon or successfully.

“Although statistics will show that great progress has indeed been made in resolving this issue, the fact that someone obtained Serbian citizenship and was issued an identity card does not mean that they have overcome all the problems associated

with refugee status,” said Ljajić at the conference “How To Do More: Refugees and Displaced Persons in Poverty Reduction Processes.”

The minister recalled that in 1996 there were over 700 collection centres in Serbia, whereas today there are 77 of them, 17 in Kosovo and 60 in central Serbia, and said that this demonstrated the enormous efforts which the state had made to solve the problem of refugees.

The refugee population in Serbia is one of the most vulnerable, said Ljajić, adding that 60% of the refugees were unemployed and 45% of them were living in rented premises, which illustrates their exceptionally difficult social position.

“Unless the refugee problem is resolved, the process of reconciliation in the region will be difficult and considerably longer,” assessed Ljajić, pointing to the need for the 1992 Law on Refugees to be amended, and emphasising that one of the problems was that the refugee issue is not enough in the public eye, the efforts of the state notwithstanding.

The minister said that, immediately after forming the government, an urgent session would be scheduled with representatives of the international community, in order for the signatories of the Sarajevo Declaration (on resolving the problem of refugees from BH, Croatia and SCG, from 2004) to plan urgent steps for its implementation.

“Representatives of the international community, refugee organisations and associations, and the civil sector must be our partners in this project, and, what is particularly important, this must be an interdepartmental activity. It cannot be the job of just one ministry or state organ; rather, it is a problem that requires the involvement of all structures of society and the state alike,” Ljajić pointed out.

Serbia’s Commissioner for Refugees, Dragiša Dabetić, stated that since 1991 over 750,000 people had arrived in Serbia in several waves, and that today there are about half a million of them.

“In statistical terms, we have about 90,000 refugees, but over 200,000 of them have acquired citizenship and they are here, and in addition there are about 200,000 internally displaced persons from Kosovo and Metohija,” Dabetić specified.

According to Darko Šunderić, head of the Deputy Prime Minister’s poverty reduction team, 15% of displaced persons in Serbia currently live below the poverty line, while the refugee population lives above that line.

Šunderić stated that civil society organisations should be involved in planning by the line ministries, for it is precisely they who are in contact with refugees and displaced persons.

#### 4. New Law on Refugees Passed in Serbia in April 2010

##### **Dačić: The largest number of refugees is in Serbia – 31 March 2010**

Belgrade – Minister Ivica Dačić stated that Serbia is offering shelter to the largest number of refugees, and that it is among the first five countries in the world with a protracted refugee situation.

The Minister of the Interior, Ivica Dačić, explaining the amendments to the Law on Refugees in the Assembly of Serbia, recalled that in the 1990's Serbia had been confronted with a number of massive refugee waves from the former SFRY republics and that, at the peak of the refugee crisis, 537,937 registered refugees and about 80,000 war-affected persons had found refuge in Serbia.

He stated that 377,131 refugees had been registered in the 2001 census and 104,246 in the 2005 one, and added that the decreased number of refugees was chiefly the result of their integration in Serbia and, to a lesser extent, of their return or settlement in third countries.

“Today the number of registered refugees in Serbia has decreased to 86,000 persons, and a further reduction of the number of persons with this status is expected,” said Dačić, adding that the objective of the amendments to the law was to create a legal framework for the integration or return of refugees.

Recalling what Serbia had done to help refugees in the preceding period, Dačić stated that through the adoption of that law refugees in Serbia had been granted the right to work and included in all education and health care programmes, and the issue of providing housing for them had been addressed.

According to him, Serbia had earmarked enormous funds to that end, with support also provided through international donations.

Dačić recalled that one of the main elements of the Law on Refugees was accommodation in collection centres, which was realistic at the time of its adoption, and added that the strategy adopted in 2002 envisaged shutting down these centres by giving them assistance to help resolve housing problems.

The conclusion which follows:



1. Tudman managed to reduce the number of Serbs in Croatia from over 12% to under 2%, starting in 1990 and definitively by August 1995. Croatia is on the path towards the European Union as an ethnically pure state, virtually without Serbs, except for those posing as Serbs in the government in Zagreb. The whole world knows it but remains silent, because the expellees are Serbs, while nevertheless Serbs are on trial and Serbia is charged with genocide.

2. Simply put, the number of Serbs who are refugees from Croatia, including the current figure, is incontrovertible proof that these refugees have been permanently expelled from Croatia, because people cannot become refugees of their own accord, like tourists, but only by being expelled by someone from a given territory. Serbia, the alleged aggressor, has the highest number of refugees in Europe. How can that be?

3. Serbs are being persecuted in The Hague in order to conceal these facts /about/ who the real criminals are. There is no expert testimony that could annul these facts. Therefore, the testimony of these expert witnesses, who are actually Croatian civil servants, on how their ministry is organised and what they do should be interpreted only as a ploy by the Prosecution to hide the real substance and try to ascribe guilt to Professor Vojislav Šešelj.

**ANALYSIS OF THE TESTIMONY OF EXPERT WITNESS VS-1112,  
[REDACTED], WITH PROTECTIVE MEASURES**

1. This witness does not appear in the Prosecution's Final Pre-Trial Brief, for it was evidently the Prosecution's intention to tender intercepted conversations through other witnesses, primarily witnesses for the Sarajevo location.

2. Summary of evidence for expert witness VS-1112, [REDACTED]

The witness [REDACTED] a large number of intercepted conversations as specified in the exhibit list which the Prosecution intends to tender. [REDACTED]

[REDACTED] The witness will cover the intercepts obtained from the authorities in Bosnia and Herzegovina.

Paragraphs: 5-8, 10, 11, 15, 16, 24.

Counts: 1.

3. Content of testimony

The witness testified with protective measures on 8, 9, 10, 15 and 16 July 2008.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A large number of the intercepts do not refer to Professor Vojislav Šešelj, but the intention is evidently to tender them so as to shore up the charges alleging the existence of a JCE. Professor Vojislav Šešelj successfully dealt with every intercepted conversation, going into the necessary detail in respect of specific parts.

The relevance and probative value of the intercepted conversations are also problematic because it is not known even now in what sense this expert witness is qualified and what, [REDACTED], he is an expert on.

#### **X. Conclusion**

In this Final Trial Brief, Professor Vojislav Šešelj has presented the entire relevant subject matter according to the sections indicated in the text and listed in its table of contents. Professor Vojislav Šešelj has been in detention for nine years, and to this day has not been given a reasonable and logically justified answer to the question of why his right to an expeditious trial is being violated. The pre-trial stage and the first stage of the Prosecution's case have proven that there is, in fact, nothing for Professor Vojislav Šešelj to defend himself against. The question is whether the charges are at all possible, and whether an indictment could be brought against him before the ICTY at all. Apparently the Prosecution counted on pressurising and threatening witnesses into giving statements, and some were blackmailed with indictments if they did not cooperate with the Prosecution, and so then everything came to depend on whether the Prosecution managed to impose a defence counsel on Professor Vojislav Šešelj. That is why the Prosecution actually did nothing else in the case except tenaciously insist for five years, either directly or through the Registry, that a defence counsel be imposed on Professor Vojislav Šešelj, to be paid for by the Registry, in order to deny Professor Vojislav Šešelj the right to defend himself. When he was granted the right to defend himself, the lies and falsifications became obvious,

and it is clear to everybody that, in fact, the indictment against Professor Vojislav Šešelj essentially does not exist.

For a long time already the task of all ICTY structures has been to keep Professor Vojislav Šešelj in detention for as long as possible. The Prosecution and the Registry, with the support of the majority in the Trial Chamber, have sustained this by fabricated trials for contempt of court, by provoking action in respect of privileged communication, contacts and the status of legal associates, by avoiding financing of the Defence's costs, and in every other way.

This Brief is a long one, and for the most part contains systematic citations of the Prosecution's charges and everything that the Prosecution considers proof of guilt. This was done deliberately, as a constant reminder of what it is that the Prosecution contends, what lies it resorts to, and to compare all of it to the results of the Prosecution's presentation of evidence, and first and foremost to the transcripts of the hearing and testimony of the Prosecution's witnesses. Small is the number of witnesses who adhered to the Prosecution's concept and uttered the lies agreed and memorised in advance during their testimony in the courtroom.

Numerous false claims from the preliminary statements of the Prosecution's witnesses have not even been commented upon, except for those which were repeated in the courtroom during the examination of witnesses, when witnesses did not disassociate themselves from them or sought to refrain from commenting on them. Given the constraints imposed on him by the Trial Chamber in respect of his allotted cross-examination time, during cross-examination Professor Vojislav Šešelj only dealt with the details and important facts relevant to the charges. It can be concluded beyond a reasonable doubt that, as a result of cross-examination, the credibility of a large number of witnesses has been destroyed, that the reliability of a number of witnesses and their testimonies have been destroyed, and that a wide array of witnesses and their statements have almost no probative value whatsoever. That is why the question arises: what is it that Professor Vojislav Šešelj is supposed to defend himself against, and could the Prosecution bring an indictment against him at all?

Particularly surprising is the fact that the Prosecution also disclosed to Professor Vojislav Šešelj exculpatory material arising from the testimonies of a number of Prosecution witnesses in other cases before the ICTY or other courts, and, in particular, that many of the testimonies of these Prosecution witnesses were not accepted in cases where a final judgement was rendered.

Even more striking is the fact that most of the witnesses, who in their initial statements to Prosecution investigators or the responsible organs in their home states never even mentioned the name of Professor Vojislav Šešelj nor members of the Serbian Radical Party, allegedly remembered something that had happened 20 years earlier several months or days prior to their appearance in the courtroom, and changed their initial statements by adding the words Vojislav Šešelj.

Professor Vojislav Šešelj has initiated contempt of court proceedings against the most responsible persons in the Office of the Prosecutor, [REDACTED]

[REDACTED] The positions taken by the Trial and Appeals Chambers in several ICTY cases where a final judgement was rendered prove that an indictment could not, in fact, have been brought against Professor Vojislav Šešelj. Therefore, this Brief represents a specific view of Professor Vojislav Šešelj's defence, for actually the Defence has nothing to defend itself against; rather, it mainly calls attention to positions barring an indictment or criminal proceedings against Professor Vojislav Šešelj. This Brief can also serve as a practical course for students and those studying the results of the work of the ICTY, and as a kind of concrete, substantiated critique of the ICTY Manual of Practice that everyone in the ICTY is so proud of, and which they use to lecture others.

#### **XI. Relief Sought**

Professor Vojislav Šešelj requests that the Trial Chamber find the Accused Professor Vojislav Šešelj NOT GUILTY on all counts of the indictment and, pursuant to Rule 99(A) of the Rules, order that Professor Vojislav Šešelj be released from the United Nations Detention Unit immediately following completion of the necessary preparations.

“Word count: 188,379 /in original/”

Professor Vojislav Šešelj

/signed/

(Done by Expert Team member Zoran Krasić)