



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-04-84*bis*-T
Date: 29 November 2012
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IN TRIAL CHAMBER II

Before: Judge Bakone Justice Moloto, Presiding
Judge Burton Hall
Judge Guy Delvoie

Registrar: Mr. John Hocking

Judgement: 29 November 2012

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

**PUBLIC JUDGEMENT
WITH CONFIDENTIAL ANNEX**

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I. INTRODUCTION

1. The Accused, Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, are charged with crimes allegedly committed by them, or by other members of the Kosovo Liberation Army (“KLA”), in 1998 against Kosovo Serbs, Kosovo Roma and Kosovo Albanian civilians in a KLA detention facility in the village of Jabllanicë/Jablanica in Gjakovë/Đakovica municipality, western Kosovo. The Indictment alleges specific incidents of abduction of a total of 16 Kosovo Serbs, Kosovo Roma and Kosovo Albanian civilians, who, it is alleged, were detained and subjected to torture and cruel treatment at the KLA headquarters and detention facility in Jabllanicë/Jablanica. It is further alleged that eight of these individuals were killed while in KLA custody. These allegations support six counts of violations of the laws or customs of war, namely cruel treatment, torture, and murder, as recognised by Common Article 3 of the Geneva Conventions, charged under Article 3 of the Statute.

2. Throughout the Judgement the Chamber will refer to locations by their names in both the Albanian and the Serbian language. Where these names are different in the two languages, the name of each location appears in the text in Albanian/Serbian. Where a name of a location is the same in both languages, it only appears once.

3. This case is a partial retrial. The three Accused were charged initially in the case of *Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj*, Case No. IT-04-84 (“*Haradinaj*”) on 4 March 2005 with 16 counts of crimes against humanity and 19 counts of violations of the laws or customs of war. Ramush Haradinaj was also charged with one further count of crimes against humanity and one further count of violations of the laws or customs of war.¹ On 3 April 2008, the Trial Chamber acquitted Ramush Haradinaj and Idriz Balaj of all charges in the indictment, found Lahi Brahimaj guilty of two counts, sentenced him to six years’ imprisonment, and acquitted him of all other charges.² The Prosecution appealed the trial judgement, alleging, *inter alia*, that the Trial Chamber breached its right to a fair trial by not allowing it additional time to secure the evidence of two critical witnesses, and asked for a retrial.

4. On 21 July 2010, the Appeals Chamber, Judge Robinson dissenting, granted in part the Prosecution’s appeal and quashed the Trial Chamber’s decisions to acquit the Accused of certain counts in the indictment related to crimes alleged to have been committed at the KLA headquarters and the prison in Jabllanicë/Jablanica. The Appeals Chamber ordered a partial retrial with respect to

¹ See *infra*, para. 686.

² See *infra*, para. 687.

these counts.³ The partial retrial was assigned to this Chamber on 21 July 2010. The trial commenced on 18 August 2011. The Chamber received evidence from 56 witnesses, including the two witnesses with respect to whom the retrial was ordered.

5. The Indictment, as ultimately amended, alleges that the Accused are criminally responsible for the crimes charged as participants in a JCE,⁴ the common purpose of which was to consolidate the total control of the KLA over the Dukagjin Operational Zone, encompassing the municipalities of Pejë/Peć, Deçan/Dečani, Gjakovë/Đakovica, including the Lake Radoniq/Radonjić canal area, and parts of the municipalities of Istog/Istok and Klinë/Klina. It further alleges that this consolidation was undertaken by the unlawful removal and mistreatment of Kosovo Serb civilians and by the mistreatment of Kosovo Albanian and Kosovo Roma/Egyptian civilians, and other civilians, who were, or were perceived to have been, collaborators with the Serbian forces or otherwise not supporting the KLA. It is alleged that the JCE included the establishment and operation of KLA detention facilities and the mistreatment of detained persons at these facilities, including at the KLA headquarters at Jabllanicë/Jablanica, Gllogjan/Glodane, and Irzniq/Rznić.⁵ It is alleged that this JCE began on or around March 1998 and continued at least until late September 1998.⁶

6. It is alleged in the Indictment that Ramush Haradinaj was one of the most senior KLA leaders in Kosovo. It is further alleged that, from at least 1 March 1998 until mid-June 1998, he was a *de facto* commander in the KLA, from mid-June 1998, he was appointed a *de jure* commander, and that as a commander Ramush Haradinaj had overall command of the KLA forces in the Dukagjin Operational Zone.⁷ Ramush Haradinaj is charged with individual criminal responsibility under Article 7(1) of the Statute for allegedly having committed, as part of the JCE, the crimes outlined in the six counts of the Indictment. In the alternative, he is charged for having committed, or aided and abetted the commission of the crimes charged in Count 1, and for allegedly having ordered, instigated, or aided and abetted the commission of the crimes charged in Count 6.

7. The Indictment alleges that, throughout the Indictment period, Idriz Balaj (aka “Toger/Togeri” meaning “Lieutenant”) was a member of the KLA and a direct subordinate to Ramush Haradinaj. It further alleges that Idriz Balaj was the commander of a rapid intervention special unit known as the “Black Eagles”, which it is alleged was created with the approval of

³ See *infra*, para. 689.

⁴ Ramush Haradinaj and Idriz Balaj for all six counts and Lahi Brahimaj for Counts 1, 2, 4, and 6 charged in the Indictment.

⁵ Indictment, para. 24.

⁶ Indictment, para. 25.

⁷ Indictment, para. 2.

Ramush Haradinaj in April 1998.⁸ Idriz Balaj is charged with individual criminal responsibility under Article 7(1) of the Statute for allegedly having committed, as part of the JCE, the six counts of violations of the laws or customs of war charged in the Indictment. In the alternative, he is also charged for having committed, or aided and abetted the commission of the crimes charged in Count 1, and for allegedly having committed, or planned or aided and abetted the commission of the crimes charged in Count 6.

8. It is alleged in the Indictment that throughout the Indictment period Lahi Brahimaj (aka “Maxhup”) was a member of the KLA stationed at Jabllanicë/Jablanica and a subordinate to Ramush Haradinaj.⁹ It is further alleged that, from 23 June 1998 to 5 July 1998, Lahi Brahimaj was the deputy commander of the Dukagjin Operational Staff, after which time he continued to serve as the finance director of the KLA General Staff.¹⁰ Lahi Brahimaj is charged with individual criminal responsibility under Article 7(1) of the Statute for allegedly having committed, as part of the JCE, the crimes charged in Counts 1, 2, 4 and 6. In the alternative, he is also charged for having ordered, instigated, or aided and abetted the commission of the crimes charged in Counts 1 and 2, and for having committed, planned, or aided and abetted the commission of the crimes charged in Count 6.

9. The Chamber received evidence that forces of the Federal Republic of Yugoslavia (“FRY”) including the forces of the Army of Yugoslavia (“VJ”), and forces of the Ministry of the Interior (“MUP”) of the Republic of Serbia were engaged in Kosovo in 1998. The Chamber will refer to the specific forces involved in a particular event when the identity of these forces is known from the evidence. However, in the absence of such evidence, the Chamber will refer to these forces, generally, as Serbian forces. This should be understood as meaning Serbian or FRY forces.

⁸ Indictment, paras 8-9.

⁹ Indictment, para. 12.

¹⁰ Indictment, para. 12.

II. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

10. Article 21(3) of the Statute enshrines the presumption of innocence to which all accused before the Tribunal are entitled. This presumption places on the Prosecution the burden of establishing the guilt of the Accused. In respect of each count charged against each of the Accused the standard to be met for conviction is that of proof beyond reasonable doubt.¹¹ The Chamber, therefore, determined in respect of each of the counts charged against each of the Accused, whether it is satisfied beyond reasonable doubt on the basis of the whole of the evidence, whether every element of the crime and every form of liability charged in the Indictment have been established. Where more than one inference was reasonably open from the facts established by the evidence, the Chamber considered whether any of these inferences was inconsistent with the guilt of the Accused.¹² In such cases, the onus and the standard of proof require that an acquittal be entered in respect of that count.¹³

11. A noteworthy feature of this trial is the large amount of evidence, which was admitted in written form, without the witnesses appearing before the Chamber, whether by explicit agreement of the Parties or after the Accused waived their right to cross-examine the witnesses. In such cases the Chamber also admitted into evidence the audio and video recordings of the witnesses' prior testimony before the Tribunal. It should be noted, however, that not all evidence presented in the original *Haradinaj* trial was tendered in the present case.

12. Measures to protect the identity of many witnesses were ordered in the original *Haradinaj* trial and continued to apply in this trial. Out of concern for their personal safety, many witnesses are referred to in this Judgement by a number. Their names and other details which might lead to their identification have been omitted. Where the Chamber considered that in the context of the specific evidence, citing the pseudonym of a witness may reveal the identity of the witness, the Chamber omitted the references to this evidence from the public Judgement. These references are included in the Confidential Annex to the Judgement.

13. The Chamber received a large amount of written evidence originating from the Serbian MUP, a participant in the conflict, which includes written reports, notes, or other documents. The sources relied on in this written evidence were not always identified, neither were the means by which information recorded in these documents was collected and processed. In many cases, these documents were not signed. In some cases where these documents were signed, the authors did not

¹¹ Rule 87(A) of the Rules, provides in so far as relevant: "A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt".

¹² See *Mrkšić* Trial Judgement, para. 11; *Đorđević* Trial Judgement, para. 10.

¹³ *Čelebići* Appeal Judgement, para. 458.

appear to give evidence during this trial. Considering the issues highlighted above, the Chamber treated such evidence with caution.

14. The Chamber also received evidence from witnesses who were, at the material time, members of the KLA. The Chamber was left with the impression that their evidence on matters concerning the organisation of the KLA or other matters of relevance to this Indictment may have been influenced by their allegiance to the organisation or by their loyalty to the Accused, who were at the time prominent members of the organisation. The Chamber approached this evidence with these considerations in mind.

15. In some cases only one witness gave evidence on a fact material to the case. The testimony of a single witness on a material fact does not, as a matter of law, require corroboration.¹⁴ In such cases, however, the Chamber satisfied itself fully of the reliability of the evidence before it placed reliance upon it.

16. Despite the various issues affecting the evaluation of evidence in this case, having carefully reviewed and weighed all the evidence, the Chamber was able to make findings on the facts of this case to determine the guilt or innocence of each of the Accused in respect of all charges in the Indictment. These findings and the Chamber's more detailed reasons for accepting or rejecting certain evidence are recorded below.

¹⁴ *Aleksovski* Appeal Judgement, para. 62.

III. STRUCTURE AND ORGANISATION OF THE KLA IN THE DUKAGJIN ZONE

A. Emergence and general structure of the KLA

17. The first “public appearance” of the KLA occurred on 28 November 1997.¹⁵ The occasion was the funeral of a teacher, Halit Geci, who was allegedly killed by Serbian forces.¹⁶ It was reported that three men in KLA uniforms—two of whom wore masks—gave a speech urging the people of Kosovo to join the “fight”.¹⁷ Witness 17 later learned that these men were Daut Haradinaj, Rexhep Selimi and a person known as Kapuçi.¹⁸ The Serbian authorities referred to the KLA as a “terrorist” group.¹⁹

1. KLA General Staff

18. Around late 1996, early 1997, the KLA General Staff²⁰ consisted of approximately 10 members operating in three different areas - underground in Kosovo; in Albania; and in western countries such as Switzerland, Germany, the United States of America, France, and throughout Scandinavia.²¹ By the spring of 1998, the KLA General Staff members included Sokol Bashota, Raif Gashi, Xhemajl Fetahu, Adem Grabovci, Xhavit Haliti, Illir Konjushevci, Jakup Krasniqi, Azem Syla (Sula), Rexhep Selimi, Hashim Thaçi, Kadri Veseli, and Xhavid Zeka.²² Not all members of the General Staff knew all the other members and they did not all communicate with each other.²³

19. Adem Jashari was the commander of the KLA until March 1998.²⁴ Following the killing of Adem Jashari, Azem Syla (Sula) became the general commander of the KLA, Sokol Bashota was

¹⁵ Witness 17, Exhibit P344, para. 4; Witness 28, Exhibit P358, paras 5-8.

¹⁶ Witness 17, Exhibit P344, para. 4.

¹⁷ Witness 17, Exhibit P344, para. 4; Witness 28, Exhibit P358, para. 8.

¹⁸ Witness 17, Exhibit P344, para. 4.

¹⁹ Radovan Zlatković, Exhibit P373, paras 16, 18; Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9850-9852; Witness 69, Exhibit P370, paras 8-10; Witness 28, Exhibit P358, para. 6; Zoran Stijević, Exhibit P121, para. 7; *see also* Dragan Zivanović, Exhibit P110 (*Haradinaj* original transcript), T. 9316.

²⁰ The KLA General Staff (“General Staff”) was also referred to as the KLA Central Staff, Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4966.

²¹ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3306; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5025.

²² Bislim Zyrapi, Exhibit P160, paras 15-16; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3261, 3265-3267, 3282-3283, 3389; Bislim Zyrapi, T. 651, 689, 693, 759-760; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3305-3307, 3311; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5026-5027, *see also* Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3821.

²³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3821; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5024-5026, 5029.

²⁴ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3306; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5024.

the deputy commander of the KLA, and Rexhep Selimi was the general inspector.²⁵ Hashim Thaçi was the head of the political department.²⁶ Jakup Krasniqi was appointed as the spokesperson for the KLA in Kosovo in June 1998.²⁷ Bislim Zyrapi joined the General Staff sometime around late May, early June 1998.²⁸ Lahi Brahimaj became the director of the finance department in July 1998.²⁹

20. The KLA General Staff in Kosovo did not have a single location where it was based in 1998; the members would move around for security reasons and usually independently of each other.³⁰ John Crosland, then the British Defence Attaché to the Republic of Yugoslavia,³¹ acknowledged that throughout 1998 the KLA did become more organised.³²

21. The Chamber heard from John Crosland that, while the KLA was organised, to call the body at the top of it “the General Staff” was misleading. He did not think that the General Staff had effective control over the KLA.³³ John Crosland concluded that there was not a “great deal” of coordination between the zones and the General Staff.³⁴

22. The General Staff would compile political statements, communiqués and give interviews which would set out the strategy and political opinions of the KLA and provide an overview of the fighting and military developments that were occurring at the time in Kosovo.³⁵

2. Number of KLA forces in 1998

23. The Chamber received evidence from VJ sources related to the number of KLA forces in various areas within Kosovo throughout early to mid 1998. In the territory covering Gjakovë/Đakovica, a command report of the 549th mtbr dated 23 February 1998 assessed the

²⁵ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3311; for the killing of Adem Jashari, *see infra*, para. 143.

²⁶ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3306; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5075.

²⁷ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3311-3313, 3429; Exhibit P65, Annex 14.

²⁸ Bislim Zyrapi, Exhibit P160, para. 16; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3259, 3282, 3304; Bislim Zyrapi, T. 687, 695.

²⁹ Bislim Zyrapi, Exhibit P160, para. 16; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3212-3213, 3394; Bislim Zyrapi, T. 759-760; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5075.

³⁰ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3282-3284, 3402-3403, 3412-3413; Bislim Zyrapi, T. 689, 693-694, 775; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4990, 5029, 5074.

³¹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2925-2926.

³² John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4703-4704.

³³ John Crosland, Exhibit P9 (*Limaj* transcript), T. 2037-2038; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4704. According to Bislim Zyrapi, the General Staff of the KLA was not functioning in the proper sense of the word, Bislim Zyrapi, Exhibit P160, para. 15; Bislim Zyrapi, Exhibit P161, para. 13; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3293, 3295; Bislim Zyrapi, T. 690-691, 697, 699, 733.

³⁴ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4706-4707.

³⁵ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3320; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5010, 5022-5023, 5030.

strength and composition of KLA deployment and forces in that area as up to 200 members.³⁶ According to Branko Gajić, then deputy head of the Serbian security administration,³⁷ between January-March 1998 it was believed that the KLA consisted of “up to 3,000 armed men who had organised themselves and there were between 6,000 and 8,000 who had weapons”.³⁸ A deployment order of the 549th mtbr dated 22 April 1998 assessed the strength of the KLA as being one battalion strong and consisting of 500 armed “terrorists”, most likely formed in Prizren, Rahovec/Orahovac, Suharekë/Suva Reka, Gjakovë/Đakovica, Deçan/Dečani, Klinë/Klina, and Pejë/Pecë municipalities, and especially in the general areas of Jabllanicë/Jablanica, Gllogjan/Glodane, Junik, and Smolicë/Smonica villages.³⁹ A report of the VJ Priština Corps dated 8 May 1998 refers to the security situation in Gjakovë/Đakovica and estimates that approximately 5,000 “terrorists” were militarily organised in Kosovo and that 15,000 were issued with weapons.⁴⁰ According to Zoran Stijović, the head of the analytical department of the Serbian RDB in Prishtinë/Priština, by June 1998 there were about 1,000 KLA members.⁴¹ Dragan Živanović, former VJ Major-General,⁴² gave evidence that he was told in May or June 1998 by Aleksandar Savović, the Chief of Security for the VJ 125th mtbr, that Haradinaj was likely situated in the area of Gllogjan/Glodane and had 500-1,000 armed trained men.⁴³

24. John Crosland gave evidence that the KLA numbers reflected by the VJ were debatable. Based on his visits to five or six KLA headquarters in various villages throughout Kosovo he believed that in April 1998 there were probably between 400 to 500 “hardcore KLA”.⁴⁴ He acknowledged, however, that if figures of the VJ were reflecting potential number of future KLA members training in Albania, the numbers of 3,500 to 4,500 did not seem “too far-fetched”.⁴⁵

25. The Chamber notes that these figures are estimates and may not be entirely accurate. It was acknowledged by Branko Gajić that the information obtained by the Serbian forces was not 100 percent reliable or even an approximation.⁴⁶

³⁶ Exhibit P28, para. 3.

³⁷ Branko Gajić, Exhibits P25 (*Haradinaj* original transcript), T. 9668; Branko Gajić, Exhibit P27, para. 8.

³⁸ Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9684, 9746-9747.

³⁹ Exhibit P32, p. 1; Branko Gajić, Exhibit P27, para. 24.

⁴⁰ Exhibit P34; Branko Gajić, Exhibit P27, para. 29; *see also* Exhibit P20, p. 1.

⁴¹ Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9068-9069.

⁴² Dragan Živanović was also the Chief of Staff of the 125th mtbr of the VJ, Dragan Živanović, Exhibit P112, para. 3.

⁴³ Dragan Živanović, Exhibit P112, para. 41.

⁴⁴ Exhibit P13; John Crosland, Exhibit P9 (*Limaj* transcript), T. 1917-1919; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2963-2964.

⁴⁵ John Crosland, Exhibit P9 (*Limaj* transcript), T. 1919.

⁴⁶ Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9684-9685.

3. The KLA zones of operation in Kosovo

26. In early 1998, there were several groupings of KLA throughout Kosovo.⁴⁷ These were referred to as sub-zones because Kosovo was considered as one zone.⁴⁸ For ease of reference, the Chamber will refer to these sub-zones as zones.⁴⁹

27. There were seven zones in Kosovo in 1998:⁵⁰

- a. the first zone was Drenica, commanded by Sylejman Selimi;⁵¹
- b. the second zone was Dukagjin, commanded by Ramush Haradinaj;⁵²
- c. the third zone was Llap, commanded by Rrustem Mustafa (“Remi”);⁵³
- d. the fourth zone was Shala, commanded by Rrahmon Rama;⁵⁴
- e. the fifth zone was Pashtrik, commanded by Musa Jashari;⁵⁵
- f. the sixth zone was Nerodimlje, commanded by Shukri Buja;⁵⁶ and
- g. the seventh zone was Karadak, commanded by Ahmet Isufi.⁵⁷

28. The level of organisation between the seven zones differed greatly.⁵⁸ The Drenica zone was well organised due to the fact that fighting between the KLA and the Serbian forces had started in this area in November 1997.⁵⁹ Fighting began in the Dukagjin zone with the attack on the Haradinaj family compound on 24 March 1998.⁶⁰ As a result of the early fighting in these two zones, they became the most developed and organised of the zones.⁶¹ According to Bislim Zyrapi, in June and July 1998, the Drenica and Dukagjin zones were the only existing KLA zones; they

⁴⁷ Exhibit P13; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2946.

⁴⁸ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4971.

⁴⁹ After November 1998, these sub-zones were renamed zones, Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4971, 5057.

⁵⁰ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3323.

⁵¹ Bislim Zyrapi, Exhibit P160, para. 17; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3323.

⁵² Bislim Zyrapi, Exhibit P160, para. 17; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3479.

⁵³ Bislim Zyrapi, Exhibit P160, para. 17; Shafqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4217-4218; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3323.

⁵⁴ Bislim Zyrapi, Exhibit P160, para. 17.

⁵⁵ Bislim Zyrapi, Exhibit P160, para. 17.

⁵⁶ Bislim Zyrapi, Exhibit P160, para. 17.

⁵⁷ Bislim Zyrapi, Exhibit P160, para. 17.

⁵⁸ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3414.

⁵⁹ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3414.

⁶⁰ Jakup Krasniqi, Exhibit P65, para. 7; *see infra*, paras 144-149.

⁶¹ Jakup Krasniqi, Exhibit P65, para. 7; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3414; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3275, 3278, 3390-3391, 3407-3408.

were in a state of development and trying to develop a structure and a centralised command.⁶² The level of organisation in the zones began to change after the Serbian summer offensive in 1998.⁶³ The commanders of the fifth, sixth and seventh zones did not take up their command posts until the autumn of 1998 because KLA activity was limited until then.⁶⁴

4. Logistics and organisation of the KLA

(a) Funding

29. The KLA was financially supported by two funds in 1997 and 1998: the “Bukoshi Fund” (also known as the “Government Fund” or the “3% Fund”) and the “Homeland Calling Fund”.⁶⁵ The Homeland Calling Fund was created in 1995 and was controlled by the KLA General Staff.⁶⁶ Contributions came mainly from Albanians living abroad and the fund was used mainly to pay for weapons and supplies in Albania for use in Kosovo.⁶⁷ The Chamber did not receive further evidence about the “Bukoshi Fund”.

(b) Uniforms

30. At the end of February and the beginning of March 1998, most KLA soldiers in training wore civilian clothes and some had KLA patches on their arms.⁶⁸ Some KLA soldiers wore camouflage uniforms with a KLA patch.⁶⁹ The KLA patch had an “eagle emblem” and the letters “UÇK”.⁷⁰

31. According to Shemsedin Çekaj, Ramush Haradinaj, and Idriz Balaj were wearing dark green uniforms with KLA patches and were armed with “pistols, light weapons”.⁷¹ Ramush Haradinaj was also reported as wearing a camouflage military uniform with boots and a cap; he was armed

⁶² Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3275-3276, 3278; Bislim Zyrapi, T. 696; *see also infra*, paras 70-77.

⁶³ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3414; *see also infra*, paras 283-300.

⁶⁴ Bislim Zyrapi, Exhibit P160, para. 17; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3278.

⁶⁵ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3367; Jakup Krasniqi, Exhibit P65, para. 5; Witness 17, Exhibit P344, paras 5-6; Exhibit P153, p. 5; Exhibit D22, pp 1-2.

⁶⁶ Jakup Krasniqi, Exhibit P65, para. 5.

⁶⁷ Jakup Krasniqi, Exhibit P65, para. 5; Zoran Stijović, Exhibit P121, para. 34; Exhibit P152; Witness 17, Exhibit P344, para. 5.

⁶⁸ Cufë Krasniqi, Exhibit P54, para. 33; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5830; Vesel Dizdari, Exhibit P467, para. 15.

⁶⁹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3614; Witness 17, Exhibit P344, para. 16.

⁷⁰ Witness 7, Exhibit P94, paras 8, 33; Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 987.

⁷¹ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4393.

with an automatic weapon.⁷² KLA soldiers at checkpoints were seen carrying automatic rifles and simple communication equipment such as “walkie-talkie[s]”.⁷³

32. The Chamber accepts that while many members of the KLA wore civilian clothing with a KLA badge affixed to their arms, some members also wore camouflage uniforms which could have been seen to be dark green in colour. The Chamber further accepts that the KLA was distinguished by the KLA badge affixed to the arm. As will be discussed later in this Judgement, the Black Eagles and the KLA military police wore uniforms different from ordinary KLA members.⁷⁴

(c) Weapons

33. Based on information received from the MUP, Dragan Živanović estimated that at the beginning of 1998, there were between 80,000 and 100,000 weapons in Kosovo, with unofficial estimates suggesting up to 200,000.⁷⁵ In a VJ Priština Corps report dated 8 May 1998 the KLA was said to possess “a few 60 millimetre mortars, hand-held launchers and sniper rifles”.⁷⁶ A similar VJ Priština Corps report dated 3 June 1998 stated that the KLA was in possession of “60 millimetre and 82 millimetre mortars, 75 millimetre and 82 millimetre recoilless guns, hand-held launchers and modern anti-armour combat equipment. They also had a significant quantity of ammunition and hand grenades”.⁷⁷ According to Branko Gajić, in the first six months of 1998 “some 25,000 weapons of different calibre and type were recovered together with some 500,000 bullets and shells of different calibre, some 10,000 hand-grenades, greater quantities of hand-held launchers and mortars, mostly of 60-millimetre, and several tonnes of military equipment”.⁷⁸ Dragan Živanović gave evidence that in the first half of 1998, in the area of the 125th mtbr of the VJ, around 20,000 weapons had been carried across the border, including Chinese-made weapons that had earlier belonged to the Army of Albania; semi-automatic rifles; automatic rifles of the Kalashnikov type; light machine guns; machine guns; hand-held launchers; mortars; and the accompanying equipment, clips, accessories and ammunition for all types of weapons.⁷⁹ The Chamber received no other evidence to corroborate this information.

34. To the contrary, according to John Crosland, in the period from January to July 1998, the KLA did not have “extensive armoury”.⁸⁰ This is consistent with Rustem Tetaj’s evidence that it

⁷² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3618.

⁷³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3614-3615.

⁷⁴ See *infra*, paras 106, 124.

⁷⁵ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9294-9295.

⁷⁶ Branko Gajić, Exhibit P27, para. 29; Exhibit P34, p. 2.

⁷⁷ Exhibit P116, para. 2.

⁷⁸ Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9699; see also Exhibits P29; P35.

⁷⁹ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9295.

⁸⁰ John Crosland, Exhibit P9 (*Limaj* transcript), T. 2010.

was not until after the Armed Forces of the Republic of Kosovo (“FARK”) arrived to the Dukagjin Operational Zone in late June 1998, that the KLA had, and used, hand-held mortars against tanks, which were effective if used within a range of between 300 and 500 metres.⁸¹ They also then had RPGs which could be used against armoured vehicles but not against tanks.⁸²

35. The report of the 549th mtbr of the VJ dated 5 March 1998 details three “main routes” along which the KLA was smuggling weapons into Kosovo: (i) Bajram Curi–Junik–toward Jabllanicë/Jablanica and Drenica; (ii) Liken and Čafa Dobruna–toward Rogovë/Rogovo–Rahovec/Orahovac–Malishevë/Mališevo and Drenica; (iii) the Stojanović and Mandić border outposts, and the Plavska Valley, toward Opolje.⁸³ The Chamber received evidence that Jabllanicë/Jablanica and Glogjan/Glodane were strategic locations in the KLA’s weapon supply route and that the KLA planned and tried to create a corridor for the movement of weapons from Albania to link Drenica and Deçan/Dečani.⁸⁴

(d) Recruitment

36. Many persons were willing to join the KLA. In order to be able to join a candidate had to be accompanied by someone who could attest to this person’s trustworthiness.⁸⁵ Personal information about the candidates would be recorded and they would be asked why they wanted to join the KLA.⁸⁶ To become a member of the KLA the approval of the KLA General Staff was not required.⁸⁷ New recruits would start training immediately and later they would give their oath at a ceremony.⁸⁸ Cufë Krasniqi explained what happened at an oath-taking ceremony he attended on 20 July 1998, in Baran/Barane in Pejë/Peć municipality.⁸⁹ The ceremony was conducted by Nazif Ramabaja and Ramush Haradinaj. Rustem Tetaj and Tahir Zemaj also gave speeches.⁹⁰ Idriz

⁸¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3823, 3825, 3851; *see infra*, para. 258. The Chamber also heard the evidence of Jakup Krasniqi who made reference to an interview he gave as KLA spokesperson to a newspaper on 6 July 1998, in which he claimed that the KLA was in possession of heavy weaponry and poised to move in and take control of Prishtinë/Priština. He clarified his position and stated that such a media report was part of a propaganda campaign intended to present the KLA as more organised than it was to gain credibility, Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5038.

⁸² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3823.

⁸³ Exhibit P30, pp 1-2.

⁸⁴ John Crosland, Exhibit P9 (*Limaj* transcript), T. 1897, 1945-1947; Witness 77, T. 1299-1300; Skender Rexhahmetaj, Exhibit P297, paras 8-10; Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4185-4191; Bislim Zyrapi, T. 682-683; Zoran Stijović, T. 565-569; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9004-9005; Zoran Stijović, Exhibit P121, para. 25; Exhibits P19, para. 5; P28, para. 3; P35, pp 2-3.

⁸⁵ Cufë Krasniqi, Exhibit P54, para. 32; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5716-5717; Exhibit P219.

⁸⁶ Cufë Krasniqi, Exhibit P54, para. 32.

⁸⁷ Bislim Zyrapi, Exhibit P161, para. 13; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3260.

⁸⁸ Cufë Krasniqi, Exhibit P54, para. 32; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5716-5717.

⁸⁹ Cufë Krasniqi, Exhibit P54, para. 66; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5716, 5804; Exhibit D148.

⁹⁰ Cufë Krasniqi, Exhibit P54, para. 67; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5716-5717.

Balaj was not present.⁹¹ Soldiers wrote their names on the list provided and got a printed oath and a certificate.⁹²

(c) Training

37. In February 1998, given his experience with using guns, Cufë Krasniqi was asked by Metë Krasniqi to train young KLA soldiers.⁹³ From then until 28 May 1998, Cufë Krasniqi trained KLA soldiers in the village of Vranoc-i-Vogël/Mali Vranovac in Deçan/Dečani municipality which was under the command of Din Krasniqi.⁹⁴ Most of the KLA trainees were from Buçan/Bučane and Vranoc/Vranovac in Pejë/Peć municipality and Vranoc-i-Vogël/Mali Vranovac.⁹⁵ Cufë Krasniqi said that on the first day he had about 21 soldiers to train but that this number increased to 700-1,000 soldiers.⁹⁶ He would train one group of soldiers for one to three months in order to prepare them for combat, operations, and tactics, including how to use guns such as M48 and AK47 rifles, rocket-launchers and anti-aircraft guns.⁹⁷ Cufë Krasniqi testified that he would spend about an hour every day talking to the soldiers about the treatment of civilians and prisoners of war.⁹⁸ Dragan Živanović also gave evidence that the VJ and MUP had heard of KLA training in Pejë/Peć, Mitrovicë/Kosovska Mitrovica, Deçan/Dečani and villages including Prapaqan/Prapačane, Isniq/Istinić, Dashinoc/Dašinovac, Llukë-c-Epërme/Gornja Luka and Glllogjan/Glodane.⁹⁹

38. During his time in Albania, from mid-March to 28 May 1998, Bislim Zyrap and his fellow officers trained about 300 soldiers; this was organised by the KLA General Staff.¹⁰⁰ Ramush Haradinaj received a report dated 1 July 1998, from Salih Veseli at the “Reka Staff” that the request for training of soldiers had been implemented and that there were approximately 400 soldiers taking part in the training.¹⁰¹ On 8 July 1998, Ramush Haradinaj issued an order for 64 KLA fighters to receive training at the “Jusuf Gërvalla KLA training centre for the training of soldiers and officers”.¹⁰²

⁹¹ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5716.

⁹² Cufë Krasniqi, Exhibit P54, para. 67.

⁹³ Cufë Krasniqi, Exhibit P54, para. 30; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5795.

⁹⁴ Cufë Krasniqi, Exhibit P54, paras 31, 51.

⁹⁵ Cufë Krasniqi, Exhibit P54, para. 31.

⁹⁶ Cufë Krasniqi, Exhibit P54, para. 34; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5715.

⁹⁷ Cufë Krasniqi, Exhibit P54, paras 24, 34; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5715.

⁹⁸ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5721.

⁹⁹ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9318-9319.

¹⁰⁰ Bislim Zyrap, Exhibit P159 (*Haradinaj* original transcript), T. 3191-3192, 3259, 3261, 3264-3265.

¹⁰¹ Bislim Zyrap, Exhibit P161, para. 48; Exhibit P205.

¹⁰² Exhibit P239.

(f) Discipline

39. Commanders of zones in Kosovo were obliged to inform the General Staff of any crimes or breaches of the laws of war committed within their area of operation; the General Staff would then order appropriate action.¹⁰³ However, the General Staff and the KLA did not have the proper mechanisms to take any measures, other than to publicly remove from their positions those who had committed crimes or breaches.¹⁰⁴ A commander of a zone was obliged to remove persons who committed the crime or breach from the position that they were in.¹⁰⁵ Jakup Krasniqi gave evidence that the General Staff never received information “that executions of captives were carried out by members of the KLA”.¹⁰⁶ According to Bislim Zyrapi, while complaints were made in Drenica, Shala and Pashtrik zones about problems with military discipline, no commander from the Dukagjin Zone, including Ramush Haradinaj, ever addressed Bislim Zyrapi with such issues.¹⁰⁷

40. Jakup Krasniqi explained that the responsibility for disciplining the soldiers would have been difficult for the zone commanders because the zones were divided in geographical terms; there was no proper organisation or regular communication between the zones.¹⁰⁸ Moreover, Jakup Krasniqi agreed to the proposition that no judges or courts were operated by the KLA during the period of March until September 1998.¹⁰⁹

41. Besides an incident at the Prapaqan/Prapačane barracks involving Tahir Zemaj, a FARK member, suspending a soldier from the army, Rustem Tetaj was not aware of any disciplinary measures taken against any KLA members in the period May to September 1998.¹¹⁰

¹⁰³ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3412-3413; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5150.

¹⁰⁴ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4970, 5150-5151.

¹⁰⁵ Bislim Zyrapi, Exhibit P160, paras 35, 38; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3441, 3443; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5150.

¹⁰⁶ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3412-3413.

¹⁰⁷ Bislim Zyrapi, Exhibit P160, paras 36, 38; Bislim Zyrapi, Exhibit P161, para. 47; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3432.

¹⁰⁸ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4970.

¹⁰⁹ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5088-5089. See also Witness 17, Exhibit P344, para. 74; Bislim Zyrapi, Exhibit P160, para. 37; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3430-3431. Rustem Tetaj was asked about the establishment of a KLA military court in June 1998. The witness explained that this was part of the propaganda to raise morale and show people that the KLA was in the process of setting up a court to prevent “bad things from happening”, Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3748-3749. The court never came into existence, Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3826.

¹¹⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3827.

B. The KLA in the Dukagjin zone

42. The Dukagjin zone¹¹¹ refers to a geographic area in western Kosovo comprising around 40-50 villages in the municipalities of Deçan/Dečani to the west, Pejë/Peć to the north, Gjakovë/Đakovica to the southeast, and parts of the municipalities of Istog/Istok to the northeast and Klinë/Klina to the east.¹¹² After a meeting on 23 June 1998 Jabllanicë/Jablanica, among others, became part of the Dukagjin Operational Zone.¹¹³ The KLA in western Kosovo had three “family power bases” – the Haradinajs in Gllogjan/Glodane; the Jasharis in Prekaz; and the Brahimajs in Jabllanicë/Jablanica.¹¹⁴

1. The village defence organisation

43. The Chamber received evidence of the events and practices occurring in the following villages: Gllogjan/Glodane, Irzniq/Rznić, Isniq/Istinić, Vranoc-i-Vogël/Mali Vranovac, and Llukë-e-Ulët/Donja Luka, all in Deçan/Dečani municipality; Baran/Barane Valley in Pejë/Peć municipality; and Grabanicë/Grabanica in Klinë/Klina municipality.¹¹⁵

44. After the fighting at the Haradinaj family compound in Gllogjan/Glodane on 24 March 1998,¹¹⁶ small groups of men began to organise themselves in their own villages. This happened in Vranoc-i-Vogël/Mali Vranovac, Isniq/Istinić, Llukë-e-Ulët/Donja Luka, Irzniq/Rznić, and in the Baran/Barane Valley.¹¹⁷ They gathered to protect their villages and made decisions as to the necessary defensive positions.¹¹⁸

45. Ramush Haradinaj’s role in the fighting at the Haradinaj family compound on 24 March 1998 had increased the local population’s support for the KLA and given Ramush

¹¹¹ The Dukagjin Operational Zone did not come into existence until 23 June 1998, when the zone expanded to include a broader area, *see infra*, para. 72. Prior to this date the Dukagjin area was referred to interchangeably as the “Dukagjin zone”, “Dukagjin Plateau” or “Dukagjin Plain”, *see* Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3636, 3723; *see also* Skender Rexhahmetaj, T. 1052-1054. Accordingly, the Chamber will refer to the area as the “Dukagjin zone” with regard to events and issues prior to 23 June 1998. The area will be referred to as the “Dukagjin Operational Zone” after 23 June 1998.

¹¹² Cufë Krasniqi, Exhibit P54, paras 44, 90; Witness 17, Exhibit P344, para. 25; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3480; Zoran Stijović, Exhibit P121, para. 47; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2945-2950; Exhibit P10.

¹¹³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3723, *see infra*, para. 72.

¹¹⁴ Bislim Zyrapi, T. 703-709.

¹¹⁵ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3708.

¹¹⁶ *See infra*, paras 144-146.

¹¹⁷ Shemsedin Çekaj, Exhibit P4, para. 6; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4390; Cufë Krasniqi, Exhibit P54, paras 38-39; Skender Rexhahmetaj, Exhibit P297, paras 5, 11; Skender Rexhahmetaj, Exhibit P298, paras 6-7, 11; Skender Rexhahmetaj, T. 1031-1034; Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9749; Zoran Stijović, T. 566-567; Witness 69, Exhibit P370, para. 27; Zymer Hasanaj, Exhibit P37, para. 2; Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8742; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5046-5047; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3378.

¹¹⁸ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5046-5047; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3378.

Haradinaj, the commander of the Gllogjan/Glodane village, immense popularity and respect.¹¹⁹ Subsequent to this event, the established headquarters in Gllogjan/Glodane in Deçan/Dečani municipality was accepted as the central point of the KLA in the Dukagjin zone.¹²⁰ Those based at the Gllogjan/Glodane headquarters, including Ramush Haradinaj, were also considered more experienced in conflict and obtaining weapons from Albania.¹²¹ It is alleged in the Indictment that by early April 1998, parts of Deçan/Dečani and Gjakovë/Đakovica around Ramush Haradinaj's Gllogjan/Glodane base were firmly under his control.¹²² As reflected above, the gathering of small groups of men in the villages was not centrally organised; it was done at the initiative of the villages.¹²³ This became known as the village defence organisation or the village guard organisation.¹²⁴

46. Most villages in the Dukagjin zone had limited weapons available as they began to organise.¹²⁵ The Chamber heard consistent evidence that as a village started to get organised, a small group of young men were sent to Gllogjan/Glodane and then on to Albania to collect weapons.¹²⁶ They purchased weapons in Albania including rifles, AK47s, mortars, anti-tank rockets, sniper rifles, ammunition, some grenades, and a hand-held mortar. These were then brought back to the village.¹²⁷ This increased the availability of weapons in the villages.¹²⁸ The Chamber received inconsistent evidence regarding Ramush Haradinaj's involvement in obtaining weapons in Albania. Rustem Tetaj gave evidence that Ramush Haradinaj was not involved in how the weapons were sourced and obtained from Albania; it was through the contacts that Rustem Tetaj had in Albania.¹²⁹ According to Cufë Krasniqi, young KLA soldiers were often armed by the

¹¹⁹ Cufë Krasniqi, Exhibit P54, paras 35, 40, 43, 61; Skender Rexhahmetaj, Exhibit P298, para. 11; Skender Rexhahmetaj, T. 1045, 1097-1098; Skender Rexhahmetaj, Exhibit P299, para. 2(f); Bislim Zyrapi, Exhibit P160, para. 9; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4482; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2964-2965; Witness 29, Exhibit P359 (*Haradinaj* original trial), T. 3486; Zoran Stijović, Exhibit P121, paras 45-46; Exhibit P153, p. 2.

¹²⁰ Cufë Krasniqi, Exhibit P54, para. 43; Skender Rexhahmetaj, Exhibit P297, paras 7-8; Skender Rexhahmetaj, Exhibit P298, para. 11; Skender Rexhahmetaj, Exhibit P299, para. 2(f); Skender Rexhahmetaj, T. 1045-1046, 1086-1090; Rustem Tetaj, Exhibit P77, para. 20.

¹²¹ Skender Rexhahmetaj, Exhibit P297, para. 8; Skender Rexhahmetaj, Exhibit P298, para. 14; Skender Rexhahmetaj, T. 1045-1046, 1086; Bislim Zyrapi, Exhibit P160, para. 9; Bislim Zyrapi, Exhibit P161, paras 19-20.

¹²² Indictment, para. 5.

¹²³ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5047; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3708; *see also* Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9684.

¹²⁴ *See* Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3708.

¹²⁵ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4402-4403; Bislim Zyrapi, T. 697-698; Ylber Haskaj, Exhibit P40, paras 5-7; Cufë Krasniqi, Exhibit P54, paras 31, 34; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5715-5716, 5795-5796; Zymer Hasanaj, Exhibit P37, para. 2; Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8742.

¹²⁶ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3622-3623; Ylber Haskaj, Exhibit P40, paras 5-7; Zymer Hasanaj, Exhibit P37, para. 3; Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8741-8742.

¹²⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3622-3623; Zymer Hasanaj, Exhibit P37, para. 3.

¹²⁸ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3627.

¹²⁹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3624, 3713.

KLA headquarters in Jabllanicë/Jablanica and Glogjan/Glodane.¹³⁰ He also testified that the individuals selected by the village commanders would be sent to meet with Ramush Haradinaj who would provide them with contacts in Albania to collect the weapons.¹³¹ Pjeter Shala, a member of the KLA, would often go to Albania with other soldiers to get weapons.¹³² He gave evidence that for this kind of visit, he always needed an authorisation, signed by Ramush Haradinaj in Glogjan/Glodane.¹³³ The Prosecution alleges that Ramush Haradinaj and Lahi Brahimag cooperated in procuring and distributing weapons.¹³⁴ The evidence cited by the Prosecution does not support this conclusion. Based on the limited evidence before the Chamber, it is apparent that assistance would be provided to local villagers seeking weapons from Albania, given Glogjan/Glodane's strategic location. There is no sufficient evidence to support a finding that Ramush Haradinaj and Lahi Brahimag cooperated in the procuring and distribution of weapons for the Dukagjin zone.

47. Villagers also organised rosters to keep watch, dig trenches and build fortifications to protect the village.¹³⁵ A "village commander" was also chosen; the village commander was usually elected from within the village.¹³⁶ A large number of villages did not have anybody with prior military experience living in the village, and the villagers then decided on a farmer, village leader or elder to be in charge of the military defence.¹³⁷ Jakup Krasniqi gave evidence that in certain villages or areas in Kosovo where the KLA was better organised, such as Drenica, the commander was proposed by the zone and then approved by the General Staff, instead of being elected by the villagers.¹³⁸

48. While the structure within each village varied according to the level of organisation, in theory, each village consisted of a general commander, deputy commander, the operations commander (responsible for training of soldiers), the logistics commander (responsible for supplies) and the commander of guards (responsible for village guards).¹³⁹ The operations commander had to

¹³⁰ Cufë Krasniqi, Exhibit P54, para. 35.

¹³¹ Cufë Krasniqi, Exhibit P54, para. 45.

¹³² Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9980.

¹³³ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9980. See also Zoran Stijović, T. 563-570; Exhibits P74; P127.

¹³⁴ Prosecution Final Brief, para. 27, citing Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9938-9945, 9979.

¹³⁵ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5046-5047.

¹³⁶ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3453; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5046-5047; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4402; Zymer Hasanaj, Exhibit P37, paras 4-5; Skender Rexhahmetaj, Exhibit P297, paras 5-8, 16; Skender Rexhahmetaj, Exhibit P298, paras 6-7; Skender Rexhahmetaj, Exhibit P299, para. 2(b); Skender Rexhahmetaj, T. 1035, 1039-1040, 1042; Cufë Krasniqi, Exhibit P54, paras 31, 33, 44; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5740-5741, 5744.

¹³⁷ Bislim Zyrapi, T. 697; Skender Rexhahmetaj, T. 1042; Witness 69, Exhibit P370, para. 19.

¹³⁸ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5048-5049.

¹³⁹ Cufë Krasniqi, Exhibit P54, para. 44.

help other villages in the Dukagjin zone when attacked.¹⁴⁰ The logistic officers under the logistic commander were collecting financial contributions from villagers to buy supplies and arms.¹⁴¹ As villages began to get organised, headquarters were established in the villages.¹⁴²

49. There were approximately 17 villages in Baran/Barane Valley in Pejë/Peć municipality which organised themselves independently; more than half of the villages did not have weapons.¹⁴³ In February 1998, Din Krasniqi was the KLA commander for the village of Vranoc/Vranovac in Pejë/Peć municipality.¹⁴⁴ Din Krasniqi became the commander of the Baran/Barane Valley in mid-April 1998 after the attack on Vranoc-i-Vogël/Mali Vranovac.¹⁴⁵ He was elected by the local villages and the appointment was approved by Ramush Haradinaj.¹⁴⁶ The appointment of Din Krasniqi was officially announced in mid-April 1998 by Haradinaj at a meeting of about 25 commanders of the local villages.¹⁴⁷ At this meeting, the 25 village commanders within the Baran/Barane Valley also discussed with Haradinaj how they could prepare themselves in case of an attack and about other concerns they had.¹⁴⁸ The Chamber also received evidence that Ramush Haradinaj, sometimes accompanied by Lahi Brahimaj, attended other meetings in the Baran/Barane Valley to discuss tactics, strategy, problems with supplies, and the general security situation.¹⁴⁹

50. In Llukë-e-Ulët/Donja Luka in Deçan/Dečani municipality, night guards were appointed to monitor any suspicious person coming in and out of the village and to check their identity; they were initially unarmed volunteers and did not wear a uniform.¹⁵⁰ Most village defenders did not have a uniform.¹⁵¹ In Llukë-e-Ulët/Donja Luka some village defenders chose to wear black pants and a black shirt to identify themselves as KLA supporters.¹⁵² In April 1998, some villagers gained

¹⁴⁰ Cufë Krasniqi, Exhibit P54, para. 44.

¹⁴¹ Cufë Krasniqi, Exhibit P54, para. 44.

¹⁴² Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4398-4399, 4400-4402, 4461, 4469-4470; Ylber Haskaj, Exhibit P40, paras 5-7; Vesel Dizdari, Exhibit P467, para. 14.

¹⁴³ Cufë Krasniqi, Exhibit P54, para. 31; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5744, 5795-5796; Exhibit P56.

¹⁴⁴ Zymer Hasanaj, Exhibit P37, paras 4-5; Cufë Krasniqi, Exhibit P54, paras 31, 33; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5740-5741, 5744; Exhibit P56.

¹⁴⁵ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5850-5852; Witness 17, Exhibit P344, para. 55.

¹⁴⁶ Zymer Hasanaj, Exhibit P37, paras 4-5.

¹⁴⁷ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5794, 5850-5851; Witness 17, Exhibit P344, para. 55; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7658; Zymer Hasanaj, Exhibit P37, paras 4-5.

¹⁴⁸ Zymer Hasanaj, Exhibit P37, para. 5.

¹⁴⁹ Zymer Hasanaj, Exhibit P37, para. 6.

¹⁵⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3626, 3706-3708.

¹⁵¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3706; Bislim Zyrapi, T. 697-698; Skender Rexhahmetaj, Exhibit P298, para. 6; Skender Rexhahmetaj, T. 1035, 1038.

¹⁵² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3802.

access to military attire and KLA patches to put on their clothes.¹⁵³ Communication was poor as villages, such as Isnqi/Istinić, only had hand-held radios of poor quality.¹⁵⁴

51. By the end of May 1998, some villages, such as Irzniq/Rznić, developed good leadership, units were formed, soldiers were trained in the proper use of weapons and a command structure under the village command was established.¹⁵⁵ Membership numbers were also increasing.¹⁵⁶ In May and June 1998, village defence organisations began to have more access to weapons, and in Irzniq/Rznić, there was approximately one weapon per household; the village KLA possessed grenade launchers and a “recoilless gun”.¹⁵⁷

52. Threats of attacks by Serbian forces increased from the end of April and late May 1998. By that time, most of the villages in the Dukagjin zone were surrounded by Serbian forces. It appears that by this time most villages in the Dukagjin zone had begun to organise their own staff and set up a village defence.¹⁵⁸ In light of the presence of Serbian forces, the need was increasingly felt to coordinate with other village defence organisations throughout the area.¹⁵⁹ When a village would come under attack, other village defence organisations would come to assist.¹⁶⁰

53. In order to better organise the village defence in Isnqi/Istinić in April 1998 Skender Rexhahmetaj, as commander of the village defence, went with other villagers to Ramush Haradinaj in Glogjan/Glodane headquarters because this was considered the central point for the defence of Dukagjin zone.¹⁶¹ Skender Rexhahmetaj met with Ramush Haradinaj. However, Ramush Haradinaj stated that it was too early to start cooperating with Isnqi/Istinić; Skender Rexhahmetaj was assured though that if the population in his village was in danger, Ramush Haradinaj would try to find a way to assist.¹⁶² The evidence indicates that as the villages became more organised and required additional coordination in their defence efforts against Serbian forces, a more unified command of the Dukagjin zone became necessary.¹⁶³ This led to the meeting on 26 May 1998, discussed below.

¹⁵³ Zymer Hasanaj, Exhibit P37, para. 2.

¹⁵⁴ Skender Rexhahmetaj, Exhibit P298, paras 6, 16.

¹⁵⁵ Shemsedin Çekaj, Exhibit P4, paras 8-9; Ylber Haskaj, Exhibit P40, paras 5-7.

¹⁵⁶ Shemsedin Çekaj, Exhibit P4, para. 9; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4403, 4466.

¹⁵⁷ Shemsedin Çekaj, Exhibit P4, para. 10.

¹⁵⁸ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3628; Skender Rexhahmetaj, T. 1048.

¹⁵⁹ Skender Rexhahmetaj, Exhibit P298, paras 10, 15; Skender Rexhahmetaj, T. 1043-1047, 1050.

¹⁶⁰ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5709-5710, 5818; *see also infra*, para. 294.

¹⁶¹ Skender Rexhahmetaj, Exhibit P297, paras 7-8; Skender Rexhahmetaj, Exhibit P298, para. 11; Skender Rexhahmetaj, Exhibit P299, para. 2(f); Skender Rexhahmetaj, T. 1045-1046, 1086-1090.

¹⁶² Skender Rexhahmetaj, Exhibit P298, para. 13; Skender Rexhahmetaj, Exhibit P299, para. 2(g); Skender Rexhahmetaj, T. 1046-1048.

¹⁶³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3625-3626; Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9749; Bislim Zyrapi, T. 697.

2. The designation of the sub-zones and the creation of the Regional Staff on 26 May 1998

54. As a result of developments in the Dukagjin zone and in response to an increased presence of Serbian forces, a meeting of representatives of the villages around Gllogjan/Glodane in Deçan/Dečani municipality was initiated by Ramush Haradinaj and Faton Mehmetaj, a KLA member, to discuss further action to better coordinate the Dukagjin zone.¹⁶⁴

55. The meeting, held on 26 May 1998 at around 2000 hours in Gllogjan/Glodane, was chaired by Ramush Haradinaj as commander of Gllogjan/Glodane village.¹⁶⁵ About 80 people attended, including representatives from the KLA village defence organisations of almost all the villages in the Dukagjin zone.¹⁶⁶ Also briefly present at the meeting was Idriz Balaj.¹⁶⁷ Lahi Brahimaaj was not in attendance.¹⁶⁸ This was the first time that representatives of the village defence organisations of western Kosovo had come together to discuss their possible joint organisation.¹⁶⁹ Most of the representatives of the villages were dressed in civilian clothes and were unarmed.¹⁷⁰ Ramush Haradinaj spoke about the situation in the area and asked the village representatives “to defend their villages, to be aware of the situation, to be mature, and to know what they should do”.¹⁷¹ He also spoke about the founding of the KLA and that it was time to coordinate all the villages and set up a structure to command the situation.¹⁷²

56. Rustem Tetaj gave evidence that at the meeting on 26 May 1998, it was proposed that the Dukagjin zone be divided into sub-zones and people with military experience be placed in command of these sub-zones.¹⁷³ The creation of the sub-zones was decided by the village

¹⁶⁴ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3628-3629, 3633-3634; Skender Rexhahmetaj, T. 1045-1048, 1087.

¹⁶⁵ Shemsedin Çekaj, Exhibit P4, para. 12; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4432; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3630-3631; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2964-2965; Zoran Stijović, Exhibit P121, paras 45-46; Exhibit P153, p. 2. According to Skender Rexhahmetaj the meeting was held on 23 May 1998. The Chamber notes that this may be a mistake on the part of the witness. The Chamber notes that this does not impact the reliability of the evidence provided with regard to the substance of the meeting, Skender Rexhahmetaj, Exhibit P297, paras 11-12; Skender Rexhahmetaj, Exhibit P298, paras 17-18; Skender Rexhahmetaj, T. 1049-1050.

¹⁶⁶ Shemsedin Çekaj, Exhibit P4, para. 12; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4480-4481; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3630-3631; Skender Rexhahmetaj, Exhibit P297, paras 11-12; Skender Rexhahmetaj, Exhibit P298, para. 17; Skender Rexhahmetaj, T. 1049-1050.

¹⁶⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3634.

¹⁶⁸ Skender Rexhahmetaj, Exhibit P297, para. 11; Skender Rexhahmetaj, Exhibit P298, para. 17; Skender Rexhahmetaj, T. 1052, 1087.

¹⁶⁹ Skender Rexhahmetaj, Exhibit P297, paras 11-12, 14; Skender Rexhahmetaj, P298, paras 17-21; Skender Rexhahmetaj, T. 1049-1050, 1087; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3628, 3630-3631, 3635.

¹⁷⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3631, 3709.

¹⁷¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3635.

¹⁷² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3635-3636.

¹⁷³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3636, *see also* Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, Exhibit P298, para. 18.

representatives themselves.¹⁷⁴ The sub-zones did not comprise all villages in the entire Dukagjin zone, but focused on those villages most vulnerable to attack and which would potentially be involved in the war.¹⁷⁵ At the meeting, Ramush Haradinaj addressed the current situation “in Glllogjan and in surrounding areas”, speaking of the “Dukagjin in the narrow sense of the region”.¹⁷⁶

57. The attending village representatives determined the boundaries of the sub-zones and elected the commanders of these sub-zone areas; these decisions were agreed on by consensus.¹⁷⁷ Ramush Haradinaj asked, but did not order, individuals to take responsibility for these areas.¹⁷⁸ Skender Rexhahmetaj gave evidence that because the Kosovo Albanians had to organise themselves and were operating without any legal power or authority attributed by a State or other body, orders could not be given, and decisions could only be made by consensus.¹⁷⁹ It was decided that Ramush Haradinaj, as commander of sub-zone 1, would be the overall commander, coordinator or representative of these sub-zones.¹⁸⁰ It was further decided that the headquarters of the Dukagjin zone would be in Glllogjan/Glodane and that a regional staff was to be established. This regional staff covering the newly created sub-zones in the Dukagjin zone is interchangeably referred to in the evidence as the “Glllogjan/Glodane Regional Headquarters”, “Glllogjan/Glodane Regional Staff”, “Dukagjin Regional Headquarters”, or “Headquarters of the Dukagjin Region”.¹⁸¹ The Chamber will refer to the headquarters and staff created on 26 May 1998 hereafter as the “Regional Staff”.

58. The Chamber received inconsistent evidence as to the number of sub-zones established on 26 May 1998.¹⁸² Nevertheless, based on the evidence before it, the Chamber is satisfied that the following sub-zones of the Dukagjin zone were decided upon at the meeting:

- a. “Sub-zone 1” was to be based in Glllogjan/Glodane in Deçan/Deçani municipality and to be commanded by Ramush Haradinaj. The area included the villages of

¹⁷⁴ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4436-4437; Skender Rexhahmetaj, Exhibit P297, paras 11-12; Skender Rexhahmetaj, Exhibit P298, paras 17-19; Skender Rexhahmetaj, T. 1049-1050, 1054-1055, 1072.

¹⁷⁵ Skender Rexhahmetaj, T. 1052; Rustem Tetaj, P75 (*Haradinaj* original transcript), T. 3634.

¹⁷⁶ Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3634.

¹⁷⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3636, 3723; Skender Rexhahmetaj, T. 1052-1054.

¹⁷⁸ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4436-4437; Skender Rexhahmetaj, Exhibit P297, paras 11-12; Skender Rexhahmetaj, Exhibit P298, paras 17-18; Skender Rexhahmetaj, T. 1049-1052, 1054-1055, 1072.

¹⁷⁹ Skender Rexhahmetaj, T. 1055-1056.

¹⁸⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3647-3648; *see also infra*, para. 58.

¹⁸¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3624; Zymer Hasanaj, Exhibit P37, para. 4; Bislim Zyrapi, Exhibit P161, para. 48, pp 11-13; Exhibits P174; P175; P181; P182; P183; P184; P185; P186; P187; P188; P189

¹⁸² According to Rustem Tetaj four sub-zones were established on 26 May 1998, Exhibit P76 (*Haradinaj* original transcript), T. 3636. Skender Rexhahmetaj gave evidence that five sub-zones were created, Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, Exhibit P298, paras 19, 20, 44; Skender Rexhahmetaj, Exhibit P299, para. 3(b); Skender Rexhahmetaj, T. 1051-1052, 1056, 1061, 1081.

Gllogjan/Glodane, Shaptej/Šaptej, Gramaqel/Gramočelj, Dubravë/Dubrava, Baballoq/Babaloc, Prilep and Rastavicë/Rastavica;¹⁸³

- b. “Sub-zone 2” was to be based in Irzniq/Rznić in Deçan/Dečani municipality and to be commanded by Shemsedin Çekaj. Sub-zone 2 included the villages of Irzniq/Rznić, Ratish-i-Epërm/Gornji Ratiš, Ratish-i-Ulët/Donji Ratiš, Beleg, and Kodrali/Kodralija;¹⁸⁴
- c. “Sub-zone 3” was to be based in Pozhar/Požar in Deçan/Dečani municipality and to be commanded by Rustem Tetaj. It comprised of the following villages, Llukë-e-Epërme/Gornja Luka, Llukë-e-Ulët/Donja Luka, Lumbardh/Ljumbarda, Dashinoc/Dašinovac, Maznik and Vranoc/Vranovac;¹⁸⁵
- d. “Sub-zone 4” was to incorporate the area which was divided by the Bistricë/Bistrica River and the village of Isniq/Istinić in Deçan/Dečani municipality. It was to be commanded by Skender Rexhahmetaj.¹⁸⁶ Sub-zone 4 comprised of the villages of Prapaqan/Prapačane, Strelle-i-Epërme/Gornji Streoc, Strelle-i-Ulët/Donji Streoc, Dubovik, Kryshevc/Kruševac, and Rashiq/Rašić;¹⁸⁷
- e. “Sub-zone 5” was commanded by Adem Ukëhaxhaj and was comprised of the villages of Carrabreg/Crnobreg, Voksh/Vokša and Drenoc/Drenovac in Deçan/Dečani municipality.¹⁸⁸

59. Jabllanicë/Jablanica in Gjakovë/Đakovica municipality was not discussed, and was consequently not included in one of the sub-zones decided at the meeting.¹⁸⁹ As a result, it

¹⁸³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3636; Exhibit P78; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4437; Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, Exhibit P298, paras 18-20, 44; Skender Rexhahmetaj, Exhibit P299, para. 3(b); Skender Rexhahmetaj, T. 1051-1053, 1056, 1061, 1081; Zoran Stijović, Exhibit P121, paras 45, 47.

¹⁸⁴ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3636; Exhibit P78; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4434, 4436, 4446, 4463, 4485; Skender Rexhahmetaj, Exhibit P299, para. 3(a); Skender Rexhahmetaj, T. 1051-1052, 1061, 1081; Exhibit P6.

¹⁸⁵ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3636; Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, Exhibit P298, paras 19, 20, 44; Skender Rexhahmetaj, T. 1051-1052, 1056, 1061, 1081; Exhibits P78; P80.

¹⁸⁶ Rustem Tetaj stated that Skender Rexhahmetaj and Gani Gjukaj were the commanders of sub-zone 4, Exhibit P76 (*Haradinaj* original transcript), T. 3636. However, Skender Rexhahmetaj when giving evidence specifically about Gani Gjukaj did not state he was also the commander of sub-zone 4; he did, however, acknowledge he was the commander of sub-zone 4, Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, Exhibit P298, paras 19-20, 44; Skender Rexhahmetaj, T. 1051-1053, 1061, 1081.

¹⁸⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3636; Exhibit P78.

¹⁸⁸ Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, Exhibit P298, paras 19, 20, 44; Skender Rexhahmetaj, Exhibit P299, para. 3(b); Skender Rexhahmetaj, T. 1051-1053, 1056, 1061, 1081.

¹⁸⁹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3720-3721; Skender Rexhahmetaj, Exhibit P297, para. 13; Skender Rexhahmetaj, T. 1058.

continued to operate independently of the sub-zones.¹⁹⁰ Jabllanicë/Jablanica and Glllogjan/Glodane cooperated on an *ad hoc* basis.¹⁹¹ There was no need for Jabllanicë/Jablanica representatives to attend the sub-zone commanders' meetings, as the remote location of Jabllanicë/Jablanica meant it was not under immediate threat of attack by Serbian forces.¹⁹² Other villages, including Kosuriq/Kosurić, Junik, and "Reka" were also not included in a specific sub-zone.¹⁹³

3. Command and control within the Dukagjin zone until 23 June 1998

60. The Prosecution alleges that from 26 May 1998, when Ramush Haradinaj became the commander of the Glllogjan/Glodane Regional Staff, he exercised authority over military and civilian matters.¹⁹⁴ It further alleges that, prior to assuming formal control on 23 June 1998, Ramush Haradinaj had *de facto* authority over the Dukagjin zone.¹⁹⁵ The Prosecution also argues that Ramush Haradinaj's position of influence and authority was based on his position as commander of the Glllogjan/Glodane headquarters; on the perception that he was the commander of the Dukagjin zone and in a position of authority; and on his role in organising the KLA in the Dukagjin zone and his close familial ties with Lahi Brahimaj.¹⁹⁶ Counsel for Haradinaj argues that the absence of a conventional command structure highlights the fact that the army did not have a vertical hierarchy; it relied on the consensus of volunteers.¹⁹⁷

61. The Chamber heard varying accounts with regard to the appointment and function of the commander for the Regional Staff, and took into account the submissions of the Parties. According to Skender Rexhahmetaj, Ramush Haradinaj suggested that the sub-zones be created under the command of the Dukagjin zone, and that a "vertical structure" be put in place with a commander appointed.¹⁹⁸ While this was the proposal, Skender Rexhahmetaj gave evidence that it was not implemented, and instead the village representatives at the meeting agreed upon a "horizontal command". Under the horizontal command, each of the commanders of the different sub-zones, elected by all the village representatives present at the meeting, would be responsible for their particular sub-zones.¹⁹⁹

¹⁹⁰ Skender Rexhahmetaj, Exhibit P297, para. 13; Skender Rexhahmetaj, T. 1058.

¹⁹¹ Skender Rexhahmetaj, Exhibit P297, para. 18.

¹⁹² Skender Rexhahmetaj, Exhibit P297, para. 18.

¹⁹³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3720-3721.

¹⁹⁴ Prosecution Final Brief, para. 11.

¹⁹⁵ Prosecution Final Brief, paras 9, 37.

¹⁹⁶ Prosecution Final Brief, para. 37.

¹⁹⁷ Closing Arguments (26 June 2012), T. 2871-2872.

¹⁹⁸ Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, Exhibit P298, para. 18.

¹⁹⁹ Skender Rexhahmetaj, T. 1052-1053, 1060-1061.

62. Skender Rexhahmetaj also testified that it was decided at the meeting that Ramush Haradinaj would be put in charge of the sub-zones, because “[he] was a good soldier, a good leader, and a person who could gather people around him”.²⁰⁰ In this role, he was responsible for coordination of the work between the sub-zones; he did not command the sub-zone commanders, and did not issue orders to the sub-zone commanders.²⁰¹ No orders as those made within a normal army could be or were given.²⁰² Shemsedin Çekaj gave similar evidence, stating that there was no overall commander appointed and that Ramush Haradinaj only tried to organise the area; other village commanders would not report to him.²⁰³ The Chamber received evidence that Ramush Haradinaj only exercised *de facto* authority over the area as a result of his reputation and the respect people had for him; Ramush Haradinaj did not have any legal authority.²⁰⁴ All of the sub-zone commanders remained independent and held equal status.²⁰⁵ For instance, in June 1998, Skender Rexhahmetaj sent a number of his men from his sub-zone to Albania to join the FARK without consulting Ramush Haradinaj; he testified that it was not necessary for him to consult with Ramush Haradinaj because Skender Rexhahmetaj was an independent commander operating within the horizontal command structure.²⁰⁶

63. The Chamber also received the evidence of Rustem Tetaj that, at the meeting of 26 May 1998, it was agreed that Ramush Haradinaj was to be the overall commander of the area; he would be the representative, supervise the other sub-zones, and be the “head of the regional staff of Glogjan/Glodane”.²⁰⁷ Rustem Tetaj stated that this agreement was “a theoretical idea [b]ut in practical terms [...] that was impossible”.²⁰⁸ In this regard, he explained that all the villages included in a sub-zone would report to the sub-zone commander, and then, if possible, the sub-zone commander would report to Ramush Haradinaj, as commander of sub-zone 1 and the Regional Staff.²⁰⁹ Whether such reporting could occur, and whether Ramush Haradinaj could be consulted before actions were taken, depended on the circumstances, because during the time this was discussed, it was practically impossible given the limited communication means available.²¹⁰ Given

²⁰⁰ Skender Rexhahmetaj, Exhibit P297, para. 12; Skender Rexhahmetaj, T. 1060-1061, 1076, 1099-1101.

²⁰¹ Skender Rexhahmetaj, T. 1060-1061.

²⁰² Skender Rexhahmetaj, T. 1060-1061, 1076.

²⁰³ Shemsedin Çekaj, Exhibit P4, para. 12; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4481-4483.

²⁰⁴ Skender Rexhahmetaj, Exhibit P297, para. 18; Skender Rexhahmetaj, Exhibit P299, para. 3(e); Skender Rexhahmetaj, T. 1097, 1099.

²⁰⁵ Skender Rexhahmetaj, T. 1060, 1076, 1081-1082.

²⁰⁶ Skender Rexhahmetaj, Exhibit P298, paras 22-23; Skender Rexhahmetaj, T. 1060-1061, 1079.

²⁰⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3648.

²⁰⁸ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3648.

²⁰⁹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3648-3649; Skender Rexhahmetaj, Exhibit P297, para. 12.

²¹⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3648-3649, 3650-3651; Skender Rexhahmetaj, T. 1058-1059.

these limitations it was decided to have a commander for each sub-zone, to allow for each sub-zone to handle the situation in the respective area.²¹¹ For instance, during a large-scale attack of the Serbian forces on Skender Rexhahmetaj's village and other villages in sub-zone 4 on 29 May 1998 the villages helped each other through voluntary support.²¹² Shemsedin Çekaj from sub-zone 2 in Irzniq/Rznić came with about 30 men to support the village of Isniq/Istinić in Deçan/Dečani municipality.²¹³ However, Haradinaj could not be contacted when the attack occurred on 29 May 1998.²¹⁴ According to Skender Rexhahmetaj, during the period of 23 May to 23 June 1998, Ramush Haradinaj was mainly engaged in his own sub-zone except for the weekly sub-zone commanders' meetings.²¹⁵

64. Counsel for Haradinaj argues that no one, including Ramush Haradinaj, ever issued any orders; the staff operated based on consent and agreement.²¹⁶ The Chamber, however, received into evidence numerous documents signed by Ramush Haradinaj in various capacities including as "Commander of Sub-zone 1", "Commander of the Gllogjan/Glodane Headquarters",²¹⁷ Commander of the "Dukagjin Regional Staff" or "Dukagjin Regional Headquarters",²¹⁸ and a signed document without specifying a title.²¹⁹ The documents received by the Chamber which were signed by Ramush Haradinaj relate to the recording of the personal data of KLA soldiers;²²⁰ an invitation to representatives of headquarters in other villages to attend a working meeting in Gllogjan/Glodane;²²¹ authorisation for a doctor to organise healthcare in a region, and for the transfer of KLA soldiers to hospital;²²² minutes of a meeting on the situation in individual villages;²²³ minutes of meetings of the Gllogjan/Glodane Staff;²²⁴ "authorisations" to the General

²¹¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3649; Skender Rexhahmetaj, T. 1058-1059.

²¹² Skender Rexhahmetaj, T. 1059.

²¹³ Skender Rexhahmetaj, T. 1059.

²¹⁴ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3664.

²¹⁵ Skender Rexhahmetaj, T. 1058, 1060; Exhibit P177.

²¹⁶ Haradinaj Final Brief, para. 110.

²¹⁷ Bislim Zyrapi, Exhibit P161, para. 48, pp 11, 12, 13; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3308-3309; Bislim Zyrapi, T. 725-726; Exhibits P166; P169 (no date is provided for in the original of the two preceding documents; but they mention a date of joining the KLA on 15 May 1998); P170 (no date is provided for in the document; but it mentions a date of joining the KLA on 20 May 1998); P174 (dated 25 May 1998); P176 (dated 31 May 1998); P179 (dated 13 June 1998); P187 (dated 16 June 1998).

²¹⁸ Bislim Zyrapi, Exhibit P161, para. 48, pp 11-13; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3309; Bislim Zyrapi, T. 725-726; Exhibits P174 (dated 25 May 1998); P175 (dated 26 May 1998); P181; P182; P183; P184; P185; P186; P187 (all dated 16 June 1998); P188; P189 (both dated 19 June 1998).

²¹⁹ Bislim Zyrapi, Exhibit P161, para. 48, p. 12; Exhibit P178 (dated 9 June 1998).

²²⁰ Bislim Zyrapi, Exhibit P161, para. 48; Exhibits P166; P169 (no date is provided for in the two preceding documents; they mention a date of joining of 15 May); P170 (dated 20 May 1998).

²²¹ Bislim Zyrapi, Exhibit P161, para. 48, p. 11; Exhibit P174 (dated 25 May 1998).

²²² Bislim Zyrapi, Exhibit P161, para. 48, pp 11-12; Exhibits P175 (dated 26 May 1998); P178 (dated 9 June 1998).

²²³ Bislim Zyrapi, Exhibit P161, para. 48, p. 11; Exhibit P176 (dated 31 May 1998).

²²⁴ Bislim Zyrapi, Exhibit P161, para. 48, pp 11-12; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3308-3309; Bislim Zyrapi, T. 725-726; Exhibits P176 (dated 31 May 1998); P177 (dated 8 June 1998); P179 (dated 13 June 1998); P180 (dated 15 June 1998).

Staff to provide the Dukagjin Regional Staff with military equipment;²²⁵ and the assignment and relocation of KLA soldiers by Ramush Haradinaj as commander of the Dukagjin Regional Staff.²²⁶ Although Ramush Haradinaj's signature is not on the minutes of meetings of the "Glllogjan Staff", it is clear from the contents of these minutes that the relevant meetings were presided over by Ramush Haradinaj in his capacity as commander of sub-zone 1.²²⁷

65. The Prosecution submits that while there were no strict military hierarchies in place at this time, "it was through defence and popular respect that authority existed". It is further contended that "all that is required to establish his authority [is] a recognition that the person giving instructions has sufficient gravamen to command respect that the instructions will be carried out".²²⁸ As discussed above, Ramush Haradinaj did have the respect of the people.²²⁹ The Chamber does not consider that the nature of some of the documents discussed in the preceding paragraph, such as personal data records of KLA soldiers or authorisation for a doctor to visit the area, are reflective of centralised command or authority in the Dukagjin zone. For the others, the Prosecution provided no evidence to indicate whether they were followed or implemented. The Chamber recalls the evidence received, which is discussed above, that decisions were taken jointly, or by the individual sub-zone commanders and that it was a practical impossibility for Ramush Haradinaj to be consulted on all matters.²³⁰ Based on the evidence discussed above, the Chamber concludes that Ramush Haradinaj, in his capacity as commander of the Regional Staff, did not exercise authority over all military and civilian matters in the area. While Ramush Haradinaj had responsibilities in the zone and played a coordinating role in trying to unite the sub-zones, the evidence indicates that the individual sub-zones in the Dukagjin zone, up until at least 23 June 1998, operated independently.²³¹

4. Jabllanicë/Jablanica

66. The events charged in the counts of the Indictment are alleged to have occurred in the KLA headquarters in the village of Jabllanicë/Jablanica.

²²⁵ Bislim Zyrapi, Exhibit P161, para. 48, pp 12-13; Exhibits P181; P182; P183; P184; P185; P186; P187 (all dated 16 June 1998).

²²⁶ Bislim Zyrapi, Exhibit P161, para. 48, p. 13; Exhibits P188; P189 (both dated 19 June 1998).

²²⁷ Bislim Zyrapi, Exhibit P161, para. 48, pp 11, 12; Exhibits P176 (dated 31 May 1998); P177 (dated 8 June 1998); P179 (dated 13 June 1998).

²²⁸ Closing Arguments (25 June 2012), T. 2788.

²²⁹ See *supra*, paras 45, 62. See also *infra*, para. 149.

²³⁰ See *supra*, para. 63.

²³¹ See *infra*, paras 70-71.

67. Rrustem Tetaj gave evidence that there were not many soldiers in Jabllanicë/Jablanica.²³² According to a report of the SUP Gjakovë/Đakovica dated 30 March 1998, Jabllanicë/Jablanica had 200 militarily trained and well-equipped members of the KLA. Zoran Stijović explained that, based on information received by the RDB, the actual number was about 50-150 members.²³³ Around 7 September 1998, Jakup Krasniqi visited Jabllanicë/Jablanica and there were approximately 30 soldiers present and the area was surrounded by Serbian police and military.²³⁴

68. Lahi Brahimaj was the KLA commander of Jabllanicë/Jablanica.²³⁵ Pjeter Shala, a KLA member at the time, gave evidence that when he visited Jabllanicë/Jablanica he would take orders from Nazmi Brahimaj; he believed he was the headquarters commander and responsible for the allocation of particular tasks to soldiers.²³⁶ Pjeter Shala was unable to recall whether he ever received orders from Lahi Brahimaj,²³⁷ or whether Lahi Brahimaj gave orders to, or received orders from, Nazmi Brahimaj.²³⁸ The Chamber approached the evidence of Pjeter Shala in this regard with caution, given that he was closely related to both Lahi Brahimaj and Nazmi Brahimaj and, therefore, may have interests to serve.

69. The Chamber finds that, as discussed below, until the formation of the Operational Staff of the Dukagjin Operational Zone on 23 June 1998, Jabllanicë/Jablanica was not operating under the authority of the Regional Staff, or that the village came to be incorporated into any KLA structure prior to this date. Evidence of meetings of the Regional Staff makes no reference to Jabllanicë/Jablanica.²³⁹ After 23 June 1998, as it will be discussed below,²⁴⁰ Jabllanicë/Jablanica became part of the Dukagjin Operational Zone. According to Bislim Zyrap, Jabllanicë/Jablanica was under the control of the Dukagjin Operational Zone in July 1998.²⁴¹

²³² Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3815-3816.

²³³ Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9065-9067; Exhibit P152, p. 1.

²³⁴ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5076.

²³⁵ Bislim Zyrap, Exhibit P159 (*Haradinaj* original transcript), T. 3387-3388; Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4193, 4196, 4264-4265; Witness 3, T. 1598-1599; Zoran Stijović, Exhibit P121, paras 23, 49; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9000-9001, 9006; Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9944-9948; Witness 75, T. 911; Cufë Krasniqi, Exhibit P54, paras 33, 35, 62; Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9850-9851; Bogdan Tomaš, Exhibit P338, para. 10; Ylber Hasanaj, Exhibit P37, para. 6; Exhibits P153, p. 2; P155; P193; *see also* Radovan Zlatković, Exhibit P389, p. 4; Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4193, 4196, 4264-4265. The Chamber notes the evidence of Bislim Zyrap that when he visited Jabllanicë/Jablanica in July 1998 he thought that he was told that Driton Zeneli was the commander of the unit at Jabllanicë/Jablanica, Bislim Zyrap, T. 762.

²³⁶ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9945-9947, 9953-9954.

²³⁷ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9947-9948, 9954.

²³⁸ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9944-9948.

²³⁹ Exhibits P177; P179.

²⁴⁰ *See infra*, para. 72.

²⁴¹ Bislim Zyrap, Exhibit P159 (*Haradinaj* original transcript), T. 3208-3209, 3345, 3385; Bislim Zyrap, T. 738, 775-776.

5. Creation of the Dukagjin Operational Zone

70. In early June 1998, Skender Rexhahmetaj asked Ramush Haradinaj to organise a meeting with his contacts at the Jabllanicë/Jablanica headquarters to improve coordination between villages and sub-zones.²⁴² The meeting was intended to deal with disputes and improve cooperation and communication between the sub-zones and other villages such as Jabllanicë/Jablanica.²⁴³

71. On the evidence before the Chamber, the first meeting of the sub-zones in the Dukagjin zone and Jabllanicë/Jablanica did not occur until 21 June 1998. This meeting was held in Irzniq/Rznić in Deçan/Dečani municipality; both Lahi Brahimag and Nazmi Brahimag were in attendance and were introduced by Ramush Haradinaj as representatives from Jabllanicë/Jablanica.²⁴⁴ The purpose of the meeting was to coordinate activities within the Dukagjin zone, encourage cooperation, and create a single working body with a commander.²⁴⁵ As discussed later in this chapter, there were also discussions at this meeting about the creation of the KLA military police.²⁴⁶ At the meeting, it was announced that there was a “self-proclaimed Dukagjin Staff to some extent”, and that this should include Jabllanicë/Jablanica and Gllogjan/Glodane.²⁴⁷

(a) Meeting on 23 June 1998: creation of the Dukagjin Operational Zone and Dukagjin Operational Staff

72. On 23 June 1998, a meeting was held at Lahi Brahimag’s house in Jabllanicë/Jablanica. It was attended by KLA members including Ramush Haradinaj, Shemsedin Çekaj, Salih Veseli, Rrustem Tetaj, Skender Rexhahmetaj, Lahi Brahimag, Nazmi Brahimag, Daut Haradinaj, Alush Agushi, Emrush Xhemajli, Faton Mehmetaj, Ali Gramaçeli, Agron Januzi, Mustafë Zeqa, and Rexhep Selimi who was a representative of the KLA General Staff.²⁴⁸ The meeting, convened to improve organisation, focused on the coordination of activity; the regulation of a single command;

²⁴² Skender Rexhahmetaj, Exhibit P297, paras 16-17; Skender Rexhahmetaj, Exhibit P298, para. 38; Skender Rexhahmetaj, Exhibit P299, para. 3(c); Skender Rexhahmetaj, T. 1062, 1068-1069, 1091-1093.

²⁴³ Skender Rexhahmetaj, Exhibit P297, para. 17; Skender Rexhahmetaj, Exhibit P298, para. 38; Skender Rexhahmetaj, Exhibit P299, para. 2(1); Skender Rexhahmetaj, T. 1061-1062, 1091-1092.

²⁴⁴ Skender Rexhahmetaj, Exhibit P297, para. 15; Skender Rexhahmetaj, Exhibit P298, para. 38; Skender Rexhahmetaj, T. 1082-1084; Exhibits P190, p. 1; P191; P192. Shemsedin Çekaj states the meeting was held around 24 June 1998 (Exhibit P4, para. 18). The Chamber does not find that this discrepancy in date impacts on the reliability of his other evidence about the meeting.

²⁴⁵ Exhibit P190, pp 1-2.

²⁴⁶ See *infra*, paras 110-112.

²⁴⁷ Exhibit P190, p. 1.

²⁴⁸ Shemsedin Çekaj, Exhibit P4, para. 18, Minutes of meeting 23 June 1998, pp 1, 6, Decisions of Meeting on 23 June 1998, p. 1; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4463; Rrustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3656, 3658-3659; Bislim Zyrapi, Exhibit P160, paras 27, 31; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3319, 3326; Witness 69, Exhibit P370, para. 15; Exhibits P191, pp 3-4; P192, pp 3-4; P193; P194.

the creation of the Dukagjin Operational Staff; and the appointment of a commander of the Dukagjin Operational Zone.²⁴⁹ At the meeting, there was agreement that the sub-zones of the Dukagjin zone and Jabllanicë/Jablanica, which were up until this date operating without consultation, would try to organise a single command.²⁵⁰ Thereafter, the Dukagjin Operational Zone included a broader territory than the Dukagjin Zone.

73. The minutes of the meeting on 23 June 1998 show that discussions centred on establishing a single command, how this would happen in practice and what it would constitute.²⁵¹ Ramush Haradinaj was reported as suggesting the need for representatives of each of the sub-zones to be recruited as members of the Dukagjin Operational Zone.²⁵² Additional minutes of the meeting reported that the attendants agreed that “as of today we should turn into an operative army” and expressly discussed the geo-strategic importance of the Dukagjin zone and the need to reorganise the forces.²⁵³ Rustem Tetaj called for a designation of duties, and the orientation and coordination of work.²⁵⁴

74. At the meeting on 23 June 1998, Ramush Haradinaj and Lahi Brahimag were the two candidates proposed for the position of commander of the Dukagjin Operational Zone.²⁵⁵ After discussions among all those present, a vote was held. Ramush Haradinaj and Lahi Brahimag were respectively appointed as commander and deputy commander.²⁵⁶ Other appointments included Salih Veseli as chief of staff (also referred to as operations commander); Rustem Tetaj as deputy chief of staff (also referred to as deputy operations commander); Idriz Balaj (“Toger”) as responsible for sabotage and anti-terrorist combat (also referred to as assistant for sabotage combat); and Faton Mehmetaj as responsible for intelligence service (also referred to as information

²⁴⁹ Shemsedin Çekaj, Exhibit P4, paras 18-19, Minutes of meeting 23 June 1998, p. 1; Skender Rexhahmetaj, Exhibit P297, paras 17-18; Skender Rexhahmetaj, Exhibit P299, para. 3(e); Exhibit P191, p. 1.

²⁵⁰ Skender Rexhahmetaj, T. 1069-1070, 1072; see Exhibits P191; P192.

²⁵¹ Exhibit P191.

²⁵² Bislim Zyrapi, Exhibit P161, para. 48; Exhibit P191, p. 2.

²⁵³ Bislim Zyrapi, Exhibit P161, para. 48, p. 13; Exhibit P192.

²⁵⁴ Exhibit P192, p. 2.

²⁵⁵ Shemsedin Çekaj, Exhibit P4, para. 19, Decisions of Meeting on 23 June 1998, pp 1-2; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3660, 3741-3744, 3660; Skender Rexhahmetaj, T. 1070-1071, 1084, 1100-1101; Exhibits P191, p. 4; P192, p. 3.

²⁵⁶ Shemsedin Çekaj, Exhibit P4, para. 19, Decisions of Meeting on 23 June 1998, pp 1-2; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3660; Jakup Krasniqi Exhibit P64 (*Haradinaj* original transcript), T. 5050, 5147-5148, 5149, 5156-5157; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3480; Cufë Krasniqi, Exhibit P54, paras 41, 62, 65; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5731-5732, 5738, 5802; Skender Rexhahmetaj, Exhibit P297, para. 18; Skender Rexhahmetaj, Exhibit P299, para. 3(e); Skender Rexhahmetaj, T. 1070-1072; Witness 17, Exhibit P344, para. 24; Bislim Zyrapi, Exhibit P161, para. 29; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3208-3211, 3220, 3228, 3298, 3326, 3339-3340, 3344-3345; Bislim Zyrapi, T. 649-651; Exhibit P163; Witness 69, Exhibit P370, paras 16-17; Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9855-9856; Exhibits P191, pp 3-4; P192, pp 1-2; P193; P194; P195, p. 1; P198; see also Exhibit P300.

service).²⁵⁷ According to Jakup Krasniqi, these appointments were then accepted by the KLA General Staff.²⁵⁸ It was suggested by Haradinaj that Glllogjan/Glodane remain the headquarters for the Dukagjin Operational Zone.²⁵⁹

75. As a result of the discussions, it was unanimously decided that the “Operational Staff of the Dukagjin Operational Zone” (also referred to as the “Operation Staff of the Plain of Dukagjin”) would be formed.²⁶⁰ The Operational Staff of the Dukagjin Operational Zone included Ramush Haradinaj, Skender Rexhahmetaj, Rrustem Tetaj, Gani Gjokaj and Shemsedin Çekaj.²⁶¹ It is the position of the Prosecution that the individuals appointed to the Dukagjin Operational Staff, including Lahi Brahimag, were then directly subordinate to Ramush Haradinaj.²⁶²

76. Following this meeting, the members of the Operational Staff of the Dukagjin Operational Zone would then meet once or twice a week and occasionally only once every two weeks, for work meetings in Irzniq/Rznić, Glllogjan/Glodane, Pozhar/Požar, Kodrali/Kodralija, Isniq/Istinić or Llukë/Luka.²⁶³ These meetings were used to discuss how to defend and protect the population in their areas of responsibility and to analyse the situation in each sub-zone to allow for better coordination and supply of weapons.²⁶⁴

77. On 4 July 1998, Lahi Brahimag was reprimanded by Ramush Haradinaj for failing to attend two work meetings.²⁶⁵ On about 4 or 5 July 1998, Ramush Haradinaj replaced Lahi Brahimag with Nazmi Brahimag as his deputy commander.²⁶⁶ Shemsedin Çekaj gave evidence that Lahi Brahimag then became finance manager to the KLA General Staff.²⁶⁷ On 30 July 1998, Ramush Haradinaj appointed Faton Mehmetaj to the position of deputy commander of the KLA intelligence for the

²⁵⁷ Shemsedin Çekaj, Exhibit P4, paras 18-19, Minutes of meeting 23 June 1998, pp 5-6, Decisions of Meeting on 23 June 1998, pp 1-2; Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3660; Cufë Krasniqi, Exhibit P54, paras 41, 58, 65; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5738; Skender Rexhahmetaj, Exhibit P298, paras 42-43; Skender Rexhahmetaj, T. 1075; Exhibit P300; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3211-3212, 3315-3316, 3321; Exhibits P191, p. 4; P193; P194.

²⁵⁸ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5157-5158.

²⁵⁹ Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3660-3661; Witness 17, Exhibit P344, para. 25; Skender Rexhahmetaj, Exhibit P298, para. 20; Exhibits P55; P61.

²⁶⁰ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3320-3321, 3331-3332, 3426-3427; Exhibit P191, pp 1-3, 5. This is also referred to as the “Dukagjin Plain Local Operative Staff”, Exhibits P192, pp 1-2, 4; P193; P194.

²⁶¹ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4432-4433, 4437.

²⁶² Prosecution Final Brief, para. 36.

²⁶³ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4433-4434, 4511.

²⁶⁴ Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3649-3650; Skender Rexhahmetaj, Exhibit P297, paras 14-17; Skender Rexhahmetaj, Exhibit P298, para. 21; Skender Rexhahmetaj, T. 1060-1061.

²⁶⁵ Exhibit P211.

²⁶⁶ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3212-3213; Shemsedin Çekaj, Exhibit P4, para. 23; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4512; Exhibits P204, p. 2; P211; P218; P234.

²⁶⁷ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4512; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3212-3213, 3394; Skender Rexhahmetaj, Exhibit P298, para. 32.

Operational Staff for the Dukagjin Operational Zone and authorised him to establish the structure of the intelligence service.²⁶⁸

(b) Command and control in the Dukagjin Operational Zone after 23 June 1998

78. The Prosecution alleges that by late June 1998, Ramush Haradinaj extended his control of parts of Deçan/Dečani and Gjakovë/Đakovica into Pejë/Peć, Istog/Istok and Klinë/Klina.²⁶⁹ It is the position of the Prosecution that on 23 June 1998, “Haradinaj was appointed commander of the Operative Staff of the Dukagjin Plain, formalising his overall command over the entire Dukagjin zone including Jabllanicë/Jablanica”.²⁷⁰ Haradinaj argues that “there is nothing to suggest that he was kept informed of the actions of those in Jabllanicë, that he was in effective day to day command or control there, or indeed that he was in a position to issues directions”.²⁷¹ The Chamber received a variety of evidence with regard to the actual functioning of the Dukagjin Operational Zone following the meeting on 23 June 1998. This is discussed below.

79. The Chamber received into evidence numerous exhibits tendered through Bislim Zyrapi, namely documents, orders and authorisations signed by Ramush Haradinaj as commander of the Dukagjin Operational Zone following his appointment on 23 June 1998. The Prosecution relied upon these exhibits to indicate Ramush Haradinaj’s authority over civilian and military matters within the zone; it further alleges that he was a “strong, dynamic and ‘hands-on’ regional commander, with direct contact, authority and control over the zone and his subordinates”.²⁷² These documents, orders and authorisations related to the transfer, deployment or return of KLA soldiers to villages including Voksh/Vokša, Smolicë/Smonica, Loxhë/Loda;²⁷³ or were authorisations to provide KLA soldiers with weaponry;²⁷⁴ lists of persons present and minutes of working meetings in Gllogjan/Glodane;²⁷⁵ authorisations to recruit additional forces;²⁷⁶ approval for training of KLA soldiers from 30 June to 27 July 1998;²⁷⁷ transfer of individuals, including KLA soldiers, to hospital;²⁷⁸ an order forbidding political parties until the “complete liberation of the

²⁶⁸ Bislim Zyrapi, Exhibit P161, para. 48, p. 19; Bislim Zyrapi, T. 686; Exhibits P271; P272; *see infra*, paras 120-121.

²⁶⁹ Indictment, para. 5.

²⁷⁰ Indictment, para. 2.

²⁷¹ Closing Arguments (25 June 2012), T. 2841, referring to Haradinaj Final Brief, paras 100, 118.

²⁷² Prosecution Final Brief, para. 15.

²⁷³ Bislim Zyrapi, Exhibit P161, para. 48, pp 14-17, 19; Exhibits P197 (dated 24 June 1998); P199 (dated 28 June 1998); P201 (dated 29 June 1998); P213 (dated 4 July 1998); P220; P221; P222; P223; P224; P225; P226 (all documents dated 7 July 1998); P230; P231; P232; P233; P235 (all documents dated 8 July 1998); P241 (dated 10 July 1998); P263 (dated 26 July 1998).

²⁷⁴ Bislim Zyrapi, Exhibit P161, para. 48, pp 14-15; Exhibits P200 (dated 28 June 1998); P214 (dated 4 July 1998).

²⁷⁵ Bislim Zyrapi, Exhibit P161, para. 48, pp 14, 21; Exhibits P202 (dated 30 June); P300 (dated 24 June 1998).

²⁷⁶ Bislim Zyrapi, Exhibit P161, para. 48, pp 19-20; Exhibits P256 (dated 19 July 1998); P273 (dated 1 August 1998).

²⁷⁷ Bislim Zyrapi, Exhibit P161, para. 48, pp 14, 19; Exhibits P203 (dated June 1998); P256 (dated 19 July 1998).

²⁷⁸ Bislim Zyrapi, Exhibit P161, para. 48, p. 15; Exhibit P207 (dated 2 July 1998).

country”;²⁷⁹ warnings to soldiers not to leave duty stations and not to communicate with journalists;²⁸⁰ establishment of the Prapaqan/Prapačane training centre and appointment of Rustem Tetaj as chief of the centre;²⁸¹ order for training of 64 KLA fighters;²⁸² a reprimand for failure to attend meetings;²⁸³ approval for arrival of young men to the Dukagjin Operational Zone for work purposes;²⁸⁴ and requests for food supplies.²⁸⁵ As noted earlier, Ramush Haradinaj replaced Lahi Brahimagaj with Nazmi Brahimagaj as his deputy commander and appointed Faton Mehmetaj as deputy commander of intelligence for the zone.²⁸⁶ The Chamber also received evidence that in July 1998 Ramush Haradinaj issued orders appointing commanders of the newly established brigades²⁸⁷ and that in July 1998 KLA soldiers in the Dukagjin Operational Zone respected the authority of Ramush Haradinaj.²⁸⁸

80. The Chamber heard evidence that decisions on how to act and measures to be implemented were taken jointly by the sub-zone commanders both before and after the 23 June 1998 meeting.²⁸⁹ Rustem Tetaj explained that while Ramush Haradinaj’s opinions were taken into account, all decisions were taken by the commanders at the sub-zone level.²⁹⁰ It was acknowledged that when undertaking military actions, Ramush Haradinaj was “probably” consulted “sometimes”, but there were few possibilities to contact him.²⁹¹ A similar position was taken by Skender Rexhahmetaj; he gave evidence that he never received an order from Ramush Haradinaj, or required his permission, to operate militarily within his sub-zone or to gain weapons from Albania. He did, however, coordinate with Haradinaj.²⁹² It was the evidence of Jakup Krasniqi that while Ramush Haradinaj, as commander of the Dukagjin Operational Zone, would try to know what was happening in the Ramush Haradinaj’s area of responsibility, this proved difficult at times.²⁹³

81. During a meeting between the KLA and FARK in Baran/Barane in Pejë/Peć municipality on 12 July 1998, the KLA was disorganised and lacked structure and discipline; there was no respect

²⁷⁹ Bislim Zyrapi, Exhibit P161, para. 48, p. 15; Exhibit P208 (dated 2 July 1998).

²⁸⁰ Bislim Zyrapi, Exhibit P161, para. 48, p. 15; Exhibits P210 (dated 2 July 1998); P212 (dated 4 July 1998).

²⁸¹ Bislim Zyrapi, Exhibit P161, para. 48, pp 17, 21; Skender Rexhahmetaj, Exhibit P298, para. 52; Skender Rexhahmetaj, T. 1023-1024; Exhibits P238 (dated 8 (or 6) July 1998); P300 (dated 24 June 1998).

²⁸² Exhibit P239. *See also supra* para. 38.

²⁸³ Bislim Zyrapi, Exhibit P161, para. 48, p. 15; Exhibit P211 (dated 4 July 1998).

²⁸⁴ Bislim Zyrapi, Exhibit P161, para. 48, pp 15, 16, 18; Exhibits P216 (dated 5 July 1998); P228; P229 (both documents dated 8 July 1998); P244 (dated 12 July 1998).

²⁸⁵ Bislim Zyrapi, Exhibit P161, para. 48, p. 20; Exhibits P266; P268 (both documents dated 28 July 1998).

²⁸⁶ *See supra*, para. 77.

²⁸⁷ *See infra*, paras 87-89.

²⁸⁸ Bislim Zyrapi, T. 776. *See also infra*, para. 93.

²⁸⁹ Skender Rexhahmetaj, T. 1056, 1061, 1076-1077, 1080; Bislim Zyrapi, T. 726-727.

²⁹⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3650; *see also* Skender Rexhahmetaj, T. 1078.

²⁹¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3665.

²⁹² Skender Rexhahmetaj, T. 1076-1078.

²⁹³ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5056.

for the chain of command and it had too many officers with not enough soldiers.²⁹⁴ According to Cufë Krasniqi Ramush Haradinaj moved around the Dukagjin Operational Zone when possible and had contact directly with the KLA forces and village commanders, however, it was not possible to exercise command over the whole area as the front line was about 50 kilometres long.²⁹⁵

82. As stated by Skender Rexhahmetaj, the list of appointments highlighted in the minutes of the meeting only reflects what was said in the meeting on 23 June 1998 and was a blueprint for a structure of an operational command that could be put into practice in the future.²⁹⁶ Bislim Zyrapi agreed with the proposition put to him by Counsel for Haradinaj that when he visited the Dukagjin Operational Zone around 18-19 July 1998, the structure decided upon at the meeting was still in the process of formation.²⁹⁷ The KLA in the area was still not “militarily formed”.²⁹⁸ The Chamber notes that the appointment of Muhamet Berisha as being responsible for chemical-biological defence was “fictitious” as there is no evidence to suggest that such weapons were being used at this time.²⁹⁹

83. Bislim Zyrapi gave evidence that from May until September 1998, the KLA was not a “proper army”; it was an army in development.³⁰⁰ There was no vertical command structure effectively in operation on the ground.³⁰¹ The Chamber heard evidence that the command structure that existed after the meeting on 26 May 1998, simply continued and the command structure therefore remained “horizontal”; Skender Rexhahmetaj stated he never received any orders from Ramush Haradinaj.³⁰² Jakup Krasniqi explained that the KLA continued to operate until the end of August or beginning of September 1998, as a voluntary army.³⁰³ Jakup Krasniqi testified that, up until the end of August 1998, the KLA had a horizontal command structure; it did not have, and it was not possible to have, a rigid hierarchical command structure.³⁰⁴

84. The Chamber received further evidence indicating that the KLA structure in the Dukagjin Operational Zone was constantly developing and transforming. At a work meeting on 27 July 1998 with the village commanders from the Dukagjin Operational Zone in Gllogjan/Glodane in Deçan/Dečani municipality, Ramush Haradinaj highlighted the need to improve the internal

²⁹⁴ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7665-7666.

²⁹⁵ Cufë Krasniqi, Exhibit P54, para. 66; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5810-5812.

²⁹⁶ Skender Rexhahmetaj, T. 1071-1072, 1074-1075; Exhibit P191, p. 4.

²⁹⁷ Bislim Zyrapi, T. 737.

²⁹⁸ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3216.

²⁹⁹ Bislim Zyrapi, T. 699-701; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3744-3746; Skender Rexhahmetaj, Exhibit P298, para. 42; Skender Rexhahmetaj, T. 1075-1076; Exhibit P191, p. 4.

³⁰⁰ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3290, 3293-3296.

³⁰¹ Bislim Zyrapi, T. 726-727.

³⁰² Skender Rexhahmetaj, T. 1076-1077. See also Bislim Zyrapi, T. 726-727.

³⁰³ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3450-3451.

³⁰⁴ Jakup Krasniqi, Exhibit P65, Annex 18; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3451.

organisation of the KLA and to transform from an armed uprising to an organised army.³⁰⁵ On 28 July 1998, Ramush Haradinaj sent a renewed request to the KLA General Staff to hold a meeting with the commanders of the “liberated” sub-zones to improve the structuring of the organisation.³⁰⁶ While attempts were constantly made throughout June, July and August 1998 to have a better organised structure and army, the forces were under constant attacks by well-equipped Serbian forces, which hindered organisational efforts.³⁰⁷ It was not until after the Serbian offensive in mid-August 1998 that the KLA started to restructure the ranks and units of their forces.³⁰⁸ By about September or October 1998 the KLA had become more organised and there were increasing efforts to set up a “purely military structure”.³⁰⁹ By this stage the KLA had companies, battalions and brigades which resulted in a better organised army.³¹⁰ The evidence indicates that, during the Indictment period, the KLA in the Dukagjin Operational Zone was an organisation in the process of development.

6. The creation of the joint command: merging KLA and FARK forces

85. As found later in this Judgement, FARK forces were deployed to Kosovo sometime before 25 June 1998.³¹¹ Initially, the FARK and the KLA disagreed about how the forces should be organised together. Tahir Zemaj had the idea that operational brigades should be formed which could intervene when Serbian forces attacked and would return to a base position. Ramush Haradinaj believed that the trained officers should be distributed at various points where the defence was taking place, rather than at a base in Prapaqan/Prapačane in Deçan/Dečani municipality.³¹² Following increasing tension between the KLA and the FARK, including the incidents on 4 and 10 July 1998 discussed later in this Judgement, a meeting was convened on the evening of 10 July 1998 to devise a solution to organise the KLA and the FARK forces.³¹³ It was agreed at this meeting that the KLA and the FARK would form three brigades.³¹⁴ Following the meeting Tahir Zemaj made a formal request to Ramush Haradinaj for particular appointments and

³⁰⁵ Bislim Zyrap, Exhibit P161, para. 48, p. 20; Exhibit P265, pp 1, 3.

³⁰⁶ Bislim Zyrap, Exhibit P161, para. 48, p. 20; Exhibit P267.

³⁰⁷ Bislim Zyrap, T. 727-729; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5008.

³⁰⁸ Shemsedin Çekaj, Exhibit P4, para. 28; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4428, 4515; *see infra*, paras 292-295.

³⁰⁹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4710; Bislim Zyrap, T. 701-702; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5008.

³¹⁰ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5008.

³¹¹ *See infra*, para. 258.

³¹² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3753-3755.

³¹³ *See infra*, paras 264-272, 275-279.

³¹⁴ Shemsedin Çekaj, Exhibit P4, paras 25-26; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4464; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3759; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3759; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5734; Witness 17, Exhibit P344, para. 47; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7632-7633.

job specifications within the combined forces; FARK officers would be dispersed among the brigades.³¹⁵

86. The 1st brigade was led by Tahir Zemaj and was based in Prapaqan/Papraçane in Deçan/Dečani municipality.³¹⁶ The brigade constituted approximately 100 men.³¹⁷

87. The formation of the 2nd brigade was authorised by Ramush Haradinaj.³¹⁸ It was based in the school building of Bardhaniq/Bardonić and/or Zhabel/Žabelj in Gjakovë/Đakovica municipality.³¹⁹ The area of responsibility of the brigade was to encompass the following villages in the Deçan/Dečani municipality: Lubeniq/Ljubenić, Strelle-i-Epërm/Gornji Streoc, Strelle-i-Ulët/Donji Streoc, Kryshec/Kruševac, Dubovik, Lëbushë/Ljubuša, Isniq/Istinić, Llukë-e-Epërme/Gornja Luka, Broliq/Brolić, Dujakë/Dujak and Prapaqan/Prapaçane.³²⁰ According to Shemsedin Çekaj, the brigade included approximately 80 men, however, initially, only 20 had weapons and uniforms.³²¹ According to Witness 17, the 2nd brigade was not properly staffed, and, therefore, never properly came into existence.³²²

88. The Chamber received inconsistent evidence as to who was appointed as the commander of the 2nd brigade and for what period of time. Shemsedin Çekaj testified that, from 11 or 12 July 1998, he was moved from his role as commander of sub-zone 2 and was appointed commander of the newly formed 2nd brigade.³²³ This is supported by evidence of an order signed by Ramush Haradinaj on 11 July 1998.³²⁴ The Chamber also received other evidence from Cufë

³¹⁵ Skender Rexhahmetaj, Exhibit P298, paras 22, 25; Skender Rexhahmetaj, T. 1078; Rustem Tetaj, Exhibit P77, para. 35; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3759-3760; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3759-3760; Witness 17, Exhibit P344, paras 47-48; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7632-7633, *see* Witness 17, Exhibit P344, para. 47; *see also* Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7632-7633. *See also* Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3759; *see also* Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4463-4464.

³¹⁶ Cufë Krasniqi, Exhibit P54, paras 41, 65; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5731-5732; Exhibit P55; Shemsedin Çekaj, Exhibit P4, para. 26; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4463-4464; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3759; Zymer Hasanaj, Exhibit P37, para. 14; Witness 77, T. 1196; Sadri Selca, Exhibit P333 (*Haradinaj* original transcript), T. 10859-10860.

³¹⁷ Shemsedin Çekaj, Exhibit P4, para. 26.

³¹⁸ Bislim Zyrapi, Exhibit P161, para. 48, p. 18; Exhibits P242; P252. *See also* Exhibit P248.

³¹⁹ Cufë Krasniqi, Exhibit P54, paras 41, 65; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5731-5732; Shemsedin Çekaj, Exhibit P4, para. 26; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4463-4464; Sadri Selca, Exhibit P333 (*Haradinaj* original transcript), T. 10860; Exhibits P55; P252; P261.

³²⁰ Witness 17, Exhibit P344, paras 53, 54; Bislim Zyrapi, Exhibit P161, para. 48, p. 18; Exhibits P242; P248; P252; P347.

³²¹ Shemsedin Çekaj, Exhibit P4, para. 26.

³²² Witness 17, Exhibit P344, para. 53.

³²³ Shemsedin Çekaj, Exhibit P4, paras 26-27; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4463-4464; Exhibit P242.

³²⁴ Bislim Zyrapi, Exhibit P161, para. 48, p. 18; Exhibit P242. The Chamber notes that the English translation of another order indicates that Shemsedin Çekaj was appointed commander of the 3rd brigade, Exhibit P248.

Krasniqi and Sadri Selca that Musa Gjakova was in fact the commander of the 2nd brigade.³²⁵ Witness 17 also stated that the 2nd brigade was initially commanded by Kemajl Shariqi, who was later replaced by Musa Gjakova.³²⁶

89. The 3rd brigade (also known as the Adrian Krasniqi brigade, and later as the Isuf Gervalla brigade) was based at the primary school in Baran/Barane in Pejë/Peć municipality.³²⁷ The area of responsibility of the brigade was to include the following villages in Pejë/Peć municipality: Raushiq/Raushic, Rashiq/Rashic, Kotradiq/Kotradić, Vranoc/Vranovac, Baran/Barane, Kosuriq/Kosuric, Buçan/Buçane, Llugagji/Lugadžija, Gillogjan/Glodane, Nepolë/Nepolje, Qeskovë/Ceskovo, and Loxhë/Loda.³²⁸ Rrustem Berisha was originally appointed by Ramush Haradinaj as commander of the 3rd brigade on 12 July 1998.³²⁹ Based on the evidence it is apparent that Rrustem Berisha never took up this position; Nazif Ramabaja filled the role of the commander.³³⁰ Cufë Krasniqi explained that he would technically report to Nazif Ramabaja who in turn would report to Tahir Zemaj and Ramush Haradinaj; this would often take weeks to occur.³³¹

90. On 11 July 1998, talks between KLA and FARK representatives continued in Prapaqan/Prapačane to decide where officers would be deployed and what their job specifications would be.³³² As a result of the meeting Tahir Zemaj sent a request to the “Dukagjin Plain Operative Staff” requesting the “appointment and job specification of military officers in the operative brigades”.³³³ It listed 20 officers for appointment, five of whom were already KLA members present in the Dukagjin area.³³⁴

91. The brigades became operational on 12 July 1998.³³⁵ According to Cufë Krasniqi, the new brigade structures were created for propaganda purposes, to portray to the people that they had three

³²⁵ Cufë Krasniqi, Exhibit P54, paras 41, 65; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5731-5732; Exhibit P55; Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10860.

³²⁶ Witness 17, Exhibit P344, para. 53.

³²⁷ Cufë Krasniqi, Exhibit P54, paras 24, 41, 63-65; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5731-5732; Exhibit P55; Shemsedin Çekaj, Exhibit P4, para. 26; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4464; Zymer Hasanaj, Exhibit P37, para. 14; Sadri Selca, Exhibit P333 (*Haradinaj* original transcript), T. 10859-10860; Witness 17, Exhibit P344, para. 53.

³²⁸ Witness 17, Exhibit P344, para. 53. Exhibit P347 is a map on which the witness marked the areas of responsibility using colour markers. The 3rd brigade is in orange. The Operative Staff of the Dukagjin Plain is marked in yellow, Witness 17, Exhibit P344, para. 53; Exhibit P347. Witness 17 explained that the areas of responsibility fluctuated sometimes depending on circumstances, Witness 17, Exhibit P344, para. 54.

³²⁹ Bislim Zyrap, Exhibit P161, para. 48, p. 18; Exhibits P246; P249; P346.

³³⁰ Cufë Krasniqi, Exhibit P54, paras 24, 64; Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10859; Shemsedin Çekaj, Exhibit P4, para. 26; Zymer Hasanaj, Exhibit P37, para. 14; *see also* Cufë Krasniqi, Exhibit P54, paras 41, 65; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5731-5732.

³³¹ Cufë Krasniqi, Exhibit P54, para. 68; Cufë Krasniqi, Exhibit P53 (*Haradinaj* original transcript), T. 5808-5809.

³³² Witness 17, Exhibit P344, para. 48; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7633.

³³³ Witness 77, T. 1277-1278, 1316-1317, 1415; Exhibit D147.

³³⁴ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7638-7639; Witness 77, T. 1277-1278, 1316-1317; Exhibit D147.

³³⁵ Shemsedin Çekaj, Exhibit P4, paras 26-27; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4464.

strong armies located in three separate areas.³³⁶ The combined forces did not have the necessary equipment, capacity, or uniforms to function as a regular army.³³⁷

7. Relationship between the Dukagjin Operational Zone and the KLA General Staff

92. In the second half of 1998, Jakup Krasniqi, in his role as the KLA spokesperson in Kosovo and as a member of the KLA General Staff, had almost daily contacts with KLA soldiers, with the operational units of the KLA, and the various units that acted separately from the zone.³³⁸ This mainly occurred via satellite telephone.³³⁹ In the beginning of March 1998, Jakup Krasniqi did not communicate with anyone in the Dukagjin zone and he did not know who, if anyone, in the General Staff communicated with them.³⁴⁰ In June 1998, Jakup Krasniqi was in contact with Lahi Brahimaj in the Dukagjin zone, because he thought that Lahi Brahimaj was responsible for the area at that time, and Lahi Brahimaj was also a member of the General Staff.³⁴¹ At the end of June or beginning of July 1998, Jakup Krasniqi was in contact with Ramush Haradinaj.³⁴²

93. On or about 18 and 19 July 1998, Bislim Zyrapi, along with Lahi Brahimaj and other members of the KLA General Staff, visited the Dukagjin Operational Zone.³⁴³ A meeting was held in the KLA command post, located at Lahi Brahimaj's house in Jabllanicë/Jablanica.³⁴⁴ The purpose of the meeting was to discuss the coordination between the General Staff, the Dukagjin Operational Zone and other zones; logistics and supply of weapons; and how to include some local units into the command structure.³⁴⁵ Bislim Zyrapi visited the unit positions in the area and was accompanied by Salih Veseli and Driton Zeneli, who, according to Zyrapi, reported to Ramush Haradinaj.³⁴⁶ Members of the General Staff had informed Bislim Zyrapi that Ramush Haradinaj was the commander of the Dukagjin Operational Zone.³⁴⁷ Based on his visit to the Dukagjin Operational Zone, Bislim Zyrapi observed that the KLA soldiers and the villagers respected the authority of Ramush Haradinaj.³⁴⁸ It was the position of Bislim Zyrapi that from a theoretical point of view, given the emergence of the command in the area, he would have been Ramush Haradinaj's

³³⁶ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5734.

³³⁷ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5734-5736.

³³⁸ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4958, 4974.

³³⁹ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4974.

³⁴⁰ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5009.

³⁴¹ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5009-5010, 5055-5056, 5076-5077.

³⁴² Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5010, 5034, 5051, 5054-5056.

³⁴³ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3202-3203, 3207, 3208-3209, 3211-3212, 3234-3235, 3286, 3301, 3316, 3344, 3345, 3385-3386, 3388, 3414; Bislim Zyrapi, T. 657, 682, 737-738, 760-761, 768.

³⁴⁴ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3387-3388; Bislim Zyrapi, T. 739, 760.

³⁴⁵ Bislim Zyrapi, T. 682-684.

³⁴⁶ Bislim Zyrapi, T. 685, 739, 762.

³⁴⁷ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3209-3211, 3220, 3228; Bislim Zyrapi, T. 649-651, 685-686, 776.

³⁴⁸ Bislim Zyrapi, T. 776.

commander.³⁴⁹ From mid-July onwards, Bislim Zyrapi, as director of the operations department of the General Staff, maintained regular contact with the Dukagjin Operational Zone and other operational zones.³⁵⁰

94. Following the meeting in Jabllanicë/Jablanica, Bislim Zyrapi and Ramush Haradinaj visited the KLA units in Gllogjan/Glodane, and the KLA positions in the surrounding area.³⁵¹ Over the course of the next two days they also visited Irzniq/Rznić (the local commander was Shemsedin Çekaj), Prilep (the local commander was Maliq Ndrecaj) and Shaptej/Šaptej in Deçan/Dečani municipality, and the Reka-e-Keqe area, including Ramoc in Gjakovë/Đakovica municipality, Smolicë/Smonica (the local commander was Naim Maloku) and Junik (the local commander was Aziz Hyseni) in Deçan/Dečani municipality.³⁵² Bislim Zyrapi wanted to visit these village units, see the level of organisation, and integrate some of these areas into the Dukagjin Operational Zone; the visit was facilitated by Ramush Haradinaj.³⁵³ During the visit both Smolicë/Smonica and Junik agreed to join the Dukagjin Operational Zone.³⁵⁴ The incorporation of the area of Reka-e-Keqe under the command of the Dukagjin Operational Zone was agreed upon.³⁵⁵

8. Change of commander of the Dukagjin Operational Zone

95. On or about 20 August 1998, following the Serbian offensive,³⁵⁶ representatives of about 60 villages in the Dukagjin Operational Zone attended a meeting in Prapaqan/Prapačane in Deçan/Dečani municipality to discuss the reorganisation and restructuring of the forces in the region in order to conduct military operations and confront the “enemy”.³⁵⁷ The meeting was attended by 68 local KLA and FARK staff representatives, including, Ramush Haradinaj and Tahir Zemaj.³⁵⁸ Ramush Haradinaj conceded he was no longer able to lead forces in the Dukagjin Operational Zone because of recent losses in the area, including Gllogjan/Glodane and Irzniq/Rznić in Deçan/Dečani municipality and Gjakovë/Đakovica.³⁵⁹ Representatives of 48 villages of the

³⁴⁹ Bislim Zyrapi, T. 740.

³⁵⁰ Bislim Zyrapi, Exhibit P161, para. 29; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3208, 3258, 3298, 3339, 3394, 3398; Bislim Zyrapi, T. 633.

³⁵¹ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3213-3218, 3344; Bislim Zyrapi, T. 649.

³⁵² Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3214, 3218-3222, 3227-3229, 3231-3237, 3327, 3344, 3346, 3355; Bislim Zyrapi, T. 649; Exhibits P172; P173.

³⁵³ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3219, 3233-3235, 3280, 3330; Bislim Zyrapi, T. 714, 723-724, 726; Exhibit P179, p. 1.

³⁵⁴ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3235-3236.

³⁵⁵ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3236; Exhibit P279, p. 3.

³⁵⁶ See *infra*, paras 287-295.

³⁵⁷ Skender Rexhahmetaj, Exhibit P298, paras 29-31, 33; Witness 17, Exhibit P344, para. 100; Skender Rexhahmetaj, Exhibit P299, paras 2(i), 2(j), 2(k); Skender Rexhahmetaj, T. 1078; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7592-7593.

³⁵⁸ Witness 17, Exhibit P344, para. 100; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7592-7593.

³⁵⁹ Witness 17, Exhibit P344, para. 100; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7592-7593.

Dukagjin Operational Zone voted for Tahir Zemaj to become the zone commander.³⁶⁰ Tahir Zemaj replaced Ramush Haradinaj and was appointed the commander of the Dukagjin Operational Zone.³⁶¹ Ramush Haradinaj became the deputy commander.³⁶² The forces were to operate in four brigades, each comprised of its own separate “departments”.³⁶³ These four brigades were to form a corps.³⁶⁴

96. A document reflecting the change in commander of the Dukagjin Operational Zone was jointly issued by Ramush Haradinaj and Tahir Zemaj on 21 August 1998.³⁶⁵ As a result of these changes, the “Dukagjin Plain Operational Directorate” was formed; this was to oversee the four brigades under the coordination of the new Operational Directorate.³⁶⁶ Tahir Zemaj ordered that the KLA General Staff be informed about the new appointment and be given the opportunity to object within 24 hours.³⁶⁷

97. On or about 23 August 1998, a delegation from the General Staff, including Lahi Brahimag arrived in Prapaqan/Papraçane.³⁶⁸ The General Staff members criticised the decision and stated that it was annulled.³⁶⁹ According to Bislim Zyrapi, the decision to replace Ramush Haradinaj with Tahir Zemaj caused serious disagreement within the General Staff.³⁷⁰ On 2 September 1998, FARK and KLA officers met in Bardhaniq/Bardonić.³⁷¹ Hashim Thaçi, a KLA General Staff member and the leader of the political directorate,³⁷² was present at the meeting. KLA General Staff member Rexhep Selimi opened the meeting and stated that it had been concluded by the General Staff that Ramush Haradinaj should be the KLA commander of the Dukagjin Operational Zone. The FARK were told that they did not have the right to make command changes without the

³⁶⁰ Skender Rexhahmetaj, Exhibit P298, para. 30.

³⁶¹ Skender Rexhahmetaj, Exhibit P298, paras 29-31, 33; Skender Rexhahmetaj, Exhibit P299, paras 2(i), 2(j), 2(k); Skender Rexhahmetaj, T. 1078; Witness 17, Exhibit P344, para. 100; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7592-7593.

³⁶² Skender Rexhahmetaj, Exhibit P298, paras 29-31, 33; Skender Rexhahmetaj, Exhibit P299, paras 2(i), 2(j), 2(k); Skender Rexhahmetaj, T. 1078; Witness 77, T. 1284; Bislim Zyrapi, Exhibit P161, para. 48, p. 22; Exhibits P279, p. 1; P280, p. 1.

³⁶³ Bislim Zyrapi, Exhibit P161, para. 48, p. 22; Exhibit P279, p. 3.

³⁶⁴ Bislim Zyrapi, Exhibit P161, para. 48, p. 22; Exhibit P279, p. 3.

³⁶⁵ Witness 17, Exhibit P344, para. 107; Witness 77, T. 1284; Bislim Zyrapi, Exhibit P161, para. 48, p. 22; Exhibits P279; P280.

³⁶⁶ Bislim Zyrapi, Exhibit P161, para. 48; Exhibits P279; P280.

³⁶⁷ Skender Rexhahmetaj, Exhibit P298, para. 31; Witness 17, Exhibit P344, para. 107; Bislim Zyrapi, Exhibit P160, para. 43; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3372.

³⁶⁸ Skender Rexhahmetaj, Exhibit P298, paras 31-32; Bislim Zyrapi, Exhibit P160, paras 44, 46; Bislim Zyrapi, Exhibit P161, para. 45; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3370-3372, 3374-3376; Bislim Zyrapi, T. 657, 679-680; Exhibit P283, p. 1.

³⁶⁹ Skender Rexhahmetaj, Exhibit P298, para. 32.

³⁷⁰ Bislim Zyrapi, Exhibit P160, para. 43.

³⁷¹ Witness 17, Exhibit P344, para. 113.

³⁷² Jakup Krasniqi, Exhibit P67 (*Haradinaj* original transcript), T. 3307; Zoran Stijović, Exhibit P121, para. 48.

permission of the General Staff.³⁷³ FARK members objected and stated they would continue to fight in their areas of responsibility and did not want the KLA to interfere.³⁷⁴ Tahir Zemaj refused to accept the decision to replace him with Ramush Haradinaj because it was seen as an attempt to bring the FARK under the KLA command.³⁷⁵ No agreement could be reached between the FARK and KLA.³⁷⁶ Nevertheless, following discussions, the decision was annulled and Ramush Haradinaj was reinstated as Dukagjin Operational Zone commander.³⁷⁷

98. On 3 September 1998, the commander of the 1st brigade based in Prapaqan/Prapačane, Tahir Zemaj, informed local staffs within the Dukagjin Operational Zone that the same command structure that was in place up until 20 August 1998 would be reinstated.³⁷⁸

99. Following these events, on 8 September 1998, the FARK withdrew from Kosovo.³⁷⁹

9. The Black Eagles

100. A KLA military unit known as the “Black Eagles” was active in Kosovo. The Black Eagles unit was referred to in the evidence as the “Special Unit”, the “rapid intervention unit”, and the “subversive sabotage unit”.³⁸⁰ Shemsedin Çekaj testified that the Black Eagles unit existed as of the beginning of April 1998.³⁸¹ However, Ylber Haskaj stated that he joined the Black Eagles on the day of its formation, which was around 14 May 1998.³⁸² The Chamber is satisfied that the Black Eagles unit was in existence by no later than 14 May 1998; the unit ultimately ceased military operations sometime in September 1998.³⁸³

³⁷³ Witness 17, Exhibit P344, para. 113; Bislim Zyrap, Exhibit P160, para. 45; Bislim Zyrap, Exhibit P159 (*Haradinaj* original transcript), T. 3377; Exhibit P215, p. 2.

³⁷⁴ Witness 17, Exhibit P344, para. 113.

³⁷⁵ Witness 17, Exhibit P344, para. 115; Exhibit P353.

³⁷⁶ Witness 17, Exhibit P344, para. 116.

³⁷⁷ Skender Rexhahmetaj, Exhibit P298, paras 32-34; Witness 17, Exhibit P344, para. 108.

³⁷⁸ Bislim Zyrap, T. 3377-3378; Exhibit P281.

³⁷⁹ Cufë Krasniqi, Exhibit P54, para. 95; Skender Rexhahmetaj, Exhibit P298, para. 31.

³⁸⁰ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3537-3538; Bislim Zyrap, Exhibit P159 (*Haradinaj* original transcript), T. 3218-3220, 3225-3226, 3382-3384; Exhibit P162, p. 1; Bislim Zyrap, T. 646, 649, 746-748; Skender Rexhahmetaj, Exhibit P297, para. 20; Skender Rexhahmetaj, Exhibit P298, para. 40; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4438, 4440-4442; Shemsedin Çekaj, T. 646, 649, 748; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7558; Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9970-9971.

³⁸¹ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4438.

³⁸² Ylber Haskaj, Exhibit P40, paras 9-10.

³⁸³ Ylber Haskaj, Exhibit P40, para. 21.

101. Idriz Balaj commanded the Black Eagles.³⁸⁴ He was commonly referred to as “Commander” or “Toger/Togeri”.³⁸⁵ Balaj possessed prior military experience from the war in Croatia where he fought against the Serbian forces.³⁸⁶ With respect to Balaj’s appointment to this position, Pjeter Shala stated “[a]ccording to my personal opinion and according to what I heard from other soldiers, I think it was Ramush who appointed [Balaj]”, but he could not confirm such an allegation; it was a rumour he heard.³⁸⁷ Witness 17 was also unable to confirm who appointed Idriz Balaj as commander of the Black Eagles or when this took place.³⁸⁸

102. While the Chamber notes that Idriz Balaj was formally put in charge of “sabotage and anti-terrorist combat” for the Dukagjin Operational Zone from 23 June 1998, the evidence, as discussed earlier in this Judgement, shows that this decision was based on consensus.³⁸⁹ Moreover, the Black Eagles had been in existence for over a month and there was no evidence that when the unit came into existence no later than 14 May 1998, Idriz Balaj was appointed the commander by Ramush Haradinaj, or that Haradinaj authorised Balaj to create the unit.

103. Shemsedin Çekaj testified that, at the Dukagjin Operational Staff meetings, Balaj did not receive orders from anyone, but rather all staff members discussed issues together.³⁹⁰ According to Ylber Haskaj, Balaj communicated the orders to the Black Eagles verbally, by way of a hand-held radio, and had access to a variety of vehicles throughout the conflict, which enabled him to engage in a mobile command of the unit.³⁹¹ Witness 17 testified that Idriz Balaj served as Haradinaj’s subordinate and this meant he “had to report to Ramush”.³⁹² Skender Rexhahmetaj testified that “[h]ad I needed Toger’s assistance, I would have had to contact Ramush. Ramush had to authorise any deployments of Toger’s unit”.³⁹³ He further testified that Ramush Haradinaj mentioned to him

³⁸⁴ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4438, 4441-4442; Ylber Haskaj, Exhibit P40, paras 10, 20; Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9970-9971; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7556-7557, 7558, 7743; Bislim Zyrapi, Exhibit P161, para. 48, p. 16; Exhibit P227, p. 1; Zoran Stijović, Exhibit P121, para. 50; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9072; Skender Rexhahmetaj, Exhibit P297, para. 20; Skender Rexhahmetaj, Exhibit P298, para. 40; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3225; Bislim Zyrapi, T. 646.

³⁸⁵ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4393-4394; Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3620-3621; Ylber Haskaj, Exhibit P40, para. 14; Skender Rexhahmetaj, Exhibit P298, para. 39; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7556-7557, 7558, 7743; Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8724-8725.

³⁸⁶ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4394; Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3620-3621; Ylber Haskaj, Exhibit P40, para. 14.

³⁸⁷ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9971-9973.

³⁸⁸ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7556-7557.

³⁸⁹ See *supra*, para. 74.

³⁹⁰ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4442.

³⁹¹ Ylber Haskaj, Exhibit P40, paras 18, 20.

³⁹² Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7555-7557. Zoran Stijović gave evidence that it was “widely regarded” that Idriz Balaj would report to Ramush Haradinaj, Zoran Stijović, Exhibit P121, para. 50.

³⁹³ Skender Rexhahmetaj, Exhibit P297, para. 21.

that he “could make use of this special unit in [his] area”, although he “never actually called on them to act”.³⁹⁴

104. The Black Eagles were based in Gillogjan/Glodane in Deçan/Dečani municipality, as part of the regional KLA headquarters.³⁹⁵ The Chamber received evidence that the Black Eagles fell under the command of the Dukagjin Operational Zone.³⁹⁶ The Black Eagles also established a second headquarters at Irzniq/Rznić in Deçan/Dečani municipality in mid-to-late July 1998.³⁹⁷ The unit was intended to operate all over the Dukagjin Operational Zone and to intervene wherever necessary.³⁹⁸ In practice, according to Ylber Haskaj, the unit operated mostly in and around the Deçan/Dečani municipality area.³⁹⁹

105. The Black Eagles consisted of approximately 30-40 members.⁴⁰⁰ The unit maintained a small number of soldiers, and even fewer would actually participate in battles.⁴⁰¹ According to Skender Rexhahmetaj, although still part of the KLA force, the Black Eagles operated with a sense of autonomy when compared to the operation of other general KLA units.⁴⁰²

106. The Black Eagles wore uniforms distinct from those of ordinary KLA soldiers,⁴⁰³ consisting of black civilian clothing and at times a black beret.⁴⁰⁴ Idriz Balaj also wore a black uniform.⁴⁰⁵

³⁹⁴ Skender Rexhahmetaj, Exhibit P298, para. 40.

³⁹⁵ Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10333-10335; Ylber Haskaj, Exhibit P40, para. 13; Zymer Hasanaj, Exhibit P37, para. 15; Skender Rexhahmetaj, Exhibit P297, para. 21; Skender Rexhahmetaj, Exhibit P299, para. 3(f).

³⁹⁶ Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3226-3227, 3357.

³⁹⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3669-3670; Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10333-10335, 10348; Ylber Haskaj, Exhibit P40, para. 13; Zymer Hasanaj, Exhibit P37, para. 15; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3357-3358; Zoran Stijović, Exhibit P121, para. 50; Exhibit P254. While in Irzniq/Rznić, the Black Eagles stayed in a house marked as “2nd Staff of the Black Eagles Unit,” located approximately 100-150 metres from the local school, Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10342-10343; Exhibit P41; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4440-4441 (the house is marked as number 3); Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3218-3220, 3225-3226; Bislim Zyrapi, T. 649, 746-748; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9071-9072; Exhibit P121, para. 50. As of August 1998, the headquarters at Irzniq/Rznić still operated, Cufë Krasniqi, Exhibit P54, para. 59.

³⁹⁸ Ylber Haskaj, Exhibit P40, para. 12; Skender Rexhahmetaj, Exhibit P297, para. 20; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3357-3358.

³⁹⁹ Ylber Haskaj, Exhibit P40, paras 12-13.

⁴⁰⁰ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4438, 4502; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3670, 3846; Zoran Stijović, Exhibit P121, para. 50; Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9974; Ylber Haskaj, Exhibit P40, para. 10.

⁴⁰¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3810.

⁴⁰² Skender Rexhahmetaj, Exhibit P298, para. 41.

⁴⁰³ Ylber Haskaj, Exhibit P40, para. 19; Witness 17, Exhibit P344, para. 16; *see supra*, para. 32. Shemsedin Çekaj testified that he saw Ramush Haradinaj with “Togeri,” whom he later discovered to be Idriz Balaj, around 20 April 1998, and the two were wearing dark green uniforms with KLA patches. Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4393. Rustem Tetaj testified that he met “Ramush and Togeri” in April 1998, both of whom donned camouflage military uniforms, Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3618.

⁴⁰⁴ Cufë Krasniqi, Exhibit P53 (*Haradinaj* original transcript), T. 5716; Skender Rexhahmetaj, Exhibit P297, para. 20; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3669; 3807-3808; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7564; Witness 17, Exhibit P344, paras 16, 41; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3225-3226; Bislim Zyrapi, T. 646, 649, 746-748; Zoran Stijović, Exhibit

Members of the Black Eagles also wore a KLA insignia on the right side of the uniform and another patch with the Black Eagles insignia.⁴⁰⁶

107. The Black Eagles were provided with weapons and training at the Black Eagles headquarters in Gllogjan/Glodane.⁴⁰⁷ Training sometimes lasted for days and was intensive.⁴⁰⁸ Zoran Stijović testified that the Black Eagles were very well equipped and armed with automatic rifles, hand grenades, hand-held rocket launchers, heavy and light machine guns and sniper rifles.⁴⁰⁹

108. The Black Eagles unit was created “to provide rapid intervention and military support” for villages under attack by Serbian forces when that need arose.⁴¹⁰ The entire unit would not deploy for a particular operation, but rather a selected few members of the unit – around three to five members – would deploy.⁴¹¹ The Chamber received evidence that the Black Eagles were used as a force for intimidation towards the Serbian forces; Rustem Tetaj testified that the Serbian forces would continue to fight less and that actions were shorter when the Black Eagles were involved.⁴¹² During the summer of 1998, the Black Eagles, *inter alia*, engaged in battles in Voksh/Vokša, Baballoq/Babaloc, Prilep, Gramaqel/Gramočelj, Rastavicë/Rastavica, Junik, Carrabreg/Crnobreg in Deçan/Deçani municipality, and Loxhë/Loda in Pejë/Peć municipality.⁴¹³ Ylber Haskaj testified that he fought for several weeks in the villages of Voksh/Vokša, Sllup/Slup, and Drenoc/Drenovac in Deçan/Deçani municipality, during June and July 1998 as a member of the Black Eagles.⁴¹⁴ Shemsedin Çekaj gave evidence that the Black Eagles also moved around the area of the weapon supply route on the west side of the Pejë/Peć-Gjakovë/Đakovica main road; he explained that the Black Eagles provided strategic defence of KLA supply routes during the conflict. Shemsedin

P121, para. 50. Pjeter Shala testified that members of the Black Eagles wore brown uniforms. The Chamber accepts that a brown and black uniform could be easily confused and therefore, this does not effect its finding, based on other consistent evidence, that members of the Black Eagles wore a black uniform, Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9974.

⁴⁰⁵ Cufë Krasniqi, Exhibit P54, para. 60; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3537-3539; Witness 17, Exhibit P344, para. 16.

⁴⁰⁶ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3669-3670, 3807-3808; Zoran Stijović, Exhibit P121, para. 50.

⁴⁰⁷ Zymer Hasanaj, Exhibit P37, para. 15; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4438, 4516, 4518; Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10333-10334, 10336-10337; Ylber Haskaj, Exhibit P40, paras 11, 13, 19.

⁴⁰⁸ Ylber Haskaj, Exhibit P40, paras 11-12, 14.

⁴⁰⁹ Zoran Stijović, Exhibit P121, para. 50.

⁴¹⁰ Cufë Krasniqi, Exhibit P54, para. 69; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3810; Bislim Zyrapi, T. 754.

⁴¹¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3846.

⁴¹² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3812.

⁴¹³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3692, 3808-3809; Exhibit P162; Bislim Zyrapi, T. 646.

⁴¹⁴ Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10334; Ylber Haskaj, Exhibit P40, para. 22.

Çekaj also testified that the unit was in Voksh/Vokša for some time after he became sub-zone 2 commander and moved to Irzniq/Rznić.⁴¹⁵

10. KLA military police

109. As discussed in the following paragraphs, the Chamber received evidence of three meetings regarding the creation of the KLA military police. They are the meetings on 21 June 1998, 12 July 1998, and 25 July 1998. The Chamber notes that how these meetings relate to one another is not clear from the evidence.

110. Evidence indicates that members of the Dukagjin Regional Staff first discussed in detail the establishment of the KLA military police during a meeting on 21 June 1998.⁴¹⁶ The meeting was attended by Ramush Haradinaj, Rrustem Tetaj, Faton Mehmetaj, Lahi Brahimag, and Skender Rexhahmetaj, among others.⁴¹⁷ According to the minutes of the meeting, the Dukagjin Regional Staff intended the KLA military police to be a “component of the KLA”, wording proposed by Rrustem Tetaj.⁴¹⁸ At the meeting Ramush Haradinaj stated that “[t]here are [r]egulations on the [m]ilitary [p]olice which will carry out regular tasks and keep the peace in the Dukagjin region”.⁴¹⁹ “Acting on his own initiative, Faton [Mehmetaj] read an alternative version of the tasks of the police with 12 items” and Ramush Haradinaj “reread the first alternative item by item, and all the items were approved one by one”.⁴²⁰ The Chamber accepts that the document in evidence dated 21 June 1998 listing 12 “duties” of the military police with the heading “Military Police Regulations” on a “[KLA] Operational Staff of the Plain of Dukagjin” letterhead and with “Ramush Haradinaj” printed at the end of the document, is a set of regulations that were approved at the 21 June 1998 meeting of the Dukagjin Regional Staff.⁴²¹

111. The minutes of the 21 June 1998 meeting indicate that “[i]t was stated that five military police officers should be deployed to each sub-zone of the Region” but that “Skënder proposed an alternative where each village would have one person from the [m]ilitary [p]olice, who would have two colleagues. The persons appointed to serve in each military sub-zone would be subordinated to him”, *i.e.* to such person.⁴²² Ramush Haradinaj responded “[a]s a start let’s go with these five.

⁴¹⁵ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4497-4499, 4502-4503.

⁴¹⁶ Exhibit P190, p. 3. *See supra*, para. 71.

⁴¹⁷ Exhibit P190, p. 1.

⁴¹⁸ Exhibit P190, p. 3.

⁴¹⁹ Exhibit P190, p. 3.

⁴²⁰ Exhibit P190, p. 3.

⁴²¹ Exhibit P349. *See* Confidential Annex.

⁴²² Exhibit P190, p. 3.

From one in a sub-zone and then the others will be determined according to need”.⁴²³ It is not clear from the minutes what the final decision was.

112. These “Military Police Regulations” of 21 June 1998 describe the military police as “an executive organ of the bodies that deal with violations and breaches of the military and civilian regulations of a country, region, or locality” and a “component part of the KLA”.⁴²⁴ The 12 “duties” listed for the KLA military police include “investigating and uncovering, with persuasive facts, all those persons who collaborate in any way with the enemy” and “tak[ing] measures against all those working against the [KLA]”.⁴²⁵ It also states that “[p]olicemen who abuse their uniform or the KLA emblem will be stripped of all their functions, and will be subjected to the appropriate sanctions”.⁴²⁶

113. The evidence indicates that more concrete measures to create an operational KLA military police unit were taken only on 12 July 1998, in Vranoc/Vranovac in Pejë/Peć municipality, when a village commander made a proposal that certain individuals be part of the KLA military police. Specifically, during a meeting on 12 July 1998 in the Vranoc/Vranovac home of Din Krasniqi, the Baran/Barane Valley KLA commander, Din Krasniqi gave to a brigade commander a list of eight candidates for the military police in the Baran/Barane Valley.⁴²⁷ The soldiers had been “chosen by Din Krasniqi and others on the KLA Staff”; the Chamber received evidence that some had been “appointed” by Ramush Haradinaj.⁴²⁸ The commander, however, had the autonomy to remove people from the list.⁴²⁹ The names of the eight candidates included Hasan Gashi and “Ibwr” or “Ibra”⁴³⁰ Krasniqi. It appears from the evidence that “Hasan Gashi” from Baran/Barane was elected as the commander of the KLA military police in Baran/Barane Valley.⁴³¹

114. Cufë Krasniqi, who joined the KLA in February 1998 and was training KLA soldiers,⁴³² also gave evidence regarding the establishment of the KLA military police in Baran/Barane Valley. His evidence generally corroborates the other evidence regarding the creation of the KLA military police in Baran/Barane Valley and Hasan Gashi⁴³³ becoming its commander, except for the time.

⁴²³ Exhibit P190, p. 3.

⁴²⁴ Exhibit P349, pp 1-2.

⁴²⁵ Exhibit P349, p. 1.

⁴²⁶ Exhibit P349, p. 2.

⁴²⁷ See Confidential Annex.

⁴²⁸ See Confidential Annex.

⁴²⁹ See Confidential Annex.

⁴³⁰ See Confidential Annex.

⁴³¹ See Confidential Annex.

⁴³² Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5795; Cufë Krasniqi, Exhibit P54, paras 30-31.

⁴³³ Cufë Krasniqi further gave evidence that Hasan Gashi was succeeded by Fadil Nimonaj in about August 1998, Cufë Krasniqi, Exhibit P54, para. 72. The Chamber notes that, when Fadil Nimonaj was named the commander of the military police during the meeting on 25 July 1998 of the “Dukagjini Plain Operations Staff”, there is no reference of him succeeding Hasan Gashi in the minutes, Exhibit P81.

Cufë Krasniqi indicates an earlier time by about two months.⁴³⁴ In light of the overall evidence,⁴³⁵ the Chamber finds that Cufë Krasniqi is mistaken about the time, but accepts the other aspects of his evidence.

115. The KLA military police formed in Baran/Barane Valley had an area of responsibility covering 17 villages.⁴³⁶ According to Cufë Krasniqi, “[t]his unit was the first to go to villages under Serb attack and it made sure that the population fled”.⁴³⁷ “It also ensured that no one committed forbidden acts” and “[i]f someone did they would take the suspect for interrogation”, but “[s]uspects had to be released because of the lack of detention facilities”.⁴³⁸ Further, the “military police were supposed to enforce discipline in the KLA”.⁴³⁹ The evidence is that the KLA had no functioning military court in the Dukagjin zone during the Indictment period⁴⁴⁰ or if it did exist, it was not until the end 1998.⁴⁴¹

116. Discussions about creating a military police force were held, independent of the KLA military police in Baran/Barane Valley discussed above, at a meeting on 25 July 1998 of the “Dukagjini Plain Operations Staff”.⁴⁴² With respect to the question whether the military police existed at that time, Rustem Tetaj, who attended this meeting of 25 July 1998, agreed with Defence counsel’s proposition that there was “no military police in existence, as at the 25th of July; although, efforts were being made to try and create one”.⁴⁴³ Shemsedin Çekaj who also attended this meeting agreed with the Prosecution’s proposition that before 25 July 1998 there was “no military police unit operating in the Dukagjini Zone”.⁴⁴⁴ Shemsedin Çekaj also agreed that the main responsibilities of the military police were “monitoring who entered and exited villages in the zone and for security of the villages”,⁴⁴⁵ and that, “for that time”, it had no investigatory role relating to misbehaviour of KLA forces.⁴⁴⁶

⁴³⁴ Cufë Krasniqi, Exhibit P54, paras 24, 72; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5714-5715.

⁴³⁵ See Confidential Annex.

⁴³⁶ Cufë Krasniqi, Exhibit P54, para. 72.

⁴³⁷ Cufë Krasniqi, Exhibit P54, para. 72.

⁴³⁸ Cufë Krasniqi, Exhibit P54, para. 72.

⁴³⁹ Cufë Krasniqi, Exhibit P54, para. 73.

⁴⁴⁰ Witness 17, Exhibit P344, para. 74. See also Skender Rexhahmetaj, Exhibit P298, para. 46.

⁴⁴¹ Bislim Zyrap, Exhibit P160, para. 37; Bislim Zyrap, Exhibit P159 (*Haradinaj* original transcript), T. 3430-3431.

⁴⁴² Exhibit P81, p. 1; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3740-3741; Shemsedin Çekaj, Exhibit P3 (*Haradinaj* original transcript), T. 4457.

⁴⁴³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3740-3741. See also Exhibit P81.

⁴⁴⁴ Shemsedin Çekaj, Exhibit P3 (*Haradinaj* original transcript), T. 4457. See also Exhibit P81.

⁴⁴⁵ Shemsedin Çekaj, Exhibit P3 (*Haradinaj* original transcript), T. 4457.

⁴⁴⁶ Shemsedin Çekaj, Exhibit P3 (*Haradinaj* original transcript), T. 4457-4459. The witness seems to indicate that the reason the duties did not include an investigatory role was because the military police soldiers were “young people”, Shemsedin Çekaj, Exhibit P3 (*Haradinaj* original transcript), T. 4459.

117. At the meeting on 25 July 1998, it was discussed that the KLA military police were to be organised into “platoons” with “commanders and deputy commanders for the area”.⁴⁴⁷ Further, the “[KLA] General Staff” approved Fadil Nimonaj or “Tigri”, who participated in the meeting, as “commander of the military police”.⁴⁴⁸ In support of the above position that the KLA military police was indeed organised, a report dated 28 July 1998 sent by Ramush Haradinaj (not signed) to the KLA General Staff indicates that the Dukagjin Operational Zone “formed a [m]ilitary [p]olice” and that it was “functioning well”.⁴⁴⁹ On 1 August 1998 Ramush Haradinaj clarified that the duties of local KLA headquarters included assisting the KLA military police.⁴⁵⁰

118. The evidence before the Chamber indicates that the KLA military police did not come into existence until sometime between 12 July 1998 and late July 1998.

119. It is contended by the Prosecution that Faton Mehmetaj, the “commander of the PU in the Dukagjin zone”, was Ramush Haradinaj’s “subordinate and close associate”.⁴⁵¹ The Chamber received evidence that during the meeting of 23 June 1998 Faton Mehmetaj was appointed as one “responsible for intelligence service”.⁴⁵²

120. The evidence before the Chamber indicating the duties of Faton Mehmetaj is a KLA document dated 30 July 1998 and signed by Ramush Haradinaj, which authorises Faton Mehmetaj, “Intelligence Service Officer”, to “establish the structure of the KLA Intelligence Service in the sub zone of responsibility of the Operations Staff of the Plain of Dukagjin”.⁴⁵³ In another KLA document dated the same date and signed by Ramush Haradinaj, Faton Mehmetaj was “appointed Deputy Commander of [KLA] Intelligence for the Operations Staff of the Plain of Dukagjin”.⁴⁵⁴ Further, when discussions on the creation of the KLA military police were held at a meeting on 25 July 1998, Faton Mehmetaj was not present.⁴⁵⁵ The Chamber recalls that on 25 July 1998, during the Dukagjin Operational Staff meeting, it was stated that the General Staff had approved the appointment of Fadil Nimonaj (aka “Tigri”) as the KLA military police commander.⁴⁵⁶

⁴⁴⁷ Exhibit P81, p. 1.

⁴⁴⁸ Exhibit P81, p. 1; Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3741; Shemsedin Çekaj, Exhibit P3 (*Haradinaj* original transcript), T. 4457.

⁴⁴⁹ Exhibit P269, p. 2. See also Bislim Zyrapi, Exhibit P161, para. 48, p. 20 (indicating that Bislim Zyrapi recognises the KLA insignia on the letterhead, but sees only the printed name of Ramush Haradinaj and no signature).

⁴⁵⁰ Exhibit P275. See also Bislim Zyrapi, Exhibit P161, para. 48, p. 20 (indicating that Bislim Zyrapi recognises the long and short versions of Ramush Haradinaj’s signature).

⁴⁵¹ Prosecution Final Brief, para. 64.

⁴⁵² See *supra*, para. 74.

⁴⁵³ Exhibit P272. See *supra*, para. 77.

⁴⁵⁴ Exhibit P271. See *supra*, para. 77.

⁴⁵⁵ Exhibit P81, p. 1. The evidence indicates that he was invited to the meeting but was absent, Exhibit P81, p. 1.

⁴⁵⁶ See *supra*, para. 117. See also Cufë Krasniqi, Exhibit P54, paras 72, 88, 91. The Chamber notes, however, that in his evidence, Cufë Krasniqi indicated that in about August 1998 Fadil Nimonaj succeeded Hasan Gashi, the KLA military commander in Baran/Barane Valley. See *supra*, para. 114.

121. When Witness 17 was asked about Faton Mehmetaj's relationship with Ramush Haradinaj he responded that "[i]n the beginning it was said that he was in charge of the military police in Gllogjan staff, and then after the Joint Command was established in the Dukagjini Plain he was political representative of the Dukagjini Plain".⁴⁵⁷ Witness 17 also indicated that "Faton Mehmeti", who "reported directly to Ramush Haradinaj" and "shared an office with [him] in Gllogjan", was the "[m]ilitary [p]olice commander" or "Gllogjan KLA Chief of Military Police" and that Idriz Balaj became in charge after "Faton Mehmeti".⁴⁵⁸ The Chamber notes that Witness 17 was not present at any of the meetings when the creation of the KLA military police was discussed, namely the meetings of 21 June and 25 July 1998,⁴⁵⁹ and was not in a position to give direct evidence about these events.⁴⁶⁰

122. The Chamber does not accept the Prosecution's argument that Faton Mehmetaj was the "commander of the [military police] in the Dukagjin zone" and concludes that the evidence does not establish beyond a reasonable doubt what role, if any, Faton Mehmetaj had in the operation of the KLA military police.

123. With regard to the role and function of the KLA military police, the Chamber received the evidence of Pjeter Shala, a member of the KLA military police during the Indictment period.⁴⁶¹ Pjeter Shala agreed that the KLA military police was not "very organised or sophisticated"⁴⁶² and believed that Hashim Thaçi appointed him to the KLA military police and that Lahi Brahimag was involved in the appointment.⁴⁶³ The "Temporary International Regulations for the Military Police (P.U.) of KLA", set out the duties and rights of the KLA military police and are signed by commander Gjellal Hajda (the commander of the local staff in Rahovec/Orahovac), Nazmi Brahimag (the commander of the local staff) and Pjeter Shala.⁴⁶⁴ The rights and duties listed in this document include "control[ing] the military discipline" and "intervene[ing] in [...] cases of the violation of military regulations and discipline".⁴⁶⁵ The KLA military police were to report to their commander

⁴⁵⁷ Witness 17, Exhibit P343 (*Haradinaj* original transcript), T. 7808.

⁴⁵⁸ Witness 17, Exhibit P344, paras 62, 71.

⁴⁵⁹ Exhibits P81, p. 1; P190, p. 1.

⁴⁶⁰ See Confidential Annex.

⁴⁶¹ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9956. Although Pjeter Shala clearly states that he was a KLA member, the Chamber notes that his evidence regarding his membership in the KLA military police is purposely evasive in that he describes a "so-called military police" to which he is apparently a part of, Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9946, 9956.

⁴⁶² Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9956.

⁴⁶³ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9961. However, in an audiotape of the Prosecution's interview with Pjeter Shala, which was played during the original trial, he stated that it was Hashim Thaçi who appointed him to the KLA military police, Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9958-9959, 9961.

⁴⁶⁴ Exhibit P72; Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9962-9963.

⁴⁶⁵ Exhibit P72.

or the “Commander of the Local Staff”.⁴⁶⁶ The Chamber notes that the “Temporary International Regulations for the Military Police (P.U.) of KLA” is dated 22 January 2005. While the testimony of the witness suggests that this document was signed sometime in March or April 1998, his evidence is unclear and it does not establish when the document was actually signed or implemented.⁴⁶⁷ The Chamber, therefore, places little weight on this document.

124. Members of the military police wore black shirts and trousers with KLA insignia on the left shoulder.⁴⁶⁸ Cufë Krasniqi explained that there were civilians who wore the black uniforms because they “thought they seemed more interesting” and agreed it was also an indication of support for the KLA.⁴⁶⁹ According to Witness 17, the patches of the KLA military police were different from the patches of the Black Eagles and bore the insignia “Military Police” and/or “KLA”.⁴⁷⁰ Pjeter Shala gave evidence that he sometimes wore a camouflage uniform because they were not strictly obliged to wear a certain uniform.⁴⁷¹ The Chamber concludes that the KLA military police usually wore black uniforms and were uniquely identifiable by the “Military Police” insignia on the left shoulder.

⁴⁶⁶ Exhibit P72.

⁴⁶⁷ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9963-9964.

⁴⁶⁸ Cufë Krasniqi, Exhibit P54, para. 72; Witness 17, Exhibit P344, para. 62. *See also* Vesel Dizdari, Exhibit P467, para. 17.

⁴⁶⁹ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5831-5832.

⁴⁷⁰ Witness 17, Exhibit P344, para. 62. *See supra*, para. 106.

⁴⁷¹ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9974.

IV. EVENTS IN THE TERRITORY OF THE KLA DUKAGJIN ZONE IN THE PERIOD MARCH TO SEPTEMBER 1998

A. Events in the territory of the Dukagjin zone between March and June 1998

1. Territorial control and Serbian forces operations

125. The strategic importance of the area of the Dukagjin zone⁴⁷² for the various factions present in the theatre in 1998—the Serbian forces comprising the VJ and the MUP on the one hand and the KLA on the other—derived in particular from the fact that it lay on the KLA's main re-supply route from Albania through to Kosovo.⁴⁷³

126. The VJ presence at the time in the Dukagjin zone included the following. The 125th mtbr was subordinated to the Prishtinë/Priština Corps.⁴⁷⁴ Throughout 1998, the area of responsibility of the 125th mtbr covered a number of municipalities, including Klinë/Klina, Istog/Istok, Pejë/Peć, and Deçan/Dečani.⁴⁷⁵ The strength of the 125th mtbr was increased from 1,400 men in January 1998 to 1,880 towards the end of the year to counter disruptions on the state border with Albania.⁴⁷⁶ A forward command post of the 125th mtbr was established in Pejë/Peć in or after April 1998 as organised groups of armed Kosovo Albanians were developing in an increasing number of villages and were attacking MUP controls.⁴⁷⁷ Combat group 2 of the 125th mtbr was also located in Pejë/Peć.⁴⁷⁸ The military strength of the forward command post in Pejë/Peć was around 400 men in April and May 1998.⁴⁷⁹ The Priština Corps Command set up a forward command post in Gjakovë/Đakovica on 21 April 1998 with 10-15 men.⁴⁸⁰ The command of the VJ Priština Corps under General Nebojša Pavković was based in Prishtinë/Priština.⁴⁸¹ The units in the so-called Metehi/Metohija area, which covered Pejë/Peć, Prizren, Gjakovë/Đakovica, and the border battalions, comprised a total of 3,000 to 4,000 men.⁴⁸²

⁴⁷² For the geographical scope of the Dukagjin zone and Dukagjin Operational Zone, *see supra*, para. 42.

⁴⁷³ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2954; John Crosland, Exhibit P9 (*Limaj* transcript), T. 1888-1889, 1897, 1929, 1946-1947; Branko Gajić, Exhibit P27, para. 33; Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9333-9334; Zoran Stijović, Exhibit P121, para. 61.

⁴⁷⁴ Dragan Živanović, Exhibit P112, para. 4.

⁴⁷⁵ Dragan Živanović, Exhibit P112, para. 5.

⁴⁷⁶ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9308, 9312; Dragan Živanović, Exhibit P112, para. 11.

⁴⁷⁷ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9316. *See also* Cufë Krasniqi, Exhibit P54, para. 46.

⁴⁷⁸ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9310.

⁴⁷⁹ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9316.

⁴⁸⁰ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9317-9318; Exhibit D134.

⁴⁸¹ Dragan Živanović, Exhibit P112, para. 4.

⁴⁸² Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9317-9318.

127. Cufë Krasniqi, a KLA member at the relevant time, stated that as early as March 1998, Serbian forces were stationed on the hilltop in Suka-e-Baballoq/Babaloć which helped them command a view of all neighbouring villages like Baballoq/Babaloć, Gramaqel/Gramočelj, Rastavicë/Rastavica, Glllogjan/Glodane, Irzniq/Rznić, Ratish/Ratiš, and Prilep, all in Deçan/Dečani municipality.⁴⁸³ Serbian forces were also stationed at Podi-i-Geshtenjave/Dolina Kestenova in Gjakovë/Đakovica municipality.⁴⁸⁴ In March 1998, Serbian forces were stationed in Suka Čërmjan/Crmljane on the eastern side of Lake Radoniq/Radonjić⁴⁸⁵ and Suka-e-Bitesh/Biteš, both in Gjakovë/Đakovica municipality.⁴⁸⁶

128. On the evidence of Cufë Krasniqi, Serbian artillery was located in Kërstic/Krstovac in Pejë/Peć municipality and Volljakë/Volujak in Klinë/Klina municipality.⁴⁸⁷ Serbian forces were stationed on high ground and shelled other villages from there.⁴⁸⁸ According to Cufë Krasniqi, from late March 1998, the Serbian forces were only shelling the villages of the Dukagjin zone from their artillery positions.⁴⁸⁹ He also stated that the Serbian forces were based in the village of Hulaj/Huljaj in Deçan/Dečani municipality. According to him, they did not “dare” enter the villages in the Baran/Barane Valley in Pejë/Peć municipality, but “just” shelled them.⁴⁹⁰ Skender Rexhahmetaj, a KLA commander in the area, stated that from the middle of April to the end of May 1998, the Serbian forces in western Kosovo had a much larger fire-power than the Kosovo Albanian village defences.⁴⁹¹ The positions of the Serbian forces in the area around Lake Radoniq/Radonjić and the control of the area are discussed later in the Judgement.⁴⁹²

129. Cufë Krasniqi marked on a map some but not all positions of Serbian forces and Kosovo Serb villages during March 1998.⁴⁹³ John Crosland, then British Defence Attaché to the Republic of Yugoslavia,⁴⁹⁴ also denoted positions of the Serbian forces on a map of the Dukagjin zone.⁴⁹⁵

130. Evidence suggests that the Serbian forces controlled the big towns and the KLA controlled the villages in the countryside. Bislim Zyrap, a member of the KLA General Staff since

⁴⁸³ Cufë Krasniqi, Exhibit P54, paras 30, 46. *See also* Zymer Hasanaj, Exhibit P37, para. 11.

⁴⁸⁴ Zymer Hasanaj, Exhibit P37, para. 11.

⁴⁸⁵ Zymer Hasanaj, Exhibit P37, para. 11; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5812-5813.

⁴⁸⁶ Zymer Hasanaj, Exhibit P37, paras 11-12; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5812-5813.

⁴⁸⁷ Cufë Krasniqi, Exhibit P54, para. 47.

⁴⁸⁸ Bislim Zyrap, T. 727-729; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3029; Zymer Hasanaj, Exhibit P37, para. 11; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5812-5813.

⁴⁸⁹ Cufë Krasniqi, Exhibit P54, para. 50. *See also* Skender Rexhahmetaj, T. 1064.

⁴⁹⁰ Cufë Krasniqi, Exhibit P54, para. 56.

⁴⁹¹ Skender Rexhahmetaj, T. 1042, 1044.

⁴⁹² *See infra*, paras 326-329.

⁴⁹³ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5745-5747, 5750; Exhibit P57 (red markings).

⁴⁹⁴ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2925-2926.

⁴⁹⁵ John Crosland, Exhibits P8 (*Haradinaj* original transcript), T. 3018; Exhibit P14 (marking both the MUP and the VJ in blue).

June 1998,⁴⁹⁶ gave evidence that during his visit in July 1998 to the Dukagjin Operational Zone the Serbian forces held the big towns.⁴⁹⁷ John Crosland stated that in Pejë/Peć, Dečan/Dečani, and Gjakovë/Đakovica, “there was a very, very heavy Serbian military presence”.⁴⁹⁸

131. According to the evidence, in the Dukagjin zone in 1998, the Serbian forces also dominated the big roads,⁴⁹⁹ while the KLA by and large held the villages and local roads in the interior of the zone.⁵⁰⁰ Cufë Krasniqi stated that except for Kërstoc/Krstovac in Pejë/Peć municipality and Volljakë/Volujak in Klinë/Klina municipality, where Serbian artillery was located,⁵⁰¹ the remainder of the villages in Pejë/Peć, Dečan/Dečani and Klinë/Klina municipalities were under KLA control.⁵⁰² According to John Crosland, in the area of the zone (“from [Pejë/]Peć to [Klinë/]Klina down to [Gjakovë/]Đakovica and back up to [Pejë/]Peć”), the Serbian forces would go off the road for five or six kilometres to make a raid, and then withdraw because of safety concerns.⁵⁰³

132. Generally, the territorial control was extremely fluid throughout, as no side truly held ground, except for the garrison towns, which remained under Serbian control.⁵⁰⁴ Witness 28, who travelled to Kosovo for seven to 10 days each month in 1998,⁵⁰⁵ stated that for “some periods” during 1998, the military situation was “frozen”, meaning that one could not speak of a “frontline”, but that the KLA and Serbian forces would be in control of territories 100 to 200 metres apart.⁵⁰⁶ According to Bislim Zyrap, there was very intense fighting from March to September 1998 in the area west of the main road close to the border.⁵⁰⁷ John Crosland gave evidence that Serbian forces would periodically overrun the village of Irzniq/Rznić over the summer period of 1998.⁵⁰⁸ According to John Crosland, Prilep was also disputed territory.⁵⁰⁹ On the evidence of Witness 28,

⁴⁹⁶ Bislim Zyrap, T. 687, 695; Bislim Zyrap, Exhibit P160, para. 16; Bislim Zyrap, Exhibit P161, paras 12-13.

⁴⁹⁷ Bislim Zyrap, Exhibit P159 (*Haradinaj* original transcript), T. 3420.

⁴⁹⁸ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2954.

⁴⁹⁹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3029; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5746; Cufë Krasniqi, Exhibit P54, paras 47, 90 (April-August 1998); Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6687-6688, 6699-6701; Nebojša Avramović, Exhibit P451, paras 9, 15.

⁵⁰⁰ See John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3028-3029; Exhibit P20, p. 2; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5746; Cufë Krasniqi, Exhibit P54, paras 47, 90; Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9401 (stating that army units did not go east of the Pejë/Peć-Gjakovë/Đakovica road into the area of Dukagjin at all up until sometime in July 1998); Dragan Živanović, Exhibit P112, paras 37-38.

⁵⁰¹ See *supra*, para. 128.

⁵⁰² Cufë Krasniqi, Exhibit P54, para. 48.

⁵⁰³ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3029.

⁵⁰⁴ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2941-2943, 2962, 3030, 3130, 4721; John Crosland, Exhibit P9 (*Limaj* transcript), T. 1876, 1942; Exhibit P14.

⁵⁰⁵ Witness 28, Exhibit P358, paras 11, 15.

⁵⁰⁶ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10299.

⁵⁰⁷ Bislim Zyrap, T. 713, 723.

⁵⁰⁸ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3108, 4671, 4673, 4721.

⁵⁰⁹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3108.

from about 19 April 1998 to 30 April 1998, the Serbian forces controlled the structure of the “Agro-Combinat”⁵¹⁰ and the newly built settlement in Baballoq/Babaloc.⁵¹¹

133. John Crosland commented on a contemporaneous telegram dated 26 March 1998 that the Serbian forces “failed to patrol out from” the vehicle checkpoint positions which were located at various strategic points, and, therefore, there was “little if any control over and above what they could see”. He concluded that, effectively, the Serbian forces had a lot of men in the area, “but they were really controlling very little of a tactical or strategic nature”.⁵¹²

134. As far as the MUP forces in the area in 1998 are concerned, John Crosland commented on a telegram dated 26 March 1998 that it would “probably [be] a conservative estimate” to assume between 8,000 and 10,000 MUP personnel were deployed in Kosovo at the time, as well as the specialised assault force of the JSO and the SAJ.⁵¹³ Nebojša Avramović, a Serbian crime technician,⁵¹⁴ stated that the SUP Gjakovë/Đakovica, comprised of Gjakovë/Đakovica as headquarters and Deçan/Dečani as sub-headquarters, never closed in 1998.⁵¹⁵ There were three police stations: Junik and Irzniq/Rznić in the municipality of Deçan/Dečani and Ponošec/Ponoševac in Gjakovë/Đakovica municipality.⁵¹⁶ The stations in Junik and Irzniq/Rznić closed from approximately April to September 1998.⁵¹⁷ According to Nebojša Avramović, this was due to the KLA blocking the road, which made it impossible to reach the station. In addition, the officers were withdrawn due to constant attack on police manpower.⁵¹⁸

135. Cufë Krasniqi testified with respect to the period before 24 March 1998, that the KLA was only a guerrilla force that was not able to stop Serbian forces from patrolling the area of Dukagjin or Baran/Barane Valley in Pejë/Peć municipality.⁵¹⁹ Nebojša Avramović marked on a map the parts within his area of responsibility, which were “unsafe for Serbs” and the police to the extent that he believed they in fact risked their lives when they entered them.⁵²⁰ According to his evidence, these areas remained “unsafe for the police” until they were taken over by the Serbian forces in

⁵¹⁰ “Combinat” is commonly referred to as an association of several people’s owned businesses in a socialist market structure.

⁵¹¹ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10179.

⁵¹² John Crosland, Exhibit P9 (*Limaj* transcript), T. 1876-1879, 1895-1896, 1917; Exhibit D119, p. 2.

⁵¹³ John Crosland, Exhibit P9 (*Limaj* transcript), T. 1876-1878; Exhibit D119, p. 1.

⁵¹⁴ Nebojša Avramović, Exhibit P451, para. 7.

⁵¹⁵ Nebojša Avramović, Exhibit P451, paras 8, 18; Exhibit P454. See also Cufë Krasniqi, Exhibit P54, para. 46.

⁵¹⁶ Nebojša Avramović, Exhibit P451, para. 18.

⁵¹⁷ Cufë Krasniqi, Exhibit P54, para. 48; Zoran Stijović, Exhibit P121, paras 41-43; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8992; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 7068; Nebojša Avramović, Exhibit P451, para. 18.

⁵¹⁸ Nebojša Avramović, Exhibit P451, para. 18.

⁵¹⁹ Cufë Krasniqi, Exhibit P54, para. 38.

⁵²⁰ Nebojša Avramović, Exhibit P451, paras 9, 15; Exhibit P455 (yellow markings). See also Radovan Zlatković, Exhibit P373, para. 28 (after 24 March 1998, the police did not have ready access to the area surrounding Lake Radoniq/Radonjić, or the whole of Deçan/Dečani municipality and part of Gjakovë/Đakovica municipality).

September 1998.⁵²¹ Branko Gajić stated that there were deployments of the MUP in the area east of the main Pejë/Peć-Gjakovë/Đakovica road between March and September 1998 which were “patrols in what was effectively disputed territory”.⁵²² Witness 69 testified that between March and September 1998, within the area of responsibility of the SUP Gjakovë/Đakovica, the police could not go to Ratish-i-Epërm/Gornji Ratiš, Ratish-i-Ulët/Donji Ratiš, and Gllogjan/Glodane in Dečan/Dečani municipality, and Jabllanicë/Jablanica in Gjakovë/Đakovica municipality.⁵²³

136. Turning to the KLA presence in the area, the Chamber discussed earlier that in a number of villages defence organisations emerged.⁵²⁴ Various witnesses described the Gjakovë/Đakovica-Pejë/Peć main road as effectively being the KLA frontline.⁵²⁵ On the evidence of Nebojša Avramović the KLA checkpoints were on the auxiliary roads on both sides off the Gjakovë/Đakovica-Pejë/Peć road. KLA bunkers and trenches were almost parallel to this road.⁵²⁶ Dragan Živanović, then chief of staff of the command of the VJ 125th mtbr,⁵²⁷ reported on 14 May 1998 from the Pejë/Peć forward command post that the KLA operated a police-style checkpoint in Llukë-e-Epërme/Gornja Luka in Dečan/Dečani municipality.⁵²⁸

137. John Crosland marked on a map the area of KLA presence and the area of KLA influence in the Dukagjin zone.⁵²⁹ Cufë Krasniqi marked on a map KLA positions at the end of March 1998.⁵³⁰

138. With regard to the control of the roads, Dragan Živanović stated that it was the MUP’s responsibility to control the roads in western Kosovo. According to him, as a reaction to KLA activity, the MUP set up control points along all main roads in the first half of 1998, where they were permanently present, such as along the road from Mitrovicë/Mitrovica to Pejë/Peć to Gjakovë/Đakovica, and Prizren, and the road from Pejë/Peć to Prishtinë/Priština.⁵³¹ Up and down the Pejë/Peć-Gjakovë/Đakovica road there were considerable numbers of Serbian security forces

⁵²¹ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6687-6688; Nebojša Avramović, Exhibit P451, para. 15; Exhibit P455.

⁵²² Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9721, 9725; *see also* Dragan Živanović, Exhibit P112, paras 37-38.

⁵²³ Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9864-9865.

⁵²⁴ *See supra*, paras 43-46, 49-51, 53.

⁵²⁵ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2940-2942; Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10300; Nebojša Avramović, Exhibit P451, paras 9, 13; Exhibit P455 (orange indicating the main road; blue indicating the KLA frontlines on the two sides of the road).

⁵²⁶ Nebojša Avramović, Exhibit P451, paras 9, 13.

⁵²⁷ Dragan Živanović, Exhibit P112, para. 3.

⁵²⁸ Dragan Živanović, Exhibit P112, paras 37-38.

⁵²⁹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3018; Exhibits P10 (black indicating the area of KLA presence); P14 (red indicating the area of KLA influence).

⁵³⁰ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5746, 5750; Exhibit P57 (blue indicating the KLA positions at the end March 1998).

⁵³¹ Dragan Živanović, Exhibit P112, paras 30-31. *See also* Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9712.

deployed.⁵³² On Dragan Živanović's evidence, KLA attacks on these control points increased "in the months before June 1998", involving the killing or injuring of a number of MUP officers.⁵³³

139. The control over the Pejë/Peć-Gjakovë/Đakovica road was significant because the Serbian forces were unable to control the mountainous region near the Albanian border. Therefore, they established "a second boundary" along this road.⁵³⁴

140. KLA presence on that road caused disturbances or interruptions of varying gravity in the period March to September 1998.⁵³⁵ Notwithstanding this, John Crosland assessed that the "basis of control" rested with the Serbian forces on the road, while in early March 1998 in localised situations around Irzniq/Rznić and Prilep in Dečan/Dečani municipality, in particular, the KLA "might have [had] slightly more control for limited periods".⁵³⁶ According to him, the route from Pejë/Peć, Dečan/Dečani on to Gjakovë/Đakovica and Prizren was fought over on a daily basis.⁵³⁷ Bislim Zyrapli stated that the Serbian forces had the Prizren-Gjakovë/Đakovica-Pejë/Peć road continuously under their control except for a few very brief interruptions from March to September 1998.⁵³⁸ Nevertheless, the road was not safe to use as far as the VJ and the MUP were concerned.⁵³⁹

141. Witness 28 stated that by the last 10 days of April 1998, bus services ceased to operate on the Prishtinë/Priština-Gjakovë/Đakovica-Pejë/Peć road due to the clashes between the Serbian forces and the KLA.⁵⁴⁰ The witness stated that there was almost no civilian traffic on the main roads and that the number of police checkpoints increased.⁵⁴¹

⁵³² John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2941-2942, 2961-2962; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5812-5813.

⁵³³ Dragan Živanović, Exhibit P112, para. 31.

⁵³⁴ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2940, 4712.

⁵³⁵ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2941-2943 (KLA sniper attacks in the early part of 1998), 2951-2952 (small KLA groups of 10-15 men present on the road from March to July 1998 in the area of Irzniq/Rznić, Prilep, and the outskirts of Gjakovë/Đakovica), T. 2961-2962 (KLA stopping the traffic, rather than carrying out an impromptu vehicle check than mounting a roadblock between March and July 1998); Dragan Živanović, Exhibit P112, para. 37 (the VJ could not use that road in May and June 1998), para. 89 (KLA launching sporadic operations along the Gjakovë/Đakovica-Pejë/Peć axis); Exhibit P116, para. 2; Nebojša Avramović, Exhibit P451, paras 9, 16 (KLA blocking the road on several occasions); Witness 69, Exhibit P370, para. 29 (KLA periodically blocking the road between Gjakovë/Đakovica and Dečan/Dečani and totally blocking it on 23 May 1998 and the following 10 days); Radovan Zlatković, Exhibit P373, para. 29 (KLA blocking the road); Exhibit D16, para. 2 (road between Dečan/Dečani-Pejë/Peć still closed on 3 June 1998).

⁵³⁶ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2941-2943, 2948-2949, 2962.

⁵³⁷ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2940-2942, 4612-4613.

⁵³⁸ Bislim Zyrapli, T. 713-714.

⁵³⁹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4720; Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9333-9334; Witness 69, Exhibit P370, para. 29; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6687-6688; Nebojša Avramović, Exhibit P451, para. 15; Exhibit P455.

⁵⁴⁰ Witness 28, Exhibit P358, para. 55.

⁵⁴¹ Witness 28, Exhibits P355 (*Haradinaj* original transcript), T. 10197-10198; Witness 28, Exhibit P358, para. 63.

142. According to Nebojša Avramović the police set up an operation to unblock the Pejë/Peć-Gjakovë/Đakovica main road in May 1998.⁵⁴² Dragan Živanović, chief of staff of the command of the VJ 125th mtbr, and subsequently commander of that brigade at the relevant time,⁵⁴³ testified that Colonel Lazarević ordered on 28 May 1998 combat group 3 of the 125th mtbr to lift the blockade of the road from Pejë/Peć to Dečan/Dečani.⁵⁴⁴ According to him, the order was not implemented in May but at the end of July 1998.⁵⁴⁵ British diplomatic cables of 6 and 8 June 1998, respectively, report claims of the MUP that the main operation on the Pejë/Peć-Gjakovë/Đakovica road was successfully concluded, and that the groups of armed Kosovo Albanians who tried to block this road were liquidated.⁵⁴⁶

143. Turning to the chronology of events in the Dukagjin zone at the relevant period of 1998, the attacks by the Serbian forces on the family compounds of the Ahmeti family and the Jashari family on 28 February and on 5 March 1998, respectively, during which Adem Jashari was killed, also had a great impact on the Kosovo Albanian people living beyond Likoshan/Likošane and Prekaz/Prekaze in Skenderaj/Srbica municipality, where these two attacks took place.⁵⁴⁷ There was also an attack by the police on the Sejdu and Nebiu houses in Çirez/Cirez in Skenderaj/Srbica municipality on 28 February 1998, during which Kosovo Albanian civilians were killed.⁵⁴⁸ These attacks left many dead, including elderly, women and children.⁵⁴⁹

144. The Chamber received evidence of an exchange of fire between Serbian forces and the KLA at the Haradinaj compound on 24 March 1998. The Haradinaj family compound was located along the Gramaqel/Gramočelj-Gllogjan/Glodane road at the border between the villages of

⁵⁴² Nebojša Avramović, Exhibit P451, paras 9, 16. John Crosland assumed that a 16 May 1998 order by the 125th mtbr setting out a coordinated action with the MUP to secure supply routes for the VJ units constitutes the order to secure the Gjakovë/Đakovica-Pejë/Peć main road, John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4711-4712.

⁵⁴³ Dragan Živanović, Exhibit P112, para. 3.

⁵⁴⁴ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9406; Dragan Živanović, Exhibit P112, para. 84; Exhibit D61, p. 1; *see also* the continuation orders Exhibits D62, p. 1; D63; Dragan Živanović, Exhibit P112, paras 85-86.

⁵⁴⁵ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9406-9408; Exhibit D16, para. 2.

⁵⁴⁶ Exhibits D19, para. 1; D20, paras 1-2.

⁵⁴⁷ Skender Rexhahmetaj, T. 1031, 1034; Bislim Zyrapi, T. 696; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3098-3099; John Crosland, Exhibit P9 (*Limaj* transcript), T. 1865-1866; Exhibit P17, paras 1-3; Zoran Stijović, Exhibit P121, para. 38; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3199, 3201-3206; Skender Rexhahmetaj, Exhibit P298, para. 11; Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10174, 10205, 10295; Witness 28, Exhibit P358, paras 17-20; Marijana Anđelković, Exhibit P440 (*Haradinaj* original transcript), T. 619-620, 623.

⁵⁴⁸ Witness 28, Exhibit P358, paras 17-18.

⁵⁴⁹ Skender Rexhahmetaj, T. 1031; Witness 80, T. 2679; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3102, 2932-2933, 2935; John Crosland, Exhibit P9 (*Limaj* transcript), T. 1863; Jakup Krasniqi, Exhibit P63 (*Haradinaj* original transcript), T. 5044; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3302; Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10253-10254; Witness 28, Exhibit P358, paras 17, 22.

Glllogjan/Glodane and Dubravë/Dubrava in Deçan/Dečani municipality.⁵⁵⁰ The Haradinaj family compound is approximately 150 to 200 metres away from the Stojanović family compound.⁵⁵¹ There were 27 families living in Dubravë/Dubrava in 1998. The Stojanović family was the only Kosovo Serb or Montenegrin house;⁵⁵² the other families were all Kosovo Albanian.⁵⁵³

145. The Chamber received conflicting evidence with regard to the exchange of gunfire that took place between MUP forces and individuals within the Haradinaj family compound beginning at approximately 1030 hours on 24 March 1998 at the border of Glllogjan/Glodane and Dubravë/Dubrava.⁵⁵⁴ What can be established on the evidence received is that, beginning at around 1030 hours on 24 March 1998, there was an exchange of fire between the Serbian police firing from the yard of the Stojanović property and KLA members firing from the Haradinaj family compound. By about 1100 or 1200 hours the course of the fighting had shifted from the Haradinaj compound to the village of Glllogjan/Glodane.⁵⁵⁵ The fighting went on until approximately 2000 or 2100 hours.⁵⁵⁶ No finding can be made on the evidence whether MUP forces or individuals within the Haradinaj family compound initiated the gunfire.

146. During the course of the battle, Miodrag Otović, the commander of the Irzniq/Rznić police station, was shot and killed approximately 100 metres away from Haradinaj family compound.⁵⁵⁷

⁵⁵⁰ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1845, 1847, 1850-1852, 1908-1909; Witness 28, Exhibit P358, para. 30; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1845, 1850-1852; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2025-2027, 2112-2113; Exhibits P411, p. 2; P412; P413, p. 2; P415.

⁵⁵¹ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 1990; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1846-1847, 1850-1852, 1946-1949; Exhibits P412; P415.

⁵⁵² Dragoslav Stojanović identified himself as “a Serb, a Montenegrin” (Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1845), while his mother identified herself as Montenegrin, Marijana Anđelković, Exhibit P440 (*Haradinaj* original transcript), T. 594. Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2183-2184.

⁵⁵³ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1846.

⁵⁵⁴ Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10253; Witness 28, Exhibit P358, paras 31-34; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6864-6866, 6868-6872, 6876-6877, 6879, 6899-6900, 6902, 6915; Radovan Zlatković, Exhibit P373, paras 22-23, 27; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1858-1859, 1968-1970; Zoran Stijović, Exhibit P121, para. 41; Exhibit P31, para. 1; Ylber Haskaj, Exhibit P40, para. 33; Marijana Anđelković, Exhibit P440 (*Haradinaj* original transcript), T. 502, 646-647; Exhibits P411, p. 2; P414, p. 2; P442, pp 33-35, 40; P446, pp 16-17, 37, 40; P447, pp 17-18, 20.

⁵⁵⁵ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6865, 6868, 7007; Radovan Zlatković, Exhibit P373, paras 23, 27; Exhibit P384, pp 1, 9; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1967-1968; Exhibit P414, p. 2; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2006-2007.

⁵⁵⁶ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6865-6866; Marijana Anđelković, Exhibit P440 (*Haradinaj* original transcript), T. 503-504; Exhibits P411, p. 2; P442, pp 35-36; P446, pp 37, 40; P447, pp 17-18.

⁵⁵⁷ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6867-6870, 6872, 6875-6876, 6879; Radovan Zlatković, Exhibit P373, para. 22; Exhibit P384, pp 8-9; Witness 28, Exhibit P358, para. 32; Nebojša Avramović, Exhibit P450 (*Haradinaj* original transcript), T. 6723-6725; Nebojša Avramović, Exhibit P451, paras 184, 188.

Other MUP officers were said to be wounded.⁵⁵⁸ Ramush Haradinaj was injured and taken to Lahi Brahimaj's house in Jabllanicë/Jablanica.⁵⁵⁹

147. The Chamber received evidence that during the investigations by Serbian authorities, hand grenades, anti-tank mines, rifles, one light machine gun, large amounts of ammunition, uniforms with KLA insignia, boots and other equipment, camouflage canvas uniforms, and cartridges were found in Ramush Haradinaj's house.⁵⁶⁰ Witnesses also gave evidence that, during the battle, rockets, automatic rifles and hand grenades were fired from the Haradinaj compound.⁵⁶¹ Evidence was also received that the bullet casings recovered from the yard and from the second floor of the Haradinaj house could be matched to those found at the Lake Radoniq/Radonjić crime scenes.⁵⁶²

148. Zoran Stijović stated that the Serbian investigators also found in the Haradinaj compound lists of Kosovo Albanians who the Serbian authorities believed were suspected of co-operating with members of the Serbian security forces and who were to be targeted.⁵⁶³ These lists are discussed in more detail later in this Judgement.⁵⁶⁴

149. This shootout at the Haradinaj compound made the Kosovo Albanian population very wary of the Serbian "repression" and spread fear.⁵⁶⁵ The attacks on the Ahmeti family, the Jashari family, and the Haradinaj family motivated many to join the KLA.⁵⁶⁶ Following these attacks Kosovo Albanians in villages started organising themselves.⁵⁶⁷ Ramush Haradinaj's role during the fighting at the Haradinaj compound also increased his popularity in Kosovo.⁵⁶⁸

150. On 25 March 1998, an armed group of Kosovo Albanians opened fire with automatic weapons from the territory of Albania at the Mitar Voinović border post, an attack which was

⁵⁵⁸ Exhibits P151, p. 2; P442, pp 33-34; P446, pp 16-17; P447, p. 17; P384, p. 8.

⁵⁵⁹ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6868; Radovan Zlatković, Exhibit P373, paras 26-28; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3272-3273; Bislim Zyrapi, Exhibit P160, para. 8; Bislim Zyrapi, Exhibit P161, paras 19, 22; Zoran Stijović, Exhibit P121, para. 41.

⁵⁶⁰ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6877; Radovan Zlatković, Exhibit P373, para. 24; Exhibit P384, pp 7-8; Nebojša Avramović, Exhibit P451, para. 184; Exhibit P31, para. 1.

⁵⁶¹ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6869-6870, 6879, 6902; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1859-1860, 1969-1970, 1972-1973; Exhibits P411, p. 2; P413, p. 2; P414, p.2; P442, pp 35-36; P446, p. 37; P447, p. 18.

⁵⁶² Nebojša Avramović, Exhibit P451, para. 184.

⁵⁶³ Zoran Stijović, T. 570, 572-573; Zoran Stijović, Exhibit P121, paras 41-42.

⁵⁶⁴ See *infra*, paras 640-643.

⁵⁶⁵ Skender Rexhahmetaj, T. 1033-1034; Skender Rexhahmetaj, Exhibit P298, para. 11.

⁵⁶⁶ Skender Rexhahmetaj, T. 1027-1028, 1030-1031, 1033-1035; Jakup Krasniqi, Exhibit P65, para. 8, Annex 18; Zoran Stijović, Exhibit P121, para. 38; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3186-3188; Skender Rexhahmetaj, Exhibit P297, para. 5; Skender Rexhahmetaj, Exhibit P298, paras 6-7, 11; Skender Rexhahmetaj, Exhibit P299, paras 2(b), 2(f); Witness 17, Exhibit P344, para. 7.

⁵⁶⁷ Skender Rexhahmetaj, T. 1027-1028, 1031-1032, 1034, 1038-1039, 1046; Skender Rexhahmetaj, Exhibit P297, paras 5, 11; Skender Rexhahmetaj, Exhibit P298, paras 6-7; Skender Rexhahmetaj, Exhibit P299, paras 2(b), 2(f).

⁵⁶⁸ Cufë Krasniqi, Exhibit P54, paras 38, 40; Skender Rexhahmetaj, Exhibit P298, para. 11; Skender Rexhahmetaj, Exhibit P299, para. 2(f).

repelled.⁵⁶⁹ Such incidents along the border became increasingly common around this time.⁵⁷⁰ The Yugoslav government had built refugee accommodations in Baballoq/Babaloc in Deçan/Dečani municipality. Serb and Montenegrin refugees had been housed there.⁵⁷¹ This settlement in Baballoq/Babaloc, which was located on the edge of KLA controlled territory, was attacked by the KLA on 18 and 19 April 1998 from the Kosovo Albanian village of Baballoq/Babaloc or Suka-e-Baballoq/Babaloc.⁵⁷² On the evidence of Witness 28, the Serbian forces retook the area on 20 April 1998.⁵⁷³ Kosovo Albanian refugees told Witness 28 that, in turn, commencing on 19 or 20 April 1998, police forces shot at them from “Suka-e-Babaloc and Suka Crmljanska, the Babaloc settlement and the Agro-Combinat behind the Babaloc settlement”.⁵⁷⁴

151. At 0715 hours on 21 April 1998, uniformed KLA soldiers and armed civilians arrived in tractors and trucks in the village of Ratish-i-Epërm/Gornji Ratiš in Deçan/Dečani municipality and fired shots into the air above Kosovo Serb houses.⁵⁷⁵ As a result, most of the Kosovo Serb inhabitants left their houses, after which the KLA took control of the village.⁵⁷⁶ Other refugees told Witness 28 that the Kosovo Serbs had vacated Dashinoc/Dašinovac in Deçan/Dečani municipality on 21 April 1998, after which the KLA took control of that village.⁵⁷⁷

152. John Crosland, who was present on the ground in Kosovo at the relevant time, gave evidence of fighting around Baballoq/Babaloc in the Deçan/Dečani region on 22 April 1998.⁵⁷⁸ According to him on 23 April 1998 the VJ presence in Kosovo was at its largest and the VJ was most heavily armed “since the beginning of the crisis”. He reported that it was concentrated in border areas and still very visible elsewhere.⁵⁷⁹

153. According to a British diplomatic report, the VJ had stated that they had taken action to counter the infiltration of the FRY-Albanian border by a group of about 200 armed Kosovo

⁵⁶⁹ Exhibit P31, para. 4.

⁵⁷⁰ Branko Gajić, Exhibit P27, para. 21. *See also* for example Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9682-9683; Exhibits P31, para. 4; D7, para. 3; D27, para. 3.

⁵⁷¹ Witness 28, Exhibit P358, para. 37.

⁵⁷² Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10179-10182, 10263-10264; Witness 28, Exhibit P358, paras 38, 40-41.

⁵⁷³ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10181.

⁵⁷⁴ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10181-10182, 10239-10240, 10243-10244, 10264; Witness 28, Exhibit P358, para. 42. *See also* Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10178, 10201-10202, 10245, 10263.

⁵⁷⁵ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10229, 10235; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10229, 10235; Witness 28, Exhibit P358, para. 49.

⁵⁷⁶ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10228; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10228; Witness 28, Exhibit P358, paras 48-49, 51.

⁵⁷⁷ Witness 28, Exhibit P358, para. 51.

⁵⁷⁸ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3007; Exhibit D5.

⁵⁷⁹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3008; Exhibit D6.

Albanians in the Gjakovë/Đakovica area.⁵⁸⁰ This operation, in which 16 armed Kosovo Albanians were killed, began on 22 April 1998 and was still ongoing on 24 April 1998.⁵⁸¹ According to a British diplomatic report of 26 April 1998 based on information from a local independent news agency, eight Kosovo Albanians were killed in a police action in the village of Gllogjan/Glodane.⁵⁸²

154. A British diplomatic report of 29 April 1998 contains the assessment of John Crosland, who was then touring the area on a regular basis, that the number of police in Kosovo was higher than at any stage up to that point in the crisis and that the VJ activity was also at its highest.⁵⁸³ British diplomatic cables dated 6 and 8 May 1998 reported heavy fighting in Ponošec/Ponoševac in Gjakovë/Đakovica municipality near the Albanian border, continuing into 8 May 1998.⁵⁸⁴ According to the latter cable, late on 7 May 1998 the VJ admitted to its first fatality since the Kosovo crisis escalated two months earlier, in that a VJ conscript was killed when armed Kosovo Albanians attacked a VJ patrol on the border between Albania and Montenegro.⁵⁸⁵

155. On or about 19 May 1998, Serbian forces attacked the village of Grabanicë/Grabanica in Klinë/Klina municipality. This attack lasted three days, after which the Serbian forces overran the village.⁵⁸⁶ A regular combat report of the 125th mtbr dated 20 May 1998 refers to the MUP currently carrying out a “serious operation”, namely in the villages of Grabanicë/Grabanica and Dollovë/Dolovo, Qeskovë/Ceskovo and Kpuz, all in Klinë/Klina municipality.⁵⁸⁷ On 24 or 25 May 1998, Witness 28 observed the aftermath of the MUP attack on Dollovë/Dolovo in Klinë/Klina municipality.⁵⁸⁸ Approaching the village, the witness encountered many police checkpoints and heard shooting.⁵⁸⁹ Upon arrival, the witness observed uniformed Serbian police, dead animals on the road, and burning houses.⁵⁹⁰

156. The Chamber received evidence from various sources about the killing of seven or eight members of the Hamzaj family by Serbian police in Lubeniq/Lubenić in Pejë/Peć on 25 May 1998.⁵⁹¹ Local Kosovo Albanians told Witness 28 later that this incident was in retaliation

⁵⁸⁰ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3009-3010; John Crosland, Exhibit P9 (*Limaj* transcript), T. 1891, 1893; Exhibits P19, paras 1-2, 5; D8, p. 1.

⁵⁸¹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3009-3011; John Crosland, Exhibit P9 (*Limaj* transcript), T. 1891, 1893; Exhibits P19, paras 1-2, 5; D8, paras 1-2, 4.

⁵⁸² John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3011-3012, 3129-3130.

⁵⁸³ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3012-3013; Exhibit D10, para. 2; *see also* Exhibit D11, para. 5.

⁵⁸⁴ Exhibits D11, para. 5; D38.

⁵⁸⁵ Exhibit D11, para. 4.

⁵⁸⁶ *See infra*, paras 444, 584.

⁵⁸⁷ Dragan Živanović, Exhibit P112, para. 80; Exhibit P114, para. 5.

⁵⁸⁸ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10206; Witness 28, Exhibit P358, paras 65-68.

⁵⁸⁹ Witness 28, Exhibit P358, paras 67-68.

⁵⁹⁰ Witness 28, Exhibit P358, para. 68.

⁵⁹¹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4608-4609; Witness 28, Exhibit P358, para. 70; Exhibit D100, pp 4-9.

to KLA actions in Lubeniq/Lubenić and a “turning point” that caused the Kosovo Albanians in the area along the Dečan/Dečani-Pejë/Peć section of the road to take up arms and join the KLA.⁵⁹² A British diplomatic cable of 27 May 1998 refers to media reports of heavy fighting in and around Dečan/Dečani, which continued for weeks.⁵⁹³ John Crosland assessed that Dečan/Dečani was then becoming the focus of intense Kosovo Albanian and Serbian activity to gain control of the town. He reported that the living conditions in the town had increasingly deteriorated for those Kosovo Serb and Kosovo Albanian inhabitants who had not yet fled. According to him, this highlighted the fact that Dečan/Dečani was becoming the key area for the re-supply from Albania into Kosovo.⁵⁹⁴ The impact of this continuous fighting on the town is illustrated by a British diplomatic cable dated 17 June 1998. The cable describes stark contrasts between the situation in Gjakovë/Đakovica and Pejë/Peć as “seemingly” normal, with shops fully stocked, markets operating, and people visible everywhere, whereas 20 miles further, in Dečan/Dečani and its surroundings, extensive damage and virtually no sign of normal life were to be found, but there was heavy police presence.⁵⁹⁵

157. The Chamber received evidence from different sources that on 29 May 1998, Serbian forces had mounted an attack on the villages Vranoc-e-Vogël/Mali Vranovac and Isnij/Istinić in Dečan/Dečani municipality.⁵⁹⁶

2. KLA attacks on the police

158. The Chamber heard evidence that throughout the period from 1 March to 30 June 1998, the KLA attacked MUP forces and kidnapped and killed police officers in the territory of the Dukagjin zone. There are reports of an increase in the number of such attacks from early spring 1998,⁵⁹⁷ but in particular after the 24 March 1998 attack on the Haradinaj family compound.⁵⁹⁸ There was a further increase of attacks in May 1998.⁵⁹⁹ Attacks are reported to have occurred predominantly on the Klinë/Klina-Gjakovë/Đakovica-Pejë/Peć road.⁶⁰⁰

⁵⁹² Witness 28, Exhibit P358, paras 71, 76.

⁵⁹³ John Crosland, Exhibit P9 (*Limaj* transcript), T. 1925, 1928; Zoran Stijović, Exhibit P121, para. 60; Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10272-10273; Exhibits D15, para. 2; D16, para. 1; D17, para. 1; D19, para. 1; D40, para. 8; D41, para. 3.

⁵⁹⁴ John Crosland, Exhibit P9 (*Limaj* transcript), T. 1926-1929; Exhibit D41, para. 3.

⁵⁹⁵ Exhibit D23, paras 1, 9.

⁵⁹⁶ Skender Rexhahmetaj, T. 1059; Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8723-8724, 8733-8734, 8741-8742; Zymer Hasanaj, Exhibit P37, paras 3, 8; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5850-5851; Cufë Krasniqi, Exhibit P54, paras 24, 51-54.

⁵⁹⁷ Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9859-9861; Witness 69, Exhibit P370, paras 22-23.

⁵⁹⁸ Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10200-10201; Witness 28, Exhibit P358, paras 36, 54, 75; Radovan Zlatković, Exhibit P373, para. 28.

⁵⁹⁹ Exhibit P20, p. 1; Dragan Živanović, Exhibit P111, paras 48, 88; Dragan Živanović, Exhibit P112, paras 48, 88; Exhibits P115, para. 2, e; P116, para. 2.

⁶⁰⁰ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4670, 4720; Dragan Živanović, Exhibit P112, para. 16; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10200; Witness 28, Exhibit P358, paras 36, 75; Radovan Zlatković, Exhibit P373, para. 28.

159. According to a contemporaneous Serbian police document, on 1 March 1998, at about 2215 hours, armed Kosovo Albanians fired upon a MUP housing facility in Hereç/Erec in Gjakovë/Đakovica municipality with a rocket launcher, grenades and several rounds of an automatic weapon. The inhabitant Tomislav Lukić, a retired MUP officer, remained unharmed; however, the building suffered substantial damage.⁶⁰¹ Zoran Stijović stated that from 2 March 1998, the police stations in Çallapek/Čelopek and Kličinë/Klinčina, both in Pejë/Pec municipality, and the one in Irzniq/Rznić in Deçan/Dečani municipality, were under “constant fire”, *i.e.* they were attacked almost on a daily basis.⁶⁰²

160. Serbian military documents of the time report an attack on a police patrol in Ponošec/Ponoševac village in Gjakovë/Đakovica municipality on 3 May 1998, at about 1000 hours, in which four policemen were wounded. According to the documents, the attacks came from armed Kosovo Albanians from the direction of the neighbouring villages Smolicë/Smonica, Popoc/Popovac, Stubëll/Stubla, Berjah, Nivokaz, Molliq/Molić, Brovinë/Brovina, and Morinë/Morina, all in Gjakovë/Đakovica municipality.⁶⁰³

161. The Chamber received evidence from various sources that on 24 May 1998, at around 1030 hours, two policemen from Šabac, Nikola Jovanović and Rade Popadić, were kidnapped near Prilep and Junik in Deçan/Dečani municipality on the Deçan/Dečani-Gjakovë/Đakovica road.⁶⁰⁴ Witness 28 learned from the local media that this was allegedly done by the KLA.⁶⁰⁵ Reportedly, the two policemen were last seen on duty going from the Baballoq/Babaloc police station in the direction of Rastavicë/Rastavica in Deçan/Dečani municipality.⁶⁰⁶ According to witness statements Rade Popadić or both of them were later killed.⁶⁰⁷ There is no factual support for this in the statements. The criminal report from the contemporaneous Serbian investigation states that due to security reasons, an on-site investigation

⁶⁰¹ Exhibit P149, p. 1.

⁶⁰² Zoran Stijović, Exhibit P121, para. 20(a); Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8990-8992, 9058-9059. See also Dragan Živanović, Exhibit P112, para. 31; Exhibit D46, p. 2.

⁶⁰³ Exhibits D52, p. 2; D53, p. 1.

⁶⁰⁴ Zoran Stijović, Exhibit P121, para. 55; Exhibit P157, p. 1; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10198-10199; Witness 28, Exhibit P358, para. 65; Witness 69, Exhibit P370, para. 29; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6884-6886; Radovan Zlatković, Exhibit P373, para. 13 (pp 8-9, 11); Exhibit P377, pp 1-3; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6602, 6604; Exhibit P383, p. 14.

⁶⁰⁵ Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10198-10199; Witness 28, Exhibit P358, para. 65.

⁶⁰⁶ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6884-6885; Radovan Zlatković, Exhibit P373, para. 13 (p. 9); Exhibit P377, p. 1; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6604.

⁶⁰⁷ Witness 69, Exhibit P370, para. 29 (only mentioning Rade Popadić); Radovan Zlatković, Exhibit P373, para. 13 (pp 8-9, 11).

was not performed, and that the perpetrators were unknown but were of the “Albanian ethnic minority”.⁶⁰⁸

162. An RDB report dated 6 August 1998 states that according to statements of a group of eight who were released from the “so-called prison” in Jabllanicë/Jablanica in Gjakovë/Đakovica municipality, two policemen captured in Deçan/Dečani about two months earlier were detained and tortured on a daily basis during their detention, and had “their arms severed from their bodies”.⁶⁰⁹ None of these individuals were witnesses in this case and their statements are not in evidence. Zoran Stijović who gave evidence about this report stated that the two policemen were maltreated but did not state that their arms had been severed from their bodies.⁶¹⁰ The Chamber received no information how this report was created. In light of this and of considerations discussed earlier in the Judgement,⁶¹¹ the Chamber finds that this information, not being independently corroborated by reliable evidence, is not sufficiently reliable to make a positive finding.⁶¹² The remains of Rade Popadić were discovered at Lake Radoniq/Radonjić canal site, as the Chamber found elsewhere.⁶¹³ On the basis of the foregoing, and without any evidence on the circumstances in which the two police officers died, the Chamber cannot make a finding beyond reasonable doubt as to whether these two policemen were held in Jabllanicë/Jablanica, about the circumstances of their death, or about any KLA involvement.

163. According to a MUP report, covering the period from March to December 1998 and dated 21 December 1998, on 23 May 1998 at around 1500 hours, armed Kosovo Albanians used sniper weapons, light machine guns, hand-held rocket launchers, and recoilless guns to attack a column of MUP vehicles that was travelling on the Gjakovë/Đakovica-Pejë/Peć road, moving through the villages Pobërgjë/Pobrđe, Voksh/Vokša, Prilep, Drenoc/Drenovac, and Rastavicë/Rastavica in Deçan/Dečani municipality. Several police officers were wounded, namely Srdan Andrejević, Sladan Cubović, Dragoljub Đorđević, Mladen Tanasijević, Mladen Vujović, Predrag Raković, and Vladan Perić.⁶¹⁴

164. The same report details several other attacks, namely

⁶⁰⁸ Exhibit P377, pp 2-3. A Serbian report based on Exhibit P377 (referring to this investigation’s case number) states that the two policemen were kidnapped by an “ethnic Albanian DTG”, Exhibit P383, p. 14.

⁶⁰⁹ Zoran Stijović, Exhibit P121, para. 55; Exhibit P157, p. 1.

⁶¹⁰ Zoran Stijović, Exhibit P121, para. 55.

⁶¹¹ *See supra*, para. 13.

⁶¹² A statement attributed to Zenel Alija mentions two policemen captured in Baballoq/Babaloc in Deçan/Dečani municipality whose bodies were disposed of in Lake Radoniq/Radonjić, Radovan Zlatković, Exhibit P373, para. 59; Exhibit P389, p. 4, para. 4. However, this evidence provides insufficient detail for the Chamber to determine whether it relates to the police officers Nikola Jovanović and Rade Popadić. In addition, the Chamber found the probative value of this alleged statement highly questionable, *see infra*, paras 208-210.

⁶¹³ *See infra*, para. 338.

⁶¹⁴ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, pp 13-14.

- an attack on 25 May 1998 by “an ethnic Albanian DTG” at around 0645 hours on a Golf passenger vehicle in Lubeniq/Ljubenić village in Pejë/Peć municipality, injuring police officers Slobodan Vuković, Dimitrije Radović, and Momčilo Antić;⁶¹⁵
- an attack by “an ethnic Albanian DTG” also on 25 May 1998 from around 0800 hours that lasted almost all day on a column of MUP vehicles that was travelling from Gjakovë/Đakovica towards the branch police station at Junik in Deçan/Dečani municipality, involving infantry weapons and mortars from the direction of Baballoq/Babaloć, Prilep, Glllogjan/Glodane, Sllup/Slup, Voksh/Vokša, and Drenoc/Drenovac in Deçan/Dečani municipality;⁶¹⁶
- another attack on 25 May 1998 by “an ethnic Albanian DTG” at around 0800 hours, against an Opel Kadett passenger vehicle near Rastavicë/Rastavica village in Deçan/Dečani municipality, seriously injuring Junik branch police station commander Miladin Novaković;⁶¹⁷ and
- an attack by “the group around Ramush Haradinaj” and inhabitants from Strelc/Streoc village in Deçan/Dečani municipality on 25 May 1998 at around 1100 hours, in the aforementioned village on the Pejë/Peć-Gjakovë/Đakovica road on MUP members, killing Dragoljub Đukić.⁶¹⁸

165. The Chamber is hesitant to rely on this report in the absence of corroborating evidence, as it is largely unsourced, in particular with regard to attributing these acts to “the group around Ramush Haradinaj” or to “an ethnic Albanian DTG”. The Chamber also considered that this report was compiled on 21 December 1998 about events alleged to have taken place as long before as 23 May 1998.

166. A British diplomatic cable of 27 May 1998 stated that the Serbian security forces issued frequent reports of attacks on police patrols.⁶¹⁹ Another British diplomatic cable of 29 May 1998 referred to unofficial data released by the Prishtinë/Priština media centre, according to which in

⁶¹⁵ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, p. 13.

⁶¹⁶ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, p. 13.

⁶¹⁷ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, p. 14.

⁶¹⁸ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, pp 1-3, 5.

⁶¹⁹ Exhibit D40, para. 8.

Kosovo 14 policemen had been killed since the beginning of the year, and an additional four kidnapped, with 356 “organised terrorist actions” undertaken in that period.⁶²⁰

167. The MUP report dated 21 December 1998, mentioned above, refers to the following further attacks:

- an attack on 30 May 1998 by “an ethnic Albanian DTG”, at around 1845 hours, with sniper weapons upon several MUP officers who carried out regular duties in the town of Dečan/Dečani, inflicting life-threatening injuries on police officer Slavko Tomašević;⁶²¹
- an attack by “the group around Ramush Haradinaj” on 1 June 1998, at around 0700 hours, by erecting obstacles in several locations and firing on MUP officers travelling in a column of motor vehicles towards the village of Junik in Dečan/Dečani municipality;⁶²²
- an attack by “the group around Ramush Haradinaj” on 12 June 1998, at around 1000 hours, in the Prilep village sector in Dečan/Dečani municipality, against several police officers seeking to secure the Gjakovë/Đakovica-Pejë/Peć road, injuring Boban Veljković and Dušan Kovačević seriously;⁶²³
- an attack by “the same group” on 14 June 1998, at about 1000 hours, in Drenoc/Drenovac village in Dečan/Dečani municipality, firing on several MUP officers with sniper rifles and automatic weapons;⁶²⁴
- an attack by “the same group” also on 14 June 1998 at about 1850 hours in Lëbushë/Ljubuša village in Dečan/Dečani municipality, on an Ascona 18 passenger vehicle by firing automatic weapons, injuring police officers Miloje Petrović, Zdravko Ašanin, and Tatjana Milatović;⁶²⁵

⁶²⁰ Exhibit D41, para. 7.

⁶²¹ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, p. 10.

⁶²² Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, pp 1-3, 5.

⁶²³ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, pp 1-3, 5.

⁶²⁴ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, pp 1-3, 5.

⁶²⁵ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, pp 1-3, 5.

- an attack by “the same group” on 15 June 1998, at about 1000 hours, by throwing a hand grenade at the police station in Drenoc/Drenovac village in Dečan/Dečani municipality, injuring police officer Vidomir Šalipur;⁶²⁶
- an attack by “a DTG made up of ethnic Albanians” on 22 June 1998, at around 1700 hours, on MUP officers on the Gjakovë/Đakovica-Pejë/Peć road in Prilep village in Dečan/Dečani municipality, wounding officer Zoltan Tot;⁶²⁷
- an attack by “an ethnic Albanian DTG” on the same day, at around 1815 hours, in Pobërgjë/Pobrdë village, in Dečan/Dečani municipality, by firing at MUP officers from the direction of Voksh/Vokša village in Dečan/Dečani municipality, injuring officer Marko Škorić;⁶²⁸ and
- an attack by “the group around Ramush Haradinaj” on 28 June 1998, at around 0430 hours, on a police checkpoint in the village of Prilep in Dečan/Dečani municipality with automatic and sniper weapons, killing police officer Pero Tintor.⁶²⁹

168. The Chamber expressed its doubts with regard to the reliability of this report.⁶³⁰ Therefore, the Chamber finds that this report, not being independently corroborated by reliable evidence, is not sufficiently reliable to make a positive finding.

169. According to an estimate by Vladimir Lazarević, VJ chief of staff, speaking about events in the area of Drenicë/Drenica and Metehi/Metohija, 21 policemen and 5 VJ members had been killed and over 50 policemen and 10 VJ members had been wounded by 3 June 1998.⁶³¹ Zoran Stijović, head of the analytical section of the Prishtinë/Priština RDB centre at the relevant time,⁶³² when referring to casualties among police officers in Pejë/Peć and Dečan/Dečani municipalities, stated that in mid-June 1998, Muslim Iznet Gutić was kidnapped from the village of Zllapek/Zlopek in Pejë/Peć municipality, while cousins Vujsić and Vuković were kidnapped from the villages of Raushiq/Raušić in Pejë/Peć municipality and “Ljubovik”, respectively. He stated that in June and July 1998, over 30 police officers were killed in the area of Dečan/Dečani and Pejë/Peć.⁶³³

⁶²⁶ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, pp 1-3, 5.

⁶²⁷ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, p. 7.

⁶²⁸ Radovan Zlatković, Exhibit P373, para. 13 (p. 11); Exhibit P383, p. 7.

⁶²⁹ Radovan Zlatković, Exhibit P373, para. 13 (pp 9, 11); Exhibits P379, pp 1, 3-4; P383, pp 1-3, 6.

⁶³⁰ See *supra*, para. 165.

⁶³¹ Dragan Živanović, Exhibit P112, para. 88; Exhibit P116, p. 1, para. 2, p. 4.

⁶³² Zoran Stijović, T. 537; Zoran Stijović, Exhibit P121, para. 2; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8871, 9096.

⁶³³ Zoran Stijović, Exhibit P121, para. 54.

170. The Chamber accepts from the above evidence that in the period from March through June 1998 there were frequent attacks on police personnel in the area of the Dukagjin zone. On the evidence the Chamber does not make a finding on the identity of the perpetrators of these attacks, or the exact circumstances in which the attacks occurred.

3. Kidnapping, mistreatment and killing of civilians by the KLA

(a) Individual incidents of kidnapping, mistreatment and killing of civilians by the KLA

(i) Jah Bushati

171. Several witnesses testified about Jah Bushati's abduction in the spring of 1998 and subsequent detention in the KLA compound in Jabllanicë/Jablanica. Their evidence is discussed below.

172. Witness 75 testified that in the spring of 1998 Jah Bushati was arrested by four soldiers, wearing a uniform and a patch with an eagle and the letters "UÇK" on their arms, on the road between Zhabel/Žabelj and Buçan/Bučane, about 15 to 20 minutes on foot from Jabllanicë/Jablanica. A month after this event, Witness 75 went alone to visit him in Jabllanicë/Jablanica, but at the gate of the KLA compound a soldier stopped him and told him not to come there anymore.⁶³⁴ The soldier had a beard and the witness found out later that his name was Naser Ibrahimaj (Brahimaj), a cousin of Lahi Brahimaj.⁶³⁵ About a week later, Witness 75 returned to the KLA compound in Jabllanicë/Jablanica⁶³⁶ together with Witness 76.⁶³⁷ Naser Ibrahimaj (Brahimaj) told them that Jah Bushati was in the compound⁶³⁸ and that they had to wait at the barrier,⁶³⁹ 30 metres before the gate.⁶⁴⁰ Shortly thereafter Jah Bushati was brought out at the gate.⁶⁴¹ From a distance of about 30 metres Witness 75 could see that Jah Bushati was very badly beaten. His face was bruised. Two soldiers were holding him, one on each side, helping him to walk.⁶⁴² Witness 75 and Witness 76 were able to see Jah Bushati for no longer than a minute.⁶⁴³

173. Witness 75 testified further that two or three weeks after this visit, Witness 75 and Witness 76 were told that they could see Jah Bushati for half an hour. Soldiers brought Jah Bushati to the barrier, two holding him by the hand while two others were standing behind him. During

⁶³⁴ Witness 75, T. 854-855, 866-867, 871.

⁶³⁵ Witness 75, T. 855-856.

⁶³⁶ For a description of the KLA compound in Jabllanicë/Jablanica, *see infra*, paras 429-430.

⁶³⁷ Witness 75, T. 867-868, 873.

⁶³⁸ Witness 75, T. 903.

⁶³⁹ Witness 75, T. 903-905.

⁶⁴⁰ Witness 75, T. 859-860.

⁶⁴¹ Witness 75, T. 905, 906.

⁶⁴² Witness 75, T. 906-907.

the 10 or 15 minute conversation effectively granted, Jah Bushati told Witness 75 that he was kept in prison in Jabllanicë/Jablanica and that he did not know why.⁶⁴⁴ Jah Bushati was in a very bad condition: his eyes were swollen, his face was disfigured, his hands were swollen, and his clothes were covered with mud.⁶⁴⁵ Jah Bushati told Witness 75 that initially he was kept in the basement but subsequently he was taken to a room that had a view on a meadow and was kept there. Whenever the soldiers would go in, they would beat him. The persons who beat him were wearing masks, so he did not know who was actually beating him.⁶⁴⁶ He had not washed for a long time. He was given food once a week, “just like you give food to a dog”, in devastating conditions.⁶⁴⁷ Jah Bushati was alone in his room. There were other rooms where he could hear other people being beaten.⁶⁴⁸ This was the last time Witness 75 saw Jah Bushati at the KLA compound in Jabllanicë/Jablanica.⁶⁴⁹

174. Witness 75 testified further that about three months after Jah Bushati’s arrest, Naser Ibrahimaj (Brahimaj) went to Witness 75’s house with Jah Bushati and told Witness 75 that Jah was kept in Jabllanicë/Jablanica because he was suspected of being a Serbian collaborator.⁶⁵⁰ They then left and took Jah Bushati back to Jabllanicë/Jablanica.⁶⁵¹ Witness 75 concluded that Jah Bushati had not been released.⁶⁵²

175. Witness 75 also testified that he saw Lahi Brahimaj and Idriz Balaj at the KLA compound in Jabllanicë/Jablanica.⁶⁵³ When they would enter or exit the compound the soldiers would salute them, by raising their fist to their head.⁶⁵⁴ Witness 75 did not know Idriz Balaj’s name at the time but he found out later what his name was and who he was.⁶⁵⁵

176. Witness 75 believed that Jah Bushati joined the KLA after 20 May 1998.⁶⁵⁶

177. Witness 76 testified that in “the beginning of the war” in 1998 Jah Bushati was abducted from the road in Zhabel/Žabelj and taken to a KLA prison in Jabllanicë/Jablanica.⁶⁵⁷ Witness 76

⁶⁴³ Witness 75, T. 907.

⁶⁴⁴ Witness 75, T. 907-908.

⁶⁴⁵ Witness 75, T. 908.

⁶⁴⁶ Witness 75, T. 909.

⁶⁴⁷ Witness 75, T. 909.

⁶⁴⁸ Witness 75, T. 909.

⁶⁴⁹ Witness 75, T. 910.

⁶⁵⁰ Witness 75, T. 910-911.

⁶⁵¹ Witness 75, T. 910-911.

⁶⁵² Witness 75, T. 911.

⁶⁵³ Witness 75, T. 911, 915.

⁶⁵⁴ Witness 75, T. 911, 913, 915.

⁶⁵⁵ Witness 75, T. 914-915.

⁶⁵⁶ Witness 75, T. 1765-1766; Exhibit D195.

⁶⁵⁷ Witness 76, Exhibit P304, para. 5; Witness 76, T. 1370, 1378-1379, 1408, 1422.

heard this from Witness 75.⁶⁵⁸ The witness stated that Jah Bushati was detained in the KLA compound in Jabllanicë/Jablanica. The witness believed that he was detained for two months, during which Witness 76 and Witness 75 visited Jah Bushati every three weeks.⁶⁵⁹ Witness 76 obtained a permit from a KLA soldier in the witness's village, which allowed travel to Jabllanicë/Jablanica.⁶⁶⁰ At their first visit, they were stopped by a KLA guard on the road before reaching the KLA compound in Jabllanicë/Jablanica. During each visit, Witness 76 would wait outside the compound for the armed guards to bring Jah Bushati to the gate. There were armed guards around.⁶⁶¹ Each time Jah Bushati was brought out, his face was swollen, he had bruises on his body and appeared to have been beaten "black and blue".⁶⁶² His clothes were dirty, muddy, sometimes wet.⁶⁶³ Subsequently Jah Bushati told the witness that other prisoners were also held in the KLA compound in Jabllanicë/Jablanica, that guards would put him and others into water up to the waist, and that he could hear the screams of other detainees while being beaten.⁶⁶⁴ After two or three months in Jabllanicë/Jablanica, Jah Bushati was sent to the "frontline" to fight as a KLA soldier.⁶⁶⁵

178. Witness 80 also gave evidence that Jah Bushati was detained in the KLA compound in Jabllanicë/Jablanica. He believed that this was because he was alleged to be a collaborator with Serbia. Jah Bushati was beaten badly by individuals known under the pseudonyms of Bandashi and Rusi. Witness 80 saw Jah Bushati being beaten once, this was around 20-25 May 1998.⁶⁶⁶ Jah Bushati was subsequently released and he became a "good [KLA] soldier".⁶⁶⁷ According to Witness 80, soon thereafter Jah Bushati abducted him from the Kosuriq/Kosurić—Gllgojan/Glodane road and brought him to the KLA compound in Jabllanicë/Jablanica.⁶⁶⁸

179. Shëfqet Kabashi also gave evidence that he saw Jah Bushati detained in Jabllanicë/Jablanica. On Kabashi's evidence in the *Limaj* trial, Jah Bushati was taken to Jabllanicë/Jablanica by a person named Muftari.⁶⁶⁹ Shëfqet Kabashi heard that this was in relation

⁶⁵⁸ Witness 76, Exhibit P304, para. 5; Witness 76, T. 1408.

⁶⁵⁹ Witness 76, Exhibit P304, paras 7, 16; Witness 76, T. 1378-1379.

⁶⁶⁰ Witness 76, Exhibit P304, para. 8.

⁶⁶¹ Witness 76, Exhibit P304, paras 9, 16; Witness 76, T. 1382.

⁶⁶² Witness 76, Exhibit P304, para. 9; Witness 76, T. 1371-1372, 1410.

⁶⁶³ Witness 76, T. 1372-1373.

⁶⁶⁴ Witness 76, Exhibit P304, para. 16; Witness 76, T. 1403-1406, 1420-1421.

⁶⁶⁵ Witness 76, Exhibit P304, para. 14; Witness 76, T. 1380, 1382-1383, 1387.

⁶⁶⁶ Witness 80, T. 2340-2341.

⁶⁶⁷ Witness 80, T. 2341.

⁶⁶⁸ Witness 80, T. 2342.

⁶⁶⁹ Shëfqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4262, 4265.

to an incident a day or two earlier in which a person was shot.⁶⁷⁰ Shefqet Kabashi saw Lahi Brahimaj beat Jah Bushati.⁶⁷¹ Shefqet Kabashi did not give a time frame for this event.

180. During the testimony of Witness 75 it became apparent that prior to testifying before the Tribunal, he had provided statements, under oath, to domestic authorities in a State in relation to an asylum application, in which he had given a different account of the fate of Jah Bushati. In none of these statements had Witness 75 mentioned any of the facts he testified about before the Chamber. Aspects of Witness 75's testimony before the Chamber do not appear credible, for example, Witness 75's evidence that Jah Bushati would discuss with Witness 75 the identity of the persons who beat him, in the presence of KLA soldiers.⁶⁷² Earlier in this trial the Chamber has discussed the circumstances surrounding Witness 75's contacts with the Office of the Prosecutor in relation to his evidence before the Tribunal and the Prosecution's involvement in Witness 75's asylum application.⁶⁷³ In the circumstances the Chamber cannot exclude the possibility that Witness 75's decision to give evidence in the present proceedings may have been influenced by personal motives. While, in and of itself, this would not render his evidence unreliable, considering this together with the varying accounts Witness 75 provided to the domestic authorities and to the Chamber and his demeanour in court, the Chamber does not accept Witness 75's evidence as convincing. It will rely on it only when corroborated by other, credible evidence. Witness 76's evidence is based in part on the evidence of Witness 75. For the reasons given, the Chamber does not accept this part of Witness 76's evidence as reliable. However, the Chamber finds Witness 76 generally a credible witness. While Witness 76 could not remember all details of the events testified about, the Chamber notes that more than 13 years had passed between these events and the witness's testimony before the Tribunal. The Chamber was left with the impression that Witness 76 was truthful in answering the questions. It accepts Witness 76's evidence with the caveat mentioned above.

181. Elsewhere in this Judgement the Chamber expresses its views about the credibility of Witness 80.⁶⁷⁴ The Chamber rejects this evidence as unreliable. The Chamber holds elsewhere that it would accept Shefqet Kabashi's evidence in the *Limaj* trial only if it is corroborated by reliable evidence in the present proceedings.⁶⁷⁵ Kabashi's evidence about Jah Bushati's detention in the KLA compound in Jabllanicë/Jablanica is corroborated by the evidence of Witness 76, whom the Chamber finds reliable. His evidence about Lahi Brahimaj beating Jah Bushati is not corroborated.

⁶⁷⁰ Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4265.

⁶⁷¹ Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4262.

⁶⁷² See *supra*, para. 173.

⁶⁷³ See Confidential Annex.

⁶⁷⁴ See *infra*, paras 448-452, 551-554.

⁶⁷⁵ See *infra*, para. 473.

182. In conclusion, the Chamber accepts that in the spring of 1998 Jah Bushati was abducted and taken to the KLA compound in Jabllanicë/Jablanica. He was detained in this compound for a period of time where he was beaten by KLA soldiers. The evidence does not establish the identity of the individuals who beat Jah Bushati. The Chamber accepts from the evidence that after a period of detention Jah Bushati joined the KLA as a soldier.

(ii) Mijat Stojanović, Dragoslav Stojanović and Veselin Stijović

183. Mijat Stojanović and Dragoslav Stojanović fled their family compound in Dubravë/Dubrava in Deçan/Deçani municipality after the clash between the MUP forces and the KLA at the Haradinaj family compound on 24 March 1998.⁶⁷⁶ At around 0830 or 0900 hours on 18 April 1998, two members of the Stojanović family, Mijat Stojanović and Dragoslav Stojanović, and their relative Veselin Stijović, all Kosovo Serbs, returned to the Stojanović family compound to retrieve some of their belongings.⁶⁷⁷ While Mijat Stojanović and Veselin Stijović were packing, gunshots were fired from the direction of Dubravë/Dubrava.⁶⁷⁸ The initial shots were followed by further gunfire from the direction of the Haradinaj compound in Gllogjan/Glodane.⁶⁷⁹ Mijat, Dragoslav, and Veselin all stated that they were unarmed and so they took refuge in the Stojanović compound.⁶⁸⁰

184. Dragoslav Stojanović, Mijat Stojanović and Veselin Stijović believed that the attack was directed at the Stojanović property and that automatic weapons and small arms were used, in addition to hand-held launchers.⁶⁸¹ The shooting continued for roughly 40 minutes, after which 15 to 30 men carrying small arms entered the front yard of the Stojanović compound.⁶⁸² The armed

⁶⁷⁶ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1858-1860; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2005, 2007, 2011; *see supra*, paras 144-149.

⁶⁷⁷ Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 960; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1844-1846, 1861, 1863-1865, 1867, 1904, 1950; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2011-2012, 2019-2020; Marijana Anđelković, Exhibit P441 (*Haradinaj* original transcript), T. 506, 592; Novak Stijović, Exhibit P492 (*Haradinaj* original transcript), T. 7144; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 1995, 2020; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2119, 2121, 2124-2126, 2161-2162; Exhibits P411, p. 2; P413, pp 2-3; P414, p. 2; P425, p. 2; P426, p. 2; P443, p. 20; P445, p. 9; P446, p. 23; P448, p. 5. *See also supra*, para. 144.

⁶⁷⁸ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1864; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2020-2021, 2051; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2125; Exhibit P413, p. 3; *see also* Exhibits P425, p. 2; P443, p. 20; P445, p. 9; P446, p. 23; P448, p. 5.

⁶⁷⁹ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2021, 2051; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2126.

⁶⁸⁰ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1864; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2021-2022; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2125, 2127; *see also* Exhibits P413, p. 2; P425, p. 2; P443, p. 20; P445, p. 9; P446, p. 23; P448, p. 5.

⁶⁸¹ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1864-1865; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2021-2022; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2125-2127; Exhibit P413, pp 3-4.

⁶⁸² Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2021-2022; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2125-2128; Exhibit P413, p. 3; *see also* Exhibits P425, p. 2; P443, p. 20; P445, p. 9; P446, p. 23; P448, p. 5.

men demanded that the inhabitants of the home surrender.⁶⁸³ Dragoslav Stojanović opened the front door and allowed these armed men to enter the house.⁶⁸⁴

185. Daut Haradinaj⁶⁸⁵ and another Kosovo Albanian⁶⁸⁶ entered the house first.⁶⁸⁷ Mijat Stojanović recognised others of the intruders as being from the area.⁶⁸⁸ Most of these men donned camouflage or black uniforms; they wore the KLA insignia.⁶⁸⁹ The men spoke Albanian with a local Kosovo accent.⁶⁹⁰

186. The KLA soldiers physically mistreated Mijat, Dragoslav and Veselin. They shouted insults at them that referenced their Serb ethnicity and declared that “Kosovo belonged to the Albanians”.⁶⁹¹ This continued for about 15 or 20 minutes until Nasim Haradinaj, Ramush Haradinaj’s cousin, arrived.⁶⁹² Nasim appeared to have “influence” over these men and attempted to stop the beatings; his commands were only briefly adhered to.⁶⁹³

⁶⁸³ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1865; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2021; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2126-2128; Exhibit P413, p. 4.

⁶⁸⁴ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1865; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2021; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2126-2128; Exhibit P413, p. 4; *see also* Exhibits P425, p. 2; P443, p. 20; P445, p. 10; P446, p. 23; P448, p. 5.

⁶⁸⁵ In cross-examination in the original *Haradinaj* trial the evidence of Mijat Stojanović regarding his memory of Daut Haradinaj’s presence on 18 April 1998 was challenged, Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2071, 2086-2089. The Chamber notes that Mijat Stojanović knew Daut Haradinaj as the two had gone to the same school and accepts that Mijat was able to recognise him, *see* Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 1987-1989. *See also* Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1865; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2165-2166.

⁶⁸⁶ In his testimony, Mijat Stojanović referred to this man as “Xhavit Nimonaj” (Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2023-2024, 2064-2065. However, Dragoslav Stojanović refers to this man as “Zećir Nimonaj” in his testimony, Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1865. There is no further mention of a “Xhavit Nimonaj” in Mijat Stojanović’s testimony. On the basis of this evidence, the identity of the person who entered the Haradinaj compound on 18 April 1998 first together with Daut Haradinaj is not established.

⁶⁸⁷ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1852, 1865; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2165-2166; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2023; *see also* Exhibit P425, p. 2.

⁶⁸⁸ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2023, 2087; Marijana Andelković, Exhibit P441 (*Haradinaj* original transcript), T. 660-661; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2132; Exhibits P413, p. 2; P443, p. 21; P445, p. 12; P446, p. 25; P448, p. 6; *see also* Exhibit P425, p. 4.

⁶⁸⁹ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1867; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2022-2023; Exhibits P413, p. 5; P443, p. 21; P445, p. 12; P446, p. 25; P448, p. 6; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2128.

⁶⁹⁰ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1868; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2128; Exhibit P413, p. 4.

⁶⁹¹ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1865-1866, 1899-1900; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2024-2025; Novak Stijović, Exhibit P492 (*Haradinaj* original transcript), T. 7144; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2126-2131, 2170, 2182; Exhibits P413, p. 4; P417, p. 1; *see also* Exhibits P425, p. 2; P443, p. 20; P445, p. 10; P446, p. 23; P448, p. 5.

⁶⁹² Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1866; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2024-2025, 2076; *see also* Exhibits P425, p. 2; P443, p. 20; P445, p. 10; P446, p. 23; P448, p. 5; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2132, 2162, 2165; Marijana Andelković, Exhibit P441 (*Haradinaj* original transcript), T. 507, 661.

⁶⁹³ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1866, 1869; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2076, 2087-2088; *see also* Marijana Andelković, Exhibit P441 (*Haradinaj*

187. Following further beatings, Mijat, Dragoslav, and Veselin were forcibly taken to the house of Smajl Haradinaj, the uncle of Ramush Haradinaj and father of Nasim Haradinaj, in Gllogjan/Glodane.⁶⁹⁴ Veselin Stijović gave evidence that this house was referred to by the armed men as the “Gllogjan/Glodane HQ”.⁶⁹⁵ It was located approximately 800 metres from the Haradinaj compound.⁶⁹⁶

188. As they were being taken to Smajl Haradinaj’s house, all three captives were ordered to keep their heads down and not to look left or right.⁶⁹⁷ Mijat Stojanović gave evidence that he saw Ramush Haradinaj and two soldiers on the path to the Haradinaj compound from the Dubravë/Dubrava-Gllogjan/Glodane road.⁶⁹⁸ Mijat Stojanović gave evidence that he was able to recognise Ramush Haradinaj because he was well acquainted with Ramush Haradinaj’s appearance as they had attended school together, they lived in neighbouring properties, and had been acquaintances for a number of years.⁶⁹⁹ However, he could not remember the last time he had seen Ramush Haradinaj.⁷⁰⁰ The Chamber notes that the distance between the place where Mijat Stojanović testified that he was when he saw Ramush Haradinaj, as marked on Exhibit D28, and the place where he testified that Ramush Haradinaj was standing, as marked on Exhibit D27, is approximately 71.9 metres.⁷⁰¹ Considering this distance, the fact that Mijat Stojanović was ordered to keep his head down, and that the other two captives did not see Ramush Haradinaj, the Chamber does not accept that Mijat Stojanović saw Ramush Haradinaj on this occasion when they were being taken to Smajl Haradinaj’s house.

original transcript), T. 507, 659; Exhibits P425, p. 2; P443, p. 20; P445, p. 10; P446, p. 23; P448, p. 5; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2132, 2163-2166.

⁶⁹⁴ Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 959-960; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1866, 1868-1869; Exhibit P413, pp 4-5; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2025, 2027; *see also* Exhibit P425, p. 2; Marijana Anđelković, Exhibit P441 (*Haradinaj* original transcript), T. 507; Exhibits P443, p. 20; P445, p. 10; P446, p. 23; P448, p. 5; Novak Stijović, Exhibit P492 (*Haradinaj* original transcript), T. 7144; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2126.

⁶⁹⁵ Novak Stijović, Exhibit P492 (*Haradinaj* original transcript), T. 7144; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2131, 2135.

⁶⁹⁶ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1866, 1869, 1871, 1904; Exhibit P413, p. 4; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2025-2027; *see also* Marijana Anđelković, Exhibit P441 (*Haradinaj* original transcript), T. 592; Exhibits P425, p. 2; P443, p. 20; P445, p. 10; P446, p. 23; P448, p. 5.

⁶⁹⁷ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1866, 1869, 1915-1916; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2026, 2052, 2062-2063, 2069-2070; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2129, 2131-2134, 2166; Exhibits P413, p. 4; P426, p. 4.

⁶⁹⁸ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2026, 2052-2054, 2058, 2063-2064, 2066; Exhibits P423; P424.

⁶⁹⁹ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 1988, 1992, 2045-2046, 2049-2050; Exhibit P426, p. 4.

⁷⁰⁰ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2067.

⁷⁰¹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Joint Submission on the Admission of Agreed Evidence and an Agreed Fact with Annex, 24 November 2011, p. 1.

189. Mijat Stojanović also gave evidence that as he was walking to Smajl Haradinaj's house, he noticed Zeqir (Zećir) Nimonaj with five to 10 other soldiers near a trench that was utilised as a checkpoint.⁷⁰² There were many armed persons along the road to Gllogjan/Glodane, a number of whom wore uniforms with the KLA insignia.⁷⁰³ During the journey to Smajl Haradinaj's house, Mijat, Dragoslav, and Veselin were mistreated by many of these persons, as well as by their captors, and insulted on the basis of their Serb ethnicity.⁷⁰⁴

190. At Smajl Haradinaj's house, the three captives were taken to the first floor by Daut Haradinaj, Besnik Haradinaj, and Zeqir (Zećir) Nimonaj.⁷⁰⁵ Present in this house were a number of armed soldiers in black or camouflaged uniforms, which displayed the KLA symbol on the right shoulder; this symbol was also visible on the soldiers' caps.⁷⁰⁶ According to Mijat Stojanović, those with black berets were addressed as superiors; this included Nasim Haradinaj and all other members of the Haradinaj family.⁷⁰⁷

191. Mijat, Dragoslav, and Veselin were taken upstairs and placed in a room together. Over the next few hours, each of the three men was individually taken into a second room, where he was interrogated and beaten by several persons with rifle butts, bats, and metal bars.⁷⁰⁸ Those administering the beatings included Zeqir Nimonaj, Daut Haradinaj, and Besnik Haradinaj.⁷⁰⁹ The questioning consisted of various accusations and verbal abuse, which referenced their Serb

⁷⁰² Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2063-2066; Exhibit P424. See also Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1865.

⁷⁰³ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2091; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2129, 2132-2134.

⁷⁰⁴ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1866, 1869; Exhibit P413, p. 4; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2025, 2091; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2129, 2132-2133.

⁷⁰⁵ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1852-1853, 1871-1873, 1886, 1917; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2027-2028, 2031, 2089; see also Exhibits P425, p. 2; P443, p. 20.

⁷⁰⁶ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1873-1875; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2031; Exhibits P443, p. 20; P445, p. 10; P446, p. 23; P448, p. 5; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2138, 2140, 2178.

⁷⁰⁷ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2071-2072.

⁷⁰⁸ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2028-2034, 2071-2074, 2076, 2086-2092; Exhibit P425, p. 3.

⁷⁰⁹ Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 960; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1871-1872, 1881-1882, 1884-1886, 1890, 1893, 1916, 1918-1919, 1927-1928; Exhibit P413, pp 4-5; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2028-2034, 2087-2088; see also Marijana Andelković, Exhibit P441 (*Haradinaj* original transcript), T. 507; Exhibits P425, pp 2-3; P443, p. 20; P445, p. 10; P446, pp 23-24; P448, p. 5; Novak Stijović, Exhibit P492 (*Haradinaj* original transcript), T. 7144; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2132, 2134-2135, 2137-2139, 2165.

ethnicity.⁷¹⁰ After leaving the room, Mijat, Dragoslav, and Veselin, were subjected to further beatings.⁷¹¹

192. Dragoslav was mistreated the worst; he incurred severe injuries causing him to drift in and out of consciousness throughout the day.⁷¹² At one point during the day, while Mijat and Veselin were interrogated in a separate room, Dragoslav saw a KLA soldier who was treated as a commander.⁷¹³ In his testimony, Dragoslav claimed that this commander was Ramush Haradinaj.⁷¹⁴ Dragoslav knew Ramush Haradinaj since elementary school, but at the time of the events on 18 April 1998 he had not seen him for 10 years.⁷¹⁵ The man in Smajl Haradinaj's house, who Dragoslav believed was Ramush Haradinaj, was dressed in camouflage and regarded as a superior by other soldiers.⁷¹⁶ Dragoslav was unable to fully observe the other soldiers around this man, however, because he was lying down.⁷¹⁷ During the alleged encounter, the person who he believed was Ramush referred to Dragoslav Stojanović as his neighbour and asked him whether he recognised him; Dragoslav responded that he did not.⁷¹⁸ According to Dragoslav, this prompted the person who he believed was Ramush to kick him in the back and state that he would eventually learn who he was.⁷¹⁹ The Chamber recalls that at the time of this alleged encounter Dragoslav Stojanović was in a very bad state; he had incurred severe injuries and was drifting in and out of consciousness throughout the day. Notwithstanding this condition, the Chamber notes that he was able to make detailed observations, from which the Chamber concludes that his cognitive abilities were not entirely impaired. However, the Chamber notes that Dragoslav Stojanović at the time of this incident had not seen Ramush Haradinaj for ten years. Considering all this, the Chamber finds this evidence not to be sufficient to conclude beyond reasonable doubt that the person with whom Dragoslav Stojanović had this encounter was in fact Ramush Haradinaj.⁷²⁰

⁷¹⁰ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1872, 1881; Exhibit P413, pp 4-5; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2032, 2039-2040; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2137, 2182.

⁷¹¹ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1891; Exhibits P413, p. 5; P446, p. 24; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2139.

⁷¹² Zoran Stijović, Exhibit P121, para. 51; Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 960; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1872-1873, 1885-1886, 1889, 1893, 1898-1903, 1916, 1918-1919, 1927-1929, 1933-1934; Exhibits P413, pp 3, 5; P417, p. 1; P418; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2033-2034, 2092-2093, 2096, 2099; see also Marijana Anđelković, Exhibit P441 (*Haradinaj* original transcript), T. 507, 509; Exhibits P425, p. 4; P443, p. 21; P445, p. 12; P446, p. 25; P448, p. 6; Novak Stijović, Exhibit P492 (*Haradinaj* original transcript), T. 7144; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2135-2136, 2148.

⁷¹³ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1887-1888, 1920, 1934-1935.

⁷¹⁴ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1886, 1897, 1920.

⁷¹⁵ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1847, 1887-1888, 1915.

⁷¹⁶ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1886-1888, 1920-1921, 1934-1935.

⁷¹⁷ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1886, 1933.

⁷¹⁸ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1886, 1915, 1920.

⁷¹⁹ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1886, 1920.

⁷²⁰ See Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1886-1888, 1893, 1930-1934.

193. At roughly 1500 hours after the beatings had ceased, Nasim Haradinaj informed Mijat, Dragoslav, and Veselin that they would be released.⁷²¹ Nasim also gave Dragoslav a pill for the pain and Hilmi Haradinaj (Ramush Haradinaj's father) brought Dragoslav some refreshments.⁷²² Mijat Stojanović then accompanied Nasim Haradinaj and another soldier to retrieve one of the cars that Mijat and his companions had driven that morning.⁷²³ While leaving Smajl Haradinaj's property, Mijat Stojanović saw Ramush Haradinaj standing with his father in the yard.⁷²⁴ There is no indication in the evidence that Mijat was ordered to keep his head down and not look left or right when leaving the property, as he was ordered when entering the property.⁷²⁵ Mijat was then taken to the Lada 1200, which was now parked on the small path that led to Ramush Haradinaj's house.⁷²⁶ As the car could not be used,⁷²⁷ Mijat and his captors returned to Smajl Haradinaj's home to retrieve Veselin and Dragoslav.⁷²⁸

194. Upon Mijat's return, he, Veselin, and Dragoslav were again offered food and drink by Hilmi Haradinaj.⁷²⁹ They were then taken by Nasim Haradinaj back to the Stojanović home so that he and his men could search the property for weapons.⁷³⁰ When no weapons were found, Mijat, Dragoslav, and Veselin were bound, blindfolded, and taken to the refugee camp in Baballoq/Babaloc, where they received medical attention.⁷³¹ The entire incident lasted roughly from 0900 to 1700 hours.⁷³² Dragoslav was subsequently hospitalised for his injuries, first in Pejë/Pec, and later in

⁷²¹ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2034, 2096-2097; *see also* Exhibits P425, p. 3; P443, pp 20-21; P445, p. 11; P446, p. 24; P448, p. 5.

⁷²² Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 1989, 2067-2068, 2096, 2098; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2136.

⁷²³ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1893-1894; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2034; *see also* Exhibits P425, p. 4; P443, pp 20-21; P445, p. 11; P446, p. 24; P448, p. 5; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2141.

⁷²⁴ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2035-2036, 2067, 2069.

⁷²⁵ *See supra*, para. 188.

⁷²⁶ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2035; *see also* Exhibit P425, p. 3.

⁷²⁷ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1894; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2035-2036; *see also* Exhibits P425, p. 3; P443, pp 20-21; P445, p. 11; P446, p. 24; P448, p. 5; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2141.

⁷²⁸ Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2036-2037; *see also* Exhibit P425, p. 3; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2141.

⁷²⁹ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1894, 1935; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2037.

⁷³⁰ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1894-1895; Exhibit P413, p. 5; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2037-2038; *see also* Exhibits P425, p. 3; P443, p. 21; P445, p. 12; P446, p. 24; P448, p. 6; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2141.

⁷³¹ Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1895-1897; Exhibit P413, p. 5; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2034, 2038, 2041-2043; *see also* Marijana Andelković, Exhibit P441 (*Haradinaj* original transcript), T. 660; Exhibits P425, pp 3-4; P443, p. 21; P445, pp 11-12; P446, p. 24; P448, pp 5-6; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2143, 2145-2147.

⁷³² Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1900; Exhibits P413, p. 3; P417, p. 1; P443, p. 20; P445, p. 11; P446, p. 24; P448, p. 5.

Prishtinë/Priština. His injuries included a burst stomach, spleen, and duodenum. He was operated in Prishtinë/Priština and remained in intensive care for a number of days.⁷³³

(iii) Novak Stijović and Staniša Radošević

195. Novak Stijović stated that on 22 April 1998, he, Staniša Radošević and Staniša's mother, Rosanda ("Rosa"), all Kosovo Serbs, set off together from Deçan/Dečani to their respective homes: Novak Stijović to Pozhar/Požar in a red Yugo car, and Staniša Radošević and his mother to Dashinoc/Dašinovac in a grey Lada car.⁷³⁴ At about 1030 hours, at Pozhar/Požar in Deçan/Dečani municipality, armed villagers stopped them with their guns drawn.⁷³⁵ Some wore uniforms and KLA insignia, others wore civilian clothes.⁷³⁶ Novak Stijović recognised some of these people, including Kujtim Berisha, and Jusuf, whose last name Novak Stijović could not recall.⁷³⁷ The soldiers told them in Serbian that they no longer had any business at their homes and that they could not return.⁷³⁸ Novak Stijović stated that it was Jusuf who ordered that they be driven to Gllogjan/Glodane.⁷³⁹ The three were taken towards Gllogjan/Glodane in their cars, guarded by KLA soldiers.⁷⁴⁰

196. When they arrived at Gllogjan/Glodane, there were between 30 and 50 KLA soldiers, most of whom were armed and uniformed.⁷⁴¹ They stopped at what appeared to be a private house at the entrance of the village nearest to Irzniq/Rznić.⁷⁴² As soon as Novak Stijović and Staniša Radošević got out of the car, these uniformed persons kicked, punched, and hit the two men with rods and rifle-butts for what Novak Stijović estimated to be between 20 and 30 minutes.⁷⁴³ Staniša Radošević suffered an injury that caused him to bleed from the back of his head and Novak Stijović

⁷³³ Zoran Stijović, Exhibit P121, para. 51; Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 960; Dragoslav Stojanović, Exhibit P409 (*Haradinaj* original transcript), T. 1873, 1889, 1898-1903; Exhibits P413, pp 3, 5; P417, p. 1; P418; Mijat Stojanović, Exhibit P421 (*Haradinaj* original transcript), T. 2042; see also Exhibit P425, p. 4; Marijana Anđelković, Exhibit P441 (*Haradinaj* original transcript), T. 507, 509; Exhibits P443, p. 21; P445, p. 12; P446, p. 25; P448, p. 6; Novak Stijović, Exhibit P492 (*Haradinaj* original transcript), T. 7144; Veselin Stijović, Exhibit P493 (*Haradinaj* original transcript), T. 2148.

⁷³⁴ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7145-7146 (speaks of 21 April); Exhibits P445, p. 13; P446, pp 1-2; P448, p. 6 (the latter three exhibits speak of 22 April). As Staniša Radošević also refers to 22 April 1998, the Chamber accepts that these events took place on 22 April 1998, see *infra*, para. 199, see also *infra*, para. 198.

⁷³⁵ Marijana Anđelković, Exhibit P440 (*Haradinaj* original transcript), T. 587-590; Exhibits P445, pp 13-15; P446, pp 1-2; P448, pp 6-7. See also Exhibits P443, p. 21; P448, p. 3; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7147.

⁷³⁶ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7149, 7168.

⁷³⁷ Exhibits P445, p. 13; P446, p. 2; P448, p. 6; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7149.

⁷³⁸ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7150, 7157.

⁷³⁹ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7188.

⁷⁴⁰ Exhibits P445, p. 13; P446, pp 1-2; P448, p. 6; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7149-7151.

⁷⁴¹ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7151.

⁷⁴² Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7161.

⁷⁴³ Exhibits P445, p. 13; P446, p. 2; P448, pp 3, 6; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7151, 7189.

believed Staniša Radošević fell unconscious for a few moments.⁷⁴⁴ Rosanda, Staniša Radošević's mother, was not touched.⁷⁴⁵ The group of men asked Novak Stijović and Staniša Radošević where they were going and why. When Novak Stijović answered that they would be going home, the men said that they could no longer go to their houses, and they should go to Serbia.⁷⁴⁶ The men asked them about the police forces, where they were located and their numbers, who the heads of the police stations in Dečan/Dečani and Irzniq/Rznić were, and which police officers had been responsible for the shooting at Kosovo Albanians on 24 March 1998.⁷⁴⁷ On the evidence of Novak Stijović, upon being questioned, he and Staniša Radošević told their captors that they each had a hunting carbine at home.⁷⁴⁸ Staniša Radošević was released to retrieve the hunting carbines and was given a KLA emblem to use as a pass.⁷⁴⁹

197. The men asked Novak Stijović if he had any relatives in the police force.⁷⁵⁰ Upon being asked whether there was anybody from their village in the police, Novak Stijović and Rosa Radošević said there was only one villager in the police force, Vukicević, from the police in Dečan/Dečani; their captors already knew about this person.⁷⁵¹ The men locked Novak Stijović and Rosanda in a small room.⁷⁵² At about 1415 hours, a soldier came and told the soldiers who were with Novak Stijović and Rosa Radošević, that Staniša Radošević had obtained one rifle and turned it over in Pozhar/Požar, and that he had gone on to Dečan/Dečani to retrieve the second.⁷⁵³ Novak Stijović and Rosa Radošević were released after about one and a half hours in detention at around 1500 hours.⁷⁵⁴ The men told them that they could go wherever they pleased, but not home.⁷⁵⁵

198. Novak Stijović's father, Kostadin ("Kojo") Stijović, from Pozhar/Požar,⁷⁵⁶ reported to Marijana Anđelković that his son was beaten when he came to get him on 22 April 1998.⁷⁵⁷

⁷⁴⁴ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7153.

⁷⁴⁵ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7145-7146, 7153.

⁷⁴⁶ Exhibits P445, p. 13; P446, p. 2; P448, p. 6; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7151-7153.

⁷⁴⁷ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7152, 7174, 7192.

⁷⁴⁸ Exhibits P445, p. 13; P446, pp 1-2; P448, p. 6; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7153.

⁷⁴⁹ Exhibits P445, p. 14; P446, p. 2; P448, p. 6; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7154, 7156, 7158.

⁷⁵⁰ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7173, 7191-7192.

⁷⁵¹ Exhibits P445, p. 14; P446, pp 1-2; P448, pp 6-7; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7190-7192.

⁷⁵² Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7154, 7191-7192.

⁷⁵³ Exhibits P445, p. 14; P446, pp 1-2; P448, p. 7.

⁷⁵⁴ Exhibits P445, p. 14; P446, pp 1-2; P448, p. 7; Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7154.

⁷⁵⁵ Novak Stijović, Exhibit P491 (*Haradinaj* original transcript), T. 7154-7155.

⁷⁵⁶ Zoran Stijović, Exhibit P121, para. 51; Exhibits P445, p. 15; P446, p. 3; P448, p. 7.

⁷⁵⁷ Exhibits P445, p. 15; P446, p. 5; P448, p. 7.

199. The essence of Novak Stijović's account is corroborated by the evidence of Staniša Radošević who testified about him, his mother and Novak Stijović being stopped in Pozhar/Požar on 22 April 1998, taken to Gllogjan/Glodane, and being beaten on the street.⁷⁵⁸ Staniša Radošević testified that after that he and Novak Stijović were then taken into a building, interrogated and beaten further.⁷⁵⁹ One person from the group who had arrived earlier interrogated Staniša Radošević and asked, *inter alia*, whether he owned a rifle, where the police were, and where the military was.⁷⁶⁰ On the evidence of Staniša Radošević, he and Novak Stijović responded that they did not have any weapons. Staniša Radošević stated that his father had a shotgun and a hunting rifle because he used to go hunting.⁷⁶¹ In cross-examination Staniša Radošević stated that he told these men that their fathers - that is Novak Stijović's father and Staniša Radošević's father - had hunting rifles.⁷⁶² On the evidence of Staniša Radošević, the interrogator sent him to Dashinoc/Dašinovac in Deçan/Dečani municipality to retrieve the two guns "for Novak and himself", and gave him a KLA badge for safe passage.⁷⁶³ While the evidence is not always entirely clear on this point, the Chamber understands this to mean that he was sent to retrieve a gun from both Novak's and his (Staniša Radošević's) fathers.⁷⁶⁴ The interrogator threatened that if Staniša Radošević did not surrender the two rifles, he would kill Novak Stijović and Staniša Radošević's mother.⁷⁶⁵

200. Staniša Radošević arrived at his family home in Dashinoc/Dašinovac.⁷⁶⁶ His father Slobodan Radošević was at home.⁷⁶⁷ He was wearing a camouflage jacket.⁷⁶⁸ Staniša Radošević gave evidence that he explained what had happened and his father gave him the carbine to get Novak Stijović and Staniša Radošević's mother out alive.⁷⁶⁹ Slobodan Radošević suggested that Staniša Radošević go to Deçan/Dečani to get a second rifle rather than to go straight back to Gllogjan/Glodane.⁷⁷⁰ Staniša Radošević left one hunting rifle with his father.⁷⁷¹ Staniša Radošević confirmed that there were two guns at his father's house, but because the interrogator only asked for one from him, Staniša Radošević took only one.⁷⁷² His father knew how to use the rifle, as he used

⁷⁵⁸ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 960-969, 971-974, 981-982, 1020, 1027-1029, 1035-1039, 1050-1059, 1074-1075. See also Witness 28, Exhibit P358, paras 51-52; Zoran Stijović, Exhibit P121, para. 51.

⁷⁵⁹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 982-983, 1051-1054.

⁷⁶⁰ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 983, 1051.

⁷⁶¹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 983.

⁷⁶² Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1059.

⁷⁶³ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 983-985, 987, 1018, 1021, 1059, 1075. See also Witness 28, Exhibit P358, para. 52.

⁷⁶⁴ See Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 983, 1075.

⁷⁶⁵ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 983.

⁷⁶⁶ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 984.

⁷⁶⁷ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 984.

⁷⁶⁸ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1076.

⁷⁶⁹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 984-985.

⁷⁷⁰ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985.

⁷⁷¹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1075.

⁷⁷² Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1075.

to hunt with it.⁷⁷³ His father said that after nightfall he would try to get out and go to Dečan/Dečani through the woods.⁷⁷⁴

201. Staniša Radošević left Dashinoc/Dašinovac to go to Dečan/Dečani.⁷⁷⁵ On the way, in the hamlet of Bandera, he checked on Novak Stijović's father's house in order to get the other rifle, but found nobody there.⁷⁷⁶ In the same hamlet, he was stopped by three armed men in civilian clothes.⁷⁷⁷ One of them was named Caus.⁷⁷⁸ Staniša Radošević informed Caus what had happened, that he had to return to Gllogjan/Glodane to surrender two rifles to have his mother and Novak Stijović released.⁷⁷⁹ He explained that he already had one rifle and that he had to go to Dečan/Dečani to retrieve a second one.⁷⁸⁰ Caus accompanied Staniša Radošević in his car to Pozhar/Požar to arrange that Staniša Radošević be let through to get the other rifle.⁷⁸¹ In Pozhar/Požar, the soldiers Staniša Radošević had encountered earlier let him continue to Dečan/Dečani after some discussion.⁷⁸² Before he continued, however, Staniša Radošević handed over the rifle he had to Caus.⁷⁸³

202. Staniša Radošević gave evidence that in Dečan/Dečani he was taken by a policeman to the health centre to have his wound stitched up and bandaged.⁷⁸⁴ After that, around 1400 or 1500 hours, he went to the police station to give a statement and was informed that a policeman, on his way from Dečan/Dečani to Gjakovë/Đakovica, had run into his mother and Novak Stijović walking along the road towards Dečan/Dečani near the village of Prilep.⁷⁸⁵

(iv) Slobodan Radošević, Miloš Radunović, Milica Radunović and the Marković family

203. According to hearsay evidence of Witness 28 after the KLA had taken control of Dashinoc/Dašinovac in Dečan/Dečani municipality on 21 April 1998,⁷⁸⁶ most Kosovo Serbs vacated their homes, but Slobodan Radošević and Miloš Radunović remained in their village together with other villagers, namely Milica Radunović and the Marković family.⁷⁸⁷ On 22 April

⁷⁷³ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1075-1076.

⁷⁷⁴ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985.

⁷⁷⁵ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985, 992; Exhibit P314.

⁷⁷⁶ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1061-1062, 1068-1069.

⁷⁷⁷ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985, 1043, 1062.

⁷⁷⁸ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985.

⁷⁷⁹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985.

⁷⁸⁰ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985.

⁷⁸¹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985-986.

⁷⁸² Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 986-987, 992, 1043-1044; Exhibit P314.

⁷⁸³ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 985, 1021.

⁷⁸⁴ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 987.

⁷⁸⁵ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 987-988, 991; Exhibit P314.

⁷⁸⁶ *See supra*, para. 151.

⁷⁸⁷ Witness 28, Exhibit P358, para. 51; Nebojša Avramović, Exhibit P451, para. 13.

1998, Staniša Radošević, Slobodan Radošević's son, was not allowed to return to Dashinoc/Dašinovac in order to search for his father.⁷⁸⁸

204. The Chamber received other hearsay evidence from various sources that the persons who stayed behind in Dashinoc/Dašinovac referred to in the previous paragraph went missing.⁷⁸⁹ Nebojša Avramović, a Serbian crime technician,⁷⁹⁰ personally spoke to the families who reported Slobodan Radošević and Miloš Radunović missing because their sons were members of the MUP.⁷⁹¹ Zoran Stijović, an RDB official,⁷⁹² gave evidence based on information from an RDB operative from Dečan/Dečani, Vlado Mirčić, that Slobodan Radošević, Miloš Radunović and the latter's wife were killed. He did not provide support for this assertion.⁷⁹³

205. Rustem Tetaj gave evidence that he heard "two different stories" concerning the disappearance of two Kosovo Serbs, "Miloš" and "Slobodan", from the village of Dashinoc/Dašinovac.⁷⁹⁴ Deli Lekaj, KLA commander in the village of Lumbardh/Ljumbarda in Dečan/Dečani municipality, told Rustem Tetaj that he, Deli Lekaj, and a number of KLA soldiers, entered the house of Slobodan in Dashinoc/Dašinovac to loot it, believing that the house was empty. An exchange of fire occurred in the house and Slobodan was killed.⁷⁹⁵ Rustem Tetaj later saw that Deli Lekaj was wounded, allegedly by Slobodan.⁷⁹⁶

206. The other version Rustem Tetaj said to have heard⁷⁹⁷ involved the same KLA soldiers approaching the same house. A Kosovo Serb named Slobodan, who had seen the soldiers, asked another Kosovo Serb named Miloš to accompany him to the house. Slobodan shot and wounded a KLA soldier and both Kosovo Serbs were subsequently taken to Gllogjan/Glodane to Haradinaj and Balaj.⁷⁹⁸ There Balaj shot Slobodan in the leg upon hearing that a KLA soldier was wounded. Haradinaj ordered that the two men be taken to Prilep in Dečan/Dečani municipality to join their own forces. The KLA in Prilep, fearing retaliation for the wounding of Slobodan, took the two men

⁷⁸⁸ Witness 28, Exhibit P358, para. 52.

⁷⁸⁹ Marijana Andelković, Exhibit P440 (*Haradinaj* original transcript), T. 525-526, 599, 662; Exhibits P443, pp 6, 19; P445, p. 17; P448, pp 3, 8, 12; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6602. For the Radunović couple, see also Exhibit P369, pp 8-9, 16, 19; Witness 69, Exhibit P370, para. 64.

⁷⁹⁰ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6591; Nebojša Avramović, Exhibit P451, para. 7.

⁷⁹¹ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6602, 6605.

⁷⁹² Zoran Stijović, T. 537; Zoran Stijović, Exhibit P121, para. 2; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8871, 9096.

⁷⁹³ Zoran Stijović, Exhibit P121, para. 51.

⁷⁹⁴ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3696-3697; Rustem Tetaj, Exhibit P77, para. 31.

⁷⁹⁵ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3697-3698, 3768; Rustem Tetaj, Exhibit P77, para. 31.

⁷⁹⁶ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3768-3769.

⁷⁹⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3698-3699.

⁷⁹⁸ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3697.

back to Dashinoc/Dašinovac. The witness heard people say that the two Kosovo Serb men were found dead two days later in front of their houses in Dashinoc/Dašinovac.⁷⁹⁹

207. The Chamber also received in evidence statements to the Serbian police attributed to a captured KLA member, Bekim Kalimashi.⁸⁰⁰ These statements refer to Bekim Kalimashi's involvement in the kidnapping by the KLA of a group of persons from Dashinoc/Dašinovac, who, according to the statements, were all Kosovo Serbs from the same area.⁸⁰¹ According to the statement attributed to Bekim Kalimashi, the kidnapped persons were brought to Jabllanicë/Jablanica and detained, and Kalimashi is reported to have heard that they were maltreated and killed.⁸⁰²

208. In order to assess the evidentiary value of the alleged statements of Bekim Kalimashi the Chamber looked at the circumstances in which these statements were taken. These statements and others were said to have been given to the SUP Gjakovë/Đakovica by persons who were among a group of 10 to 12 Kosovo Albanians arrested by the police on 3 September 1998 in the village of Kodrali/Kodralija.⁸⁰³ Radovan Zlatković of the SUP Gjakovë/Đakovica gave evidence that two police officers conducted interviews with Bekim Kalimashi and Zenel Alija in the Albanian language upon his orders.⁸⁰⁴ He gave evidence that he was present during the entire time of the interviews, which lasted two or three days,⁸⁰⁵ but he also gave evidence that he was not there all the time.⁸⁰⁶ None of the persons whose names appear on the statements to the SUP Gjakovë/Đakovica gave evidence before the Chamber. At the time of the interviews one of the persons taking the statements, Rade Vlahović, believed that his parents had been abducted by the KLA.⁸⁰⁷ Radovan Zlatković gave evidence that he instructed the police officers to ask questions in Albanian and that he took notes of the responses translated by them.⁸⁰⁸ However, he also stated that he himself did not take notes, that the men conducting the interviews took the notes, and that he worked on the case on the basis of those notes.⁸⁰⁹ The statements are recorded in the Serbian language, even though the interviews were conducted in Albanian as Bekim Kalimashi did not speak the Serbian

⁷⁹⁹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3698. Rustem Tetaj agreed to the proposition that there were a lot of rumours circulating with regard to the fate of "Slobodan" and "Miloš", Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3768.

⁸⁰⁰ Exhibits P369, p. 18; P390; P391; Nebojša Avramović, Exhibit P451, paras 23, 25.

⁸⁰¹ Exhibits P369, p. 18; P390, p. 3; P391, p. 4; Nebojša Avramović, Exhibit P451, para. 33.

⁸⁰² Exhibits P369, p. 18; P390, pp 3-4; P391, p. 5.

⁸⁰³ Radovan Zlatković, Exhibit P373, paras 45-46; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 7014; Nebojša Avramović, Exhibit P451, paras 23-24; Exhibits P387; P388; P389; P390; P391; D179, D180, D189; D190.

⁸⁰⁴ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6940-6943, 6969; Radovan Zlatković, Exhibit P373, para. 51.

⁸⁰⁵ Radovan Zlatković, Exhibit P373, para. 52.

⁸⁰⁶ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6955-6956.

⁸⁰⁷ Nebojša Avramović, Exhibit P450 (*Haradinaj* original transcript), T. 6631.

⁸⁰⁸ Radovan Zlatković, Exhibit P373, para. 51.

language and Zenel Alija spoke “little” Serbian.⁸¹⁰ One of the statements attributed to Bekim Kalimashi is not signed.⁸¹¹ The Chamber will not consider this unsigned statement further.

209. The Chamber also received in evidence official notes of interviews of Zenel Alija and Lul (Ljulj, Luli) Musaj, who were also in the group of those arrested on 3 September 1998, with RDB officials.⁸¹² Bogdan Tomaš gave evidence that the interviews were conducted on 7 September 1998.⁸¹³ He also stated that he and his colleague used the opportunity provided by law to speak to the interviewees for three days, namely 7, 9, and 10 September 1998.⁸¹⁴ The official notes prepared after these interviews, however, refer only to interviews conducted with Zenel Alija and Lul (Ljulj, Luli) Musaj, respectively, on 9 and 10 and on 8 and 9 September 1998.⁸¹⁵

210. The issues highlighted above raise concerns about the reliability of these statements and official notes. The evidence also includes the following statements: a statement given by Lul (Ljulj, Luli) Musaj on 9 November 1999 to the Commission on War Crimes in Dečan/Dečani indicating that on 5 September 1998 he was beaten in the SUP Gjakovë/Đakovica and that the beatings continued for 10 days,⁸¹⁶ another statement of Lul (Ljulj, Luli) Musaj, given in July 2006, providing more information about the same events,⁸¹⁷ and a statement of Zenel Alija given in May 2006 indicating that he and others, including Bekim Kalimashi, were ill-treated during their arrest on 3 September 1998 and that Zenel Alija was tortured and forced to sign statements during his subsequent detention in the SUP Gjakovë/Đakovica.⁸¹⁸ These allegations, together with the concerns highlighted in the preceding paragraphs, raise serious questions about the reliability of the statements of Bekim Kalimashi and Zenel Alija to the SUP Gjakovë/Đakovica and the official notes of the interviews of Zenel Alija and Lul (Ljulj, Luli) Musaj. In the circumstances, the Chamber attaches no weight to the information contained in these statements and in the official notes of the interviews.

⁸⁰⁹ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6942-6943.

⁸¹⁰ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6940-6943, 6969; Radovan Zlatković, Exhibit P373, para. 51. Bogdan Tomaš of the State Security who subsequently conducted interviews with Zenel Alija and Lul (Ljulj, Luli) Musaj gave evidence that the interviews were conducted in the Albanian language because he assumed the interviewees did not have the required knowledge of the Serbian language, Bogdan Tomaš, Exhibit P336 (*Haradinaj* original transcript), T. 6218-6219.

⁸¹¹ Exhibit P390 admitted also as Exhibit D189.

⁸¹² Exhibits P339; P340. *See also* Exhibit P341.

⁸¹³ Bogdan Tomaš, Exhibit P338, para. 22; Bogdan Tomaš, Exhibit P336 (*Haradinaj* original transcript), T. 6192.

⁸¹⁴ Bogdan Tomaš, Exhibit P336 (*Haradinaj* original transcript), T. 6189-6190.

⁸¹⁵ Exhibits P339; P340.

⁸¹⁶ Exhibit D182, pp 1-2.

⁸¹⁷ Exhibit D183.

⁸¹⁸ Exhibit D184, pp 1-3.

211. Turning again to the incident involving Slobodan Radošević and Miloš Radunović, Staniša Radošević, son of Slobodan Radošević,⁸¹⁹ provided several accounts of what he heard may have happened to his father. He heard from an unnamed friend that this friend left his house when KLA members in uniform in two cars drove by, transporting Slobodan Radošević and Miloš Radunović.⁸²⁰ On the evidence of Staniša Radošević, the friend tried to stop the KLA members from taking these two individuals away and was beaten.⁸²¹ The friend's account as conveyed by Staniša Radošević is unclear as to whether the friend could see whether the two individuals had been beaten.⁸²² On the evidence of Staniša Radošević, the KLA members drove on with the two men in the direction of Pozhar/Požar.⁸²³ Staniša Radošević was also told by the friend that he had heard a rumour that Slobodan Radošević and Miloš Radunović had been killed later and thrown by the road near the "Linkin Put" location.⁸²⁴ According to Staniša Radošević, when the friend went there to confirm this, he found the bodies already decomposed and threw some soil over them with a shovel he had brought.⁸²⁵

212. Staniša Radošević also gave evidence about the account of another friend, Slavisa Marković. Staniša Radošević testified that one day after his mistreatment,⁸²⁶ Slavisa Marković came from Dashinoc/Dašinovac and told him that his father, Slobodan Radošević, had "probably" been captured and killed.⁸²⁷ Slavisa Marković told Staniša Radošević that there had been "a lot of gun-fire" around 1900 or 1930 hours, which Staniša Radošević attributed to an attack on his father's house.⁸²⁸ On the evidence of Staniša Radošević, Slavisa Marković attributed it to the KLA "terrorists".⁸²⁹ Staniša Radošević believed that nobody else could have done it, as the only persons allowed into the area were the KLA.⁸³⁰

213. Staniša Radošević also heard various rumours about his father's fate.⁸³¹ According to one of these rumours, Slobodan Radošević and Miloš Radunović were brought to the village of Prilep and were wounded at some point.⁸³² The rumour went on to say that the people of the village of

⁸¹⁹ Staniša Radošević, Exhibit P310, p. 1.

⁸²⁰ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1001-1003, 1006, 1082, 1086-1087; Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 996-999.

⁸²¹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1002-1003, 1006; Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 996-999.

⁸²² Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1005, 1081.

⁸²³ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1001-1002, 1006, 1082, 1087-1088.

⁸²⁴ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1006.

⁸²⁵ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1006; Staniša Radošević, Exhibit P307 (*Haradinaj* original transcript), T. 996, 998.

⁸²⁶ *See supra*, paras 195-202.

⁸²⁷ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 988, 1016.

⁸²⁸ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 988.

⁸²⁹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 988-989.

⁸³⁰ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 989.

⁸³¹ *See also* Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 995, 1017.

⁸³² Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1084-1085.

Prilep did not want to let them stay there for fear that they would be blamed for what happened.⁸³³ The two men were then taken to Gllogjan/Glodane, and either died there or in the village of Dashinoc/Dašinovac.⁸³⁴ According to another rumour they had been questioned and wounded in Gllogjan/Glodane, and were then taken to Prilep in Dečan/Dečani municipality and finally to Dashinoc/Dašinovac, where they were killed or left to bleed to death.⁸³⁵ Staniša Radošević added that he had heard yet another rumour that Deli Lekaj, a KLA member in Gllogjan/Glodane, had participated in the arrest and perhaps in the murder of his father.⁸³⁶

214. The Chamber notes that these accounts about the fate of the persons last seen in Dashinoc/Dašinovac referred to above⁸³⁷ are hearsay, in large parts multiple and unsourced. They are, therefore, not reliable. Some of the persons whose accounts were discussed above such as Deli Lekaj might have had an interest in minimizing or misrepresenting their own involvement in the events. No direct evidence of what occurred with the missing persons since they stayed behind in Dashinoc/Dašinovac, was tendered by the Prosecution. The Chamber further notes that the various accounts discussed differ considerably in parts and contradict one another. The evidence does not provide a sufficient basis for a finding on the circumstances in which these persons died. With regard to Slobodan Radošević, the Chamber also notes the evidence of his son, Staniša Radošević,⁸³⁸ who recalled that Slobodan Radošević wore a camouflage jacket and was in possession of a hunting rifle on the day he last saw him.⁸³⁹ This raises at least reasonable doubt as to whether Slobodan Radošević was taking active part in the hostilities when he died.

215. Serbian investigations attributed the remains found near Dashinoc/Dašinovac in Dečan/Dečani municipality to Slobodan Radošević and Miloš Radunović.⁸⁴⁰ A Serbian crime scene investigation report provides details about the results of the autopsies conducted on the bodies found at the lake and the Dashinoc/Dašinovac exhumation sites. According to this report, all bodies found⁸⁴¹ showed fractures and other signs of maltreatment and the cause of death was ascertained to be shots from firearms.⁸⁴² Miloš Radunović's ID card was also found at the Dashinoc/Dašinovac

⁸³³ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1084.

⁸³⁴ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1084.

⁸³⁵ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1007.

⁸³⁶ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 1004.

⁸³⁷ *See supra*, para. 203.

⁸³⁸ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 957, 1075.

⁸³⁹ Staniša Radošević, Exhibit P306 (*Haradinaj* original transcript), T. 960-961, 1075-1076.

⁸⁴⁰ Exhibit P369, pp 5-6, 57, *see also* p. 67; Nebojša Avramović, Exhibit P451, paras 83-85, 170; Dragan Živanović, Exhibit P112, para. 67; Exhibit D48, p. 1. *See infra*, para. 375.

⁸⁴¹ This assessment of the report refers to the bodies found at the canal and Dashinoc/Dašinovac sites and the farm, Exhibit P369, p. 6, explicitly mentioning the bodies found at these sites discussed in this chapter (Ilija Antić, Jusuf Hodža/Hoxha, Slobodan Radošević, Darinka Kovač, and Vukosava Vujošević), with the exception of Miloš Radunović who was not explicitly mentioned, Exhibit P369, pp 3-5.

⁸⁴² Exhibit P369, pp 6-7, 50.

exhumation site, together with clothes.⁸⁴³ The remains attributed by the above-mentioned Serbian investigation to the two mentioned individuals consist of four fragments of flat skull bones which were determined “by anthropological examination” to belong to at least three different persons, and of other bones or bone fragments. On the basis of the tendered evidence, as discussed elsewhere, the Chamber does not accept that it has been proved beyond reasonable doubt that these remains were in fact those of Slobodan Radošević and Miloš Radunović.⁸⁴⁴

216. The Chamber notes that no further evidence was received on Milica Radunović and the Marković family. In sum, the evidence received is insufficient or insufficiently reliable to establish the circumstances of the death of the persons who went missing from Dashinoc/Dašinovac or to establish the identity of the perpetrators or any KLA involvement.

(v) Dara (Darinka) Kovač (née Vujošević), Vukosava Marković (née Vujošević), Milovan Vlahović and Milka Vlahović

217. The Chamber received hearsay evidence that on the night of 20 April 1998 and continuing into the morning of 21 April 1998, the KLA fired shots from the village of Gllogjan/Glodane at Kosovo Serb houses in the village of Ratish-i-Epërm/Gornji Ratiš in Dečan/Dečani municipality.⁸⁴⁵ When at 0715 hours on 21 April 1998, the KLA and armed civilians arrived in the village in tractors and trucks and began to fire shots into the air above Kosovo Serb houses,⁸⁴⁶ the Kosovo Serbs left their houses, after which the KLA took control of the village.⁸⁴⁷ According to hearsay evidence, Dara (Darinka) Vujošević, Vukosava Vujošević, as well as Nada Vlahović’s parents, Milovan Vlahović and Milka Vlahović stayed behind in Ratish-i-Epërm/Gornji Ratiš in Dečan/Dečani municipality.⁸⁴⁸ Marijana Andelković, then a researcher for a human rights organisation,⁸⁴⁹ was told by villagers from the area, that Nada Vlahović and her brother, who left the village on 21 April 1998, tried to return the next day for their parents but were stopped and turned back by KLA members.⁸⁵⁰ Hearsay evidence from various sources suggests that the persons who stayed behind in

⁸⁴³ For this and the following *see infra*, para. 375.

⁸⁴⁴ *See infra*, paras 335-336, 375-376.

⁸⁴⁵ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10229, 10232-10234; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10229, 10232-10234; Witness 28, Exhibit P358, paras 48-49. *See also* Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10228-10230, 10234; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10228-10230, 10234. *See also supra*, para. 151; Nebojša Avramović, Exhibit P451, para. 13.

⁸⁴⁶ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10229, 10235; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10229, 10235; Witness 28, Exhibit P358, para. 49.

⁸⁴⁷ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10228; Witness 28, Exhibit P356 (*Haradinaj* original transcript), T. 10228; Witness 28, Exhibit P358, paras 49, 51; Marijana Andelković, Exhibit P440 (*Haradinaj* original transcript), T. 598.

⁸⁴⁸ Witness 28, Exhibit P358, para. 48; Marijana Andelković, Exhibit P440 (*Haradinaj* original transcript), T. 525-526; Exhibits P443, p. 6; P445, p. 17; P448, p. 8.

⁸⁴⁹ Marijana Andelković, Exhibit P440 (*Haradinaj* original transcript), T. 464, 466-468.

⁸⁵⁰ Marijana Andelković, Exhibit P440 (*Haradinaj* original transcript), T. 598.

Ratish-i-Epërm/Gornji Ratiš went missing.⁸⁵¹ Zoran Stijović gave evidence, based on RDB information, that Milovan Vlahović and his wife and the Vujošević sisters were killed, without providing support for this assertion.⁸⁵²

218. The statements allegedly taken by the Serbian police of a captured KLA member, Bekim Kalimashi have already been mentioned above.⁸⁵³ According to information in these statements attributed to Bekim Kalimashi, in May or June 1998, he took part in the kidnapping of several persons from the Ratish-i-Epërm/Gornji Ratiš village in Dečan/Dečani municipality on orders from Jah Brahimaj,⁸⁵⁴ “commander for the village of Jabllanicë/Jablanica” in Gjakovë/Đakovica municipality, who participated in the kidnapping.⁸⁵⁵ The statements describe one of the victims as an older man of average height with a moustache and a black cap with white stripes.⁸⁵⁶ According to Nebojša Avramović, a crime technician,⁸⁵⁷ this description matched the one in a missing persons report filed by the family of the missing person sometime in April 1998.⁸⁵⁸ According to the statements attributed to Bekim Kalimashi, the persons were subsequently detained in Jabllanicë/Jablanica in Gjakovë/Đakovica municipality, and according to what he heard, were maltreated and killed.⁸⁵⁹

219. These accounts about the fate of the above mentioned persons who went missing from Ratish-i-Epërm/Gornji Ratiš are hearsay, partly unsourced and removed. They are therefore of low reliability. As explained elsewhere, the Chamber is particularly concerned about the reliability of the statements referred to above, attributed to Bekim Kalimashi.⁸⁶⁰ Therefore, the Chamber will not rely on any of these accounts.

220. According to Serbian investigations, the remains of Darinka Kovač (née Vujošević), Vukosava Marković (née Vujošević), and Milka Vlahović from Ratish-i-Epërm/Gornji Ratiš in Dečan/Dečani municipality were found at the Radoniq/Radonjić lake exhumation site.⁸⁶¹ The

⁸⁵¹ Exhibit P369, pp 10-11, 16, 18 (the Vlahović couple), pp 19, 69-74 (the Vujošević sisters); Marijana Andelković, Exhibit P440 (*Haradinaj* original transcript), T. 525-526, 662; Exhibits P443, pp 6, 19; P445, p. 17; P448, pp 3, 8.

⁸⁵² Zoran Stijović, Exhibit P121, para. 51.

⁸⁵³ See *supra*, paras 207-210; Exhibits P369, p. 18; P390; P391; Nebojša Avramović, Exhibit P451, paras 23, 25; Exhibits D189; D190.

⁸⁵⁴ The names Jah Brahimaj, Ljah Ibrahim, Ljahi Ibrahim, Jah Ibrahim, Ljahi Ibrahim are used interchangeably by the evidence to refer to the commander of Jabllanicë/Jablanica, Exhibits P369, p. 18; P390, p. 3; P391, p. 5.

⁸⁵⁵ Exhibit P369, p. 18; Radovan Zlatković, Exhibit P373, para. 53; Exhibits P390, p. 3; P391, pp 3-4; Nebojša Avramović, Exhibit P451, para. 32; Exhibits D189, p. 3; D190, p. 4.

⁸⁵⁶ Exhibits P390, p. 3; P391, p. 5; Nebojša Avramović, Exhibit P451, para. 32; Exhibits D189, p. 3; D190, p. 5.

⁸⁵⁷ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6591; Nebojša Avramović, Exhibit P451, para. 7.

⁸⁵⁸ Nebojša Avramović, Exhibit P451, para. 32.

⁸⁵⁹ Exhibits P369, p. 18; P390, pp 3-4; P391, p. 5; D189, pp 3-4; D190, p. 5.

⁸⁶⁰ See *supra*, paras 207-210.

⁸⁶¹ Witness 28, Exhibit P358, para. 48; Exhibits P369, pp 4-6, 57; P428, p. 2; Nebojša Avramović, Exhibit P451, para. 170; Dušan Dunjić, Exhibit P470, paras 304, 593-594. Remains labelled “R-15” that were found at the lake were initially attributed to Milovan Vlahović, but a later DNA identification revealed that they belong to Istref

Serbian crime scene investigation report mentioned above refers to results of autopsies conducted on the bodies found at the lake and Dashinoc/Dašinovac exhumation sites. According to this report, all bodies found⁸⁶² showed signs of maltreatment including fractures and the report ascertained shots from firearms to be the cause of death.⁸⁶³ The remains that the report attributes to Vukosava Marković (labelled “R-10”) showed a bullet hole through the pelvis, multiple fractures on the left arm, and a fracture on the right thigh.⁸⁶⁴ The autopsy on the remains that the report attributes to Darinka Kovač (labelled “R-17”) revealed a bullet hole on the left pelvic bone caused by a firearm projectile, multiple fractures on the left arm, and a fracture on the right thigh.⁸⁶⁵ The Chamber discussed and found elsewhere that the remains labelled “R-10” and “R-17” are those of Vukosava Marković and Darinka Kovač.⁸⁶⁶ The Chamber also found elsewhere that the remains labelled “R-35” were those of Milka Vlahović.⁸⁶⁷ The cause of death could not be ascertained for remains labelled “R-35”.⁸⁶⁸

221. In light of the above, the evidence received is insufficient or insufficiently reliable to establish the circumstances of the death of the persons who went missing from Ratish-i-Epërm/Gornji Ratiš or to establish the identity of the perpetrators or any KLA involvement.

(vi) Other incidents

222. On 2 March 1998, at 1600 hours, Slobodan Praščević, a retired police officer, was killed in an attack on his Lada vehicle, in Ratish-i-Ulët/Donji Ratiš in Deçan/Dečani municipality.⁸⁶⁹ A contemporaneous RDB Gjakovë/Đakovica report dated 3 March 1998 suggests that this attack was inflicted by “šiptar terrorists”.⁸⁷⁰ Notwithstanding this report, according to Zoran Stijović of the Serbian State Security Service,⁸⁷¹ police investigations established that the victim was not killed by

Krasniqi, Exhibit P369, p. 57; Nebojša Avramović, Exhibit P451, para. 170; Dušan Dunjić, Exhibit P470, paras 381-383. *See infra*, paras 334-335.

⁸⁶² This assessment of the report refers to the bodies found at the canal and Dashinoc/Dašinovac sites and the farm, Exhibit P369, p. 6, explicitly mentioning the bodies found at these sites discussed in this chapter (Ilija Antić, Jusuf Hodža/Hoxha, Slobodan Radošević, Darinka Kovač, and Vukosava Vujošević), with the exception of Miloš Radunović who was not explicitly mentioned, Exhibit P369, pp 3-5.

⁸⁶³ Exhibit P369, pp 6-7, 50.

⁸⁶⁴ Dušan Dunjić, Exhibit P470, paras 300, 304.

⁸⁶⁵ Dušan Dunjić, Exhibit P470, paras 401, 408.

⁸⁶⁶ *See infra*, para. 340.

⁸⁶⁷ *See infra*, para. 337.

⁸⁶⁸ Dušan Dunjić, Exhibit P470, paras 593, 597-598.

⁸⁶⁹ Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9061-9064; Zoran Stijović, Exhibit P123 (*Haradinaj* original transcript), T. 9061-9064; Marijana Anđelković, Exhibit P441 (*Haradinaj* original transcript), T. 667-668. *See Confidential Annex*.

⁸⁷⁰ *See Confidential Annex*.

⁸⁷¹ Zoran Stijović, T. 537; Zoran Stijović, Exhibit P121, para. 2; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8871, 9096.

the KLA and that there were personal motives involved in his death.⁸⁷² In light of this and in the absence of further evidence, this incident will not be considered further.

223. On 6 March 1998, at 1800 hours, there was an attack on Stevan Maslovarić from Plangor/Pljančor village in Gjakovë/Đakovica municipality. No details of this attack were provided in the evidence. According to Nebojša Avramović, a crime technician,⁸⁷³ a ballistic report showed that the bullet casings used matched those resulting from the exchange of fire between the KLA and Serbian forces at the Haradinaj family compound,⁸⁷⁴ which the Chamber found earlier occurred on 24 March 1998.⁸⁷⁵

224. Various sources of evidence suggest that a Serbian doctor, Dr. Mirko Pešić, and his driver Zečević were kidnapped and questioned near Dečan/Dečani on or before 13 April 1998, but were released, because they were working for an international medical organisation.⁸⁷⁶ No information about the perpetrators is provided.

225. The Chamber received uncorroborated hearsay evidence of an attack on the Serbian refugee settlement in Baballoq/Babaloć in Dečan/Dečani municipality on 18 and 19 April 1998. Inhabitants of the settlement told Witness 28 that on the evening of 18 April 1998 the KLA attacked the house of Žarko Zlaticanina in the settlement from the direction of the Kosovo Albanian village of Baballoq/Babaloć or Suka-e-Baballoq/Babaloć.⁸⁷⁷ No one was injured.⁸⁷⁸ The same residents told Witness 28 that the KLA shot at the houses in the settlement “every day and night” from the same direction, continuing on 19 April 1998.⁸⁷⁹

226. Witness 28 was informed that Branko Stamatović, a Kosovo Serb from Prilep in Dečan/Dečani municipality, disappeared on 25 April 1998.⁸⁸⁰

227. On 13 May 1998, Dragan Živanović reported from the Pejë/Peć forward command post to the Priština Corps Command that a Catholic Kosovo Albanian from Baran/Barane village in Pejë/Peć municipality had been killed due to the villager’s refusal to take up arms for the KLA.⁸⁸¹

⁸⁷² Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9061-9064; Zoran Stijović, Exhibit P123 (*Haradinaj* original transcript), T. 9061-9064; Marijana Anđelković, Exhibit P440 (*Haradinaj* original transcript), T. 490, 675. See Confidential Annex.

⁸⁷³ Nebojša Avramović, Exhibit P451, para. 7.

⁸⁷⁴ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6710-6711; Nebojša Avramović, Exhibit P451, paras 187, 189. The ballistic report was not tendered into evidence. See also *infra*, para. 330.

⁸⁷⁵ See *supra*, paras 144-149.

⁸⁷⁶ Zoran Stijović, Exhibit P121, para. 51; Exhibit P448 p. 1.

⁸⁷⁷ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10180-10182, 10263; Witness 28, Exhibit P358, paras 40-41.

⁸⁷⁸ Witness 28, Exhibit P358, para. 40.

⁸⁷⁹ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10181-10182, 10263; Witness 28, Exhibit P358, para. 41.

⁸⁸⁰ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10196; Witness 28, Exhibit P358, para. 53.

228. A regular combat report of the VJ 125th mtrb dated 20 May 1998 details a number of incidents involving armed Kosovo Albanians. These include an incident on 19 May 1998 of a bus which “came under infantry fire” while travelling along the road from Prilep to Dečan/Dečani. The report alleges that the perpetrators were positioned by the roadside near the bridge across the “Ločanska Bistrica” River.⁸⁸²

229. A report of the SUP Gjakovë/Đakovica to the district prosecutor in Pejë/Peć, dated 21 December 1998 and drafted by Radovan Zlatković,⁸⁸³ refers to several incidents, listing Ramush Haradinaj and the “group” around him or “ethnic Albanian DTG[s]” as the perpetrators of a number of incidents.⁸⁸⁴ The report speaks of the killing of Mustafa Vebi and the serious injuring of Boško Vlahović, Mišo Mijović, Dragan Đurišić and Ernand Muminović on 7 May 1998 in Dečan/Dečani municipality;⁸⁸⁵ the shooting at Marko Krstović and Đoka Kujtim in their vehicles on 23 May 1998 in Prilep village in Dečan/Dečani municipality;⁸⁸⁶ and the killing of Vidosava Simić with firearms in her house in Lloqan/Locane village in Dečan/Dečani municipality on 31 May 1998.⁸⁸⁷ According to Radovan Zlatković, the persons who disappeared were mostly so-called “loyal Albanians” or those who could have had feuds with others; normally, however, these persons were peaceful, law-abiding citizens.⁸⁸⁸

230. The Chamber is in possession of a statement that Zenel Alija allegedly provided to the Serbian police. According to this evidence, Zenel Alija heard that a person from Pejë/Peć, about 190 centimetres tall, blond and with a beard, had been caught by Toger’s unit in Dujakë/Dujak village in Gjakovë/Đakovica municipality and brought to Gllogjan/Glodane presumably by the end of May 1998, where he was detained. According to the statement, Zenel Alija heard that he was later killed.⁸⁸⁹ As found elsewhere,⁸⁹⁰ this evidence is not of sufficient probative value to be relied upon in the absence of other reliable evidence that corroborates it.

⁸⁸¹ Dragan Živanović, Exhibit P111, para. 48; Dragan Živanović, Exhibit P112, para. 48.

⁸⁸² Dragan Živanović, Exhibit P112, para. 80; Exhibit P114, para. 1.

⁸⁸³ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6907; Radovan Zlatković, Exhibit P373, para. 13 (pp 8, 11); Exhibit P383.

⁸⁸⁴ Exhibit P383, p. 3. The Chamber discussed the evidentiary value of this report elsewhere, *see supra*, para. 165.

⁸⁸⁵ Exhibit P383, p. 13.

⁸⁸⁶ Exhibit P383, p. 8.

⁸⁸⁷ Exhibits P378; P383, p. 6. *See also* Exhibit P378, pp 2-3, a criminal report which states that due to security reasons, an on-site investigation was not performed and that the perpetrators of the crime of terrorism were unknown.

⁸⁸⁸ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 7070-7071.

⁸⁸⁹ Exhibit P389, pp 1, 3-4.

⁸⁹⁰ *See supra*, paras 208-210.

231. Jusuf Hodža/Hoxha was reported to have disappeared on 26 June 1998 in the Duhël/Dulje pass in the Suharekë/Suva Reka municipality between Prizren and Suharekë/Suva Reka.⁸⁹¹ According to hearsay evidence from Nebojša Avramović, a crime technician,⁸⁹² Jusuf Hodža/Hoxha had been a police informant for petty crimes, burglaries, forced entries into shops and the like.⁸⁹³ According to Serbian police investigations, Jusuf Hodža/Hoxha's remains were discovered at the Lake Radoniq/Radonjić canal exhumation site. As set out elsewhere, the Chamber does not accept this identification.⁸⁹⁴ The location where Jusuf Hodža/Hoxha is reported to have gone missing is outside of the Indictment area. This incident will not be considered further.

232. Ilija Antić was reported last seen on 28 June 1998.⁸⁹⁵ According to Serbian police investigations, Ilija Antić's body was found at the Lake Radoniq/Radonjić canal.⁸⁹⁶ On the evidence of Dušan Dunjić, the autopsy of the body labelled "R-20", which was identified by the Belgrade forensic team as the remains of Ilija Antić,⁸⁹⁷ revealed multiple fractures, *inter alia*, to the skull, the lower jaw, ribs on the left side, both tibiae, bones of the left arm, which could not have been caused by a fall in the ditch.⁸⁹⁸ The Chamber notes that these remains were not DNA-identified, and in the circumstances does not find that the evidence tendered in this respect establishes otherwise beyond reasonable doubt that the remains labelled "R-20" were indeed those of Ilija Antić.⁸⁹⁹

233. The Chamber received hearsay evidence from Cufë Krasniqi, a KLA member at the relevant time,⁹⁰⁰ that at the end of June 1998, the KLA captured Sali Shkreli from the village of Kosuriq/Kosurić in Pejë/Peć municipality, who was known to be working for the RDB.⁹⁰¹ According to Cufë Krasniqi, Idriz Balaj (aka "Toger") and Metë Krasniqi interrogated him in Baran/Barane in Pejë/Peć municipality.⁹⁰² On Cufë Krasniqi's evidence, Sali Shkreli stated that

⁸⁹¹ Exhibit P369, p. 60; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6592-6593; Nebojša Avramović, Exhibit P451, para. 170.

⁸⁹² Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6591; Nebojša Avramović, Exhibit P451, para. 7.

⁸⁹³ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6591.

⁸⁹⁴ Exhibit P369, pp 4-5, 57; Nebojša Avramović, Exhibit P451, para. 170. The Chamber does not find that the evidence tendered establishes beyond reasonable doubt that these remains found at the lake were those of Jusuf Hodža/Hoxha, *see infra*, para. 341.

⁸⁹⁵ Exhibit P369, pp 75-77.

⁸⁹⁶ Exhibit P369, pp 3, 5, 57; Nebojša Avramović, Exhibit P451, para. 170.

⁸⁹⁷ *See infra*, para. 334.

⁸⁹⁸ Dušan Dunjić, Exhibit P470, para. 449.

⁸⁹⁹ *See infra*, para. 341.

⁹⁰⁰ Cufë Krasniqi, Exhibit P54, para. 30.

⁹⁰¹ Cufë Krasniqi, Exhibit P54, para. 80.

⁹⁰² Cufë Krasniqi, Exhibit P54, para. 80.

Ramush Haradinaj and Idriz Balaj released him, as Sali Shkreli said he and his family wanted to join the KLA.⁹⁰³

234. John Crosland stated that from time to time, he was asked to go and visit places where bodies had been left by the side of the road. He recalled one instance on an unspecified date on the Pejë/Peć-Prishtinë/Priština road close to Pejë/Peć, and one at Rakovinë/Rakovina in Gjakovë/Đakovica municipality. According to him, it was very difficult to assess who was responsible for those killings, taking into account that ordinary criminal activity and blood feuds resulted in deaths in Kosovo.⁹⁰⁴

235. Some of the evidence referred to above does not provide specific information as to date, time, and place of the events. The material often lacks any information about its sources, and whether it was first-hand or further removed, and often remains uncorroborated. The Chamber, therefore, will give little weight to it. In this regard, it notes in particular that one document that reports incidents of kidnapping, maltreatment or killing of civilians at the time of the Indictment, attributes these acts to “Albanian DTG[s]”, Ramush Haradinaj and the group around Ramush Haradinaj, without providing a factual basis to support this assertion. The Chamber finds such evidence on perpetrators not to be sufficiently reliable on its own to prove KLA involvement or involvement of particular individuals. In some of the instances mentioned above, the Chamber received no evidence on the perpetrators at all.

(vii) Conclusion

236. In light of the above, the Chamber finds the abduction and beating of Jah Bushati by KLA soldiers in spring 1998, the beatings of the Kosovo Serbs Mijat Stojanović, Dragoslav Stojanović, and Veselin Stijović by KLA soldiers on 18 April 1998, and the beatings of the Kosovo Serbs Novak Stijović and Staniša Radošević by KLA soldiers on 22 April 1998 established. The Chamber notes that all of these victims were civilians.⁹⁰⁵ For the reasons set out above, the Chamber is otherwise not satisfied that it can rely on the above material for a factual finding on KLA involvement in the mistreatment or killing of civilians.

(b) General statements on kidnapping, mistreatment and killing of civilians by the KLA

237. The Chamber received a great number of general statements about targeting of civilians by the KLA for the period and geographical area alleged in the Indictment.

⁹⁰³ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5841; Cufë Krasniqi, Exhibit P54, para. 81.

⁹⁰⁴ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4701.

⁹⁰⁵ See *infra*, para. 176, 182-183, 195.

238. Witness Zoran Stijović provided statistics of attacks that concern a broader geographical area and time frame than alleged in the Indictment but which also cover attacks that fall within the Indictment area and period and the period discussed in this chapter. Zoran Stijović said that he in his function as head of the analytical section of the Prishtinë/Priština centre of the RDB,⁹⁰⁶ compiled a table of “terrorist” attacks on police and Kosovo Albanians “who did not support the agenda of the separatists” in 1998 that totalled 1,486 attacks between 1 January and 30 November 1998. This number included the killing of 90 Kosovo Albanian and Kosovo Serb civilians, the wounding of 96 civilians, and the kidnapping of 221 persons whose fate remains unknown.⁹⁰⁷

239. Witness 69 stated that he was privy to information from the intelligence and the police duty service in 1998, that an organisation operating in the Dukagjin zone was threatening Kosovo Albanians in the area, pressuring them in other ways, or beating them up or abducting them to make them join or morally or financially support the group.⁹⁰⁸ On the evidence of Witness 69, members of the group threatened or killed Kosovo Albanians who refused to join. Therefore, Kosovo Albanians joined in great numbers.⁹⁰⁹

240. On Witness 69’s evidence, from early spring 1998, the number of ambushes and attacks on civilians increased and kidnappings of Kosovo Serb, Kosovo Albanian, and Kosovo Roma civilians started to occur. According to Witness 69, this was evident from citizens’ complaints to the police duty service and intelligence information, and it also corresponded with the witness’s recollection.⁹¹⁰ According to Witness 69, the police saw or had “grounds for suspicion” that the KLA was involved in these events.⁹¹¹

241. Nebojša Avramović gave evidence that from March until the end of August 1998 all Kosovo Serbs who remained in the KLA controlled areas were kidnapped.⁹¹² He explained that the police received this information from relatives of those who had gone missing, “sources” working for the police, complaints and reports, and from KLA soldiers who had been captured and interviewed.⁹¹³

⁹⁰⁶ Zoran Stijović, T. 537; Zoran Stijović, Exhibit P121, para. 2; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8871, 9096-9097.

⁹⁰⁷ Zoran Stijović, Exhibit P121, paras 20, 62; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8933-8934, 9058. Zoran Stijović stated that these numbers were based on information from the MUP (including an official publication), the RDB, the media, and the army. He explained the source of these figures and details of his methodology, including how the attacks were distinguished between “terrorist” attacks and such unrelated to “terrorism”, Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8933-8948, 8953-8958, 9058.

⁹⁰⁸ Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9857-9858; Witness 69, Exhibit P370, para. 11.

⁹⁰⁹ Witness 69, Exhibit P370, para. 11.

⁹¹⁰ Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9859-9860; Witness 69, Exhibit P370, paras 21-23, 25.

⁹¹¹ Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9860.

⁹¹² Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6600.

⁹¹³ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6600, 6604. The Chamber also notes in this regard that according to the witness, on-site inspections with regard to investigations into cases of kidnapping

He saw documents, reports, and talked to his colleagues about the missing persons. There were also Kosovo Albanians loyal to the state, *i.e.* who did not want to fight against it, who went missing in the same zone.⁹¹⁴

242. Witness 28 gained the impression that during the clashes between the KLA and police forces in the Dukagjin zone in March and April 1998, the KLA and the Serbian forces were targeting each other's populations and this resulted in the flight of the civilian population, as opposed to "uncontrolled" violence by unknown perpetrators.⁹¹⁵ Witness 28 "understood" that some Kosovo Serbs were arrested and beaten in the KLA headquarters in Gillogjan/Glodane in Deçan/Dečani municipality.⁹¹⁶ The witness stated that in March of 1998, there were KLA attacks to the east of the Prishtinë/Priština-Gjakovë/Đakovica-Pejë/Pecë road "in the triangle between [Deçan/]Dečani-[Gjakovë/]Đakovica-[Klinë/]Klina", but conditions on the road itself were normal.⁹¹⁷ A report of the 549th mtbr of the VJ dated 5 March 1998 asserts an "escalation of terrorist activity" and attacks on the Kosovo Serb population in the villages of Bec, Čermjan/Crmljane in Gjakovë/Đakovica municipality, and Ratishë/Ratiš in Deçan/Dečani municipality.⁹¹⁸

243. Zoran Stijović, an RDB official,⁹¹⁹ stated on the basis of information from Vlado Mirčić, an RDB operative from Deçan/Dečani, that after the attack on the Haradinaj family compound on 24 March 1998, KLA harassment and attacks increased.⁹²⁰ He further stated that suspected Kosovo Albanian collaborators and Kosovo Roma were targeted, and that according to pathologists who conducted autopsies most of the victims showed signs of torture.⁹²¹ The Chamber notes that the witness does not provide any further information about the identity of the alleged victims, where they were killed, who killed them, and where their remains were found.

244. Radovan Zlatković, an investigator in Gjakovë/Đakovica at the time,⁹²² shared this assessment of a considerable increase in the activity of Kosovo Albanian armed groups after 24 March 1998. According to him, from this date onwards, armed Kosovo Albanians were active in

were impossible in that period and that area under the KLA command, and that the police made no enquiries, Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6603-6604.

⁹¹⁴ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6602.

⁹¹⁵ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10178, 10182-10184, 10201.

⁹¹⁶ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10201.

⁹¹⁷ Witness 28, Exhibit P358, para. 56.

⁹¹⁸ Exhibit P30, p. 1.

⁹¹⁹ Zoran Stijović, T. 537; Zoran Stijović, Exhibit P121, para. 2; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 8871, 9096.

⁹²⁰ Zoran Stijović, Exhibit P121, para. 51.

⁹²¹ Zoran Stijović, Exhibit P121, para. 56.

⁹²² Radovan Zlatković, Exhibit P373, paras 10-11. The witness's area of responsibility during this time was, *inter alia*, the road between Prishtinë/Priština and Gjakovë/Đakovica and between Gjakovë/Đakovica and Pejë/Pecë, and parts of Gjakovë/Đakovica municipality and of Deçan/Dečani municipality, *ibid.*, para. 11.

the area surrounding Lake Radoniq/Radonjić, *i.e.* the whole of Deçan/Dečani municipality and part of Gjakovë/Đakovica municipality. On his evidence, which provides no further details, they kidnapped Kosovo Serbs, Montenegrins, Catholics, “disobedient” Kosovo Albanians, and Kosovo Roma in Ratish-i-Epërm/Gornji Ratiš, Ratish-i-Ulët/Donji Ratiš, and Lumbardh/Ljumbarda in Deçan/Dečani municipality and in Plançor/Pljančor in Gjakovë/Đakovica municipality.⁹²³

245. Dragan Živanović, chief of staff of the command of the VJ 125th mtbr,⁹²⁴ stated that in April 1998, a forward command post of the 125th mtbr was established in Pejë/Peć, as “terrorist groups” were developing in an increasing number of villages and were attacking MUP controls. According to him, these armed Kosovo Albanian groups were “kidnapping and murdering [Kosovo] Serbs and [Kosovo] Romas and those [Kosovo] Albanians who were loyal to the state of Serbia”.⁹²⁵ Dragan Živanović did not provide details about these acts.

246. The Chamber received another general assessment with regard to the situation of civilians during the period around 21 and 22 April 1998 from Nebojša Avramović, a crime technician.⁹²⁶ He asserted that the Kosovo Serbs who had remained in Deçan/Dečani and the area on both sides of the Gjakovë/Đakovica-Pejë/Peć road, which then was essentially the frontline, were driven out or abducted. This area included the villages of Pozhar/Požar, Dashinoc/Dašinovac, and Ratish/Ratiš in Deçan/Dečani municipality. According to Nebojša Avramović, the KLA fired at both civilian and police vehicles that moved on that road.⁹²⁷

247. Nebojša Avramović stated that he participated in five or six investigations of about a dozen or more attacks on civilian cars during the night hours by KLA forces on the Gjakovë/Đakovica – Pejë/Peć road. These attacks took place in January and February 1998 prior to the period referred to in the Indictment.⁹²⁸ Nebojša Avramović gave evidence that in the course of these investigations he travelled on the Gjakovë/Đakovica-Pejë/Peć road. He stated that he experienced “many attacks” on his police vehicle, even though it was a plain white vehicle with civilian licence plates, but did not provide further information on what these attacks involved.⁹²⁹ He stated that such attacks on civilian cars became more frequent from the beginning of May until September 1998, and they took place by day and at night. Kosovo Albanians stopped travelling.⁹³⁰

⁹²³ Radovan Zlatković, P373, para. 28.

⁹²⁴ Dragan Živanović, Exhibit P112, para. 3.

⁹²⁵ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9316.

⁹²⁶ Nebojša Avramović, Exhibit P451, paras 7, 13.

⁹²⁷ Nebojša Avramović, Exhibit P451, para. 13.

⁹²⁸ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6597; Nebojša Avramović, Exhibit P451, para. 11.

⁹²⁹ Nebojša Avramović, Exhibit P451, para. 14.

⁹³⁰ Nebojša Avramović, Exhibit P451, para. 11.

248. A Priština Corps forward command post report of 8 May 1998 refers to the security situation in Gjakovë/Đakovica and states that armed Kosovo Albanian groups in Kosovo and Metehi/Metohija launched attacks against, *inter alia*, the Kosovo Serb population and Kosovo Albanians loyal to the state.⁹³¹ A report of the VJ Priština Corps dated 13 May 1998 referred to increasingly frequent attacks on, *inter alia*, “citizens of Serbian nationality” and Kosovo Albanians “loyal to the system”.⁹³²

249. A contemporaneous British situation report dated 11 May 1998 referred to a “Tanjug” report which detailed a number of grenade attacks on Kosovo Albanian restaurants and businesses in Pejë/Peć, and which attributed them to the KLA as measures against businessmen who collaborated with the Serbian administration.⁹³³ In light of these attacks, John Crosland opined that the aforementioned attacks were similar to what went on throughout the campaign, “where [Kosovo] Albanians who seemed to be siding with the Serb[ian] administration were taken out and their businesses either bombed and they themselves murdered”.⁹³⁴

250. A report of the VJ 125th mtbr of 22 May 1998 states that armed Kosovo Albanians had, in the two preceding days in particular, “increased the number of intercepting, kidnapping and attacks against the civilian population”.⁹³⁵ The basis for this conclusion in the report is not provided in the evidence.

251. According to Witness 69, on the road between Gjakovë/Đakovica and Dečan/Dečani many attacks by armed Kosovo Albanians on civilians took place.⁹³⁶ Upon arriving in Pejë/Peć on 24 or 25 May 1998, Witness 28 was informed of several incidents that had occurred during that day.⁹³⁷ These included, *inter alia*, attacks against Kosovo Serbs along the Gjakovë/Đakovica-Pejë/Peć road.⁹³⁸

252. An order of the Gjakovë/Đakovica forward command of the Priština Corps dated 3 June 1998 stated that armed Kosovo Albanians “launched increasingly forceful terrorist operations against the Serbian and Montenegrin population, [...] and against their own people”.⁹³⁹ An interim report from the Priština Corps to the 3rd Army command dated 20 June 1998 reported Kosovo Serbs

⁹³¹ Exhibit P34, pp 1-2.

⁹³² Exhibit P20, p. 1.

⁹³³ Exhibit P18, paras 1, 10-11.

⁹³⁴ John Crosland, Exhibit P9 (*Limaj* transcript), T. 1867.

⁹³⁵ Dragan Živanović, Exhibit P111, para. 48; Dragan Živanović, Exhibit P112, para. 48; Exhibit P115, para. 2(e).

⁹³⁶ Witness 69, Exhibit P370, para. 29.

⁹³⁷ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10206-10207; Witness 28, Exhibit P358, para. 65.

⁹³⁸ Witness 28, Exhibit P355 (*Haradinaj* original transcript), T. 10207; Witness 28, Exhibit P358, para. 65.

⁹³⁹ Exhibit P116, para. 2.

leaving the village of Dush-i-Vogël/Dušević in Klinë/Klina municipality under pressure by armed Kosovo Albanians.⁹⁴⁰

253. These broad statements briefly summarised above do not offer information about any specific events that could provide a reliable factual basis for a finding of the Chamber, or they consist of derivative information of uncertain provenance, so that the Chamber must reject this evidence.

B. Events in the territory of Dukagjin Operational Zone between July and September 1998

1. Interactions between the FARK and KLA

(a) Deployment of FARK forces to the Dukagjin Operational Zone

254. The creation of the FARK is associated with the Democratic League of Kosovo (“LDK”). According to Jakup Krasniqi, the LDK was formed “in around December 1990/1991”.⁹⁴¹ Ibrahim Rugova was the leader of the LDK and Bujar Bukoshi was the (LDK) Prime Minister of the government in exile.⁹⁴² The LDK advocated a peaceful solution to the Kosovo question.⁹⁴³

255. In early 1998 the LDK changed its prior policy of non-violent opposition to support armed resistance.⁹⁴⁴ Bujar Bukoshi created a Ministry of Defence and appointed Ahmet Krasniqi as the Minister of Defence of the Republic of Kosovo and Agim Mehmeti as his Deputy. It was then that the LDK established the FARK.⁹⁴⁵ The LDK held talks with the KLA on the relationship of their armed forces from 22 to 24 May 1998 in Oslo, Norway.⁹⁴⁶ At this meeting, the KLA “agreed to be integrated into the Ministry of Defence, but that the new, integrated force would continue to be known as the KLA, since this name was already widely known”⁹⁴⁷ and “meant something to the population”.⁹⁴⁸ It was also agreed that the KLA insignia would be used on uniforms.⁹⁴⁹

256. In June 1998 FARK soldiers were trained at the Tropoje region of northern Albania. There were three FARK brigades: the 131st commanded by Rrustem Berisha; the 133rd commanded by

⁹⁴⁰ John Crosland, Exhibit P9 (*Limaj* transcript), T. 1940-1941; Exhibit P22.

⁹⁴¹ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3298.

⁹⁴² Witness 17, Exhibit P344, para. 2; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3366.

⁹⁴³ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3298-3299; Witness 3, T. 1501-1502.

⁹⁴⁴ Witness 17, Exhibit P344, paras 5, 7-8.

⁹⁴⁵ Witness 17, Exhibit P344, para. 8.

⁹⁴⁶ Witness 17, Exhibit P344, para. 9; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7609-7611.

⁹⁴⁷ Witness 17, Exhibit P344, para. 9.

⁹⁴⁸ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7610-7611.

⁹⁴⁹ Witness 17, Exhibit P344, para. 9. See also Rrustem Tetaj, Exhibit P77, para. 38; Skender Rexhahmetaj, Exhibit P297, para. 25; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5805.

Kemajl Shaqiri; and the 134th commanded by Tahir Zemaj. Tahir Zemaj was the highest ranking FARK officer and the commander of all three FARK brigades.⁹⁵⁰

257. Ahmet Krasniqi decided on the operational zones and deployment of the FARK brigades in Kosovo.⁹⁵¹ The initial deployment of FARK brigades into Kosovo was planned to occur in three stages. First, the brigades were to march from Albania to Jasiq/Jasić in Deçan/Dečani municipality and wait for weapons and equipment; second, they were to march from Jasiq/Jasić to Isniq/Istinić in Deçan/Dečani municipality; and third, they were to “form military barracks and enlist men and train them as soldiers and reorganise the army in general”.⁹⁵²

258. The Chamber heard evidence that around June 1998 only the 134th brigade, under the command of Tahir Zemaj, had soldiers. This brigade consisted of approximately 100-200 soldiers and 23-25 officers.⁹⁵³ They entered Kosovo in late June 1998 and arrived at Jasiq/Jasić in the early hours of 25 June 1998, where they remained for a few days.⁹⁵⁴ Thereafter, the brigade continued and arrived at Isniq/Istinić around 30 June 1998.⁹⁵⁵ The FARK brought with them automatic rifles and grenades.⁹⁵⁶ The Chamber heard evidence from Zoran Stijović that the “first reaction of the KLA to the [FARK’s] appearance was hostile”, and that “KLA spokesman Jakup Krasniqi stated in public that the FARK was undermining the Albanian cause”.⁹⁵⁷

259. On 25 June 1998, FARK representatives met with KLA commanders, Salih Veseli and Naim Maloku in Jasiq/Jasić.⁹⁵⁸ Ramush Haradinaj was not present.⁹⁵⁹ The evidence indicates that Ramush Haradinaj sent the KLA commanders to inform the FARK that they had to submit to KLA command or leave Kosovo. The FARK representatives stated they could not submit to the KLA because of the agreement that had been reached in Oslo in May 1998 to create a joint command.

⁹⁵⁰ Witness 17, Exhibit P344, para. 10. According to Witness 17, Tahir Zemaj was the commander of all three FARK brigades and commanded the 134th brigade at the same time.

⁹⁵¹ Witness 17, Exhibit P344, paras 8, 10-11. See also Witness 77, T. 1156.

⁹⁵² Witness 17, Exhibit P344, para. 11.

⁹⁵³ Witness 17, Exhibit P344, para. 10; Witness 77, T. 1155-1156, 1213-1214.

⁹⁵⁴ Witness 17, Exhibit P344, paras 11, 13; Shemsedin Çekaj, Exhibit P4, para. 24; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3490-3493; Zoran Stijović, Exhibit P121, para. 63. The Chamber did not receive evidence regarding the entry of the 131st and 133rd FARK brigades from Albania to Kosovo. During his testimony, Witness 77 testified that the 134th FARK brigade entered Kosovo “sometime in 1998. It was the beginning of June, as far as I remember”, Witness 77, T. 1157, 1213-1214, 1219. The Chamber does not accept this as reliable in light of the overall evidence.

⁹⁵⁵ Shemsedin Çekaj, Exhibit P4, para. 24; Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4463-4464; Zoran Stijović, Exhibit P121, para. 63.

⁹⁵⁶ Witness 77, T. 1155; Witness 17, Exhibit P344, para. 13; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3491.

⁹⁵⁷ Zoran Stijović, Exhibit P121, para. 63.

⁹⁵⁸ Witness 17, Exhibit P344, para. 14; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7612-7613.

⁹⁵⁹ Witness 17, Exhibit P344, para. 14; Witness 77, T. 1228-1229, 1472.

The KLA commanders either did not know about the agreement in Oslo or were pretending not to know.⁹⁶⁰

260. On 26 June 1998, Ramush Haradinaj arrived in Jasiq/Jasić with other KLA soldiers including Idriz Balaj, Salih Veseli, Naim Maloku and Hajdan Abazi.⁹⁶¹ The discussions during the meeting focused on the command of the Dukagjin Operational Zone and the entering of FARK forces into the area.⁹⁶² Ramush Haradinaj introduced himself as commander of the “Dukagjini Plain”.⁹⁶³ Haradinaj told the FARK representatives that they arrived in territory liberated by the KLA, that they had to accept his command or return to Albania,⁹⁶⁴ and that he did not recognise the agreement in Oslo.⁹⁶⁵ Ramush Haradinaj instructed the FARK to become part of the KLA command.⁹⁶⁶ He stated that senior FARK officers should be distributed among the operative units and in the villages, and carry out their tasks within the structure of the “Dukagjini operative staff”; this was refused by the FARK. No agreement was reached.⁹⁶⁷ The FARK informed the KLA that they would continue to carry out their military plans and strategies in phases.⁹⁶⁸

261. On 27 June 1998, the KLA⁹⁶⁹ invited the FARK commander Tahir Zemaj to Junik in Deçan/Dečani municipality to continue discussions on the command of the KLA and FARK. However, FARK officers believed that it was too dangerous and advised Tahir Zemaj not to go. Instead of Tahir Zemaj, two other FARK officers went to Junik on 30 June 1998. At the meeting of 30 June 1998, the two FARK representatives met with Salih Veseli, who introduced himself as the “Dukagjin Zone Chief of Staff”, and the other representative as Hajdan Abazi.⁹⁷⁰ The FARK officers conveyed Tahir Zemaj’s position, which was unchanged from the previous two meetings, and informed the KLA attendants that the FARK “wanted to finish the second phase of [their] deployment, marching to Isniq”, and that “if anyone got in [their] way”, the FARK forces “would have to act according to military rules”.⁹⁷¹ When the FARK representative told Salih Veseli that the FARK was going to continue with its deployment, Salih Veseli responded that the KLA could not

⁹⁶⁰ Witness 17, Exhibit P344, para. 14; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7612-7613.

⁹⁶¹ Witness 17, Exhibit P344, paras 15-17; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7613-7614; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3493-3496.

⁹⁶² Witness 17, Exhibit P344, paras 15, 17; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7613-7614; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3493-3496.

⁹⁶³ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7556-7557.

⁹⁶⁴ Witness 17, Exhibit P344, para. 17.

⁹⁶⁵ Witness 17, Exhibit P344, para. 17; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7613.

⁹⁶⁶ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7560-7561.

⁹⁶⁷ Witness 17, Exhibit P344, para. 17; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7560-7561, 7613-7614.

⁹⁶⁸ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7560-7561.

⁹⁶⁹ The evidence does not indicate who from the KLA invited Tahir Zemaj.

⁹⁷⁰ Witness 17, Exhibit P344, para. 18.

⁹⁷¹ Witness 17, Exhibit P344, para. 18; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7616.

guarantee the safety of FARK.⁹⁷² There was no use of military force by the KLA.⁹⁷³ The FARK forces were not prepared to be commanded by the “Dukagjin KLA”. Their deployment was delayed until the night of 30 June 1998 because of the problems with the KLA and the non-delivery of a convoy of weapons expected to arrive from Albania.⁹⁷⁴

262. On 2 July 1998, FARK brigade commanders and KLA commanders again met in Isniq/Istinić.⁹⁷⁵ On behalf of FARK, Tahir Zemaj discussed the “Supreme Staff of the FARK, including the activity of its senior officers since 1991”; the “formal founding of the Supreme Staff on 5 March 1998”; the formation of the brigades on 21 June 1998; and the agreement reached with the KLA leadership.⁹⁷⁶ He discussed the establishment of “two FARK components: the KLA and the MT (or territorial defence)”.⁹⁷⁷ On behalf of the KLA, Rustem Tetaj stated that the KLA did not recognise the Supreme Staff of the FARK, since it was based outside of Kosovo.⁹⁷⁸ The evidence states that the meeting on 2 July “ended amicably”.⁹⁷⁹

263. Discussions continued at a meeting on 5 July 1998. At this meeting, Rustem Tetaj explained that the KLA did not recognise the authority of the government in exile, and that the “Staff of the Plain of Dukagjin” had been “formed on 23 May 1998”. Ramush Haradinaj stated that “the KLA was born here in Kosovo”, and that the best way to integrate the forces was for the FARK forces to join the KLA.⁹⁸⁰ The evidence states that the “meeting ended quietly”.⁹⁸¹

(b) Incident in Glllogjan/Glodane in Deçan/Dečani municipality on 4 July 1998

264. On 4 July 1998, four FARK soldiers were sent by FARK commander Tahir Zemaj from Isniq/Istinić to Pacaj in Gjakovë/Đakovica municipality, to obtain weapons coming in from Albania.⁹⁸² At that time, the FARK 134th brigade was located in Isniq/Istinić village.⁹⁸³ The soldiers took a travel document issued by Tahir Zemaj with them.⁹⁸⁴ On their journey, the FARK

⁹⁷² Witness 17, Exhibit P344, para. 18.

⁹⁷³ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7617.

⁹⁷⁴ Witness 17, Exhibit P344, paras 19-20; Witness 77, T. 1236-1237.

⁹⁷⁵ Witness 17, Exhibit P344, para. 22.

⁹⁷⁶ Witness 17, Exhibit P344, para. 22. The Chamber interprets the reference to the agreement reached with the KLA leadership to be a reference to the one made in Oslo regarding the creation of the joint command between the KLA and FARK. *See supra*, para. 255.

⁹⁷⁷ Witness 17, Exhibit P344, para. 22.

⁹⁷⁸ Witness 17, Exhibit P344, para. 23.

⁹⁷⁹ Witness 17, Exhibit P344, para. 24.

⁹⁸⁰ Witness 17, Exhibit P344, paras 33-34.

⁹⁸¹ Witness 17, Exhibit P344, para. 34.

⁹⁸² Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3504-3505; Exhibit P217. *See Confidential Annex.*

⁹⁸³ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3504-3505. *See Confidential Annex.*

⁹⁸⁴ *See Confidential Annex.*

soldiers stopped at Irzniq/Rznić, so that one of them could get his military uniform and an additional travel document from Maxhun Çekaj, the KLA village commander.⁹⁸⁵

265. As the other FARK soldiers were waiting in a village store, Idriz Balaj and Daut Haradinaj, wearing black uniforms, arrived at the store and demanded that the FARK soldiers come to Gllogjan/Glodane.⁹⁸⁶ Subsequently, when the soldier who had gone to collect his uniform and travel document arrived at the store, Idriz Balaj and Daut Haradinaj repeated their demand and fired several shots in the air.⁹⁸⁷ At one point, the travel document obtained from KLA village commander Maxhun Çekaj was shown to Idriz Balaj and Daut Haradinaj.⁹⁸⁸ Daut Haradinaj tore the document up and summoned Maxhun Çekaj, telling him that the travel document should not have been provided to “these FARK soldiers” because they did not belong in Kosovo, and the KLA should “fight against them”.⁹⁸⁹

266. The four FARK soldiers subsequently went in their own vehicle to Gllogjan/Glodane, in a convoy led by Daut Haradinaj in his vehicle, followed by Idriz Balaj in a third vehicle.⁹⁹⁰ When they arrived, there was a group of around 100-200 people, most of whom were in civilian clothes, waiting outside the KLA staff building.⁹⁹¹ The Chamber heard evidence that the group of people was preparing to go to Albania to get weapons.⁹⁹²

267. Upon their arrival in Gllogjan/Glodane, one of the FARK soldiers entered the KLA staff building to speak with Ramush Haradinaj.⁹⁹³ The discussion was apparently friendly at first, but as the FARK soldier who spoke with Ramush Haradinaj was exiting the building,⁹⁹⁴ Ramush Haradinaj followed in a visibly angry manner. The Chamber heard evidence that Ramush Haradinaj started swearing and insulting one FARK soldier.⁹⁹⁵ He told another FARK soldier to “get lost” and “I don’t want to lay my eyes on you anymore”.⁹⁹⁶ Moreover, there was evidence that Ramush Haradinaj struck one of the FARK soldiers with the butt of his gun and kicked him.⁹⁹⁷ The Chamber accepts that a FARK soldier was struck by Ramush Haradinaj.

⁹⁸⁵ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3509-3511. *See* Confidential Annex.

⁹⁸⁶ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3514-3517. *See* Confidential Annex; Exhibit P217; Bislim Zyrapi, Exhibit P161, para. 48, p. 15.

⁹⁸⁷ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3514-3517. *See* Confidential Annex.

⁹⁸⁸ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3514-3517.

⁹⁸⁹ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3514-3517.

⁹⁹⁰ Witness 29, Exhibit P359 (*Haradinaj* original transcript) T. 3517-3518. *See* Confidential Annex.

⁹⁹¹ *See* Confidential Annex.

⁹⁹² *See* Confidential Annex.

⁹⁹³ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3518-3520. *See* Confidential Annex.

⁹⁹⁴ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3520-3521. *See* Confidential Annex.

⁹⁹⁵ *See* Confidential Annex.

⁹⁹⁶ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3520-3521, 3524-3526, 3529-3530, 3557-3562, 3569-3570.

⁹⁹⁷ *See* Confidential Annex.

268. Shortly thereafter, the four FARK soldiers were beaten and kicked by many individuals including Idriz Balaj, Daut Haradinaj, and other KLA soldiers.⁹⁹⁸ With respect to Ramush Haradinaj, one witness gave evidence that he did not know if at that point, Ramush Haradinaj continued to hit the first FARK soldier, while another witness testified that, after the initial blows, Ramush Haradinaj continued to beat this FARK soldier.⁹⁹⁹ The Chamber also heard evidence that during the beatings, the words “[k]ill those dirty scoundrels, those spies,” were heard and that the men beating the FARK soldiers were saying that they would “eliminate” the FARK and their commanders, and, in reference to one FARK soldier, that Ramush Haradinaj said he would “kill him with [his] own hand”.¹⁰⁰⁰

269. One of the FARK soldiers was injured by gun shot near the neck at the back of his right shoulder.¹⁰⁰¹ A witness gave evidence that Ramush Haradinaj personally threatened and shot the FARK soldier.¹⁰⁰² However, this witness gave two different accounts of the shooting. In one account, which was given to UNMIK police, he stated that Ramush Haradinaj fired several shots, while in his testimony before the Chamber, he stated that Ramush Haradinaj fired only one shot.¹⁰⁰³ The witness sought to explain this discrepancy by stating: “I said that he fired several times and this is true, and others fired as well. I couldn’t identify who it was that fired. The important thing here is that [the FARK soldier] was wounded by Mr. Ramush”.¹⁰⁰⁴ On this matter, the Chamber accepts that a FARK soldier was wounded by a gun shot and that Ramush Haradinaj is among the men who fired their guns.

270. After a brief period of beatings, three of the four FARK soldiers were dragged by the hair into the KLA staff building by soldiers in black uniforms, including Idriz Balaj and Daut Haradinaj. As they were dragged, their beating continued.¹⁰⁰⁵ The fourth FARK soldier, who had suffered the gunshot wound to the shoulder, was told by Ramush Haradinaj that he had “two minutes to leave the village of Glogjan”.¹⁰⁰⁶ This soldier returned to the FARK command and was later admitted to

⁹⁹⁸ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3523-3526. *See* Confidential Annex.

⁹⁹⁹ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3523. *See* Confidential Annex.

¹⁰⁰⁰ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3524-3526. *See also* Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3529-3531, 3557-3565, 3569-3570. *See* Confidential Annex.

¹⁰⁰¹ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3536. Another FARK soldier was injured in the leg. However, it is unclear from the evidence whether this occurred at the time the other FARK soldier was injured near the neck or during subsequent events. *See* Confidential Annex.

¹⁰⁰² Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3524-3526, 3529-3530, 3557-3562, 3564, 3567-3569. *See* Confidential Annex.

¹⁰⁰³ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3564, 3567-3569. The statement to UNMIK was read in court and the witness did not deny that he gave the statement to UNMIK, Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3568.

¹⁰⁰⁴ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3568.

¹⁰⁰⁵ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3530-3532.

¹⁰⁰⁶ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3530-3532.

hospital in Isniq/Istinić.¹⁰⁰⁷ Inside the KLA staff building, the remaining three FARK soldiers were undressed and beaten again by soldiers in black uniform; one of the FARK soldiers lost consciousness.¹⁰⁰⁸ There is no evidence on whose orders these beatings were carried out.

271. Thereafter, on the same day, Ramush Haradinaj ordered Idriz Balaj and Daut Haradinaj to take the three FARK soldiers to Kodrali/Kodralija in Deçan/Dečani municipality.¹⁰⁰⁹ The FARK soldiers were then forced by Idriz Balaj and Daut Haradinaj to run undressed for several kilometres while shots were being fired in the air.¹⁰¹⁰ When they passed through Irzniq/Rznić village, men “dressed in black clothes like military police” asked Idriz Balaj who the FARK soldiers were. When Idriz Balaj replied that they were “soldiers of Tahir Zemaj”, the men beat and kicked them.¹⁰¹¹

272. One of the FARK soldiers testified that, upon reaching Kodrali/Kodralija, Idriz Balaj put a pistol in his mouth and said “[s]ay, give my best to Tahir Zemaj and the same will befall them if they come by” before leaving.¹⁰¹² The FARK soldiers eventually arrived in Isniq/Istinić at around 2200 hours; all three were immediately offered medical attention and subsequently admitted to Isniq/Istinić hospital.¹⁰¹³

273. There was evidence that a meeting was held between KLA and FARK commanders in Llukë-e-Ulët/Donja Luka on 5 July 1998. In discussions concerning the 4 July 1998 incident discussed in the foregoing, Ramush Haradinaj stated that he felt sorry for what had happened to the four FARK soldiers, that this had been, in his words, “a failed action”, and that it would not happen again.¹⁰¹⁴ Tahir Zemaj stated that this was to be the first and last of such incidents and asked Ramush Haradinaj to “dismiss those responsible for the attack” but the latter refused.¹⁰¹⁵

274. The Chamber received no evidence of similar physical confrontations occurring thereafter.

¹⁰⁰⁷ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3532, 3536. *See* Confidential Annex.

¹⁰⁰⁸ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3530-3532. *See* Confidential Annex.

¹⁰⁰⁹ *See* Confidential Annex.

¹⁰¹⁰ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3537; Exhibit P217. *See* Confidential Annex. *See* also Bislim Zyrap, Exhibit P161, para. 48, p. 15.

¹⁰¹¹ Witness 29’s evidence was that the “Black Eagles”, under Idriz Balaj’s command, beat the FARK soldiers, Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3536-3537. However, the Chamber does not accept this evidence considering that he was not present and the direct evidence available before the Chamber. *See* Confidential Annex.

¹⁰¹² *See* Confidential Annex.

¹⁰¹³ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3536-3537; Exhibit P217; Bislim Zyrap, Exhibit P161, para. 48, p. 15. *See* Confidential Annex.

¹⁰¹⁴ Witness 17, Exhibit P344 para. 33.

¹⁰¹⁵ Witness 17, Exhibit P344, para. 33.

(c) Subsequent interactions between the FARK and KLA

275. The Chamber heard evidence that a uniformed FARK commander and Idriz Balaj had an altercation on 7 or 8 July 1998.¹⁰¹⁶ Idriz Balaj stopped the FARK commander and asked if he had permission to be there or to move around.¹⁰¹⁷ A verbal exchange ensued between Idriz Balaj and the FARK commander.¹⁰¹⁸ Although it is not explicit from the evidence, it appears that the FARK commander was subsequently allowed to proceed to the military hospital.

276. A few days later, the FARK commander raised the incident and Toger's behaviour towards him at a meeting at Llukë-e-Ulët/Donja Luka with Ramush Haradinaj.¹⁰¹⁹ The FARK commander told Ramush Haradinaj that he should dismiss or discipline Toger.¹⁰²⁰ Toger was present at that time, but did not say anything.¹⁰²¹ Ramush Haradinaj responded that he already knew about this because Toger had spoken to him¹⁰²² and that he would speak to Toger.¹⁰²³ There is no evidence whether Toger was disciplined for this interaction; he retained his role as the commander of the Black Eagles.¹⁰²⁴

277. On 10 July 1998, while the FARK 134th brigade was located in a school at Prapaqan/Prapačane in Deçan/Dečani municipality, around 15-30 KLA soldiers, including Ramush Haradinaj, Daut Haradinaj, Idriz Balaj and soldiers dressed in black uniforms, arrived at the school and demanded that the FARK officers leave immediately.¹⁰²⁵ The KLA soldiers had weapons and Ramush Haradinaj fired into the air.¹⁰²⁶ At that time, Ramush Haradinaj and Idriz Balaj were also wearing black uniforms.¹⁰²⁷ As a consequence of the demands of the KLA soldiers, the FARK officers left the barracks and went to the houses that they had been staying at in Prapaqan/Prapačane.¹⁰²⁸

278. The Chamber accepts that on 10 July 1998, KLA soldiers, including Ramush Haradinaj, Daut Haradinaj, and Idriz Balaj, demanded that FARK officers at the Prapaqan/Prapačane barracks

¹⁰¹⁶ See Confidential Annex.

¹⁰¹⁷ See Confidential Annex.

¹⁰¹⁸ See Confidential Annex.

¹⁰¹⁹ See Confidential Annex.

¹⁰²⁰ See Confidential Annex.

¹⁰²¹ See Confidential Annex.

¹⁰²² See Confidential Annex.

¹⁰²³ See Confidential Annex.

¹⁰²⁴ See Confidential Annex.

¹⁰²⁵ Witness 17, Exhibit P344, paras 41-42; Witness 17 Exhibit P342 (*Haradinaj* original transcript), T. 7564-7565; Witness 77, T. 1196-1197; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3537-3539.

¹⁰²⁶ Witness 77, T. 1196-1197; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3537-3539.

¹⁰²⁷ Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3538.

¹⁰²⁸ Witness 17, Exhibit P344, paras 43-44, 46; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7564-7565; Witness 29, Exhibit P359 (*Haradinaj* original transcript), T. 3537-3539; Rrustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3756; Witness 77, T. 1197.

leave immediately. In the Chamber's finding, this incident is indicative of tensions between the FARK and the KLA.

279. The Chamber received evidence that a meeting was held between Ramush Haradinaj and FARK commander, Tahir Zemaj, in the evening of 10 July 1998, in Llukë-e-Ulët/Donja Luka¹⁰²⁹ to resolve the tensions.¹⁰³⁰ At the meeting Ramush Haradinaj apologised to Tahir Zemaj for the incident which occurred earlier that day at the Prapaqan/Prapačane barracks.¹⁰³¹ The Chamber received evidence that Ramush Haradinaj and Tahir Zemaj went into another room to talk privately.¹⁰³² They returned and told the FARK commanders and KLA commander, Rustem Tetaj, that they had agreed on the formation of three brigades.¹⁰³³ The FARK officers, who had left pursuant to the KLA demands, returned to the Prapaqan/Prapačane barracks around 24 hours after their departure.¹⁰³⁴

280. The Chamber also received evidence that a swearing-in or oath-taking ceremony for soldiers to join and pledge their allegiance to the KLA was held on 20 July 1998 in Baran/Barane or Vranoc/Vranovac in Pejë/Peć municipality.¹⁰³⁵ The testimony of a witness and a video recording of the ceremony affirmed that those sworn in included newly arrived FARK soldiers and other volunteers, and that both FARK and KLA commanders participated in the ceremony, including Tahir Zemaj and Ramush Haradinaj who made speeches.¹⁰³⁶

281. As discussed in the earlier section of this Judgement, on or about 20 August 1998 a meeting was held to discuss the reorganisation and restructuring of the forces in the Dukagjin Operational Zone.¹⁰³⁷ The evidence indicates that this reorganisation and restructuring included Tahir Zemaj

¹⁰²⁹ The evidence about the location of the meeting was not consistent. Witness 77 described the meeting to have been in "Lluka e Poshtme". However he was not present at the meeting, Witness 77, T. 1198, 1275. In this respect, the Chamber notes evidence that Ramush Haradinaj and Tahir Zemaj met previously in Llukë-e-Ulët/Donja Luka on 5 July 1998. See *supra*, para. 273.

¹⁰³⁰ Witness 17, Exhibit P344, paras 46-47; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7632; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3756-3759; Witness 77, T. 1198.

¹⁰³¹ Witness 17, Exhibit P344, paras 46-47; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3758-3759.

¹⁰³² Witness 17, Exhibit P344, paras 46-47; Witness 17, Exhibit P342 (*Haradinaj* original transcript) T. 7632; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3758-3759.

¹⁰³³ Witness 17, Exhibit P344, paras 46-47; Witness 17, Exhibit P342 (*Haradinaj* original transcript) T. 7632; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3758-3759. See *supra*, paras 85-89.

¹⁰³⁴ Witness 17, Exhibit P344, para. 47; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 3756; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3756; Witness 77, T. 1198-1199.

¹⁰³⁵ Witness 77, T. 1281, 1308-1311; Exhibit D148; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5716-5717, 5804-5805; Cufë Krasniqi, Exhibit P54, paras 66-67; Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10862.

¹⁰³⁶ Witness 77, T. 1281, 1308-1311; Exhibit D148; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5716-5717; Cufë Krasniqi, Exhibit P54, paras 66-67.

¹⁰³⁷ See *supra*, para. 95.

becoming the commander, but that, shortly thereafter, Ramush Haradinaj was reinstated as the commander by the KLA General Staff despite the refusal of Tahir Zemaj.¹⁰³⁸

282. The Prosecution argues that the incidents discussed above, namely the reaction of the KLA following the entry of the FARK in Kosovo at the end of June 1998, the 4 July 1998 incident involving the four FARK soldiers, and the 10 July 1998 incident in Prapaqan/Prapačane barracks are evidence of “attacks against the FARK”.¹⁰³⁹ The Chamber finds that these interactions between the FARK and KLA and the subsequent events thereafter are indicative of tensions between FARK and the KLA commanders and their efforts to integrate the two forces.

2. Serbian forces operations between July and September 1998 in the Dukagjin Operational Zone

283. The evidence indicates that Serbian forces mounted several operations in Kosovo between July and September 1998.¹⁰⁴⁰ The Dukagjin Operational Zone was the “prime area because it was the main re-supply route [...] from Albania through to Kosovo” including for weapons.¹⁰⁴¹

284. Witness 17 gave evidence that Loxhë/Loda in Pejë/Peć municipality was held by the KLA in early July 1998¹⁰⁴² and that a Serbian attack began on 5 or 6 July 1998.¹⁰⁴³ Shemsedin Çekaj gave evidence that in the morning of 8 July 1998, he was informed that Loxhë/Loda was under attack by Serbian forces from the direction of Pejë/Peć.¹⁰⁴⁴ According to Witness 17, Loxhë/Loda, “initially fell to the Serbs during the attack, but FARK forces under the command of Tahir Zemaj retook the town”.¹⁰⁴⁵ The participation of FARK soldiers is supported by other evidence.¹⁰⁴⁶

285. A British diplomatic telegram dated 13 July 1998 describes the situation in Kosovo as seen by international observer missions during their tour between 9 and 11 July 1998.¹⁰⁴⁷ The telegram indicates that the missions toured, *inter alia*, the “area of Dobra Voda”, which was controlled by the KLA, and found the “whole area quiet but tense particularly around Peć post Loda operations”.¹⁰⁴⁸ In Pejë/Peć, the missions saw about 150 “heavily armed JSO” members driving to “probable

¹⁰³⁸ See *supra*, paras 95-97.

¹⁰³⁹ Prosecution Final Brief, paras 80-84.

¹⁰⁴⁰ Zoran Stijović, Exhibit P121, paras 9, 64. See also Witness 28, Exhibit P358, para. 79.

¹⁰⁴¹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2953-2954. See also Exhibit D105, p. 1.

¹⁰⁴² Witness 17, Exhibit P344, para. 35.

¹⁰⁴³ Witness 17, Exhibit P344, para. 35. See also Skender Rexhahmetaj, Exhibit P298, para. 27; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5805, 5819. In his witness statement given to the Prosecution in 2007, Cufë Krasniqi indicates that the Serbian attack on Loxhë/Loda took place on 6 June 1998, but he later indicates that he “may be wrong” about the date, Cufë Krasniqi, Exhibit P54, para. 77; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5819.

¹⁰⁴⁴ Shemsedin Çekaj, Exhibit P4, para. 25.

¹⁰⁴⁵ Witness 17, Exhibit P344, para. 35. The Chamber notes that the period of attack on Loxhë/Loda is before the creation of the joint command between the FARK and the KLA. See *supra*, para. 85.

¹⁰⁴⁶ Skender Rexhahmetaj, Exhibit P298, para. 27. See also Shemsedin Çekaj, Exhibit P4, para. 25.

¹⁰⁴⁷ Exhibit D104.

¹⁰⁴⁸ Exhibit D104, pp 2-3.

holding area around Dečani”.¹⁰⁴⁹ The telegram reads that “each successive visit to Dečani/Peć area highlights continuing damage being inflicted by MUP/JSO forces randomly shooting up homes/house/businesses and pilfering contents”¹⁰⁵⁰ with an analysis that the KLA “technically control approx[imately] 50 percent of area but positions would not withstand a Serbian onslaught”.¹⁰⁵¹

286. Dragan Živanović of the 125th mtbr ordered preparations for “engagement in the active operations, by 24.07.1998”¹⁰⁵² in the area of, *inter alia*, Dollc/Dolac and Gllarevë/Iglarevo villages in Klinë/Klina municipality and Junik village in Dečan/Dečani municipality.¹⁰⁵³ With respect to Junik village, combat group 2 was to “support combat activities of the PJP units, aimed at mopping-up šiptar gangs in the village of Junik”.¹⁰⁵⁴ He also ordered that “orders relating to prohibiting unnecessary firing on unarmed civilians and destruction of property (houses and other facilities) from which fire has not been opened” are to be observed strictly and that “fire should be opened selectively, and prioritised by importance of targets, and this is to be especially observed when opening fire from heavy weapons”.¹⁰⁵⁵ Subsequently he ordered, *inter alia*, combat group 3 to “march along the axis of Peć-Dečani-the village of Rastavica” and “close off the village of Junik” in coordination with combat group 2 and the PJP units.¹⁰⁵⁶ A British military telegram dated 30 July 1998, which records the direct observations of the British Defence Attaché¹⁰⁵⁷ between 28 and 29 July 1998, reads “Junik under [artillery]/tank and mor[tar] fire from 1300 onwards”.¹⁰⁵⁸

287. According to a report dated 7 August 1998 from the 15th armoured brigade command to the Priština Corps Command, during the period between 25 July and 6 August 1998, MUP units, consisting of MUP detachments, SAJ and the “Brazil unit”, were engaged in various areas of Kosovo, including the areas falling within the area of the Dukagjin Operational Zone, along the axis of “Gra[b]anica village - Bandera [...] - Glodane - Jablanica village”.¹⁰⁵⁹

288. The evidence indicates that on 1 August 1998, the Priština Corps Command requested “approval [from the 3rd Army Forward Command Post] to launch the third stage of the Plan to curb

¹⁰⁴⁹ Exhibit D104, p. 2.

¹⁰⁵⁰ Exhibit D104, p. 3.

¹⁰⁵¹ Exhibit D104, p. 3.

¹⁰⁵² Exhibit D66, item 1. The order is dated 23 July 1998 and signed by Dragan Živanović.

¹⁰⁵³ Exhibit D66, items 2-3, 5-6.

¹⁰⁵⁴ Exhibit D66, item 5.

¹⁰⁵⁵ Exhibit D66, item 8.

¹⁰⁵⁶ Exhibit D67, item 1. The order is dated 24 July 1998 and signed by Dragan Živanović.

¹⁰⁵⁷ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2984-2985.

¹⁰⁵⁸ Exhibit D106, pp 1-3. See also Exhibit D69.

¹⁰⁵⁹ Exhibit D109, item 1. The Chamber accepts that the reference to “Gradanica village” is a reference to Grabanicë/Grabanica and the reference to “Glodane” is a reference to the village of Catholic Glllogjan/Glodane in Pejë/Peć municipality.

terrorism in Kosovo and Metohija”,¹⁰⁶⁰ which included “to crush the terrorist forces’ centres in [...] Jablanica and Glodane villages and Smonica village by mounting synchronised operations in the Drenica and Jablanica areas and continuing the blockade of Junik and Jasić villages” and “[t]o exert psychological pressure on terrorist forces in Junik village by continuing the blockade of Jasić and Junik villages with the blockade forces and opening fire on targets spotted in Jasić village”.¹⁰⁶¹ The operation was to start on 2 August 1998.¹⁰⁶²

289. Witness 28 gave evidence that in August 1998, “Serb forces overran the KLA in Glodane and Jablanica and regained control over the Dukagjini area”.¹⁰⁶³ Witness 17 gave evidence that Jabllanicë/Jablanica “fell” sometime during the Serbian offensive “from the 2nd to the 5th of August”,¹⁰⁶⁴ while Witness 69 agreed that “perhaps” MUP forces entered Jabllanicë/Jablanica on 2nd and 3rd of August 1998.¹⁰⁶⁵ Zoran Stijović stated that MUP units “tried to enter the village of Jablanica and to capture or, rather, arrest the group around Lahi Brahimaj” but did not elaborate further.¹⁰⁶⁶ The Chamber accepts that Serbian forces entered Jabllanicë/Jablanica in Gjakovë/Đakovica municipality on or around 2 or 3 August 1998.

290. There is evidence indicating that from 2 to 4 August 1998, MUP units conducted operations in the municipality of Gjakovë/Đakovica along the axis of the villages of Meqe/Meca, Čermjan/Crmljane, and Kralan/Kraljane.¹⁰⁶⁷ Also in evidence is a Priština Corps Command decision to “attack [on 2 August 1998] the DTS in the general sector of Smonica village by [...] engaging main forces along the Korenica village-Donji Nec village-Smonica village axis”.¹⁰⁶⁸ According to this decision, the goal was to “destroy DTS forces along the routes of attack, take control of Stubla village, Donji Nec village, Ramoc village sector, open the road, and prevent direct attacks on motorised convoys on the Đakovica-Ponoševac village-Batuša village road”.¹⁰⁶⁹ The “[a]djacent units [...] [t]ogether with MUP units” were to “prevent DTS interventions from the general area of Glodane village along the Đakovica-Rastavica village road section”.¹⁰⁷⁰

¹⁰⁶⁰ The request, signed by Nebojša Pavković, indicates that at a meeting of the “Joint Command for Kosovo and Metohija” on 31 July 1998, it was decided to launch the third stage of the plan, Exhibit D108. See also Dragan Živanović, Exhibit P111, para. 98.

¹⁰⁶¹ Exhibit D108.

¹⁰⁶² Exhibit D108.

¹⁰⁶³ Witness 28, Exhibit P358, para. 85.

¹⁰⁶⁴ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7770-7771.

¹⁰⁶⁵ Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9905.

¹⁰⁶⁶ Zoran Stijović, Exhibit P123 (*Haradinaj* original transcript), T. 9249-9250.

¹⁰⁶⁷ Exhibit D140, p. 1. This is a document labelled “An analysis of the combat operations conducted between 18 July and 6 August 1998”, addressed to the “Priština Corps Command” and signed by Commander Colonel Božidar Delić of the 549th mtbr.

¹⁰⁶⁸ Exhibit D68, p. 1. The decision is dated 1 August 1998 and signed by Nebojša Pavković. See also Exhibit D108.

¹⁰⁶⁹ Exhibit D68, p. 1.

¹⁰⁷⁰ Exhibit D68, p. 1.

291. A British diplomatic telegram dated 7 August 1998 indicates that there were “ongoing op[erations] on Drenica, Junik and poss[ibly] Jablanica areas” between 5 and 6 August 1998.¹⁰⁷¹ The telegram reads that “most villages north/south Peć-Priština road and Gornji Klina-Rudnik-Rakos road wantonly destroyed” and “large MUP convoy seen returning to Priština carr[ying] large Serbian flags [...] [t]roops wearing bandanas as if returning from glorious victory”.¹⁰⁷²

292. The evidence indicates that sometime between 8 and 13 August 1998, the Serbian forces conducted operations in the villages including Prilep, Isnij/Istinić, Baballoq/Babaloć, Rastavić/Rastavica, Carrabreg/Crnobreg, Kodrali/Kodralija, Dubravë/Dubrava, Irznij/Rznić, Shaptej/Šaptej, Gramaqel/Gramočelj, and Gllogjan/Glodane in Deçan/Dečani municipality, among others.¹⁰⁷³ In evidence is a Priština Corps Command decision to “smash the DTS[...] stronghold and establish control over the general Crnobreg village-Rznić village-Glodane village- Gramočelj village-Prilep village sector” together with the MUP and VJ.¹⁰⁷⁴ The operation was to commence on 11 August 1998.¹⁰⁷⁵ The 125th mtbr decided on 12 August 1998, *inter alia*, that combat group 2 was to “prevent DTS from pulling out of the village of Junik, and be on readiness to disarm them”.¹⁰⁷⁶

293. According to Shemsedin Çekaj, there was “some resistance by the KLA” during the Serbian forces operation on 11 August 1998 when the forces came east from the Deçan/Dečani - Gjakovë/Đakovica main road.¹⁰⁷⁷ However, the KLA eventually “withdrew along with the civilian population” because they “didn’t have artillery weapons” and were “low on ammunition”.¹⁰⁷⁸ Shemsedin Çekaj gave evidence that the KLA and civilians began to return to their villages the following day, and the “Serb forces returned [...] with looting units” in the afternoon of the following day.¹⁰⁷⁹ According to him, the Serbian forces left again on the same day and the “KLA then returned to their previous positions”.¹⁰⁸⁰

¹⁰⁷¹ Exhibit D107, p. 1.

¹⁰⁷² Exhibit D107, pp 1-2.

¹⁰⁷³ Witness 17, Exhibit P344, paras 38, 93-94, 96; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7592; Shemsedin Çekaj, Exhibit P3 (*Haradinaj* original transcript), T. 4427-4428, 4487, 4515-4516; Shemsedin Çekaj, Exhibit P4, para. 28; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5709-5711, 5816-5818; Cufë Krasniqi, Exhibit P54, para. 93; Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9469-9470, 9487; Exhibit D110, p. 1.

¹⁰⁷⁴ Exhibit D110, p. 1. The decision is dated 10 August 1998 and signed by Nebojša Pavković.

¹⁰⁷⁵ Exhibit D110, p. 1.

¹⁰⁷⁶ Exhibit D75, p. 1. The decision is dated 12 August 1998 and signed by Dragan Živanović.

¹⁰⁷⁷ Shemsedin Çekaj, Exhibit P4, para. 28.

¹⁰⁷⁸ Shemsedin Çekaj, Exhibit P4, para. 28.

¹⁰⁷⁹ Shemsedin Çekaj, Exhibit P4, para. 28.

¹⁰⁸⁰ Shemsedin Çekaj, Exhibit P4, para. 28.

294. The Serbian forces conducted an attack on the KLA headquarters in Glllogjan/Glodane in Dečan/Dečani municipality sometime between 10 and 12 August 1998.¹⁰⁸¹ Witness 17 gave evidence that he arrived at the headquarters on 11 August 1998 and spoke to Ramush Haradinaj, who indicated that he “needed help”.¹⁰⁸² The witness stated further that the KLA headquarters “fell sometime during the Serb offensive of 11 August 1998”.¹⁰⁸³ Witness 17 does not know “how long the Serbs took to withdraw from the villages”.¹⁰⁸⁴ Cufë Krasniqi gave evidence that he was present during the offensive in August 1998 in order to provide military support.¹⁰⁸⁵ On his evidence “it was the first offensive when Glllogjan fell”.¹⁰⁸⁶ The Chamber accepts that Serbian forces entered Glllogjan/Glodane on or around 11 August 1998.

295. On 14 August 1998, the Priština Corps Command decided “on breaking up DTS in the Slup and Vokša village sectors” which are west of the Dečan/Dečani - Gjakovë/Đakovica road.¹⁰⁸⁷ The decision also refers to a “blockade of Junik”.¹⁰⁸⁸ According to Dragan Živanović, the Serbian forces entered Junik on 15 and 16 August 1998.¹⁰⁸⁹ He gave evidence that he issued an order on 15 August 1998 “to support the MUP forces in disarming the KLA in Locane, Slup and Vokša”¹⁰⁹⁰ and that on 18 August 1998, “General Pavković issued an order to the Priština Corps [...] to control the Peć-Dečani road and [...] to control Jasi[ć] and Junik”.¹⁰⁹¹ According to him, there were subsequent orders issued until the end of August 1998 to continue with the previous operations that were ordered.¹⁰⁹²

296. A British diplomatic telegram dated 27 August 1998, indicates that as of 26 August 1998 Serbian forces held control of Junik and the region south of Junik in Dečan/Dečani municipality through to Ponošec/Ponoševac in Gjakovë/Đakovica municipality.¹⁰⁹³ Further, a document of the Priština Corps Command dated 30 August 1998 indicates that a command was given to the Priština Corps forces to support the MUP in “unblocking roads and breaking up DTS” including in areas of

¹⁰⁸¹ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5709-5711, 5816-5818; Cufë Krasniqi, Exhibit P54, para. 93; Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9487; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7592-7593; Witness 17, Exhibit P344, paras 38, 93-96; Exhibit P352. With respect to Cufë Krasniqi, the Chamber notes that he appears to have been mistaken about the date of the attack on Glllogjan/Glodane in his witness statement, Cufë Krasniqi, Exhibit P54, para. 93; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5816-5818.

¹⁰⁸² Witness 17, Exhibit P344, para. 95.

¹⁰⁸³ Witness 17, Exhibit P344, para. 96.

¹⁰⁸⁴ Witness 17, Exhibit P344, para. 93.

¹⁰⁸⁵ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5709, 5817.

¹⁰⁸⁶ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5817.

¹⁰⁸⁷ Exhibit D76, p. 1. The decision is dated 14 August 1998 and signed by Vladimir Lazarević. See also Dragan Živanović, Exhibit P111, para. 118.

¹⁰⁸⁸ Exhibit D76, p. 1.

¹⁰⁸⁹ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9456.

¹⁰⁹⁰ Dragan Živanović, Exhibit P111, para. 119. See also Exhibit D77.

¹⁰⁹¹ Dragan Živanović, Exhibit P111, para. 120. See also Exhibit D111, p. 1.

¹⁰⁹² Dragan Živanović, Exhibit P111, paras 121-125. See also Exhibits D78; D79; D80; D81; D82; D83.

¹⁰⁹³ Exhibit D44, pp 1-2.

Gjakovë/Đakovica and Klinë/Klina municipalities.¹⁰⁹⁴ The same document also notes that “[t]he level of morale amongst the majority of the DTS is decreasing due to losses suffered and because the assistance they were expecting to arrive from abroad never did”.¹⁰⁹⁵

297. Regarding early September 1998, Radovan Zlatković gave evidence that there were operations of MUP units into Jabllanicë/Jablanica in Gjakovë/Đakovica municipality.¹⁰⁹⁶ According to Radovan Zlatković, the KLA started to withdraw to Dashinoc/Dašinovac in Deçan/Dečani municipality and the “MUP forces followed”.¹⁰⁹⁷ He indicated that he does not know whether “any MUP stayed in Jablanica”.¹⁰⁹⁸ Radovan Zlatković also gave evidence that there were operations, which included the MUP and SAJ,¹⁰⁹⁹ between 4 and 8 September 1998 in order “to regain control” of the roads that were “blocked by the KLA”, and that these operations “had to take place first in order for the MUP to reach the Lake Radonjić”.¹¹⁰⁰ It appears from the evidence that the Serbian forces entered the canal area at Lake Radoniq/Radonjić on or around 8-9 September 1998.¹¹⁰¹

298. Dragan Živanović gave evidence that “around 6-8 September 1998 the MUP and some of [his] units engaged in another operation against the KLA fighters within the Dukagjini area”¹¹⁰² and that there were various orders of the Serbian forces that were issued relating to these operations.¹¹⁰³ He stated that operations were conducted, *inter alia*, on “the axis of Suka Crmljane-Grgoc-Donji Ratiš” and the “axis of Prilep village-Rznić village - Dašinovac village” on or around 7 September 1998¹¹⁰⁴ and that the MUP entered Irzniq/Rznić and then the canal area at Lake Radoniq/Radonjić¹¹⁰⁵ on or around 8 September 1998.¹¹⁰⁶ According to a British diplomatic telegram dated 10 September 1998, which includes John Crosland’s observations,¹¹⁰⁷ heavy damage

¹⁰⁹⁴ Exhibit D84, p. 1. The document is dated 30 August 1998 and signed by Nebojša Pavković.

¹⁰⁹⁵ Exhibit D84, p. 2.

¹⁰⁹⁶ Radovan Zlatković, Exhibit P373, para. 40.

¹⁰⁹⁷ Radovan Zlatković, Exhibit P373, para. 40.

¹⁰⁹⁸ Radovan Zlatković, Exhibit P373, para. 40.

¹⁰⁹⁹ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6971-6972.

¹¹⁰⁰ Radovan Zlatković, Exhibit P373, paras 39, 68; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6971. According to him, the operations were conducted after receiving information from KLA members, who were arrested on 3 September 1998 in Kodrali/Kodralija in Gjakovë/Đakovica municipality, that there were bodies in the canal area at Lake Radoniq/Radonjić, Radovan Zlatković, Exhibit P373, paras 45, 47, 53, 64; Exhibit P385. *See infra*, para. 330.

¹¹⁰¹ Nebojša Avramović, Exhibit P451, para. 53; Witness 69, Exhibit P370, para. 35. The Chamber notes that Radovan Zlatković gave a broad range of dates, *i.e.* 5, 6, 7, 8, or 9, as to when the Serbian forces arrived at the canal area at Lake Radoniq/Radonjić, Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6970-6971, 6975; Radovan Zlatković, Exhibit P373, para. 65. *See also infra*, para. 330. *See also* Dragan Živanović, Exhibit P111, paras 135-136.

¹¹⁰² Dragan Živanović, Exhibit P111, para. 131.

¹¹⁰³ Dragan Živanović, Exhibit P111, paras 132-135. *See also* Exhibits D85; D86.

¹¹⁰⁴ Dragan Živanović, Exhibit P111, para. 132.

¹¹⁰⁵ Dragan Živanović, Exhibit P111, para. 136.

¹¹⁰⁶ Dragan Živanović, Exhibit P111, para. 135.

¹¹⁰⁷ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2984-2985.

was seen in Prilep and Irzniq/Rznić villages when John Crosland was being escorted to the canal area at Lake Radoniq/Radonjić on 8 or 9 September.¹¹⁰⁸ He also observed “heavily armed MUP/PJP/SAJ with VJ T55 and Praga in support” with comments that “troops involved in this op[eration] were obviously still conducting further op[eration]s and attempting to secure the area”.¹¹⁰⁹

299. On 6 September 1998, the 125th mtbr issued an “order in support of MUP forces in scattering DTS in the wider region of Rati[š] village” where they expected resistance from the “Šiptar terrorist[s]” in the area of “Beleg village, Radonjić Lake, villages Ratiš, Dašinovac and Grgoc”.¹¹¹⁰ The order also indicates “possible interventions” of “stronger DTS [...] located in the direction of villages of Istinić-Prapačane-Brolić-Vranovac, north of Dečani Bistrica”.¹¹¹¹ It appears from the order that a stand-by order was included for attacks on 8 September 1998 in the region of Gërgoc/Grgoc, Ratish-i-Ulët/Donji-Ratiš and alternatively Zhabel/Žabelj, Bardhaniq/Bardonić, Beleg, Pozhar/Požar, Kodrali/Kodralija, Irzniq/Rznić and Dashinoc/Dašinovac.¹¹¹² The Chamber notes that the areas referred to above cover a broad region in Dečan/Dečani and Gjakovë/Đakovica municipality.¹¹¹³

300. The Chamber also received in evidence 125th mtbr decisions dated 7 and 8 September 1998 which indicate that there were further operations west of the Dečan/Dečani - Gjakovë/Đakovica road.¹¹¹⁴ The 125th mtbr decision of 7 September 1998 ordered, *inter alia*, combat group 2 to “continue to secure and control the wider region of villages Jasić and Junik [and] [o]rganise an ambush in the region of Docaj village”.¹¹¹⁵ The 125th mtbr decision of 8 September 1998 orders the combat groups to continue supporting the MUP in their operations, *inter alia*, in Jasiq/Jasić, Junik and Gjocaj/Đocaj villages.¹¹¹⁶

3. Other incidents between July and September 1998

(a) European Community Monitoring Mission

301. On 11 August 1998, members of a European Community Monitoring Mission (“ECMM”) team in Kosovo, including Greek Air Force officer Achilles Pappas, were driving from Pejë/Peć

¹¹⁰⁸ Exhibit D112, p. 2. *See infra*, para. 330.

¹¹⁰⁹ Exhibit D112, p. 2.

¹¹¹⁰ Exhibit P117, p. 1. The order is dated 6 September 1998 and signed by “Lieutenant Colonel Djordjzef Kolim”. *See also* Exhibit D86, p. 2.

¹¹¹¹ Exhibit P117, p. 1.

¹¹¹² Exhibit P117, p. 2.

¹¹¹³ Exhibit P352.

¹¹¹⁴ Exhibits D85; D86. The decisions are signed by Dragan Živanović.

¹¹¹⁵ Exhibit D85, p. 1.

¹¹¹⁶ Exhibit D86, p. 1.

southwards toward Deçan/Dečani when they heard shell explosions in the distance and sought to get a closer look.¹¹¹⁷ They headed east towards “a main area for KLA presence”.¹¹¹⁸ The team arrived in Irzniq/Rznić in Deçan/Dečani municipality which was being shelled and was seemingly abandoned.¹¹¹⁹ As the team was leaving Irzniq/Rznić, their way was blocked by two soldiers in a small jeep, who were wearing camouflage uniforms with KLA insignia; the soldiers asked the team who they were, and their purpose for being there.¹¹²⁰ The soldiers then escorted them into a house while the shelling continued, and then told them that they were free to go; Achilleas Pappas speculated that the soldiers may have been concerned for the team’s safety.¹¹²¹ The team prepared to leave the village but were stopped by a second group of KLA soldiers. This group was “enraged” or “upset” about the shelling and wanted to show the ECMM team sites which had been shelled, including a mosque and an “unsophisticated” field hospital.¹¹²² After escorting the team to various sites over a period of around 15 minutes, the soldiers instructed the team to leave the village.¹¹²³ As they were preparing to leave for the third time, the team was stopped again, this time by three men in a large black jeep, wearing black uniforms with KLA insignia.¹¹²⁴ Achilleas Pappas gave evidence that some of these men were “much more aggressive” than the previous groups of soldiers, and that the soldier who appeared to be in charge was “yelling and gesturing”.¹¹²⁵ This soldier ordered the ECMM team to get into their car and follow the jeep.¹¹²⁶ Achilleas Pappas gave evidence that, feeling that “it wouldn’t be wise not to do so”, the ECMM team complied and followed the black jeep towards Glogjan/Glodane.¹¹²⁷

302. Achilleas Pappas gave evidence that the ECMM team stopped on a small road in Glogjan/Glodane; they observed a lot of people entering and leaving a particular building, which they thought was the KLA headquarters.¹¹²⁸ Most of the people present were wearing KLA camouflage uniforms; “very few of them” wore black uniforms.¹¹²⁹ The leader of the men in the black jeep was “very upset”, “swearing in Albanian” and “shouting and gesturing”.¹¹³⁰ Achilleas Pappas was later told by the Albanian interpreter who was accompanying the ECMM team that this

¹¹¹⁷ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4077-4079; Achilleas Pappas, Exhibit P320, para. 6; Exhibit P322.

¹¹¹⁸ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4078-4079.

¹¹¹⁹ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4085-4086.

¹¹²⁰ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4085-4086.

¹¹²¹ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4085-4086, 4089.

¹¹²² Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4085-4091.

¹¹²³ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4089-4090.

¹¹²⁴ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4091.

¹¹²⁵ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4090-4091.

¹¹²⁶ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4090-4092.

¹¹²⁷ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4092.

¹¹²⁸ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4092.

¹¹²⁹ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4098.

¹¹³⁰ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4099.

man was accusing the ECMM team of being “Serb spies”.¹¹³¹ He also began to rip a series of European Union and “Observer” stickers off the ECMM vehicle, and then started beating and kicking the Albanian interpreter, and making gestures like he was trying to get his gun and shoot him.¹¹³² The ECMM team were ordered to proceed into the yard outside the main building, where there were around 15 men in uniform.¹¹³³ Here, the leader from the black jeep continued to strike, kick and punch the interpreter. Another ECMM team member tried to move towards the Albanian interpreter to protect him, but he stopped after hearing some of the men cock their guns.¹¹³⁴

303. The ECMM team was led to the upper floor of the main building and ordered to wait for Ramush Haradinaj.¹¹³⁵ Ramush Haradinaj arrived and asked the ECMM team who they were and what they were doing there; he was “polite”, “civilised” and “quite open and understand[ing]” of the ECMM’s mission.¹¹³⁶ He asked the team members if they carried weapons on them or in their car. When they answered negatively he conducted a quick inspection of the car. Ramush Haradinaj then told the team that they could leave and provided the same three men in black uniforms with the black jeep to escort them; the team was escorted to Kodrali/Kodralija where they continued driving alone.¹¹³⁷ In a location nearby Kodrali/Kodralija, the ECMM team ran into a KLA group, which they had run into on a previous occasion, and explained to them what had happened. The commander of the group, “Toni”, said that he was “very sorry but there are extremistic [sic] groups inside KLA that were operating in their own manner”.¹¹³⁸

304. Achilleas Pappas subsequently identified Idriz Balaj, as the leader of the men in black uniforms in the black jeep, through the photograph available on the Tribunal’s website.¹¹³⁹ He visited the website when he was asked to testify at the original *Haradinaj* trial.¹¹⁴⁰ According to Achilleas Pappas, he instantly recognised Idriz Balaj as the man who beat the Albanian interpreter and the leader of the three men in black uniforms.¹¹⁴¹ However, Achilleas Pappas was never asked to identify Idriz Balaj in a photo line up before he was asked to testify.¹¹⁴² During his testimony at the original *Haradinaj* trial, Achilleas Pappas underscored that the leader of the three men who beat the interpreter, who was present in the yard of the KLA headquarter building, and who escorted the

¹¹³¹ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4099.

¹¹³² Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4075, 4099, 4128-4129; Exhibit P321.

¹¹³³ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4361.

¹¹³⁴ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4128-4129.

¹¹³⁵ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4130-4131.

¹¹³⁶ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4132-4133, 4305.

¹¹³⁷ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4133-4134, 4357.

¹¹³⁸ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4134.

¹¹³⁹ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4136-4137, 4149, 4360, 4372; Exhibit P323.

¹¹⁴⁰ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4136-4137, 4149, 4357, 4372.

¹¹⁴¹ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4136-4137, 4149, 4372.

¹¹⁴² Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4357.

ECMM team to Kodrali/Kodralija, was Idriz Balaj.¹¹⁴³ Although the Chamber understands that the proper procedure for identification of Idriz Balaj by Achilleas Pappas was not followed, it accepts Achilleas Pappas' identification of Idriz Balaj as reliable given the interactions and proximity between the two men.

305. After being shown the photograph of Lahi Brahimag available on the Tribunal's website, Achilleas Pappas recognised him as one of the men who was in the yard of the KLA headquarters building in Glogjan/Glodane on 11 August 1998.¹¹⁴⁴ Achilleas Pappas gave evidence that he did not mention Lahi Brahimag in his witness statement because Lahi Brahimag did not play "an active part" in the incident and he "didn't do anything".¹¹⁴⁵ During his testimony at the original trial, when asked by the presiding Judge, Achilleas Pappas indicated, however, that he was not certain whether the photograph on the Tribunal's website, identified as that of Lahi Brahimag, was that of the person he saw in the yard of the KLA headquarter building.¹¹⁴⁶ The Chamber accepts that the identification of Lahi Brahimag by Achilleas Pappas as being present during this incident is unreliable.

306. The Chamber finds that on 11 August 1998, an ECMM team in Kosovo went to Irzniq/Rznić in Deçan/Dečani municipality while it was being shelled. As they were leaving the area, they were stopped by KLA soldiers a few times and ultimately taken to KLA headquarters in Glogjan/Glodane by KLA soldiers, including Idriz Balaj, who accused them of being spies. An interpreter with the ECMM team was ill-treated by Idriz Balaj. In Glogjan/Glodane, they met Ramush Haradinaj who asked them questions and subsequently released them with an escort out of the area on the same day.

(b) Sanije Balaj

307. The Chamber heard evidence that Sanije Balaj, from the village of Streoc/Strelle, was detained by members of the KLA military police, including Metë Krasniqi, and taken to Baran/Barane sometime in August 1998.¹¹⁴⁷ Avni Krasniqi and Iber Krasniqi, two members of the KLA military police from Vranoc/Vranovac,¹¹⁴⁸ came to commander Nazif Ramabaja and KLA

¹¹⁴³ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4149, 4372-4373.

¹¹⁴⁴ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4149, 4360-4361, 4372; Exhibit P323.

¹¹⁴⁵ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4360-4361.

¹¹⁴⁶ Achilleas Pappas, Exhibit P317 (*Haradinaj* original transcript), T. 4366.

¹¹⁴⁷ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5770-5772; Witness 17, Exhibit P344, paras 76-77; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7732-7733; Skender Rexhahmetaj, Exhibit P297, para. 22.

¹¹⁴⁸ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5714.

soldier, Cufë Krasniqi, at the new “Re”¹¹⁴⁹ elementary school in Baran/Barane, and told them that they had detained a suspect and that they wanted someone to come and interrogate the suspect.¹¹⁵⁰ They explained that they had stopped the suspect, Sanije Balaj, on her way from her village to Pejë/Peć because the route she had taken was a difficult and indirect one and had raised suspicions; they found a notebook in her possession containing a Serb name, and that they suspected her of working for this person.¹¹⁵¹

308. Accompanied by Avni Krasniqi and Iber Krasniqi, Cufë Krasniqi went to the KLA military police base in the older “red” school¹¹⁵² in Baran/Barane to question Sanije Balaj.¹¹⁵³ Cufë Krasniqi, who joined the KLA in February 1998, found Sanije Balaj sitting and waiting guarded by a KLA soldier who introduced himself as “Officer Galani”.¹¹⁵⁴ Cufë Krasniqi later learned that Officer Galani’s real name was Idriz Gashi.¹¹⁵⁵

309. During the questioning, Sanije Balaj stated that she was going to Pejë/Peć and that she was taking the longer route because she was going to buy a telephone to install in her village for profit and planned to meet her aunt in Kličinë/Kličina.¹¹⁵⁶ The Serb name written in her notebook did not appear suspicious to Cufë Krasniqi.¹¹⁵⁷ During the questioning, Avni Krasniqi and Iber Krasniqi intervened and said that Sanije Balaj was not telling the truth. Cufë Krasniqi asked them to leave; they did so, but remained not far from the room.¹¹⁵⁸ Eventually, Cufë Krasniqi released Sanije Balaj and told her that she should not go to Pejë/Peć until suspicions were all cleared or she got permission from the KLA staff in her village.¹¹⁵⁹ When offered by Cufë Krasniqi, Sanije Balaj refused to take lunch, but agreed to be driven home by Avni Krasniqi and Iber Krasniqi in their vehicle.¹¹⁶⁰ Cufë Krasniqi saw Sanije Balaj in the car and never saw her again.¹¹⁶¹

¹¹⁴⁹ Cufë Krasniqi testified that there were three facilities of the elementary school that were used by the KLA. These facilities included a school called “Re” and a “red school”, Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5771, 5773.

¹¹⁵⁰ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5771-5772.

¹¹⁵¹ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5772, 5778; Skender Rexhahmetaj, Exhibit P297, para. 22.

¹¹⁵² *See supra*, para. 307.

¹¹⁵³ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5773-5775; Witness 17, Exhibit P344, paras 76-77; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7732, 7736-7738.

¹¹⁵⁴ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5773-5775, 5779; Cufë Krasniqi, Exhibit P54, para. 30.

¹¹⁵⁵ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5788.

¹¹⁵⁶ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5774-5775.

¹¹⁵⁷ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5778.

¹¹⁵⁸ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5775-5776.

¹¹⁵⁹ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5776-5777.

¹¹⁶⁰ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5777, 5779-5780.

¹¹⁶¹ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5780.

310. About two weeks later, Sanije Balaj's brother, Shaban Balaj came to see Cufë Krasniqi in Baran/Barane.¹¹⁶² Shaban Balaj told Cufë Krasniqi that he knew that Sanije Balaj had been in Baran/Barane and that Cufë Krasniqi had questioned her, and he needed to know where she was now. Cufë Krasniqi explained the events of the day Sanije Balaj had been in Baran/Barane as he knew them.¹¹⁶³ Shaban Balaj thanked Cufë Krasniqi, told him that he had heard rumours about his sister and that "if she was a collaborator of the Serbs, he would kill her with his own hand, nobody else needed to kill her".¹¹⁶⁴ The Chamber heard evidence from Sadri Selca, a FARK soldier in Baran/Barane,¹¹⁶⁵ that Shaban Balaj came to him a few days after Sadri Selca was told about the "abduction, rape and murder of Sanije Balaj".¹¹⁶⁶ According to Sadri Selca, Shaban Balaj inquired about his sister, told him that she had about 2,000 German Marks, and asked him "Is my sister arrested? I think that my sister has been stopped by KLA forces".¹¹⁶⁷ However, earlier in his testimony, Sadri Selca gave evidence that Shaban Balaj did not have any "specific suspicion" but that "someone from some forces" was involved in the disappearance of his sister.¹¹⁶⁸

311. According to the evidence of Rustem Tetaj, there were rumours that "Metë Krasniqi and others arrested and detained [Sanije Balaj] on the order of Faton Mehmetaj" and that she was "arrested and executed because she was suspected of giving information to the MUP and the Secret Police".¹¹⁶⁹ It was alleged that her body was found in early August 1998 in the mountains near the village of Baran/Barane.¹¹⁷⁰ When Rustem Tetaj asked Faton Mehmetaj about "what had happened to Sanije Balaj", Faton Mehmetaj responded that "she was suspected of being a spy and collaborating with the State Security and the MUP and that she therefor[c] had to be eliminated".¹¹⁷¹ Rustem Tetaj testified that Faton Mehmetaj told him that "he had given the order to Metë Krasniqi to arrest and eliminate her".¹¹⁷² Rustem Tetaj further testified that he later met with Metë Krasniqi, who confirmed that he had "arrested and eliminated Sanije Balaj on the order of Faton Mehmetaj".¹¹⁷³

312. Sometime in August 1998, Zymer Hasanaj was informed by his son that between 1200 and 1400 hours on the relevant day, he and his friends saw two men forcing a woman out of a car, at a place called "Lug e Sufit" outside of Vranoc/Vranovac towards Deçan/Deçani in Pejë/Peć

¹¹⁶² Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5780-5781; Witness 17, Exhibit P344, para. 25.

¹¹⁶³ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5782-5783.

¹¹⁶⁴ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5783.

¹¹⁶⁵ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10859.

¹¹⁶⁶ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10880-10881.

¹¹⁶⁷ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10886-10887.

¹¹⁶⁸ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript) T. 10865.

¹¹⁶⁹ Rustem Tetaj, Exhibit P77, para. 26.

¹¹⁷⁰ Rustem Tetaj, Exhibit P77, para. 26.

¹¹⁷¹ Rustem Tetaj, Exhibit P77, para. 27.

¹¹⁷² Rustem Tetaj, Exhibit P77, para. 27.

¹¹⁷³ Rustem Tetaj, Exhibit P77, para. 27.

municipality.¹¹⁷⁴ The boys were told by the men to leave and, as the boys were leaving, they heard three gunshots.¹¹⁷⁵ At around 1930 hours, Zymer Hasanaj's son took Zymer Hasanaj and co-villagers Ahmet Ukaj, Hysen Ukaj, and Sokol Tolaj to the described location.¹¹⁷⁶ When they arrived, they heard a voice say "stop", "take the child away or I will kill him".¹¹⁷⁷ Zymer Hasanaj could not see the speaker's face. Zymer Hasanaj, his son, Hysen Ukaj and Sokol Tolaj returned to their village; Ahmet Ukaj remained at the site for around another hour.¹¹⁷⁸

313. Ahmet Ukaj and Hysen Ukaj came to Zymer Hasanaj's house around one hour after the group had first arrived at the site that evening.¹¹⁷⁹ Ahmet Ukaj told Zymer Hasanaj that there were two people in the forest: Idriz Gashi and Avni Krasniqi.¹¹⁸⁰ In shock and distress, Ahmet Ukaj told Zymer Hasanaj that "Galani" had killed Sanije Balaj, and threatened him not to speak about the killing.¹¹⁸¹ Subsequently, Zymer Hasanaj, accompanied by Ahmet Ukaj and Hysen Ukaj, went to inform Din Krasniqi about this incident.¹¹⁸² Zymer Hasanaj gave evidence that he told Din Krasniqi to report the case to the commander in Baran/Barane Valley and that Din Krasniqi told Zymer Hasanaj that he would follow up and someone would be held responsible.¹¹⁸³

314. Following the disappearance of Sanije Balaj, investigations were conducted by the KLA and FARK members; Hysen Gashi, Fadil Nimani (Nimoni, Nimonaj) and Sadri Selca were involved in these investigations.¹¹⁸⁴ According to Sadri Selca, someone with the family name Ukaj told him that he had been on patrol with Avni Krasniqi and a third officer when they stopped a female with the name Balaj and that Avni Krasniqi raped and killed her and that Ukaj had been forced by Avni Krasniqi to also shoot the already-deceased body and help bury it in order to involve Ukaj and prevent him from talking.¹¹⁸⁵ The investigation notes of Sadri Selca recorded on 26 August 1998 indicate that after Sanije Balaj was released she was taken by "Galan and Avni Krasniqi" to an unknown place and killed.¹¹⁸⁶ Sadri Selca's notes record the conclusion that "[i]n all probability Togerri then took her to Lake [Radoniq/Radonjić]", and that she was "executed because she admitted to working for the Serbian police".¹¹⁸⁷ With respect to the investigation notes, Sadri Selca gave

¹¹⁷⁴ Zymer Hasanaj, Exhibit P37, para. 16; Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8738.

¹¹⁷⁵ Zymer Hasanaj, Exhibit P37, para. 16.

¹¹⁷⁶ Zymer Hasanaj, Exhibit P37, paras 16-17; Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8731.

¹¹⁷⁷ Zymer Hasanaj, Exhibit P37, para. 18.

¹¹⁷⁸ Zymer Hasanaj, Exhibit P36 (*Haradinaj* original transcript), T. 8731.

¹¹⁷⁹ Zymer Hasanaj, Exhibit P37, para. 18.

¹¹⁸⁰ Zymer Hasanaj, Exhibit P37, paras 18, 20. See also Witness 77, Exhibit P344, para. 78.

¹¹⁸¹ Zymer Hasanaj, Exhibit P37, paras 18, 20.

¹¹⁸² Zymer Hasanaj, Exhibit P37, paras 20-21.

¹¹⁸³ Zymer Hasanaj, Exhibit P37, paras 20-21.

¹¹⁸⁴ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5784; Witness 17, Exhibit P344, para. 76.

¹¹⁸⁵ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10880-10881. See also Witness 17, Exhibit P344, para. 78.

¹¹⁸⁶ Witness 17, Exhibit P344, paras 76-77.

¹¹⁸⁷ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10866.

evidence that they were taken down according to information he received from individuals without the opportunity “to process the information”; he stated “[s]o whatever I got I wrote it down”.¹¹⁸⁸

315. The Chamber received evidence from Cufë Krasniqi and Witness 17 that they heard Idriz Gashi was prosecuted and sentenced to prison in Kosovo for the murder of Sanije Balaj.¹¹⁸⁹ There was evidence from Sadri Selca that the body of Sanije Balaj was recovered after the war and buried in her village by her family.¹¹⁹⁰ The location where the body was recovered from is not identified in the evidence.

316. The Chamber notes that Sanije Balaj is not named as a victim in the counts charged in the Indictment. The Chamber accepts that Sanije Balaj was killed and that members of the KLA were likely involved. However, the circumstances of her disappearance and death, including the particular identity of the perpetrators, are not established beyond reasonable doubt based on the foregoing evidence.

(c) Other incidents

317. As discussed in an earlier section of this Judgement,¹¹⁹¹ in evidence is a report dated 21 December 1998 of the SUP Gjakovë/Đakovica referring to various attacks on civilians, among others, including in the period between July and September 1998. These incidents are:

- a. a “mortar attack” carried out by “an organised terrorist group from Prilep and Rznić villages” on 6 July 1998, from 0950 until 2030 hours, on the refugee settlement of “Dečanski Borovi” injuring Nastadin Čulafić and Lela Batočanin;¹¹⁹²
- b. a “terrorist attack” carried out by “an ethnic Albanian DTG” on 9 September 1998, at about 1700 hours, on Skivjan/Skivjane village in Gjakovë/Đakovica municipality killing Dino Čekaj.¹¹⁹³

318. As stated earlier, the Chamber does not rely on this report in the absence of corroborating evidence.¹¹⁹⁴ No further evidence regarding these incidents has been tendered.

¹¹⁸⁸ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10866.

¹¹⁸⁹ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5788; Witness 17, Exhibit P344, para. 80.

¹¹⁹⁰ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10882.

¹¹⁹¹ *See supra*, para. 229.

¹¹⁹² Radovan Zlatković, Exhibit P373, para. 13 (p.11), Exhibit P383, p. 6.

¹¹⁹³ Radovan Zlatković, Exhibit P373, para. 13 (p.11), Exhibit P383, p. 15.

¹¹⁹⁴ *See supra*, paras 165, 168, 235.

4. Investigations by Serbian authorities of the canal area near Lake Radoniq/Radonjić, the road leading to Dashinoc/Dašinovac and Ratish-i-Ulët/Donji Ratiš, and Ekonomija Farm

319. The evidence before the Chamber indicates that subsequent to a clash on 3 September 1998 between the KLA and the MUP in Kodrali/Kodralija village, Gjakovë/Đakovica municipality, located southeast of Lake Radoniq/Radonjić, the MUP arrested a group of around 10 to 12 suspected KLA members.¹¹⁹⁵ Those arrested, including Zenelj Alija, Bekim Kalimashi and Lul (Ljulj, Luli) Musaj, were taken to the SUP Gjakovë/Đakovica for questioning.¹¹⁹⁶ Over the course of two to three days, they were interviewed and their statements were taken multiple times.¹¹⁹⁷ The issue of the reliability of these statements was discussed earlier in the Judgement.¹¹⁹⁸

320. Following the interviews, the Serbian authorities investigated three locations approximately between 8 and 16 September 1998: (i) the canal area which is located in the north-western part of Lake Radoniq/Radonjić; (ii) a road leading to Dashinoc/Dašinovac and Ratish-i-Ulët/Donji Ratiš, and (iii) Ekonomija Farm in Irzniq/Rznić village. There was a subsequent investigation between 23 and 27 September 1998 in Ekonomija Farm. The investigations included the involvement of the MUP and a forensic team from Belgrade (“Belgrade forensic team”).

321. According to Radovan Zlatković it was the information received from those arrested on 3 September 1998 that led to discovery of the bodies.¹¹⁹⁹ Some two weeks before, Radovan Zlatković only heard rumours that people were missing and one of the stories was that “they had been thrown into Lake Radonjić”.¹²⁰⁰ There was also evidence of Zoran Stijović that the RDB had information about the “killings and kidnapping of civilians and their disposal in the Lake Radonjić canal before the Serbian forces re-took the area by force”.¹²⁰¹ The Chamber received evidence that at a meeting on 20 August 1998 between FARK and KLA members, at which Ramush Haradinaj was present, a FARK member raised the issue of “KLA misconduct,” and that because of this, “the fish in Lake Radoniq were getting fat on human flesh”.¹²⁰² No one at the meeting said anything in

¹¹⁹⁵ Nebojša Avramović, Exhibit P451, paras 23-24; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6954-6957, 7014; Radovan Zlatković, Exhibit P373, paras 45-47; Exhibits P369, pp 16-24; P385, p. 1; Witness 69, Exhibit P370, paras 33-34.

¹¹⁹⁶ Nebojša Avramović, Exhibit P451, paras 25, 27-28, 31-32; Radovan Zlatković, Exhibit P373, paras 47-49.

¹¹⁹⁷ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 7016-7018; Radovan Zlatković, Exhibit P373, paras 53-55; Exhibits P387; P388; P391 (The Chamber notes that this exhibit is identical to D190); Bogdan Tomaš, Exhibit P336 (*Haradinaj* original transcript), T. 6189-6190, 6192.

¹¹⁹⁸ *See supra*, paras 207-210.

¹¹⁹⁹ Radovan Zlatković, Exhibit P373, paras 53-55, 64.

¹²⁰⁰ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6934-6935.

¹²⁰¹ Zoran Stijović, Exhibit P121, paras 57-58; Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9087-9089. *See also* Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6934-6935; Bogdan Tomaš, Exhibit P336 (*Haradinaj* original transcript), T. 6189.

¹²⁰² Zoran Stijović, Exhibit P121, para. 58. *See Confidential Annex.*

response to this statement.¹²⁰³ Zoran Stijović also gave evidence that there was “a significant number of documents [at the RDB] identifying Idriz Balaj as the most responsible person for the attacks, murders and other events—incidents happening in the [canal] area”.¹²⁰⁴ For instance, there was an RDB Pejë/Peć report dated 26 June 1998 regarding a suspect interview that “Toger had killed two Serbian policemen in Glodane” and that their “corpses were thrown in the Lake Radonjić canal”.¹²⁰⁵

(a) General observations on the forensic examinations and identification of the human remains found

322. Dušan Dunjić, the head of the Belgrade forensic team,¹²⁰⁶ gave evidence that during the course of the investigation, which took place approximately between 8 and 16 September 1998 and 23 and 27 September 1998, the remains of at least 39 individuals were found in the three locations.¹²⁰⁷ The victims included persons of both genders and their estimated ages varied from 11 to 70 years.¹²⁰⁸

323. The Belgrade forensic team found that autopsies alone could not definitively determine the “cause of death” due to the bodies’ advanced stage of putrefaction.¹²⁰⁹ However, they indicated that most had fractures to the skull and bones caused by bullets which in some cases were recovered from the bodies, or by physical blows from blunt objects.¹²¹⁰ Branimir Aleksandrić, a member of the Belgrade forensic team, drew the conclusion, based on the positioning of the bodies recovered from the canal area, the damage to the bones discovered during the autopsy process and evidence of projectile damage found on the canal wall above the bodies, that it was “most likely” that some of the deceased persons were “executed there on the spot” by “light weapons”.¹²¹¹ Near or tied around

¹²⁰³ See Confidential Annex.

¹²⁰⁴ Zoran Stijović, Exhibit P122 (*Haradinaj* original transcript), T. 9086-9089; Zoran Stijović, Exhibit P121, para. 57.

¹²⁰⁵ Zoran Stijović, Exhibit P121, para. 57. The report itself was not submitted in evidence.

¹²⁰⁶ See *infra*, para. 331.

¹²⁰⁷ Dušan Dunjić, Exhibit P471, para. 169. The Chamber uses the term “at least” because the exact number is unclear from the evidence.

¹²⁰⁸ See generally, Dušan Dunjić, Exhibit P471.

¹²⁰⁹ Dušan Dunjić, Exhibit P471, paras 98, 196, 206, 218, 237, 248, 258, 265, 283, 293, 319, 330, 341, 351, 362, 373, 390, 400, 417, 448, 461, 474, 491, 508, 517, 530, 541, 550, 560, 567, 578, 598, 605, 618, 628, 643, 656, 668, 678; Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 9537; Branimir Aleksandrić, Exhibit P439, para. 49.

¹²¹⁰ Dušan Dunjić, Exhibit P471, paras 194-196, 207-210, 219-220, 233, 244-245, 256, 266-267, 281, 291, 300, 313, 328, 330, 338, 349, 351, 359-360, 374, 391, 400-401, 418, 448-449, 461, 464, 469, 475-477, 491-492, 518, 542, 551-552, 568, 580-581, 606-607, 619-621, 629-632, 644-647, 657-658, 669-670, 679; Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6776-6777, 6818-6819, 9556-9557; Branimir Aleksandrić, Exhibit P439, paras 47-48, 78, 95, 105-106, 112, 171, 192.

¹²¹¹ Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6776-6777, 6818-6819, 9536-9538, 9556-9558, 9560-9562; Branimir Aleksandrić, Exhibit P439, paras 47-48.

some of the bodies or body parts, they found barbed wires, electric cables and “kind of mountain climbing rope” which were removed during the forensic examinations.¹²¹²

324. Even after the examinations the Belgrade forensic team could not give “an accurate estimation of the time of death”.¹²¹³ This was because the remains found at the canal had been “exposed to various elements and the rate of decomposition is dependent upon weather conditions”.¹²¹⁴ Nonetheless, the Belgrade forensic team estimated the time of death for each of the persons whose remains were found at the canal area at Lake Radoniq/Radonjić to be sometime between April and August 1998; the time of death for some bodies could be estimated more precisely than for others.¹²¹⁵ The time of death for the persons whose remains were found at and around Ekonomija Farm was more definitively stated; the forensic experts responsible for examining these remains determined that the deaths of these victims were more recent, with the estimation given to be some time between July and August 1998.¹²¹⁶ The time of death for the persons whose remains were found on the road leading to Dashinoc/Dašinovac and Ratish-i-Ulët/Donji Ratiš was estimated to be between May and August 1998.¹²¹⁷ In sum, the times of death for all the persons whose remains were found at these three sites were estimated to be sometime during the Indictment period.

(b) Canal area at Lake Radoniq/Radonjić

325. The canal is located in Dečan/Dečani municipality at the north-western side of Lake Radoniq/Radonjić.¹²¹⁸ The Chamber notes that Jabllanicë/Jablanica in Gjakovë/Đakovica municipality lies to the north-eastern side of Lake Radoniq/Radonjić, while Gllogjan/Glodane in Dečan/Dečani municipality lies to the north-western side of Lake Radoniq/Radonjić.¹²¹⁹ The canal area is estimated to be about two kilometres southeast of Irzniq/Rznić in Dečan/Dečani municipality¹²²⁰ and is described as a “concrete monsoon ditch [...] about a 6- or 7 foot deep with

¹²¹² Branimir Aleksandrić, Exhibit P439, paras 57, 72, 81-82, 87, 97, 100, 111, 119, 129, 132-133; Exhibit P436, p. 3 (p. 15 in e-court); Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6761-6762, 6769-6770; Dušan Dunjić, Exhibit P471, paras 269, 302, 352.

¹²¹³ Dušan Dunjić, Exhibit P471, para. 97.

¹²¹⁴ Dušan Dunjić, Exhibit P471, para. 97.

¹²¹⁵ Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 7266-7268; Dušan Dunjić, Exhibit P471, paras 192, 205, 217, 236, 247, 257, 264, 282, 292, 318, 329, 340, 350, 361, 371, 388, 398, 413, 437, 446, 458, 472, 489, 505, 514, 529, 539, 548, 558, 565, 575, 589, 596. Branimir Aleksandrić gave evidence that the various stages of decomposition indicated that the bodies at the canal had been at that location for different lengths of times; he considered that each of the bodies would have been there for between a minimum of three to four weeks and a maximum of several months, Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6765-6766, 9563; Branimir Aleksandrić, Exhibit P439, para. 255.

¹²¹⁶ Dušan Dunjić, Exhibit P471, paras 604, 616, 626, 640, 654, 666, 676.

¹²¹⁷ Dušan Dunjić, Exhibit P471, para. 687.

¹²¹⁸ Radovan Zlatković, Exhibit P373, paras 72-73; Exhibit P395. See also Exhibit P12.

¹²¹⁹ Exhibit P87.

¹²²⁰ Exhibit D112, para. 1; John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4666-4667.

concrete, and it was a water collection project that led down to the lake”.¹²²¹ The concrete canal leads to a natural canyon.¹²²² According to Nebojša Avramović, access to the canal was only possible on difficult dirt roads from the direction of Gillogjan/Glodane, Irzniq/Rznić, and Ratish-i-Ulët/Donji Ratiš in Deçan/Dečani municipality.¹²²³

326. Ylber Haskaj, a member of the Black Eagles,¹²²⁴ gave evidence that after the Serbian forces withdrew from Irzniq/Rznić village and many surrounding villages in mid April 1998, the Serbian forces did not regain control over large portions of the Dukagjin area, including Lake Radoniq/Radonjić, until the September 1998 offensive.¹²²⁵ However, during cross-examination he accepted that both the KLA and the Serbian forces were operating in the Lake Radoniq/Radonjić area, and that the KLA “did not have the armament, the weapons, to keep everything under control, so we could never say that we had full control over a zone”.¹²²⁶ Witness 69 stated that for the Serbian forces “there was no possibility to travel along the lake from south to north because there was a greater KLA presence” and that, from mid-1998 to September 1998, it was almost impossible to access the area around the lake by the roads through Cërmjan/Crmljane, Gillogjan/Glodane or Ratish/Ratiš to end up at the northern part of the lake without being seen and attacked by the KLA.¹²²⁷

327. Branko Gajić gave evidence that there were Serbian forces deployed around the southern end of Lake Radoniq/Radonjić, in Rakoc and at the base of Radonjička Suka in March 1998,¹²²⁸ and that the special units corps was redeployed to the area around Lake Radoniq/Radonjić and the foot of “Suka Radoniq” sometime after 13 May.¹²²⁹ He gave evidence that the “KLA often attacked the

¹²²¹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2972.

¹²²² Nebojša Avramović, Exhibit P451, para. 71. *See also* Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6803; Exhibit P436, p. 1 (p. 12 in e-court); Branimir Aleksandrić, Exhibit P439, paras 151, 155-156, 212.

¹²²³ Nebojša Avramović, Exhibit P451, para. 53. *See also* Witness 69, P370, para. 30.

¹²²⁴ Ylber Haskaj, Exhibit P40, paras 8-10.

¹²²⁵ Ylber Haskaj, Exhibit P40, para. 34; Exhibit P42. *See also* Radovan Zlatković, Exhibit P373, para. 28; Witness 69, Exhibit P370, para. 31; Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9877-9878.

¹²²⁶ Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10329-10333.

¹²²⁷ Witness 69, Exhibit P370, paras 30, 32; Exhibit P368. The Chamber notes that Cërmjan/Crmljane in Gjakovë/Đakovica municipality is located at the south-eastern side of Lake Radoniq/Radonjić.

¹²²⁸ Branko Gajić, Exhibit P27, para. 22; Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9707-9709. *See also* Ylber Haskaj, Exhibit P40, para. 34; Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10329-10330 (stating that the Serbian forces “controlled the area to the southeast of Lake Radonjić” and accepting during cross-examination that Serbian forces were stationed at the base of Bitesh/Suka Biteš, from where they conducted operations and shelling from late March or the beginning of April to September 1998). The Chamber notes that Rakoc and “Radonjička Suka” are located at the north-eastern and south-western side of Lake Radoniq/Radonjić, respectively.

¹²²⁹ Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9743. When originally questioned on whether the special units corps were deployed around the area in 1998, Branko Gajić answered “[n]ot to my knowledge”. However, he contradicted his original answer when a Priština Corps Command document was put before him, Branko Gajić, Exhibit P25 (*Haradinaj* original transcript), T. 9710-9711, 9741-9743.

Radonjička Suka position”.¹²³⁰ There was also evidence that Serbian forces, including the 52nd military police battalion and the MUP, were posted at the southern end of Lake Radoniq/Radonjić.¹²³¹ In evidence are various Serbian forces documents dated April,¹²³² May,¹²³³ and June¹²³⁴ 1998, indicating the presence of Serbian forces at this location. The Chamber also received evidence about a shootout between the KLA and Serbian forces near Lake Radoniq/Radonjić in the evening of 25 April 1998 that lasted several hours.¹²³⁵

328. In relation to the control around the canal area at Lake Radoniq/Radonjić, Nebojša Avramović stated that the canal area was within KLA control and that it was inaccessible to the Serbian police from April 1998 until 9 September 1998.¹²³⁶ In contrast to this evidence, John Crosland raised the possibility that the MUP units may have had access to and been operating in the canal area at Lake Radoniq/Radonjić sometime between 25 July and 6 August.¹²³⁷ Furthermore, during cross-examination Ylber Haskaj accepted that there were armed engagements between the KLA and the Serbian forces in the area of the canal leading to Lake Radoniq/Radonjić from early July 1998, and that this area was, in effect, disputed territory.¹²³⁸ Radovan Zlatković gave evidence that MUP forces did not advance to the Lake Radoniq/Radonjić area during the Serbian forces operations in August 1998, but agreed that it was possible that they reached Suka Bitesh/Biteš, which sits immediately adjacent to the western bank of Lake Radoniq/Radonjić.¹²³⁹ On the other hand, Dragan Živanović indicated that the MUP reached the canal area at Lake Radoniq/Radonjić during these operations.¹²⁴⁰

329. In light of the foregoing evidence, the Chamber accepts that the canal area at Lake Radoniq/Radonjić was generally under the control of the KLA during the Indictment period, but

¹²³⁰ Branko Gajić, Exhibit P27, para. 22.

¹²³¹ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3009-3011, 4632 (in April 1998); Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9394-9395; Dragan Živanović, Exhibit P112, para. 8 (referring to an unspecified time in 1998).

¹²³² Exhibit D120. The “supplementary combat report” of Priština Corps Command dated 26 April 1998 (not signed but bearing the name Milorad Đorđević), stating that “terrorists” attacked the “redeployment area of the 52nd military police battalion (defending Radonjić Lake)”, Exhibit D120.

¹²³³ Exhibit D98. The order of the 125th mtbr dated 16 May 1998 (signed by Dragan Živanović) ordering combat group 2 to “be ready in the current redeployment sector for operations along the following axes [...] the barracks at [Radoniq/Radonjić] Lake”, Exhibit D98, p. 1. See also John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3139-3141.

¹²³⁴ Exhibit D102. The Priština Corps Command document dated 10 June 1998 (not signed but bearing the name Nebojša Pavković) including a report that communication had been established with “the 25th military police company in the area of the Radonjić Lake (subordinated to the 52nd military police battalion)”, Exhibit D102, p. 2. See also John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4630-4632.

¹²³⁵ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 3009-3011; Exhibit D8, paras 1-2.

¹²³⁶ Nebojša Avramović, Exhibit P451, para. 53.

¹²³⁷ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 4654-4655.

¹²³⁸ Ylber Haskaj, Exhibit P39 (*Haradinaj* original transcript), T. 10331.

¹²³⁹ Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6905-6906, 6909-6910; Radovan Zlatković, Exhibit P373, para. 34. See also Exhibit D113, p. 55.

¹²⁴⁰ Dragan Živanović, Exhibit P110 (*Haradinaj* original transcript), T. 9353.

that there were occasional Serbian forces patrols and clashes in the canal area. Further, the Chamber finds that the Serbian forces were consistently present in some areas around Lake Radoniq/Radonjić, including the southern end, during the Indictment period.

(i) Investigations in canal area at Lake Radoniq/Radonjić

330. Prior to the start of the on-site investigations at the canal area at Lake Radoniq/Radonjić MUP operations, in cooperation with the VJ, were conducted sometime during the first week of September 1998, to clear the area of the KLA.¹²⁴¹ Thereafter, on either 8 or 9 September 1998, a Serbian investigation team arrived at the canal with some of the arrested suspected KLA members, including Zenelj Alija, Bekim Kalimashi, and Lul (Ljulj, Luli) Musaj.¹²⁴² The Serbian investigation team included officers from the MUP and the RDB.¹²⁴³ In addition to the Serbian investigation team, several domestic officials and domestic and international representatives and journalists also attended the site.¹²⁴⁴ At the site, they saw, *inter alia*, bullet holes in the canal wall, bodies and remains and spent ammunition casings.¹²⁴⁵ John Crosland, who attended the site, gave evidence that these casings were of Chinese origin and bore what appeared to be Chinese characters, and that intelligence reports at the time indicated that the KLA were using Chinese ammunition sourced from Albania.¹²⁴⁶ Branimir Aleksandrić gave evidence that he was not aware of bullets being retrieved from the ground or the concrete walls lining of the canal for forensic comparisons with those recovered during the autopsies.¹²⁴⁷ However, there was evidence that cartridges were recovered from the canal area and were determined by the MUP to be “identical” to those found “at the scene in Pljančor village on 7 March 1998” and “at the scene in Gramočelj village on 24 March 1998”.¹²⁴⁸

331. On 9 or 10 September 1998, Judge Radomir Gojković of the Pejë/Peć district court, who was appointed the investigating judge for this matter, sent a request to the Belgrade Institute of

¹²⁴¹ Radovan Zlatković, Exhibit P373, para. 68; Radovan Zlatković, Exhibit P372 (*Haradinaj* original transcript), T. 6971-6972; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6656-6657; Nebojša Avramović, P451, para. 19. *See supra*, para. 297.

¹²⁴² Bogdan Tomaš, Exhibit P338, paras 29, 40-41; Nebojša Avramović, Exhibit P451, paras 41-42, 44; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6970-6973, 6975; Radovan Zlatković, Exhibit P373, paras 64-65, 68-69, 74.

¹²⁴³ Bogdan Tomaš, Exhibit P338, paras 29-30, 34; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6641-6643; Radovan Zlatković, Exhibit P371 (*Haradinaj* original transcript), T. 6970-6973; Radovan Zlatković, Exhibit P373, paras 68-69; Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9890-9891.

¹²⁴⁴ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2971-2972; Exhibit D112; Bogdan Tomaš, Exhibit P338, para. 45; Nebojša Avramović, Exhibit P451, para. 62.

¹²⁴⁵ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2972-2973, 2979-2980; Exhibit P12; Nebojša Avramović, Exhibit P451, paras 55-59, 62, 71; Radovan Zlatković, Exhibit P373, paras 74-79, 88; Bogdan Tomaš, Exhibit P338, paras 38-39; Bogdan Tomaš, Exhibit P336 (*Haradinaj* original transcript), T. 6152-6154.

¹²⁴⁶ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2973-2974.

¹²⁴⁷ Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 9568-9570, 9606. *See also* Dušan Dunjić, Exhibit P471, paras 123, 465-468, 502, 506.

¹²⁴⁸ Exhibit P369, pp 7, 51-55 (in e-court).

Forensic Medicine (also known as the Forensic Institute of the Medical Faculty in Belgrade) asking that a team of forensic experts be appointed to assist with the investigations in the Lake Radonij/Radonjić area.¹²⁴⁹ A Belgrade forensic team was convened including, among others, Dušan Dunjić, as team leader, and Branimir Aleksandrić.¹²⁵⁰ The Belgrade forensic team was also assisted by MUP divers working at the scene.¹²⁵¹

332. The Belgrade forensic team arrived at the canal area around late morning on 11 September 1998 to begin the exhumation and completed work there on 15 or 16 September 1998.¹²⁵² The team took photographs and video footage of each of the bodies and partial remains, marked and noted their locations, and gave each an individual label with its own number and an “R” prefix.¹²⁵³ Thereafter, the bodies and remains were loaded onto a truck and transported to a garage in Hotel Paštrik in Gjakovë/Đakovica for autopsies at the end of each day because it was deemed too dangerous to conduct autopsies on site due to the KLA presence.¹²⁵⁴ The autopsies at Hotel Paštrik began on 12 September 1998 and were conducted by members of the Belgrade forensic team.¹²⁵⁵

333. The exhumation was halted on 12 September 1998 because of heavy rain and could not be resumed until the afternoon of 15 September 1998.¹²⁵⁶ The autopsies were concluded on 16 September 1998.¹²⁵⁷

¹²⁴⁹ Nebojša Avramović, Exhibit P451, paras 106-108; Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6737; Branimir Aleksandrić, Exhibit P439, paras 7-8, 11; Exhibits P435, pp 1-2; P436, p. 1 (p.12 in e-court); Dušan Dunjić, Exhibit P471, paras 21-23, 26.

¹²⁵⁰ Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6737; Branimir Aleksandrić, Exhibit P435, p. 2 in e-court; Branimir Aleksandrić, Exhibit P436, p. 1 (p. 12 in e-court); Branimir Aleksandrić, Exhibit P439, paras 9, 11; Nebojša Avramović, Exhibit P451, para. 114; Dušan Dunjić, Exhibit P471, para. 22.

¹²⁵¹ Nebojša Avramović, Exhibit P451, para. 116.

¹²⁵² Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6623-6624; Nebojša Avramović, Exhibit P451, paras 105,108-110, 124; Exhibits P458; P462; Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6737; Exhibit P436, pp 1, 7 (pp 12, 18 in e-court); Branimir Aleksandrić, Exhibit P439, paras 11-12, 67, 262; Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 7223-7226, 7234; Dušan Dunjić, Exhibit P471, paras 25, 27, 75; Exhibit P473.

¹²⁵³ Branimir Aleksandrić, Exhibit P439, paras 34-37, 39-40, 46, 124; Exhibit P436, pp 1-3 (pp 12-14 in e-court); Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6742, 6753-6755; Nebojša Avramović, Exhibit P451, paras 114, 117; Dušan Dunjić, Exhibit P471, para. 43; Exhibit P474; Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 6831.

¹²⁵⁴ Exhibit P436, pp 1, 2, 5-6, (pp 12-13, 16-17 in e-court); Branimir Aleksandrić, Exhibit P439, paras 16, 35, 41-44, 62; Dušan Dunjić, Exhibit P471, paras 49-50, 60-62; Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 6829-6831.

¹²⁵⁵ Exhibit P436, pp 1, 3, 5-6 (pp 12, 14, 16-17 in e-court); Branimir Aleksandrić, Exhibit P439, paras 41-43; Dušan Dunjić, Exhibit P471, para. 80.

¹²⁵⁶ Dušan Dunjić, Exhibit P471, para. 75; Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 7234-7235.

¹²⁵⁷ Exhibit P436, p. 7 (p. 18 in e-court); Branimir Aleksandrić, Exhibit P439, para. 262.

(ii) Remains at Lake Radoniq/Radonjić and subsequent identification

334. The evidence before the Chamber indicates that a total¹²⁵⁸ of 37 or 38 bodies, partial remains or personal items¹²⁵⁹ were labelled in the canal area; some of these labelled remains were later found to belong to the same individual.¹²⁶⁰ Among the remains found in the canal area, the “record compiled on the premises of Paštrik Hotel at 1400 hours on 19 September 1998”, which is signed by the team leader Dušan Dunjić and investigating judge Radomir Gojković, indicates that the following 10 individuals were identified:¹²⁶¹ Adžija Seferaj, Velizar Stošić, Vukosava Marković (née Vujošević), Milovan Vlahović, Darinka Kovač (née Vujošević), Ilira Frrokaj, Ilija Antić, Hajrullah Gashi, Jusuf (Isuf) Hodža/Hoxha, and Tush Frrokaj.¹²⁶²

335. After the examinations of the human remains were completed, the Belgrade forensic team compared the descriptions given by family members of those missing with their findings, which included details such as gender, height, age, and “specific physical characteristics”. If there was a match, the Belgrade forensic team would show the families the clothing and personal items found on or around the human remains, observe their reactions and then compare “all the post mortem information with all the ante mortem information” to make an identification.¹²⁶³ However, Dušan Dunjić conceded that the identification methods employed carried significant risk of misidentification.¹²⁶⁴ Indeed the remains found in the canal area at Lake Radoniq/Radonjić labelled “R-15” were initially identified as those of Milovan Vlahović, but later identified by the ICMP through DNA testing to be those of Istref Krasniqi.¹²⁶⁵ The original identification was based on the identification of clothes by family members, information on medical history, including a “bone scar on the rib” obtained when Milovan Vlahović fractured one of his right ribs, and other bodily

¹²⁵⁸ According to evidence from Branimir Aleksandrić, it appears that 37 items were labelled, while evidence from Dušan Dunjić indicates that 38 items were labelled. See generally Branimir Aleksandrić, Exhibit P439; and Dušan Dunjić, Exhibit P471.

¹²⁵⁹ Personal items included a shoe labelled as “R-6”. Dušan Dunjić, Exhibit P471, para. 250. See also Branimir Aleksandrić, Exhibit P439, paras 107, 188.

¹²⁶⁰ For instance, remains labelled “R-21” and “R-24” were found to be “two parts of the same body,” Dušan Dunjić, Exhibit P471, para. 502.

¹²⁶¹ The evidence of Dušan Dunjić indicates that remains labelled “R-21” and “R-24” were identified as “Sejdo Noci” by his daughter and brother. However, this identification was denied by his wife and the Belgrade forensic team stated “we were not able to positively identify R-21 and R-24”, Dušan Dunjić, Exhibit P471 paras 123, 465-468, 502, 506. See also Branimir Aleksandrić, Exhibit P439, para. 188. The Chamber does not include “Sejdo Noci” among the individuals identified.

¹²⁶² Exhibit P369, p. 57 (in e-court). The record indicates that 20 other bodies or body parts found in the canal area were unidentified, Exhibit P369, p. 57 (in e-court).

¹²⁶³ Dušan Dunjić, Exhibit P471, paras 107-117; Branimir Aleksandrić, Exhibit P439, paras 262-263. According to Dušan Dunjić, the human remains were not shown to the families, Dušan Dunjić, Exhibit P471, para. 114.

¹²⁶⁴ Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 7325-7326.

¹²⁶⁵ Dušan Dunjić, Exhibit P471, paras 381, 383; Exhibit P428.

characteristics.¹²⁶⁶ There were other instances where the original identifications were found to be incorrect through ICMP DNA testing.¹²⁶⁷

336. In light of the above, the Chamber accepts the original identifications conducted by the Belgrade forensic team as correct only when the basis for identification appears to be sufficient from the evidence. Such basis for identification is determined on a case by case basis. In terms of DNA identification, the Chamber notes that not all the remains underwent this method of identification and that some of the remains, which were not originally identified, were DNA tested and identified by the ICMP.

337. In evidence is a document from the ICMP addressed to UNMIK, dated 26 May 2006, indicating that the remains found at the canal area included those of “Gashi (Ramadan) Zenun”, “Krasniqi (Dede) Pale”, “Krasniqi (Ymer) Istref”, “Meha (Shefki) Malush”, “Vlahović (Radovan) Milka” identified by DNA.¹²⁶⁸ With respect to Zenun Gashi, in evidence are an ICMP DNA report,¹²⁶⁹ an UNMIK death certificate,¹²⁷⁰ and an UNMIK autopsy report.¹²⁷¹ The Chamber accepts that the remains found at the canal area at Lake Radoniq/Radonjić included those of Zenun Gashi, Pal Krasniqi, Istref Krasniqi, Malush Meha, and Milka Vlahović based on these ICMP documents.

338. Dušan Dunjić gave evidence that he saw or was shown ICMP DNA reports with respect to Misin Berisha,¹²⁷² Kujtim Imeraj,¹²⁷³ Ilira Frrokaj,¹²⁷⁴ Nuriqe Krasniqi,¹²⁷⁵ and Rade Popadić.¹²⁷⁶ These reports are not in evidence.¹²⁷⁷ However, considering the evidence of Dušan Dunjić and in the absence of any indications to the contrary, the Chamber accepts that the remains of Misin Berisha, Kujtim Imeraj, Ilira Frrokaj, Nuriqe Krasniqi, and Rade Popadić were found in the canal area at Lake Radoniq/Radonjić.

¹²⁶⁶ Dušan Dunjić, Exhibit P471, paras 379-381. See also Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T.7325-7326.

¹²⁶⁷ Dušan Dunjić gave evidence indicating that the remains identified as those of Adžija Seferaj were in fact those of Misin Berisha and that the remains identified as those of Tush Frrokaj were in fact those of Kujtim Imeraj, Dušan Dunjić, Exhibit P471, paras 226, 383, 525.

¹²⁶⁸ Exhibit P428, pp 1-2 (in e-court).

¹²⁶⁹ Exhibit P428, p. 3 (in e-court).

¹²⁷⁰ Exhibit P431, pp 4-5.

¹²⁷¹ Exhibit P429.

¹²⁷² Dušan Dunjić, Exhibit P471, para. 226.

¹²⁷³ Dušan Dunjić, Exhibit P471, para. 525.

¹²⁷⁴ Dušan Dunjić, Exhibit P471, para. 431.

¹²⁷⁵ Dušan Dunjić, Exhibit P471, para. 367.

¹²⁷⁶ Dušan Dunjić, Exhibit P471, para. 571

¹²⁷⁷ Dušan Dunjić also gave evidence that he was shown an ICMP DNA report with respect to Istref Krasniqi, Dušan Dunjić, Exhibit P471, para. 383. In evidence is an ICMP document indicating that Istref Krasniqi was identified among the remains, Exhibit, P428, p. 1 (in e-court).

339. The remains labelled “R-8” were identified as those of Velizar Stošić based on, *inter alia*, the clothing found on the remains and a “metal rod that had been placed in his right hip”.¹²⁷⁸ Also there was evidence that family members of Velizar Stošić told the Belgrade forensic team that he had gone to the “pharmacy to buy things for his grandchild and on his way back he disappeared”¹²⁷⁹ and that “a plastic pacifier, a rubber cover for a baby feeding bottle, plastic underwear for baby diapers [and a] a little wool cardigan sweater in a size for a baby” were found near the remains.¹²⁸⁰ In light of the foregoing, the Chamber accepts that the remains of Velizar Stošić were found in the canal area at Lake Radoniq/Radonjić.

340. The remains labelled “R-10” and “R-17” were identified respectively as those of Vukosava Marković and her sister Darinka Kovač,¹²⁸¹ based on, *inter alia*, “previous bone disease and the disease of vertebra joints, the symptoms of the disease”.¹²⁸² The Belgrade forensic team found “old injuries” on the remains later identified as those of Vukosava Marković, which coincided with the information given to them by a family member indicating that Vukosava Marković was injured in an automobile accident years before her death.¹²⁸³ The Belgrade forensic team also found that the remains later identified as those of Darinka Kovač had a “severe ossification of the spinal column, which caused a development of a hump on the rib cage”.¹²⁸⁴ Accordingly, the Chamber accepts that the identification of the remains found at the canal area at Lake Radoniq/Radonjić and labelled “R-10” and “R-17” are those of Vukosava Marković and Darinka Kovač.

341. The remains of Ilija Antić, Hajrullah Gashi, and Jusuf (Isuf) Hodža/Hoxha were identified by the Belgrade forensic team on the basis of sex, age, height, and other bodily characteristics and especially the positive identification of clothing by relatives.¹²⁸⁵ The Chamber has no evidence that these remains were DNA tested. Considering the incorrect identifications by the Belgrade forensic team discussed earlier, and in the absence of any specific indications, there is no sufficient basis for the Chamber to accept these identifications.¹²⁸⁶ The Chamber also does not accept that the remains of Adžija Seferaj, Milovan Vlahović, and Tush Frrokaj were found at the canal area at Lake Radoniq/Radonjić because these identifications were found to be incorrect through subsequent DNA testing.¹²⁸⁷

¹²⁷⁸ Dušan Dunjić, Exhibit P471, paras 270-272.

¹²⁷⁹ Branimir Aleksandrić, Exhibit P439, para. 114.

¹²⁸⁰ Branimir Aleksandrić, Exhibit P439, para. 112.

¹²⁸¹ Dušan Dunjić, Exhibit P471, para. 406.

¹²⁸² Dušan Dunjić, Exhibit P471, paras 304, 306-307, 407-408. The Chamber notes that the disease is not named.

¹²⁸³ Dušan Dunjić, Exhibit P471, para. 304.

¹²⁸⁴ Dušan Dunjić, Exhibit P471, para. 403.

¹²⁸⁵ Dušan Dunjić, Exhibit P471, paras 452, 483, 498.

¹²⁸⁶ Dušan Dunjić, Exhibit P471, paras 452, 483, 498.

¹²⁸⁷ Dušan Dunjić, Exhibit P471, paras 226, 383, 525.

342. In sum, the Chamber accepts that the remains found at the canal area at Lake Radoniq/Radonjić included those of Misin Berisha, Zenun Gashi, Velizar Stošić, Nurije Krasniqi, Istref Krasniqi, Malush Meha, Ilira Frrokaj, Kujtim Imeraj, Rade Popadić, Vukosava Marković, Darinka Kovač, Pal Krasniqi, and Milka Vlahović.

a. Misin Berisha

343. The Chamber heard evidence that Misin Berisha was one of the persons included on the list written down in Witness 17's notebook as will be discussed later.¹²⁸⁸

344. The remains labelled "R-3" were identified as those of Misin Berisha.¹²⁸⁹ The remains were found on 11 September 1998 directly next to the concrete wall of the canal.¹²⁹⁰ Next to the remains, there was a piece of yellow sticky tape similar to the one found around the neck of "R-4".¹²⁹¹ The time of death was estimated to be sometime between April and August 1998.¹²⁹² The body had an "injury in the pelvis caused by a bullet", which, if untreated, would have caused the victim to bleed to death.¹²⁹³ There were also multiple fractures to the skull and lower jaw, and the Belgrade forensic team found that the fractures to the skull were "caused by a blunt object or objects".¹²⁹⁴ It was also their opinion "that the injury could not have been caused by a fall from the top of the embankment at the bottom of which the body was found".¹²⁹⁵ No further evidence on Misin Berisha was tendered.

345. The Chamber notes that Misin Berisha is not named as a victim in the counts charged in the Indictment. The Chamber accepts that Misin Berisha was killed. However, the circumstances of his disappearance and death, including involvement of the KLA and the identity of the particular perpetrators, are not established based on the foregoing evidence.

b. Zenun Gashi

346. In late June or early July 1998, the family of Zenun Gashi, a retired policeman of Roma origin, wanted to leave their village of Kosuriq/Kosurić in Pejë/Peć municipality, because they had

¹²⁸⁸ Exhibit D146, p. 14; Witness 17, Exhibit P344, para. 57. *See infra*, para. 645.

¹²⁸⁹ Dušan Dunjić, Exhibit P471, para. 226.

¹²⁹⁰ Dušan Dunjić, Exhibit P471, para. 211. Evidence from Branimir Aleksandrić indicates that the body was found on the slope directly parallel to the wall, Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 9548-9550, 9552.

¹²⁹¹ Dušan Dunjić, Exhibit P471, paras 212, 228.

¹²⁹² Dušan Dunjić, Exhibit P471, paras 215, 217.

¹²⁹³ Dušan Dunjić, Exhibit P471, para. 219; Branimir Aleksandrić, Exhibit P439, para. 95

¹²⁹⁴ Dušan Dunjić, Exhibit P471, para. 220.

¹²⁹⁵ Dušan Dunjić, Exhibit P471, para. 220.

heard that the police were leaving and they feared the KLA.¹²⁹⁶ Although Zenun Gashi did not want to leave, stating “I have done nothing wrong [...]. So I don’t have to leave,” he agreed, and the family left the village.¹²⁹⁷ While leaving the village, some young men in civilian clothes informed the family that it was only Serbian police who were leaving and the family returned to their home.¹²⁹⁸

347. Later that day, three men, two in black uniforms and one in a “multicoloured uniform”, came to the family home and asked for Zenun Gashi’s weapon (a licensed pistol) and for his old uniform.¹²⁹⁹ On 30 July 1998, two other men in black uniforms came to the house and searched it again for weapons and uniforms.¹³⁰⁰

348. On 1 August 1998, at 1100 hours, the two men who had searched the home on 30 July 1998 returned to Zenun Gashi’s house with a third man; on this occasion, two of the men were dressed in black uniforms and the third was in camouflage.¹³⁰¹ One of the men dressed in black was Vesel Dizdari.¹³⁰²

349. Vesel Dizdari testified that, on the orders of the KLA military police commander, Metë Krasniqi,¹³⁰³ the home was again searched for weapons, and Zenun Gashi was then taken to Metë Krasniqi in the school at Baran/Barane.¹³⁰⁴ Vesel Dizdari testified that he did not use physical force against Zenun Gashi and that he did not see anything done to Zenun Gashi by other soldiers. He also testified that, after the war, he heard that Zenun Gashi was killed or otherwise gone missing.¹³⁰⁵

¹²⁹⁶ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9625-9626; Witness 52, Exhibit P495 (*Haradinaj* original transcript), T. 9627, 9633-9634; Witness 17, Exhibit P344 (*Haradinaj* original transcript), T. 7705; Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10872.

¹²⁹⁷ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9625-9626; Witness 52, Exhibit P495 (*Haradinaj* original transcript), T. 9627, 9630-9631.

¹²⁹⁸ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9625-9626; Witness 52, Exhibit P495 (*Haradinaj* original transcript), T. 9627, 9629-9631.

¹²⁹⁹ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9636; Witness 52, Exhibit P495 (*Haradinaj* original transcript), T. 9637.

¹³⁰⁰ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9639-9640.

¹³⁰¹ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9641-9642.

¹³⁰² Vesel Dizdari, Exhibit P467, paras 18-19; Witness 52, Exhibit P495 (*Haradinaj* original transcript), T. 9646-9648. See also Zoran Stijović, Exhibit P121, para. 56.

¹³⁰³ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5714; Witness 17, Exhibit P344, para. 71; Rustem Tetaj, Exhibit P77, para. 27; Rustem Tetaj, Exhibit P76 (*Haradinaj* original transcript), T. 3835-3836. The Chamber notes that the evidence of Sadri Selca, a FARK member, is not clear regarding Metë Krasniqi’s position and does not accept his evidence in this regard, Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10862, 10864.

¹³⁰⁴ Vesel Dizdari, Exhibit P467, paras 18-21; Witness 17, Exhibit P344, para. 71. See also Zoran Stijović, Exhibit P121, para. 56. In his evidence, Vesel Dizdari asserted that he had never been a member of the KLA, but was involved in the protection of his village, Qellopek/Zlopek in Lipjan/Lipljan municipality, and that he was told by Metë Krasniqi that he was to work for the military police, Vesel Dizdari, Exhibit P467, para. 12.

¹³⁰⁵ Vesel Dizdari, Exhibit P467, paras 20, 22.

350. Sadri Selca, a FARK member, who had worked with Zenun Gashi in the police, saw the latter for the last time in a car at the centre of Baran/Barane in Pejë/Peć municipality.¹³⁰⁶ The evidence does not disclose the date of this event. Sadri Selca gave evidence that Zenun, who was “in a very poor state” and “beaten”, asked him for water.¹³⁰⁷ In his testimony in the original trial, Sadri Selca testified that he did not know the people in the car and could not remember if they were wearing uniforms. Upon being read a passage of his written testimony given in October 2002, he agreed that the persons in the vehicle were Kosovo Albanian soldiers wearing camouflage uniforms, which he could not recognise.¹³⁰⁸ Sadri Selca went to see Zenun Gashi’s family and his wife told him that a group of soldiers abducted him from their house the same day Sadri Selca saw him in the car.¹³⁰⁹

351. In the days following his disappearance, Zenun Gashi’s family made inquiries and learned that there was a KLA headquarters in a basement in Kosuriq/Kosurić village.¹³¹⁰ The family members asked around the village and also went to the headquarters. They were told by several men that, “He will be back. He will come back. Don’t worry”.¹³¹¹ Family members returned to the KLA headquarters several times, but Zenun Gashi was never seen again by his family.¹³¹²

352. Around the end of July or early August, Witness 17 received information from “someone within the 3rd/131st brigade security service that a civilian named Zenun from Baran village was taken by KLA military police officer Metë Krasniqi” to Ramush Haradinaj in Gllogjan/Glodane.¹³¹³ Witness 17 gave evidence that when he asked Metë Krasniqi’s commander, Din Krasniqi,¹³¹⁴ about the information he received, Din indicated that it was “Faton Mehmeti” who ordered that Zenun Gashi be brought to Gllogjan/Glodane.¹³¹⁵ There is no evidence before the Chamber indicating that Ramush Haradinaj was present if and when Zenun Gashi was brought to Gllogjan/Glodane. According to Witness 17, upon being told by Din Krasniqi at an unspecified time after these events that Zenun would be killed if he was sent to the “KLA secret police”, Witness 17 insisted that Zenun be released; Din Krasniqi intervened and Zenun was released.¹³¹⁶ Din Krasniqi told Witness

¹³⁰⁶ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10872-10874.

¹³⁰⁷ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10873-10874.

¹³⁰⁸ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10873-10875.

¹³⁰⁹ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10884.

¹³¹⁰ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9643-9644.

¹³¹¹ Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9643-9644.

¹³¹² Witness 52, Exhibit P494 (*Haradinaj* original transcript), T. 9643-9644.

¹³¹³ Witness 17, Exhibit P344, paras 71-72; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7704.

¹³¹⁴ Din Krasniqi was a KLA commander in the Baran/Barane Valley, Cufë Krasniqi, Exhibit P54, para. 31.

¹³¹⁵ Witness 17, Exhibit P344, para. 71.

¹³¹⁶ Witness 17, Exhibit P344, para. 71; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7704.

17 that if Zenun was arrested again, he would be liquidated.¹³¹⁷ As will be discussed later, Zenun Gashi was named on the list of people written down in Witness 17's notebook.¹³¹⁸

353. Witness 17 later heard that Zenun was "detained again by KLA member Zeqë Krasniqi, a cousin of Metë Krasniqi", and "taken again to the Dukagjin Plain Operational Staff in Glllogjan".¹³¹⁹ The time frame as to when this occurred, and from whom Witness 17 heard this, are unclear from the evidence. Witness 17 asked Din Krasniqi about Zenun, with the intention to intervene again to secure his release.¹³²⁰ In response, Din Krasniqi made a lateral cutting motion across his throat and Witness 17 understood that "Zenun had been killed".¹³²¹ According to Witness 17, Din Krasniqi did not say where the body was, and Witness 17 did not ask.¹³²²

354. According to the DNA report by the ICMP, the remains labelled "R-4" retrieved from the canal area at Lake Radoniq/Radonjić were identified through DNA testing as those of Zenun (Ramadan) Gashi.¹³²³ The remains were found directly next to the concrete wall of the canal. According to the Belgrade forensic team report, there was a perforating wound in the skull, caused by a projectile, and the time of death was estimated to be sometime between April and August 1998.¹³²⁴ There was also evidence of fractures to the "right humerus, left ribs, left radius and ulna and right foot", "possibly due to gunshot wounds".¹³²⁵ There was a piece of yellow sticky tape around the neck of the victim; this tape was similar to that found next to the body labelled "R-3".¹³²⁶ The autopsy report of the OMPF determined the cause of death of Zenun Gashi to be "[s]hrapnel wound to the head".¹³²⁷

355. The Chamber notes that Zenun Gashi is not named as a victim in the counts charged in the Indictment. The Chamber accepts that Zenun Gashi was killed and that members of the KLA were likely involved. However, the circumstances of his disappearance and death, including the identity of the particular perpetrators, are not established based on the foregoing evidence.

¹³¹⁷ Witness 17, Exhibit P344, para. 71.

¹³¹⁸ Exhibit D146, p. 13. See also Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7705; Witness 17, Exhibit P344, paras 57-58. See *infra*, para. 645.

¹³¹⁹ Witness 17, Exhibit P344, para. 72; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7704.

¹³²⁰ Witness 17, Exhibit P344, para. 72

¹³²¹ Witness 17, Exhibit P344, para. 72.

¹³²² Witness 17, Exhibit P344, para. 72.

¹³²³ Exhibit P428. Although the remains labelled "R-4" was reported as "not identified" in the Belgrade forensic team report, they were subsequently identified by DNA by the ICMP, Dušan Dunjić, Exhibit P471, para. 238. See also Exhibits P429; P430; P431.

¹³²⁴ Dušan Dunjić, Exhibit P471, paras 227-228, 233, 236; Exhibits P478; P479; P480; Branimir Aleksandrić, Exhibit P439, paras 101-103.

¹³²⁵ Exhibit P429, p. 1.

¹³²⁶ Dušan Dunjić, Exhibit P471, paras 212, 226, 228; Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 7320-7324. "R-3" was identified in the first instance as that of "Adžija Seferaj" but it was later revealed through DNA that the remains of "R-3" were those of "Misin Berisha". Dušan Dunjić, Exhibit P471, paras 224, 226.

¹³²⁷ Exhibit P429, p. 1. See also Exhibits P430; P431.

c. Velizar Stošić

356. The Chamber heard evidence that “[o]n 18 July, a seventy-seven year old pensioner Velizar Stošić, father of three children, was kidnapped at the Belo Polje – Lodja local road”¹³²⁸ and that family members of Velizar Stošić told the Belgrade forensic team that he had gone to the “pharmacy to buy things for his grandchild and on his way back he disappeared”.¹³²⁹

357. Dušan Dunjić gave evidence that the remains labelled “R-8” were identified as those of Velizar Stošić.¹³³⁰ The remains labelled “R-8” were found on 11 September 1998 next to the concrete wall of the canal;¹³³¹ there was a “tight noose made of mountain climbing rope surrounding the neck area”.¹³³² The time of death was estimated to be sometime between April and August 1998.¹³³³ There were “bullet holes on both sides of the head”, injury to the right leg above the knee and a “bullet found inside the left kneecap”.¹³³⁴

358. The Chamber notes that Velizar Stošić is not named as a victim in the counts charged in the Indictment. The Chamber accepts that Velizar Stošić was killed. However, the circumstances of his disappearance and death, including involvement of the KLA and the identity of the particular perpetrators, are not established based on the foregoing evidence.

d. Nurije Krasniqi and Istref Krasniqi

359. Sadri Selca wrote in his notes that “Imer (Istref) Krasniqi” from Turjakë/Turjak village in Pejë/Peć municipality was “taken for an interview regarding his collaboration with the Serbian police and several other cases”.¹³³⁵ When being examined about Istref Krasniqi and Nurije Krasniqi, Sadri Selca gave evidence that he was told by his courier, Naser Kuçi, that “they had taken them... these elderly people were taken”.¹³³⁶ According to Sadri Selca, Naser Kuçi heard this information “from citizens, from some villagers from Turjakë” (Turjakë/Turjak in Pejë/Peć municipality) whose names Sadri Selca had forgotten.¹³³⁷

360. The evidence of an official note dated 25 August 1998 shows that Sadri Selca had also been “informed by an informant that Istref Imer Krasniqi and his wife had been abducted from

¹³²⁸ Zoran Stijović, Exhibit P121, para. 54.

¹³²⁹ Branimir Aleksandrić, Exhibit P439, para. 114.

¹³³⁰ Dušan Dunjić, Exhibit P471, para. 272.

¹³³¹ Dušan Dunjić, Exhibit P471, para. 259.

¹³³² Branimir Aleksandrić, Exhibit P439, paras 111, 119; Dušan Dunjić, Exhibit P471, para. 269.

¹³³³ Dušan Dunjić, Exhibit P471, para. 264.

¹³³⁴ Dušan Dunjić, Exhibit P471, paras 266-267.

¹³³⁵ Exhibit P335, p. 8.

¹³³⁶ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10867-10869, 10883.

¹³³⁷ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10883.

[Turjakë/Turjak] village by Rustem Tetaj and that their fate is unknown”.¹³³⁸ At the same time, Sadri Selca gave evidence that from his conversation with Naser Kuçi, “it was said that Rustem Tetaj took them in a vehicle” but that Sadri Selca was “not able to get any information” regarding “who carried out the kidnapping.”¹³³⁹ The Chamber notes that Rustem Tetaj’s evidence before the Chamber does not include information on Nurije Krasniqi and Istref Krasniqi.

361. Cufë Krasniqi gave evidence that, sometime before September 1998, he heard about the abduction of “Nurije and Istref Krasniqi”.¹³⁴⁰ Cufë Krasniqi testified that Tahir Zemaj asked him whether he knew what had happened to the couple, and told the witness that Fadil Nimoni (Nimani, Nimonaj), commander of the KLA Military Police,¹³⁴¹ was assigned to investigate the case.¹³⁴² Later Cufë Krasniqi heard rumours that the couple was collaborating with the Serbian authority and that they were killed, but he did not know who might have killed them.¹³⁴³

362. The Belgrade forensic team found the remains labelled “R-14” and “R-15” together under gravel next to the concrete wall of the canal on 12 September 1998.¹³⁴⁴ The remains labelled “R-14” and “R-15” were identified as those of Nurije Krasniqi and Istref Krasniqi, respectively.¹³⁴⁵ On the remains labelled “R-14”, there were “multiple fractures of the skull with some parts of the skull missing”.¹³⁴⁶ There were also, *inter alia*, “multiple fractures of the ribs” with some of the bone matter missing, and “a fracture to the upper right arm with parts of this arm missing”.¹³⁴⁷ It was not possible for the Belgrade forensic team to determine “if the fractures to the skull, upper right arm and thorax area had been caused by a bullet or a blunt object”.¹³⁴⁸ The time of death for the remains labelled “R-14” was estimated to be April or May 1998.¹³⁴⁹ The remains labelled “R-15” by the Belgrade forensic team “revealed fractures of both forearms”. Although the cause of death “could not be established with certainty” the Belgrade forensic team concluded that the fractures “could not have occurred as a result of a simple fall down the slope” and instead “were

¹³³⁸ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10868; Exhibit P334.

¹³³⁹ Sadri Selca, Exhibit P332 (*Haradinaj* original transcript), T. 10869; Exhibit P334.

¹³⁴⁰ Cufë Krasniqi, Exhibit P54, para. 88.

¹³⁴¹ See *supra*, para. 117.

¹³⁴² Cufë Krasniqi, Exhibit P54, para. 88.

¹³⁴³ Cufë Krasniqi, Exhibit P54, para. 89. See Confidential Annex.

¹³⁴⁴ Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6772-6774, 9553; Exhibit P436, p. 3 (p. 14 in e-court); Branimir Aleksandrić, Exhibit P439, paras 134-135; Dušan Dunjić, Exhibit P471, paras 354, 368.

¹³⁴⁵ Dušan Dunjić, Exhibit P471, paras 367, 383; Exhibit P428.

¹³⁴⁶ Dušan Dunjić, Exhibit P471, para. 359.

¹³⁴⁷ Dušan Dunjić, Exhibit P471, para. 359. The lower left leg, both feet and both hands were also missing, Dušan Dunjić, Exhibit P471, para. 359.

¹³⁴⁸ Dušan Dunjić, Exhibit P471, para. 360.

¹³⁴⁹ Dušan Dunjić, Exhibit P471, para. 361.

inflicted by mechanical force”.¹³⁵⁰ The time of death for the remains labelled “R-15” was determined to have been between April or May and August 1998.¹³⁵¹

363. The Chamber notes that Nurije Krasniqi and Imer (Istref) Krasniqi are not named as victims in the counts charged in the Indictment. The Chamber accepts that Nurije Krasniqi and Imer (Istref) Krasniqi were killed. However, the circumstances of their disappearances and deaths, including the involvement of the KLA and the identity of the particular perpetrators, are not established based on the foregoing evidence.

c. Malush Meha

364. There is evidence indicating that the ICMP identified the remains labelled “R-16” as those of Malush Meha by DNA testing.¹³⁵² The remains labelled “R-16” were not identified by the Belgrade forensic team.¹³⁵³

365. According to the Belgrade forensic team, the remains were found on 12 September 1998 “next to the outside edge of the concrete canal” under a 30 centimetres layer of muddy and moist soil.¹³⁵⁴ Dušan Dunjić considered that certain missing bones also suggested that “the body was originally on the surface and was covered up with earth only at a later stage”.¹³⁵⁵ There were “fractures of the right shoulder blade and the left half of the pelvic bone” which the forensic experts determined “could not have occurred as a result of a fall down a slope”.¹³⁵⁶ No further evidence regarding Malush Meha was tendered.

366. The Chamber notes that Malush Meha is not named as a victim in the counts charged in the Indictment. The Chamber makes no finding on Malush Meha based on the foregoing evidence.

f. Ilira Frrokaj

367. Sadri Selca wrote in his notes: “1./?V/itor Krasniqi from the village of Nepola states that Tush Frrokaj from Plançor village has disappeared without a trace, with his wife”.¹³⁵⁷ Radovan Zlatković gave evidence that the SUP Gjakovë/Đakovica “had information that Serbs, Romas and Albanians such as Ilira and Tush Frrokaj went missing without a trace”.¹³⁵⁸

¹³⁵⁰ Dušan Dunjić, Exhibit P471, para. 374.

¹³⁵¹ Dušan Dunjić, Exhibit P471, para. 371.

¹³⁵² Exhibit P428. See also Exhibit P431.

¹³⁵³ Dušan Dunjić, Exhibit P471, para. 393.

¹³⁵⁴ Dušan Dunjić, Exhibit P471, para. 384.

¹³⁵⁵ Dušan Dunjić, Exhibit P471, para. 391.

¹³⁵⁶ Dušan Dunjić, Exhibit P471, para. 391.

¹³⁵⁷ Exhibit P335, p. 3.

¹³⁵⁸ Radovan Zlatković, Exhibit P373, para. 51.

368. Dušan Dunjić gave evidence that a relative of Ilira Frrokaj stated that she “was last seen on 26 August 1998” and that other relatives indicated that “KLA members” went “straight to [Ilira and Tush Frrokaj’s] home as if it was planned” and took them away.¹³⁵⁹ According to Dušan Dunjić’s evidence Ilira Frrokaj was “breastfeeding a baby at the time of her disappearance” and “a relative went to the home and took the baby before Ilira and Tush were taken away by the KLA”.¹³⁶⁰ Dušan Dunjić could not remember if the relatives told him that they had “witnessed the kidnappings” or if they had heard about it from someone else.¹³⁶¹ Zoran Stijović gave evidence about a Gjakovë/Đakovica RDB “note of an interview of Ibrahim Maju [...] in which he mentions the kidnapping of the Frrokaj couple in a village near Đakovica”.¹³⁶²

369. The remains labelled “R-18” were identified as those of Ilira Frrokaj.¹³⁶³ The Chamber recalls that it did not find that the remains of Tush Frrokaj were found at the canal area at Lake Radoniq/Radonjić.¹³⁶⁴ The remains labelled “R-18” were found on 11 September 1998 “at the opening into a channel leading to the concrete canal, below a falls [sic], next to an overturned car”.¹³⁶⁵ The autopsy “revealed a shallow entry wound at the right lower leg” and a “projectile was found in the same region actually protruding from the leg”.¹³⁶⁶ The autopsy “also revealed multiple fractures of the bones of the skull, cervical vertebra, left shoulder blade and left tibia”.¹³⁶⁷ There were also bullet holes in the car that was found near the body.¹³⁶⁸ Finally, the autopsy “revealed traces of burning on the body as well as defects from animal teeth inflicted post mortem”.¹³⁶⁹ The body “was in an advanced stage of putrefaction and decomposition, so the cause of death” could not “be determined on the basis of autopsy alone” and the time of death was estimated to be sometime in August of 1998.¹³⁷⁰

370. The Chamber notes that Ilira Frrokaj is not named as a victim in the counts charged in the Indictment. The Chamber accepts that Ilira Frrokaj was killed. However, the circumstances of her disappearance and death, including the involvement of the KLA and the identity of the particular perpetrators, are not established based on the foregoing evidence.

¹³⁵⁹ Dušan Dunjić, Exhibit P471, para. 426.

¹³⁶⁰ Dušan Dunjić, Exhibit P471, para. 426.

¹³⁶¹ Dušan Dunjić, Exhibit P471, para. 426.

¹³⁶² Zoran Stijović, Exhibit P121, para. 56. The Gjakovë/Đakovica RDB interview note is not in evidence.

¹³⁶³ Dušan Dunjić, Exhibit P471, paras 428, 431.

¹³⁶⁴ *See supra*, para. 341.

¹³⁶⁵ Dušan Dunjić, Exhibit P471, para. 411. *See also* Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original trial), T. 6803, 9605; Exhibit P436, p. 3 (p. 15 in e-court); Exhibit P439, paras 151, 154-158.

¹³⁶⁶ Dušan Dunjić, Exhibit P471, para. 418.

¹³⁶⁷ Dušan Dunjić, Exhibit P471, para. 418.

¹³⁶⁸ Dušan Dunjić, Exhibit P471, para. 419.

¹³⁶⁹ Dušan Dunjić, Exhibit P471, para. 421.

¹³⁷⁰ Dušan Dunjić, Exhibit P471, paras 413, 417.

g. Kujtim Imeraj

371. The remains labelled as “R-26” were identified as those of Kujtim Imeraj.¹³⁷¹ They were found around 660 metres downstream from the falls.¹³⁷² The “autopsy of the present bones of the skull revealed a fracture in the right temporal region”.¹³⁷³ The time of death was estimated to be “July or August 1998” and the “autopsy was insufficient to determine the cause of death”.¹³⁷⁴

372. The Chamber notes that Kujtim Imeraj is not named as a victim in the counts charged in the Indictment. The Chamber makes no finding on Kujtim Imeraj based on the foregoing evidence.

(c) Road leading to Ratish-i-Ulët/Donji Ratiš and Dashinoc/Dašinovac

373. The Chamber received evidence that on 11 September 1998, investigating judge Radomir Gojković gave members of the Belgrade forensic team, who were located in the canal area near Lake Radoniq/Radonjić, a “bag of bones found in [Dashinoc/Dašinovac]”.¹³⁷⁵ These remains were found by the judge and the MUP on a road to Ratish-i-Ulët/Donji Ratiš and Dashinoc/Dašinovac on 10 September 1998.¹³⁷⁶ It does not appear that the Belgrade forensic team visited the location, and instead were given photographs taken by the MUP at the scene where the bones were found.¹³⁷⁷

374. The bag, labelled “D” for “Dashinoc/Dašinovac”,¹³⁷⁸ contained bones, clothes, documents and bullet casings, and was taken to Hotel Paštrik in Gjakovë/Dakovica.¹³⁷⁹ The bag’s contents were found to belong to “at least three different adult individuals”¹³⁸⁰ or three males and one female.¹³⁸¹ The different sets of remains were labelled “D-1” and “D-2”.¹³⁸² “D-1” comprised a number of bones from at least three individuals, including fragments of skulls, ribs and leg bones; the three victims whose remains were within “D-1” were initially labelled as “D1a”, “D1b” and “D1c”.¹³⁸³ The “degree of decomposition of the bones in D-1” indicated that the deaths “occurred

¹³⁷¹ Dušan Dunjić, Exhibit P471, para. 525.

¹³⁷² Dušan Dunjić, Exhibit P471, para. 516.

¹³⁷³ Dušan Dunjić, Exhibit P471, para. 518.

¹³⁷⁴ Dušan Dunjić, Exhibit P471, paras 514, 517.

¹³⁷⁵ Exhibit P436, p. 3 (p. 14 in e-court); Branimir Aleksandrić, Exhibit P439, para. 252; Dušan Dunjić, Exhibit P471, paras 63, 683-684; Nebojša Avramović, Exhibit P451, paras 80, 82, 87; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6667.

¹³⁷⁶ Bogdan Tomaš, Exhibit P338, para. 50; Bogdan Tomaš, Exhibit 336 (*Haradinaj* original transcript), T. 6157; Radovan Zlatković, Exhibit P373, paras 93-95, 97-100; Branimir Aleksandrić, Exhibit P439, para. 252.

¹³⁷⁷ Dušan Dunjić, Exhibit P471, paras 64, 69, 128.

¹³⁷⁸ Dušan Dunjić, Exhibit P471, paras 64, 683-687; Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 6850; Exhibit P436, p. 3 (p. 14 in e-court); Branimir Aleksandrić, Exhibit P439, para. 252; Nebojša Avramović, Exhibit P451, para. 88.

¹³⁷⁹ Branimir Aleksandrić, Exhibit P439, para. 252; Dušan Dunjić, Exhibit P471, paras 63-65, 683; Nebojša Avramović, Exhibit P451, para. 87; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6667.

¹³⁸⁰ Dušan Dunjić, Exhibit P471, paras 683-684, 688.

¹³⁸¹ Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 6850.

¹³⁸² Dušan Dunjić, Exhibit P471, paras 66-67, 690.

¹³⁸³ Dušan Dunjić, Exhibit P471, para. 68.

probably between May and August 1998”.¹³⁸⁴ The contents of “D-2” were “partly burnt parts of a woman’s clothes” which were “found on the opposite side of the same road from where D-1 was found”.¹³⁸⁵ The owner of this woman’s clothes was never identified.¹³⁸⁶

375. The Belgrade forensic team determined that the items in D-1 included “most probably some bone fragments belong[ing] to the disappeared Slobodan Radošević and Miloš Radunović”.¹³⁸⁷ This identification was based on, *inter alia*, the recognition by relatives of the clothing found and the documents contained inside the clothes which included identification papers of Miloš Radunović.¹³⁸⁸ The evidence indicates that the remains were not identified by DNA testing. According to the Belgrade forensic team, it was not possible to determine which bone fragment belonged to which individual and, at the families’ insistence, the bone fragments were separated equally into three (namely, for the two identified victims and one unidentified victim) and placed in caskets with the personal effects.¹³⁸⁹

376. In light of the discussion on identification earlier in the Judgement, since the basis for identification does not appear sufficient in the evidence,¹³⁹⁰ the Chamber does not accept that the remains of individuals found on the road included those of Slobodan Radošević and Miloš Radunović. Neither is named as a victim in the counts charged in the Indictment.

(d) Ekonomija Farm

377. During the afternoon of 11 September 1998, members of the Belgrade forensic team were escorted from the canal area near Lake Radonij/Radonjić to the nearby Ekonomija Farm.¹³⁹¹ The Farm is located about 300 metres away from the canal in the village of Irzniq/Rznić in Deçan/Dečani municipality.¹³⁹²

¹³⁸⁴ Dušan Dunjić, Exhibit P471, paras 686-687.

¹³⁸⁵ Dušan Dunjić, Exhibit P471, paras 67, 689-690.

¹³⁸⁶ Dušan Dunjić, Exhibit P471, para. 692.

¹³⁸⁷ Dušan Dunjić, Exhibit P471, para. 705. See also Exhibit P369, p. 57 (in e-court).

¹³⁸⁸ Dušan Dunjić, Exhibit P471, paras 127, 704-705. Radovan Zlatković gave evidence that the weapon permit of Miloš Radunović was found (Radovan Zlatković, Exhibit P373, para. 100) while Nebojša Avramović gave evidence that the weapon permit of Slobodan Radošević was found (Nebojša Avramović, Exhibit P451, paras 83, 85). However, the Belgrade forensic team did not refer to any weapon permit being found, Dušan Dunjić, Exhibit P471, paras 694-709; Branimir Aleksandrić, Exhibit P439, para. 252.

¹³⁸⁹ Dušan Dunjić, Exhibit P471, para. 709; Dušan Dunjić, Exhibit P468 (*Haradinaj* original transcript), T. 6849-6852.

¹³⁹⁰ See *supra*, paras 335-336.

¹³⁹¹ Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6741-6742, 9578-9579; Branimir Aleksandrić, Exhibit P439, paras 12-13; Exhibit P436, p. 1 (p. 12 in e-court); Dušan Dunjić, Exhibit P471, paras 39, 57.

¹³⁹² Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6741-6742.

(i) Investigations in Ekonomija Farm

378. At the Farm, they found a male body in civilian clothes at the end of a sewer drainage canal which was labelled as “RE-1”, photographed, and transported to Hotel Paštrik.¹³⁹³ The team also found seven electric cables tied to a metal rod inside a cattle stable in the farm. These cables were separately tied with “dead knots” or “bowlines” (*i.e.* slip proof knots), which would be too short to fit around the necks of cattle, and noting that electrical cable can harm livestock, the team concluded that these had been used to tie people, probably by the neck.¹³⁹⁴ Similar cable was found on or near several bodies found in the canal in Lake Radonij/Radonjić.¹³⁹⁵

379. On 23 September 1998, while clearing and securing the Lake Radonij/Radonjić and Ekonomija Farm area for a visit by the then President of Serbia Milan Milutinović, MUP officers found five additional bodies about 100-200 meters away from Ekonomija Farm.¹³⁹⁶ The remains found around Ekonomija Farm were labelled as “RE-2” through “RE-7”; the remains labelled “RE-5” and RE-7” were later determined to belong to the same person.¹³⁹⁷ The remains were taken to Hotel Paštrik. On 24 September 1998, the members of the Belgrade Forensic team visited the location where the remains were found and undertook the autopsies at Hotel Paštrik.¹³⁹⁸ The “autopsies and the forensic examinations of the five bodies” were concluded on 27 September 1998.¹³⁹⁹ In total, human remains of six individuals were found at the farm.

(ii) Remains at Ekonomija Farm and subsequent identification

380. None of the six human remains found at Ekonomija Farm were identified by the Belgrade forensic team.¹⁴⁰⁰ However, three of the human remains were DNA identified.

¹³⁹³ Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6741; Exhibit P436, p. 1 (p. 12 in e-court); Branimir Aleksandrić, Exhibit P439, paras 36, 39, 57; Dušan Dunjić, Exhibit P471, paras 57, 62.

¹³⁹⁴ Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6742-6743, 6749-6750, 9578-9579; Exhibit P436, p. 1 (p. 12 in e-court); Branimir Aleksandrić, Exhibit P439, paras 55, 57; Dušan Dunjić, Exhibit P471, para. 59.

¹³⁹⁵ Branimir Aleksandrić, Exhibit P439, para. 57; Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6742-6743, 6749-6750.

¹³⁹⁶ Nebojša Avramović, Exhibit P451, para. 181; Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6670-6671; Dušan Dunjić, Exhibit P471, paras 147-148. According to Dušan Dunjić, he found the body part which was labelled “RE-7” when he was at the Farm on 26 September 1998. It was later determined that body parts labelled “RE-5” and “RE-7” belonged to one individual, Dušan Dunjić, Exhibit P471, paras 159-160.

¹³⁹⁷ Dušan Dunjić, Exhibit P471, paras 158-160, 613. See also Branimir Aleksandrić, Exhibit P439, para. 40.

¹³⁹⁸ Dušan Dunjić, Exhibit P471, paras 149-158; Exhibit P477; Nebojša Avramović, Exhibit P451, para. 182.

¹³⁹⁹ Dušan Dunjić, Exhibit P471, paras 163-164; Exhibit P477, p. 3.

¹⁴⁰⁰ Dušan Dunjić, Exhibit P471, paras 609, 634, 649, 660, 672, 682.

a. Mehmet Rustemaj

381. Dušan Dunjić gave evidence that he was shown an ICMP DNA report indicating that the remains labelled “RE-1” were those of Mehmet Rustemaj.¹⁴⁰¹ The Chamber accepts that the remains of Mehmet Rustemaj, were found in the Farm.

382. The remains labelled “RE-1” were found on 11 September 1998 in a “narrow concrete ditch used for drainage of wastewater from stables”.¹⁴⁰² The autopsy indicated “multiple bilateral rib fractures the features of which suggest that they could have been caused by repeated blows with a blunt instrument”.¹⁴⁰³ There was “an irregular shaped oval defect on the left parietal bone where it meets the frontal bone and the greater wing of the sphenoid bone, whose appearance is consistent with the track of a bullet fired from a sidearm”.¹⁴⁰⁴ Also the “transversal defect on the right parietal bone had flat (without any angles) edges and sides consistent with a blow with a sharp instrument”.¹⁴⁰⁵ Finally, the body was in an “advanced stage of decomposition so that it was impossible to determine the cause of death by autopsy alone”.¹⁴⁰⁶ The time of death was estimated to be July or August of 1998.¹⁴⁰⁷ No additional evidence on Mehmet Rustemaj was received by the Chamber.

383. The Chamber notes that Mehmet Rustemaj is not named as a victim in the counts charged in the Indictment. The Chamber accepts that Mehmet Rustemaj was likely killed. However, the circumstances of his disappearance and death, including involvement of the KLA and the identity of the particular perpetrators, are not established based on the foregoing evidence.

b. Tushe Tahiraj and Ramiz Tahiraj

384. Evidence indicates that the ICMP identified the remains labelled “RE-2” and “RE-3” as those of Tushe Tahiraj and Ramiz Tahiraj, respectively by DNA testing.¹⁴⁰⁸ The Chamber accepts that the remains of Tushe Tahiraj and Ramiz Tahiraj were found at the Farm.

385. During cross-examination, Nebojša Avramović was asked about a statement made by Blerim Tahiraj, the son of “Tushe and Ramiz Tahiraj”, to the Prosecution. In the statement, Blerim Tahiraj indicated that his parents left Skivjan/Skivjane in Gjakovë/Đakovica municipality taking the route through “Novo Sello” in the direction of Pozhar/Požar in Dečan/Dečani municipality on

¹⁴⁰¹ Dušan Dunjić, Exhibit P471, para. 610.

¹⁴⁰² Dušan Dunjić, Exhibit P471, para. 601.

¹⁴⁰³ Dušan Dunjić, Exhibit P471, para. 606.

¹⁴⁰⁴ Dušan Dunjić, Exhibit P471, para. 607.

¹⁴⁰⁵ Dušan Dunjić, Exhibit P471, para. 607.

¹⁴⁰⁶ Dušan Dunjić, Exhibit P471, para. 605.

¹⁴⁰⁷ Dušan Dunjić, Exhibit P471, para. 604.

6 September 1998 and that about one or two weeks later, a suspended Serbian policeman by the name of “Moma Derlović or Drelović” told Blerim Tahiraj’s brother that their parents were in a prison.¹⁴⁰⁹ Nebojša Avramović gave evidence that he knew of a suspended police officer named “Momo Drljević” who was stationed in the same building in Gjakovë/Đakovica with Nebojša Avramović before the suspension.¹⁴¹⁰ In the same statement, Blerim Tahiraj indicated that he heard “rumours that Serbs captured people in Novo Sello on the 6th of September 1998” and that on his way to Pozhar/Požar on 7 September 1998, “some people” said that “the police and paramilitary were capturing people on the 6th of September”.¹⁴¹¹

386. The remains of Tushe Tahiraj and Ramiz Tahiraj were found near each other by Serbian police on 23 September 1998 “in the grove not far from the farm”.¹⁴¹² The autopsy of “RE-2” indicated a “perforating defect of the skin in the area between the shoulder blades”, which was an “entry wound inflicted by a shot from a weapon”, and “soft tissue defects in the area of the lower fourth of the left forearm”, which were “consistent with a decomposed entry and exit gunshot wound”.¹⁴¹³ The Belgrade forensic team considered that, if “inflicted ante mortem”, “this would suggest a violent death as a direct result of gunshot wounds”.¹⁴¹⁴ The autopsy of “RE-3” “established a gunshot wound to the skull inflicted by a bullet fired from a firearm”; “a gun shot wound to the right half of the rib cage and abdomen”; and “a gunshot wound at the left thigh”.¹⁴¹⁵ According to the Belgrade forensic team “[i]f these gunshot wounds to the head and body were inflicted ante mortem, they were the direct cause of death”.¹⁴¹⁶ The time of death for both was estimated to be sometime in July or August 1998.¹⁴¹⁷

387. The Chamber notes that Tushe Tahiraj and Ramiz Tahiraj are not named as victims in the counts charged in the Indictment. The Chamber accepts that Tushe Tahiraj and Ramiz Tahiraj were likely killed. However, the circumstances of their disappearances and deaths, including the involvement of the KLA and the identity of the particular perpetrators, are not established based on the foregoing evidence.

¹⁴⁰⁸ Exhibit P428.

¹⁴⁰⁹ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6671-6672.

¹⁴¹⁰ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6672-6673.

¹⁴¹¹ Nebojša Avramović, Exhibit P449 (*Haradinaj* original transcript), T. 6673.

¹⁴¹² Dušan Dunjić, Exhibit P471, paras 612-613, 623.

¹⁴¹³ Dušan Dunjić, Exhibit P471, paras 619-620.

¹⁴¹⁴ Dušan Dunjić, Exhibit P471, para. 621.

¹⁴¹⁵ Dušan Dunjić, Exhibit P471, paras 629-631.

¹⁴¹⁶ Dušan Dunjić, Exhibit P471, para. 632.

¹⁴¹⁷ Dušan Dunjić, Exhibit P471, paras 616-617, 626-627.

V. GENERAL REQUIREMENTS OF ARTICLE 3 OF THE STATUTE

A. Law

388. The Indictment charges the Accused with six counts of violations of the laws or customs of war under Article 3 of the Statute of the Tribunal. Article 3 of the Statute accords to the Tribunal the power to prosecute persons violating the laws or customs of war. The jurisprudence has set up further requirements which must be met for the Tribunal to have jurisdiction to try offences under this Article. Both these jurisdictional requirements and general elements of crimes under Article 3 of the Statute will be discussed below.

1. The *Tadić* conditions

389. The jurisprudence of the Tribunal has found Article 3 of the Statute to be a “residual clause” that provides the Tribunal with jurisdiction over all serious violations of humanitarian law not falling under Articles 2, 4, or 5 of the Statute.¹⁴¹⁸ It has consistently held that for a charged crime to fall within the jurisdiction of the Tribunal under Article 3 of the Statute, four conditions must be fulfilled: (1) the violation must constitute an infringement of a rule of international humanitarian law; (2) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met; (3) the violation must be serious, that is to say, that it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and (4) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.¹⁴¹⁹

390. In the present case, the charges of murder, cruel treatment and torture, are based on Common Article 3 of the Geneva Conventions. It is well established jurisprudence of this Tribunal that violations of Common Article 3 fall within the scope of Article 3 of the Statute.¹⁴²⁰ In particular, the rules contained in Common Article 3 form part of customary international law applicable in both international and non-international armed conflict.¹⁴²¹ The acts of murder, torture and cruel treatment that Common Article 3 prohibits constitute breaches of rules that protect important values, and involve grave consequences for the victims. The violation of the rules of

¹⁴¹⁸ *Tadić* Jurisdiction Decision, paras 89, 91-92; *Čelebići* Appeal Judgement, para. 125; *Kunarac* Appeal Judgement, para. 68.

¹⁴¹⁹ *Tadić* Jurisdiction Decision, para. 94; *Kunarac* Appeal Judgement, para. 66.

¹⁴²⁰ *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, paras 133-134, 136; *Kunarac* Appeal Judgement, para. 68.

¹⁴²¹ *Tadić* Jurisdiction Decision, paras 89, 98; *Čelebići* Appeal Judgement, paras 138-139, 147.

Common Article 3 also entails individual criminal responsibility of the person breaching the rule.¹⁴²² Therefore, the Tribunal has jurisdiction over such violations of Common Article 3.

2. Preliminary requirements of Article 3

391. Once jurisdiction is established, certain general conditions need to be met before Article 3 of the Statute is applicable. First, there must be an armed conflict, whether international or internal, at the time material to the Indictment; second, the acts of the Accused must be closely related to this armed conflict, *i.e.*, there must be a nexus,¹⁴²³ and third, the victim must not be taking active part in the hostilities at the time the crimes were committed.¹⁴²⁴

(a) Armed conflict

392. The test for an armed conflict was set out by the Appeals Chamber in the *Tadić* Jurisdiction Decision as follows:

[a]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.¹⁴²⁵

This test has been applied consistently in the subsequent jurisprudence.¹⁴²⁶ Under this test, two criteria have to be considered: first, the intensity of the conflict, and second, the organisation of the parties to the conflict.¹⁴²⁷ These criteria have been further explicated by case law.¹⁴²⁸

393. The jurisprudence of the Tribunal has established that armed conflict of a non-international character may only arise when there is protracted violence between governmental authorities and organised armed groups, or between such groups, within a State.¹⁴²⁹ While an armed group must have “some degree of organisation”, the warring parties do not necessarily need to be as organised

¹⁴²² *Tadić* Jurisdiction Decision, paras 128-129; *Čelebići* Appeal Judgement, paras 153-156, 160, 162-164, 167, 170.

¹⁴²³ *Tadić* Jurisdiction Decision, paras 67, 69-70; *Kunarac* Appeal Judgement, para. 55; *Stakić* Appeal Judgement, para. 342.

¹⁴²⁴ Common Article 3 (1); *Čelebići* Appeal Judgement, para. 420.

¹⁴²⁵ *Tadić* Jurisdiction Decision, para. 70. See also *Kunarac* Appeal Judgement, para. 56; *Kordić* Appeal Judgement, para. 336.

¹⁴²⁶ *Kunarac* Appeal Judgement, para. 56; *Kordić* Appeal Judgement, para. 336; *Tadić* Trial Judgement, para. 561; *Čelebići* Trial Judgement, para. 183; *Krnjelac* Trial Judgement, para. 51; *Naletilić* Trial Judgement, para. 225; *Limaj* Trial Judgement, para. 84; *Haradinaj* Trial Judgement, para. 37; *Delić* Trial Judgement, para. 40; *Milutinović* Trial Judgement, Volume I, para. 125; *Boškoski* Trial Judgement, para. 175; *Đorđević* Trial Judgement, para. 1522.

¹⁴²⁷ *Tadić* Trial Judgement, para. 562; *Čelebići* Trial Judgement, para. 183; *Limaj* Trial Judgement, para. 84; *Mrkšić* Trial Judgement, para. 407.

¹⁴²⁸ See for instance *Đorđević* Trial Judgement, paras 1522-1526 with further references.

¹⁴²⁹ *Tadić* Jurisdiction Decision, para. 70.

as the armed forces of a State.¹⁴³⁰ The leadership of the group must, as a minimum, have the ability to exercise some control over its members so that the basic obligations of Common Article 3 of the Geneva Conventions may be implemented.¹⁴³¹ These are factual elements which need to be determined on a case-by-case basis.¹⁴³²

394. The factors taken into account to assess the intensity of the conflict include the seriousness of attacks and whether there has been an increase in armed clashes; the spread of clashes over territory and over a period of time; any increase in number of government forces and mobilisation and the distribution of weapons among both parties to the conflict; involvement of the UN Security Council; number of civilians forced to flee from the combat zones; types of weapons used, particularly heavy weapons, and other military equipment, such as tanks and other heavy vehicles; the blockading or besieging of towns and heavy shelling of towns; the extent of destruction and number of casualties caused by shelling or fighting; the quantity of troops and units deployed; existence and change of front lines between the parties; the occupation of territory, towns and villages; the deployment of government forces to the crisis area; closure of roads; cease fire orders and agreements; the attempt of representatives from international organisations to broker and enforce cease fire agreements; and the intensity, including the protracted nature, of violence which has required the engagement of the armed forces and the high number of casualties and extent of material destruction.¹⁴³³

395. The factors taken into account to assess the organisation of an armed group can be seen to fall into five broad groups. They are factors signalling the presence of a command structure; factors indicating that the armed group could carry out operations in an organised manner; factors indicating a level of logistic; factors relevant to the armed group's level of discipline and its ability to implement the basic obligations of Common Article 3; and factors indicating that the armed group was able to speak with one voice.¹⁴³⁴

396. The armed conflict is seen to extend to the entire territory of the warring states or, in case of a non-international conflict, the entire territory controlled by a party, irrespective of whether actual

¹⁴³⁰ *Boškoski* Trial Judgement, paras 196-198; *Limaj* Trial Judgement, para. 89; *Orić* Trial Judgement, para. 254; *Dordević* Trial Judgement, para. 1525.

¹⁴³¹ *Dordević* Trial Judgement, para. 1525; *Boškoski* Trial Judgement, para. 196, citing ICRC Commentary to Geneva Convention II, p. 34 (observing that if a non-State group does not apply Common Article 3, "it will prove that those who regard its actions as mere acts of anarchy or brigandage are right"). See also ICRC, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts", Report prepared by the International Committee of the Red Cross, 28th International Conference of the Red Cross and Red Crescent, Geneva, 2 to 6 December 2003, at p. 19 (referring to "armed forces or armed groups with a certain level of organization, command structure and, therefore, the ability to implement international humanitarian law").

¹⁴³² *Dordević* Trial Judgement, para. 1522.

¹⁴³³ *Dordević* Trial Judgement, para. 1523 citing various judgements of the Tribunal.

¹⁴³⁴ *Dordević* Trial Judgement, para. 1526 citing various judgements of the Tribunal.

combat takes place there.¹⁴³⁵ The armed conflict ends in the case of an international conflict, when there is a general conclusion of peace, and in the case of a non-international conflict, when a peaceful settlement is reached.¹⁴³⁶

(b) Nexus

397. To meet the nexus requirement the Prosecution must establish a sufficient link between the Accused's alleged conduct and the armed conflict.¹⁴³⁷ It is not required that the alleged crime be committed at a time and place where actual combat took place. The nexus requirement is used to distinguish war crimes from purely domestic crimes and to avoid that random or isolated crimes are qualified as war crimes.¹⁴³⁸ There need not be a causal link between the armed conflict and the crime.¹⁴³⁹ However, the armed conflict must have played a substantial role in the perpetrator's ability to commit the crime, his or her decision to commit it, the manner in which it was committed, or the purpose for which it was committed.¹⁴⁴⁰ For the determination whether or not sufficient link between the armed conflict and the crime exists, the following criteria may be considered: whether the perpetrator was a combatant; whether the victim was a non-combatant or a member of the adverse party; whether the act can be seen to have furthered the ultimate goal of the military action; and whether the perpetrator committed the crime as part of or in the context of his or her official duties.¹⁴⁴¹

(c) Status of victims

398. Lastly, for Article 3 of the Statute (based on a violation of Common Article 3 to the Geneva Conventions) to be applicable, it is required that the victim was not taking active part in the hostilities at the time the crimes were committed.¹⁴⁴² Participation in hostilities has been defined in the jurisprudence of the Tribunal as participating in acts of war that aim by their nature or purpose to cause actual harm to the personnel or equipment of the armed forces of the opponent.¹⁴⁴³ The protection of Common Article 3 extends to victims that are members of armed forces who have laid

¹⁴³⁵ *Tadić* Jurisdiction Decision, para. 70; *Kunarac* Appeal Judgement, paras 57, 64.

¹⁴³⁶ *Tadić* Jurisdiction Decision, para. 70; *Kunarac* Appeal Judgement, para. 57.

¹⁴³⁷ *Kunarac* Appeal Judgement, para. 57; *Stakić* Appeal Judgement, para. 342.

¹⁴³⁸ *Kunarac* Appeal Judgement, para. 58.

¹⁴³⁹ *Kunarac* Appeal Judgement, para. 58; *Stakić* Appeal Judgement, para. 342. See *Bagosora* Appeal Judgement, paras 405-406, in which the Appeals Chamber concludes that the factors considered by the Trial Chamber, demonstrating that the crimes were perpetrated in furtherance of or under the guise of the armed conflict, were sufficient to conclude that the perpetrators' acts were closely related to the armed conflict.

¹⁴⁴⁰ *Kunarac* Appeal Judgement, para. 58; *Stakić* Appeal Judgement, para. 342.

¹⁴⁴¹ *Kunarac* Appeal Judgement, para. 59.

¹⁴⁴² Common Article 3(1); *Čelebići* Appeal Judgement, paras 420, 424; *Strugar* Appeal Judgement, paras 172, 178; *Boškoski* Appeal Judgement, para. 66.

¹⁴⁴³ *Strugar* Appeal Judgement, para. 178.

down their arms or are placed *hors de combat* by, for instance, sickness, wounds, detention.¹⁴⁴⁴ The determination of status is to be done on a case-by-case basis, having regard to the circumstances of the individual victim at the time of the alleged offence.¹⁴⁴⁵ Further, the perpetrator of a Common Article 3 crime must know or should have been aware that the victims were not taking active part in the hostilities when the crime was committed.¹⁴⁴⁶

B. Findings

1. The Tadić conditions

399. For reasons given above, the Chamber is satisfied that the *Tadić* conditions have been met.¹⁴⁴⁷

2. Existence of an armed conflict

400. The Parties have agreed that an “armed conflict existed in Kosovo at all times relevant to the Indictment from and including 22 April 1998 onwards”, between (1) the armed forces of the FRY and the Republic of Serbia, consisting of the forces of the VJ and the MUP, including PJP, JSO and SAJ (“Serbians forces”) and (2) the KLA.¹⁴⁴⁸ However, the Indictment alleges that a state of armed conflict existed in Kosovo between 1 March 1998 and 30 September 1998.¹⁴⁴⁹ Thus the Chamber will review the evidence to make a finding on whether an armed conflict existed prior to 22 April 1998. In doing so, the Chamber will look at (1) the intensity of conflict between the Serbian forces and the KLA in Kosovo and (2) the level of organisation of the KLA from 1 March to 21 April 1998.

401. With respect to the present case, the evidence pertaining to the factors taken into consideration, in reviewing whether an armed conflict existed during the period between 1 March 1998 - 21 April 1998 is limited. In this respect, the Chamber notes that the Parties do not separately address this period in their Final Trial Briefs.

¹⁴⁴⁴ Common Article 3(1); *Strugar* Appeal Judgement, para. 175.

¹⁴⁴⁵ *Strugar* Appeal Judgement, para. 178.

¹⁴⁴⁶ *Boškoski* Appeal Judgement, para. 66.

¹⁴⁴⁷ *See supra*, para. 390.

¹⁴⁴⁸ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Joint Prosecution and Defence Submission on the Existence of an Armed Conflict in Kosovo with Annex A, 19 November 2010. In the filing, “MUP” is defined as the “Ministry of Internal Affairs”.

¹⁴⁴⁹ Indictment, paras 13-14. The armed conflict is alleged to have been between the KLA and “Serbian forces”, defined as the forces of the FRY and the Ministry of Interior of the Republic of Serbia, Indictment, para. 14.

(a) Intensity of conflict

402. As already discussed in the Judgement, the Chamber received evidence that the deployment of 8,000 and 10,000 MUP personnel in Kosovo in March of 1998, as well as the specialised assault force of the JSO and SAJ, was a “conservative estimate”,¹⁴⁵⁰ and that the 125th mtbr of the VJ, which covered the areas of a number of municipalities, including Klinë/Klina, Istog/Istok, Pejë/Peć and Dečan/Dečani, had 1,400 men in January 1998 and 1,880 men towards the end of the year.¹⁴⁵¹ Also in evidence is a British diplomatic telegram dated 24 March 1998 indicating a “substantial special police presence (men (100-200), APCs, checkpoints)” remaining in the Drenica area with their positions “still being reinforced”.¹⁴⁵²

403. The Chamber received evidence that the 125th mtbr was not attacked by the KLA in the early part of 1998 and the “first attack” occurred on 23 May 1998 on the “Đakovica-Ponoševac-Morina road” in Gjakovë/Đakovica municipality.¹⁴⁵³ However, as “organised groups of armed Kosovo Albanians” were attacking MUP patrols,¹⁴⁵⁴ a forward command post of the 125th mtbr was established in April 1998 (date not stated) in Pejë/Peć, with around 400 men.¹⁴⁵⁵ Combat group 2¹⁴⁵⁶ of the 125th mtbr, which had 10 tanks of which three were kept combat ready, was established in April 1998 in order to assist the MUP in maintaining control of the road.¹⁴⁵⁷ Regarding the Prishtinë/Priština-Gjakovë/Đakovica-Pejë/Peć road, Witness 28 gave evidence that in March 1998 the “conditions” were “normal” although there were KLA attacks on villages east of the road, and it was in April that Witness 28 started seeing “temporary police check-points” on the road.¹⁴⁵⁸

404. Earlier in the Judgement, the Chamber discussed evidence of shelling of villages in the Dukagjin zone by Serbian forces from late March 1998,¹⁴⁵⁹ an ‘armed group of Kosovo Albanians’ opening fire with automatic weapons from Albania at the Mitar Voinović border post on 25 March 1998,¹⁴⁶⁰ intense fighting in the area west of the Pejë/Peć-Dečan/Dečani main road close to the

¹⁴⁵⁰ See *supra*, para. 134.

¹⁴⁵¹ See *supra*, para. 126.

¹⁴⁵² Exhibit D1, para. 3.

¹⁴⁵³ Dragan Živanović, Exhibit P112, para. 34.

¹⁴⁵⁴ Dragan Živanović gave evidence that it was the MUP’s responsibility to control the road in western Kosovo and Metohi/Metohija and MUP units on the Pejë/Peć-Dečan/Dečani-Gjakovë/Đakovica road were “under constant attack from the KLA”. Dragan Živanović, Exhibit P112, para. 16. See *supra*, para. 138.

¹⁴⁵⁵ Dragan Živanović, Exhibit P112, para. 18. See also *supra*, paras 126, 138.

¹⁴⁵⁶ Combat group 1 of the 125th mtbr was formed in early April 1998 with a strength of about 220, comprised of 12 officers, 12 NCOs and about 190 soldiers. It was larger than a company but smaller than a battalion, Dragan Živanović, Exhibit P112, para. 15.

¹⁴⁵⁷ Dragan Živanović, Exhibit P112, para. 16. See also *supra*, paras 126, 138.

¹⁴⁵⁸ Witness 28, Exhibit P358, para. 56. See also *supra*, para. 141.

¹⁴⁵⁹ See *supra*, para. 128.

¹⁴⁶⁰ See *supra*, para. 150.

border from March to September 1998;¹⁴⁶¹ and police stations in Çallapek/Čelopek and Kličinë/Klinčina, both in Pejë/Peć municipality, and the one in Irzniq/Rznić in Deçan/Dečani municipality being attacked almost on a daily basis from 2 March 1998.¹⁴⁶² On 5 March 1998 there was an attack by the Serbian forces on the Jashari family and, as discussed in detail earlier in the Judgement on 24 March 1998 there was a clash between the Serbian forces and the KLA at the Haradinaj family compound.¹⁴⁶³ As indicated, this and other incidents motivated many to join the KLA and it was after these incidents, people in villages started organising themselves in village defences.¹⁴⁶⁴

405. In addition to the foregoing, in evidence are telegrams which include the observations of the British Defence Attaché who was present in Kosovo.¹⁴⁶⁵ A British diplomatic telegram dated 24 March 1998 refers to “[o]ccasional incidents and intimidations at [Serbian] police checkpoints, as well as threats from armed Albanians” still occurring, but that there appears to be “no systematic official obstruction”.¹⁴⁶⁶ In a telegram dated 7 April 1998, the security situation in Kosovo is described as “calm despite apparently large police movements”,¹⁴⁶⁷ with a subsequent telegram dated 8 April 1998 again describing the “[s]ecurity situation calm”.¹⁴⁶⁸ A telegram dated 9 April 1998 indicates that the PJP withdrew from “checkpoints in Drenica” and that there were “[s]ome minor incidents in Drenica and Dečani” with “no casualties reported”,¹⁴⁶⁹ while a telegram dated 15 April 1998 states “no reports of other noteworthy incidents, though [Kosovo] Albanians report continuing harassment by the security services, and there are regular reports of gunfire in rural areas”.¹⁴⁷⁰ Finally, a telegram dated 16 April 1998 indicates that a “few relatively minor incidents [have occurred], otherwise all quiet” and that “checkpoints continue to be manned but by ordinary police (MUP) rather than by the specials (PJP)”.¹⁴⁷¹

¹⁴⁶¹ See *supra*, para. 132.

¹⁴⁶² See *supra*, para. 159.

¹⁴⁶³ See *supra*, paras 143-146.

¹⁴⁶⁴ See *supra*, para. 149.

¹⁴⁶⁵ John Crosland, Exhibit P8 (*Haradinaj* original transcript), T. 2984-2985.

¹⁴⁶⁶ Exhibit D1, para. 5. It appears that the telegram was sent prior to learning about the incident in the Haradinaj family compound on 24 March 1998. There is another subsequent telegram also dated 24 March 1998 which refers to the incident, Exhibit D33.

¹⁴⁶⁷ Exhibit D34, paras 1, 6.

¹⁴⁶⁸ Exhibit D2, para. 1.

¹⁴⁶⁹ Exhibit D3, para. 2. The Chamber notes that the subject line reads “9 March”. However, in light of the overall contents of the document it shall regard it as typo which was meant to be “9 April”.

¹⁴⁷⁰ Exhibit D35, para. 2. The telegram also describes an attack on a police station on 13 April 1998 with one policeman being wounded and substantial building damage, Exhibit D35, para. 2.

¹⁴⁷¹ Exhibit D4, paras 1-2.

(b) Organisation of the KLA

406. The Chamber discussed in other sections of this Judgement, the emergence and general structure of the KLA and the KLA in the Dukagjin zone. In doing so, the Chamber discussed evidence that the KLA General Staff did not have a single location where it was based in 1998; not all the members knew all the other members; and they did not all communicate with one another.¹⁴⁷² The evidence on the number of KLA forces, funding, uniforms, weapons, recruitment, training, and discipline relating to this period was limited.¹⁴⁷³

407. In terms of what was occurring at the local level, as already discussed in the Judgement, there was evidence indicating that small groups of men began to organise themselves in their own villages after the area of the Dukagjin zone began to be shelled and after the Haradinaj family compound was attacked on 24 March 1998.¹⁴⁷⁴ These gatherings of small groups of men in the villages, the village defence organisations, or village guard organisations, were not centrally organised, but were done at the initiative of the villages.¹⁴⁷⁵ In terms of obtaining weapons, the Chamber has observed that small groups of men in the villages were sent to Gillogjan/Glodane and then to Albania to collect weapons.¹⁴⁷⁶ Moreover, with respect to the KLA in the Dukagjin zone, the Chamber indicated that during the Indictment period it was an organisation in the process of development.¹⁴⁷⁷

408. In terms of territorial control, and as already discussed, the evidence suggests that the Serbian forces controlled the big towns and big roads while the KLA controlled the villages and local roads.¹⁴⁷⁸ With respect to evidence on KLA checkpoints, Branko Gajić gave evidence that the “KLA increased the number and visibility of their checkpoints” following the incident on 5 March 1998 at the Jashari family compound.¹⁴⁷⁹ Witness 69 gave evidence that the KLA set up checkpoints and roadblocks in early spring of 1998¹⁴⁸⁰ and Nebojša Avramović gave evidence that KLA checkpoints were located on the auxiliary roads on both sides off the Pejë/Peć-Deçan/Deçani-Gjakovë/Đakovica road without specifying the period.¹⁴⁸¹ Shemsedin Çekaj gave evidence that when he travelled to Irzniq/Rznić from Pejë/Peć around 20 April 1998, he did not take the main

¹⁴⁷² See *supra*, paras 18, 20.

¹⁴⁷³ See *supra*, paras 18-25, 29-40.

¹⁴⁷⁴ See *supra*, para. 44.

¹⁴⁷⁵ See *supra*, para. 45.

¹⁴⁷⁶ See *supra*, para. 46.

¹⁴⁷⁷ See *supra*, para. 84.

¹⁴⁷⁸ See *supra*, paras 130-131.

¹⁴⁷⁹ Branko Gajić, Exhibit P27, para. 17.

¹⁴⁸⁰ Witness 69, Exhibit P370, paras 21-22; Witness 69, Exhibit P364 (*Haradinaj* original transcript), T. 9859.

¹⁴⁸¹ See *supra*, para. 136. As discussed earlier, Cufë Krasniqi gave evidence that the KLA was not able to stop the Serbian forces from patrolling the Dukagjin area or Baran/Barane valley in Pejë/Peć municipality before 24 March 1998 since the KLA was only a guerrilla force, see *supra*, para. 135.

road because he feared the Serbian checkpoints on the main road and instead went through Lubeniq/Ljubenici, Strelac-i-Ulet/Donji Streoc, Pozhar/Požar, and Kodrali/Kodralija.¹⁴⁸² In some of the villages, Shemsedin Çekaj came across KLA checkpoints manned by young men, some with KLA uniforms.¹⁴⁸³

409. The Chamber heard evidence that in the Dukagjin area the need to coordinate with other village defence organisations was felt and that it was in a meeting on 26 May 1998 that discussions on a more unified command of the Dukagjin zone were held.¹⁴⁸⁴ The date of this meeting is well beyond the relevant period of 1 March 1998 and 21 April 1998. Moreover, the Chamber notes that the Dukagjin Operational Zone was not created until June 1998.¹⁴⁸⁵

(c) Conclusion

410. The Chamber finds that the limited evidence is insufficient to support a conclusion that the conflict between the KLA and the Serbian forces had the requisite level of intensity during the period between 1 March 1998 and 21 April 1998. The situation in Kosovo was indeed tense and incidents, such as the one at the Haradinaj family compound on 24 March 1998, particularly exacerbated the situation. However, the Chamber can only view them as incidents that contributed to the escalation of the tension which had not yet reached the requisite level of intensity. The Chamber also finds that the evidence is insufficient to support a conclusion that the KLA had the requisite level of organisation during the period between 1 March 1998 and 21 April 1998.

411. The Chamber is not satisfied that an armed conflict existed in Kosovo between the Serbian forces and the KLA between the period of 1 March 1998 and 21 April 1998. However, as an agreed fact, the Chamber accepts that an armed conflict existed from and including 22 April 1998.

3. Nexus

412. The Chamber must assess whether there is a nexus between the armed conflict which existed from and including 22 April 1998 onwards and the conduct alleged in the Indictment. In this respect the Chamber refers to findings made later in the Judgement in respect of the crimes established in this Judgement.¹⁴⁸⁶ The Chamber finds that the nexus element of Article 3 is

¹⁴⁸² Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4390-4391, 4461-4462.

¹⁴⁸³ Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4391-4392. There were no documents required from him to pass because he was well known in the area, but after that time, permission documents from the villages' KLA local staff was necessary to travel through the checkpoints, Shemsedin Çekaj, Exhibit P2 (*Haradinaj* original transcript), T. 4392.

¹⁴⁸⁴ See *supra*, paras 53-54.

¹⁴⁸⁵ See *supra*, para. 72.

¹⁴⁸⁶ See *infra*, paras 494, 516, 579, 610.

established for those crimes, which occurred on or after 22 April 1998, found to be established in this Judgement.

4. Status of victims

413. Finally, the Chamber must review whether the victims of the alleged violations committed on or after 22 April 1998 were not taking active part in the hostilities at the time the crimes were committed. In this respect, the Chamber makes specific findings later in this Judgement.

C. Conclusion

414. Considering its finding regarding the existence of an armed conflict, the Chamber is not satisfied that the requirements of Article 3 of the Statute have been satisfied for the period prior to 22 April 1998. Taking into account the agreement between the Parties that an armed conflict existed from and including 22 April 1998 and its further findings in this Judgement, the Chamber is satisfied that the requirements of Article 3 are met for the period from and including 22 April 1998.

VI. THE CHARGES

A. Law on the crimes charged

1. Law on torture

415. All three Accused are charged in Counts 1, 4 and 6 with torture as a violation of the laws or customs of war punishable under Article 3 of the Statute. Ramush Haradinaj and Idriz Balaj are also charged with torture in Counts 3 and 5.¹⁴⁸⁷

416. Torture, whether charged as a war crime or as a crime against humanity,¹⁴⁸⁸ is constituted by the following elements:

- (a) there must be an act or omission inflicting severe pain or suffering, whether physical or mental;
- (b) the act or omission must be intentional; and
- (c) the act or omission must have been carried out with a specific purpose, such as obtaining information or a confession, or punishing, intimidating, or coercing the victim or a third person, or discriminating, on any ground, against the victim or a third person.¹⁴⁸⁹

417. Whether the acts charged as torture inflict severe pain or suffering will be assessed in light of all the circumstances of the case, such as the nature and context of the infliction of pain, the premeditation and institutionalisation of the ill-treatment, the physical condition of the victim, the physical or mental effect of the treatment on the victim, the victim's state of health, and whether the mistreatment occurred over a prolonged period of time.¹⁴⁹⁰ It is not required that the act or omission cause a permanent injury, nor is there a requirement that it cause physical injury, as mental harm is a recognised form of inflicting torture.¹⁴⁹¹

418. The required *mens rea* is that the perpetrator intended to act in a way which, in the normal course of events, would cause severe pain or suffering, whether physical or mental, to his victims.¹⁴⁹² Torture is distinguished from other offences in that it aims, through the infliction of

¹⁴⁸⁷ Indictment, paras 47-65.

¹⁴⁸⁸ *Limaj* Trial Judgement, para. 235; *Brdanin* Trial Judgement, para. 482.

¹⁴⁸⁹ *Kunarac* Appeal Judgement, paras 142, 144; *Furundžija* Appeal Judgement, para. 111; *Brdanin* Trial Judgement, para. 481; *Krnojelac* Trial Judgement, para. 179; *Limaj* Trial Judgement, para. 235; *Mrkšić* Trial Judgement, para. 513.

¹⁴⁹⁰ *Mrkšić* Trial Judgement, para. 514; *Krnojelac* Trial Judgement, para. 182; *Limaj* Trial Judgement, para. 237.

¹⁴⁹¹ *Kvočka* Trial Judgement, paras 148-149; *Limaj* Trial Judgement, para. 236.

¹⁴⁹² *Kunarac* Appeal Judgement, para. 153; *Mrkšić* Trial Judgement, para. 515.

severe mental or physical pain, to attain a certain result or purpose. This includes, albeit not exhaustively,¹⁴⁹³ the purpose to obtain information or a confession, to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.¹⁴⁹⁴ In the absence of these purposes or goals, even very severe infliction of pain would not be classified as torture.¹⁴⁹⁵ However, there is no requirement that the severe pain or suffering be inflicted exclusively for one or more of the purposes mentioned, but only that such a purpose or purposes be part of the motivation for the conduct.¹⁴⁹⁶

419. The perpetrator need not have acted in an official capacity for the acts to constitute torture.¹⁴⁹⁷

2. Law on cruel treatment

420. All three Accused are charged with cruel treatment as a violation of the laws or customs of war punishable under Article 3 of the Statute in Counts 1, 2, 4 and 6. Ramush Haradinaj and Idriz Balaj are also charged in Counts 3 and 5.¹⁴⁹⁸

421. Cruel treatment, charged as a violation of the laws or customs of war, is defined as an intentional act or omission which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity, committed against a person taking no active part in the hostilities.¹⁴⁹⁹

422. The requirement of a prohibited purpose, characteristic for the offence of torture, is not required in the offence of cruel treatment.¹⁵⁰⁰ Additionally, the degree of suffering required to prove cruel or inhuman treatment is not as high as that required to sustain a charge of torture.¹⁵⁰¹

423. With regard to *mens rea*, the perpetrator must have acted with direct intent to commit cruel treatment, or with indirect intent, *i.e.* in the knowledge that cruel treatment was a probable consequence of his act or omission.¹⁵⁰²

¹⁴⁹³ *Čelebići* Trial Judgement, para. 470; *Kvočka* Trial Judgement, para. 140; *Limaj* Trial Judgement, para. 239; *Mrkšić* Trial Judgement, para. 515.

¹⁴⁹⁴ *Kunarac* Appeal Judgement, para. 155; *Kvočka* Trial Judgement, para. 153; *Krnjelac* Trial Judgement, para. 184; *Mrkšić* Trial Judgement, para. 515.

¹⁴⁹⁵ *Krnjelac* Trial Judgement, para. 180.

¹⁴⁹⁶ *Kunarac* Appeal Judgement, para. 155.

¹⁴⁹⁷ *Kvočka* Appeal Judgement, para. 284; *Limaj* Trial Judgement, para. 240.

¹⁴⁹⁸ Indictment, paras 47-65.

¹⁴⁹⁹ *Čelebići* Appeal Judgement, paras 424, 426; *Blaškić* Appeal Judgement, para. 595; *Haradinaj* Appeal Judgement, para. 94; *Jelisić* Appeal Judgement, para. 41. See also *supra*, para. 398.

¹⁵⁰⁰ *Kvočka* Trial Judgement, para. 226.

¹⁵⁰¹ *Čelebići* Trial Judgement, para. 542; *Kvočka* Trial Judgement, para. 161.

¹⁵⁰² *Limaj* Trial Judgement, para. 231; *Strugar* Trial Judgement, para. 261; *Krnjelac* Trial Judgement, para. 132;

3. Law on murder

424. All three Accused are charged in Counts 1, 2 and 4 with murder as a violation of the laws or customs of war punishable under Article 3 of the Statute. Ramush Haradinaj and Idriz Balaj are also charged under Count 5.¹⁵⁰³

425. Three elements are required to establish the offence of murder:

- (a) the death of a victim;
- (b) an act or omission of the perpetrator or one or more of the persons for whom he is criminally responsible caused the victim's death; and
- (c) the act or omission of the perpetrator or one or more of the persons for whom he is criminally responsible was committed with the intent to kill the victim or in the knowledge that death was a probable consequence of the act or omission (*mens rea*).¹⁵⁰⁴

426. It is not necessary to establish that the body of the deceased person has been recovered. The fact of a victim's death can be inferred circumstantially from all of the evidence presented. All that needs to be established is that the only reasonable inference from the evidence is that the victim is dead as a result of an act or omission of the accused or of one or more persons for whom he is criminally responsible.¹⁵⁰⁵

427. It is sufficient that the perpetrator's conduct contributed substantially to the death of the person, this conduct does not have to be the sole cause of the death of the victim.¹⁵⁰⁶

¹⁵⁰³ Vasiljević Trial Judgement, para. 236; Simić Trial Judgement, para. 76; Haradinaj Trial Judgement, para. 126. Indictment, paras 47-65.

¹⁵⁰⁴ Kvočka Appeal Judgement, para. 261; Čelebići Appeal Judgement, para. 423; Kordić Appeal Judgement, para. 37; Setako Appeal Judgement, para. 257; Gotovina Trial Judgement, para. 1725; Đorđević Trial Judgement, para. 1708; Mrkšić Trial Judgement, para. 486.

¹⁵⁰⁵ Kvočka Appeal Judgement, para. 260; Tadić Trial Judgement, para. 240; Halilović Trial Judgement, para. 37; Brdanin Trial Judgement, paras 385-386; Martić Trial Judgement, para. 59; Boškoski Trial Judgement, para. 305; Krnojelac Trial Judgement, paras 326-327; Đorđević Trial Judgement, para. 1708.

¹⁵⁰⁶ Čelebići Appeal Judgement, para. 423; Kordić Appeal Judgement, para. 37; Milutinović Trial Judgement, para. 137; Orić Trial Judgement, para. 347.

B. Findings

1. Preliminary notes

428. The acts or omissions charged in the counts of the Indictment are alleged to have occurred in or in relation with the KLA headquarters and detention facilities in the village of Jabllanicë/Jablanica from on or about 19 May until the end of July 1998.

429. Jabllanicë/Jablanica is a small village,¹⁵⁰⁷ situated in a mountainous area¹⁵⁰⁸ in the north-eastern part of Gjakovë/Đakovica municipality, close to the border with the municipalities of Deçan/Dečani, Pejë/Peć, and Klinë/Klina. Among others, the villages of Dollovë/Dolovo, Grabanicë/Grabanica, Gllogjan/Glodane, and Napolë/Nepolje are situated to the northeast of Jabllanicë/Jablanica, Kosuriq/Kosurić, Baran/Barane, and Buçan/Bučane to the northwest, and Dashinoc/Dašinovac, Zhabel/Žabelj, and Kralan/Kraljane to the south. The KLA established a presence in Jabllanicë/Jablanica before the Indictment period and the village was considered by some the oldest KLA headquarters in western Kosovo.¹⁵⁰⁹ It was believed that its mountainous location made it difficult for the Serbian forces to reach.¹⁵¹⁰

430. At the south entrance to Jabllanicë/Jablanica, the first structure on the left side of the road from Zhabel/Žabelj, was a compound¹⁵¹¹ with wooden gates.¹⁵¹² It was surrounded in part by a wall and in part by a fence,¹⁵¹³ with a long wall along the road leading to Zhabel/Žabelj. Inside the compound, to the left of the gates, was a long one-storey building.¹⁵¹⁴ Inside the yard, there was another one-storey building, rectangular in shape, made of red bricks. This building had four rooms and a cellar.¹⁵¹⁵ Witnesses identified this compound as the one pictured on the photograph admitted in evidence as Exhibit P60.¹⁵¹⁶ The evidence indicates that in 1998 this compound was used as a

¹⁵⁰⁷ Cufë Krasniqi testified that Jabllanicë/Jablanica is not a big village and that there are not many houses and inhabitants, Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5846.

¹⁵⁰⁸ Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5846.

¹⁵⁰⁹ See Cufë Krasniqi, Exhibit P54, para. 35; Skender Rexhahmetaj, Exhibit P297, para. 10.

¹⁵¹⁰ Cufë Krasniqi, Exhibit P54, para. 35; Cufë Krasniqi gave evidence that the Serbian forces could not enter Jabllanicë/Jablanica for a long time without giving a specific timeframe, Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5846. Nebojša Avramović gave evidence with respect to Jabllanicë/Jablanica that the police had received information that the whole village was armed and that there were attacks on the police, Nebojša Avramović, Exhibit P451, para. 10.

¹⁵¹¹ Witness 3, T. 1541; Witness 7, Exhibit P94, para. 6; Witness 16, Exhibit P96, para. 10; Witness 75, T. 857; Witness 76, Exhibit P305, para. 10.

¹⁵¹² Witness 3, T. 1541; Witness 76, Exhibit P305, para. 10; Witness 80, T. 2336. Witness 3 testified that on the opposite, right side of the road there was “the mountain and the woods”, Witness 3, T. 1541.

¹⁵¹³ Witness 76, Exhibit P305, para. 10; Witness 7, Exhibit P94, para. 6. See also Witness 3, T. 1542-1543.

¹⁵¹⁴ Witness 80, T. 2336-2337. Witness 16 described one long building which “looked like a stable” and one two-storey building, Witness 16, Exhibit P96, para. 10. Considering the limited opportunity Witness 16 had to observe the compound the Chamber accepts that this witness was mistaken about the two-storey building.

¹⁵¹⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5204; Witness 75, T. 864-865.

¹⁵¹⁶ Witness 3, T. 1542; Witness 75, T. 858; Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5754.

KLA headquarters,¹⁵¹⁷ and as KLA barracks.¹⁵¹⁸ In the long one-storey building in the compound there was a kitchen for the soldiers¹⁵¹⁹ and an office with a desk.¹⁵²⁰ The Chamber will refer to this compound as the “KLA compound in Jabllanicë/Jablanica”.

431. Not far from the KLA compound in Jabllanicë/Jablanica, some five to seven minutes walking, was the house of Lahi Brahimaj.¹⁵²¹ KLA soldiers met and sometimes slept in this house.¹⁵²² This house is sometimes referred to in the evidence as the KLA headquarters in Jabllanicë/Jablanica or KLA command post in Jabllanicë/Jablanica.¹⁵²³

432. The Chamber heard evidence from a number of witnesses regarding their own or other’s abduction in the spring and summer of 1998 from various locations not far from Jabllanicë/Jablanica and their subsequent detention in the KLA compound in Jabllanicë/Jablanica. This evidence is not always consistent and the Chamber does not accept all of it as sufficiently reliable, as will be explained below.

2. Count 1

(a) Allegations in the Indictment

433. It is alleged in the Indictment that on or about 19 May 1998, Ivan Zarić, a Serb, and two Roma/Egyptians, Agron Berisha and Burim Bejta, left their home village of Dollc/Dolac and travelled to the flour mill in the village of Grabanicë/Grabanica, where they were arrested by KLA soldiers, taken to an abandoned house and severely beaten.¹⁵²⁴ It is alleged that the KLA soldiers then took them to the KLA compound in Jabllanicë/Jablanica where they were detained and that, in the presence of Ramush Haradinaj, Idriz Balaj mutilated Ivan Zarić by cutting off his ear and threatened to do the same to Agron Berisha and Burim Bejta. It is alleged further that Lahi Brahimaj, in the presence of Ramush Haradinaj, ordered the execution of the three men.¹⁵²⁵ It is alleged that Idriz Balaj and a group of KLA soldiers from the Black Eagles then took the three men

¹⁵¹⁷ Witness 80, T. 2333-2339. See also Cufë Krasniqi, Exhibit P53 (*Haradinaj* original transcript), T. 5754.

¹⁵¹⁸ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9949-9951; Exhibits P70; P71; P118; see also Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4193.

¹⁵¹⁹ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9950; Cufë Krasniqi, Exhibit P53 (*Haradinaj* original transcript), T. 5755; Exhibit P70.

¹⁵²⁰ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9950; Exhibit P70.

¹⁵²¹ Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9948-9949; Cufë Krasniqi circled in red Lahi Brahimaj’s house on a photograph depicting houses in Jabllanicë/Jablanica, Cufë Krasniqi, Exhibit P52 (*Haradinaj* original transcript), T. 5753; Exhibit P59.

¹⁵²² Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9946-9947.

¹⁵²³ Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4196; Bislim Zyrapi, Exhibit P159 (*Haradinaj* original transcript), T. 3387-3388.

¹⁵²⁴ Indictment, para. 47.

¹⁵²⁵ Indictment, paras 47-49.

and that the three men were killed while in KLA custody.¹⁵²⁶ These allegations support one count of murder, cruel treatment and torture charged as a violation of the laws or customs of war under Article 3 of the Statute against each of the three Accused (Count 1) on the basis of their alleged participation in the joint criminal enterprise alleged in the Indictment, and, in the alternative, on the basis of other modes of individual criminal responsibility charged pursuant to Article 7(1) of the Statute.

(b) Findings

434. In 1998, Burim Bejta, then 15 years old, lived in the village of Dolle/Dolac in Klinë/Klina municipality with his family.¹⁵²⁷ Agron Berisha, a relative of Burim Bejta, also lived in Dolle/Dolac at the time. He was 16 years old.¹⁵²⁸ Burim Bejta and Agron Berisha were of Roma ethnicity. They did not belong to any armed group.¹⁵²⁹ Ivan Zarić, a Kosovo Serb resident of Dolle/Dolac, was 22 years old in 1998.¹⁵³⁰ He had served previously in the army but in 1998 was not a member of an armed group.¹⁵³¹

435. The village of Dolle/Dolac, located approximately 3.5 kilometres to the northeast of the village of Grabanicë/Grabanica, had a predominantly Kosovo Serb population. There were also some Catholic Kosovo Albanian residents and 12 Roma households.¹⁵³²

436. On 17 or 18 May 1998¹⁵³³ at 0930 or 1000 hours Burim Bejta, Agron Berisha and Ivan Zarić left Dolle/Dolac on a horse-drawn cart in the direction of Grabanicë/Grabanica.¹⁵³⁴ They had a sack of corn in their cart which they were going to grind at the mill in Grabanicë/Grabanica.¹⁵³⁵ The mill was operational until 21 May 1998.¹⁵³⁶

¹⁵²⁶ Indictment, para. 49.

¹⁵²⁷ Witness 31, Exhibit P102 (*Haradinaj* original transcript), T. 9514; Witness 66, Exhibit P107 (*Haradinaj* original transcript), T. 8413-8414.

¹⁵²⁸ Witness 31, Exhibit P102 (*Haradinaj* original transcript), T. 9514; Witness 66, Exhibit P107 (*Haradinaj* original transcript), T. 8414.

¹⁵²⁹ Witness 66, Exhibit P107 (*Haradinaj* original transcript), T. 8413-8414.

¹⁵³⁰ Witness 31, Exhibit P102 (*Haradinaj* original transcript), T. 9514; Witness 66, Exhibit P107 (*Haradinaj* original transcript), T. 8414-8415.

¹⁵³¹ Witness 66, Exhibit P107 (*Haradinaj* original transcript), T. 8415.

¹⁵³² Witness 66, Exhibit P107 (*Haradinaj* original transcript), T. 8415, 8423-8424.

¹⁵³³ For the reasons supporting the Chamber's finding that the events discussed here occurred on 17 or 18 May 1998 see *infra*, para. 444.

¹⁵³⁴ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8422-8423, 8431; Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9515-9516.

¹⁵³⁵ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9516; Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8422.

¹⁵³⁶ The mill worked until 21 May 1998. On that day, as a result of the shelling of the village, power stopped and the mill did not work for some time, see Confidential Annex.

437. At about that time KLA soldiers and village defenders in Grabanicë/Grabanica were digging trenches and keeping guard. A village defender saw what he described as two children and another person of Serb ethnicity arrive in Grabanicë/Grabanica on a cart.¹⁵³⁷ He put the date of this event as “around 17 or 18 May”.¹⁵³⁸ The children appeared to him to be 10 or 12 years old, the third person appeared around 30 years old.¹⁵³⁹ The village defender stopped them and asked where they were going.¹⁵⁴⁰ They responded that they were going to the mill.¹⁵⁴¹ The three young men then continued on their way.¹⁵⁴² In the Chamber’s finding, the two children and the man seen on a horse-drawn cart by a village defender in Grabanicë/Grabanica were Burim Bejta, Agron Berisha, and Ivan Zarić.

438. When Burim Bejta, Agron Berisha, and Ivan Zarić had not returned a few hours after they had left for Grabanicë/Grabanica to mill the corn their relatives began searching for them. They first went to Klinë/Klina, where Burim Bejta’s girlfriend, Suzana, lived.¹⁵⁴³ She was a Kosovo Serb and on the day of his disappearance Burim Bejta wore a bracelet with her name.¹⁵⁴⁴ As they were unable to find any information about the boys in Klinë/Klina, they went to Grabanicë/Grabanica.¹⁵⁴⁵

439. There are discrepancies in the evidence as to the details of the relatives’ visit to Grabanicë/Grabanica. On the evidence of one witness, the relatives arrived in the village by bus and continued on foot. The road passed through a forest. As the relatives were going through the forest a group of armed men in KLA uniforms emerged from the trees, stopped them and asked where they were heading.¹⁵⁴⁶ The relatives told the men the reason why they were going to the mill and they were allowed to proceed.¹⁵⁴⁷ They arrived at the mill and rang the bell. After some time a man came out of the mill and told them that he had not seen the boys.¹⁵⁴⁸ The relatives returned home. Some time later, the relatives reported the disappearance of the three young men to the police in Klinë/Klina but the police did not know what to do and sent them home.¹⁵⁴⁹

¹⁵³⁷ See Confidential Annex.

¹⁵³⁸ See Confidential Annex.

¹⁵³⁹ See Confidential Annex.

¹⁵⁴⁰ See Confidential Annex.

¹⁵⁴¹ See Confidential Annex.

¹⁵⁴² See Confidential Annex.

¹⁵⁴³ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9517-9518; Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8424.

¹⁵⁴⁴ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9521-9522.

¹⁵⁴⁵ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9517-9518; Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8424.

¹⁵⁴⁶ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9518; Witness 31 does not give evidence as to the date of this inquiry.

¹⁵⁴⁷ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9519-9520.

¹⁵⁴⁸ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9520.

¹⁵⁴⁹ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9520.

440. The account of another witness is slightly different. This witness heard that the relatives went to Grabanicë/Grabanica on two occasions. The first visit was on the day the boys had disappeared. At a location between the school and a graveyard they were stopped by three or four Kosovo Albanians armed with semi-automatic weapons, who asked them to display their identification documents, and entered their names in a register. The men directed the relatives to the mill.¹⁵⁵⁰ There was no one at the mill.¹⁵⁵¹ The relatives then went to the police where they were advised that only women should make inquiries in Grabanicë/Grabanica as “the men would be kept there”.¹⁵⁵² On the following day, the relatives again went to Grabanicë/Grabanica. Upon arriving in the village they were stopped by 40 to 50 armed people, half of them in civilian clothes, the other half in uniform.¹⁵⁵³ The relatives were told that the three young men had not been in Grabanicë/Grabanica and that the relatives should return home or the men would kill them.¹⁵⁵⁴

441. Years have passed between the events described above and the witnesses’ evidence before the Tribunal. The details of the witnesses’ recollection of these events may not be entirely clear or accurate. From the accounts discussed above the Chamber accepts nevertheless that on the day of the disappearance of Burim Bejta, Agron Berisha, and Ivan Zarić and the following day, relatives made attempts to find them in the village of Grabanicë/Grabanica and at the mill. These attempts yielded no results.

442. A few days after the three young men’s disappearance, the horse-drawn cart on which they left for Grabanicë/Grabanica was seen on the road near Klinë/Klina.¹⁵⁵⁵ The cart was coming from the direction of the village of Zajm/Zajmovo and was driven by two Kosovo Albanian children.¹⁵⁵⁶ On Witness 31’s evidence the corn sack was still on the cart.¹⁵⁵⁷ The two Kosovo Albanian children told the police that they found the cart without a driver around their home village of Përlinë/Prlina in Klinë/Klina municipality.¹⁵⁵⁸

443. Burim Bejta, Agron Berisha, and Ivan Zarić were never seen by their relatives after the day they left their village on a horse-drawn cart.¹⁵⁵⁹

¹⁵⁵⁰ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8424-8425.

¹⁵⁵¹ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8425.

¹⁵⁵² Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8425.

¹⁵⁵³ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8426, 8428.

¹⁵⁵⁴ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8428-8429.

¹⁵⁵⁵ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8429-8430; see Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9520-9521.

¹⁵⁵⁶ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8429-8430.

¹⁵⁵⁷ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9520.

¹⁵⁵⁸ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8430-8431.

¹⁵⁵⁹ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8422-8423, 8431; Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9517. See also Witness 28, Exhibit P355 (*Haradinaj* original transcript),

444. The day on which the three young men were last seen by a witness in this case was a subject of some controversy.¹⁵⁶⁰ Witness 66 gave evidence that he was told by a relative that this occurred on 19 May 1998.¹⁵⁶¹ He also testified that this occurred four or five days before the shelling of Grabanicë/Grabanica started.¹⁵⁶² Witness 31 could not remember the day on which the three young men disappeared.¹⁵⁶³ Other evidence, discussed in this section, suggests this happened on 17 or 18 May 1998.¹⁵⁶⁴ The Chamber received evidence it finds reliable that on or about 19 May 1998 the village of Grabanicë/Grabanica was attacked by Serbian forces and that the attack lasted for three days.¹⁵⁶⁵ As noted earlier in this Judgement, a combat report of the 125th mtbr dated 20 May 1998 refers to an ongoing “serious” operation by the Serbian forces in the villages of Grabanicë/Grabanica, and also in the villages of Dollovë/Dolovo, Qeskovë/Ceskovo and Kpuz in Klinë/Klina municipality,¹⁵⁶⁶ which are to the south of Grabanicë/Grabanica and of the village of Dollc/Dolac, where the three young men left from. The Chamber found elsewhere in this Judgement that the attack on Grabanicë/Grabanica lasted for three days.¹⁵⁶⁷ The Chamber accepts the evidence discussed in this paragraph and finds that the village of Grabanicë/Grabanica was attacked by the Serbian forces on 19 or 20 May 1998 and that the attack continued for three days. The Chamber recalls that relatives of the three young men went to Grabanicë/Grabanica to search for them on the day of their disappearance.¹⁵⁶⁸ They did not come across any shelling or any military activities. The Chamber concludes from this evidence that the three young men were last seen a few days before the Serbian forces operation in Grabanicë/Grabanica of 19 or 20 May 1998, possibly on 17 or 18 May 1998.

445. The Chamber received evidence as to events alleged to have occurred after the disappearance of the three young men from two witnesses, Witness 80 and Witness 81. This evidence is analysed below.

446. Witness 80 testified that he had seen the three young men from Dollc/Dolac go to Grabanicë/Grabanica to mill corn several times.¹⁵⁶⁹ He testified that on a day in May 1998, before

T. 12190, 10194-10195, testifying that as of August 1999 the whereabouts of Burim Bejta, Agron Berisha, and Ivan Zarić were unknown; Exhibit P427, pp 1, 2, 4, 5, 7 (in e-court).
¹⁵⁶⁰ See Closing Arguments, 27 June 2012, T. 2960, 3060-3063.
¹⁵⁶¹ Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8423.
¹⁵⁶² Witness 66, Exhibit P106 (*Haradinaj* original transcript), T. 8433-8434.
¹⁵⁶³ Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9515. Witness 31 testified that this happened “in 1999 or 1998”, Witness 31, Exhibit P101 (*Haradinaj* original transcript), T. 9515.
¹⁵⁶⁴ See *supra*, para. 437.
¹⁵⁶⁵ See Confidential Annex.
¹⁵⁶⁶ Exhibit P114, p. 2. See also *supra*, para. 155.
¹⁵⁶⁷ See *infra*, para. 584.
¹⁵⁶⁸ See *supra*, para. 438.
¹⁵⁶⁹ Witness 80, T. 2393-2394. Witness 80 did not know the names of the three young men but from the description provided (“They were very young. They were almost kids”, Witness 80, T. 2395; “They came from the village of Dollc/Dolac”, Witness 80, T. 2394; “They were speaking Albanian, but I don’t know their ethnicity”, Witness 80,

the attack on Grabanicë/Grabanica,¹⁵⁷⁰ the three young men were arrested at the mill in Grabanicë/Grabanica by Mete Morina and Hazir Morina,¹⁵⁷¹ KLA soldiers,¹⁵⁷² and taken to the KLA headquarters in Grabanicë/Grabanica. Witness 80 saw that at the KLA headquarters in Grabanicë/Grabanica they were beaten severely with wooden sticks.¹⁵⁷³

447. Witness 80 further testified that he saw the three young men again in the KLA compound in Jabllanicë/Jablanica. He thought that they had remained there for two or three days.¹⁵⁷⁴ They were brought out of the cellar of the rectangular building in the compound, with their hands tied to one another, like a chain.¹⁵⁷⁵ They had bruises on their bodies, their clothes were wet.¹⁵⁷⁶ Witness 80 then saw the three young men brutally beaten. Many people took part in the beatings. Witness 80 did not know all their names.¹⁵⁷⁷ The beatings took place in the presence of Lahi Brahimaj, Nazmi Brahimaj, and Idriz Balaj.¹⁵⁷⁸ Idriz Balaj took part in the beatings¹⁵⁷⁹ and beat the three young men brutally.¹⁵⁸⁰ The boys were beaten with sticks until they urinated in their clothes.¹⁵⁸¹ Lahi Brahimaj and Nazmi Brahimaj also took part in the beatings; they beat the three young men with sticks.¹⁵⁸² Idriz Balaj cut off the ear of one of the boys with a very sharp knife.¹⁵⁸³ Witness 80 then heard Idriz Balaj say to Lahi Brahimaj, Nazmi Brahimaj, Alush Agushi, Myftar Ibrahimaj (Brahimaj), and Naser Ibrahimaj (Brahimaj) that they “should arrange his papers to go to Drenica or somewhere else [...]”.¹⁵⁸⁴ Lahi Brahimaj also said that they should prepare the papers for Drenica.¹⁵⁸⁵ Witness 80 had heard this phrase before in Jabllanicë/Jablanica and believed that it meant that the three young men would be killed.¹⁵⁸⁶ After the beatings, soldiers took the three young men away.¹⁵⁸⁷

448. Numerous challenges to Witness 80’s credibility were raised. The witness accepted in cross-examination that in a prior statement he had stated that he only “heard” of the kidnapping of

T. 2394; “They arrived on a cart drawn by a horse”, Witness 80, T. 2394) the Chamber accepts that the three young men referred to in Witness 80’s evidence are Burim Bejta, Agron Berisha and Ivan Zarić.

¹⁵⁷⁰ Witness 80, T. 2390, 2392.

¹⁵⁷¹ Witness 80, T. 2395.

¹⁵⁷² Witness 80, T. 2396-2397.

¹⁵⁷³ Witness 80, T. 2395.

¹⁵⁷⁴ Witness 80, T. 2397, 2404.

¹⁵⁷⁵ Witness 80, T. 2403-2404.

¹⁵⁷⁶ Witness 80, T. 2403-2404.

¹⁵⁷⁷ Witness 80, T. 2398-2399.

¹⁵⁷⁸ Witness 80, T. 2399.

¹⁵⁷⁹ Witness 80, T. 2399-2400.

¹⁵⁸⁰ Witness 80, T. 2400.

¹⁵⁸¹ Witness 80, T. 2400.

¹⁵⁸² Witness 80, T. 2407.

¹⁵⁸³ Witness 80, T. 2400-2401.

¹⁵⁸⁴ Witness 80, T. 2401-2402, 2405.

¹⁵⁸⁵ Witness 80, T. 2463.

¹⁵⁸⁶ Witness 80, T. 2405.

¹⁵⁸⁷ Witness 80, T. 2404, 2406.

the three young men in Grabanicë/Grabanica.¹⁵⁸⁸ His evidence before the Chamber was that the three young men were “arrested” at the mill in Grabanicë/Grabanica.¹⁵⁸⁹ When asked where he saw them for the first time in Grabanicë/Grabanica, he answered that he could not remember.¹⁵⁹⁰ While Witness 80 was asked a leading question suggesting that he saw what happened in Grabanicë/Grabanica to the three young men, in his answer Witness 80 did not specify how he knew that they were arrested in the village.¹⁵⁹¹ He testified, however, that he could see them being beaten at the KLA headquarters in Grabanicë/Grabanica.¹⁵⁹²

449. It was suggested by Counsel for Balaj that while Witness 80 testified that he knew the three young men from Dolle/Dolac, he was not able to recognise Ivan Zarić when his photograph was shown to him during an interview with the OTP.¹⁵⁹³ Counsel suggested, in particular, that when Ivan Zarić’s photograph was shown to the witness in 2005, he stated that he had seen the man and the face was familiar to him but he was unable to specify where he had seen him.¹⁵⁹⁴ Witness 80 did not remember this event.¹⁵⁹⁵ Witness 80’s evidence before the Chamber was not that he knew Ivan Zarić well, but that he had seen the three young men “several times”, that he could not remember their names and he had never spoken to them in person.¹⁵⁹⁶

450. It was also put to the witness during cross-examination that in a prior statement, which the witness accepted, he had stated that after the ear of one of the boys was cut off, it fell on the ground and was vibrating like a butterfly.¹⁵⁹⁷ It was further suggested by counsel that according to a medical opinion, this description is a physical impossibility.¹⁵⁹⁸ The medical report cited in cross-examination is not in evidence. The witness has no medical background and, on his evidence, the events with the three young men he said he had witnessed affected him emotionally at the time he gave evidence.¹⁵⁹⁹

451. While none of the challenges discussed in the preceding paragraphs, if taken in isolation, would render Witness 80’s account unreliable, the Chamber notes that Witness 80 gave inconsistent

¹⁵⁸⁸ Witness 80, T. 2597-2598; *see also* Balaj Final Brief, para. 169.

¹⁵⁸⁹ Witness 80, T. 2394-2395.

¹⁵⁹⁰ Witness 80, T. 2394.

¹⁵⁹¹ The relevant portion of the transcript reads:

“Q. And you said -- you’ve told us that something had happened to these young people in the village. What was it that -- that you saw happen to them in the village?

A. They were detained by some people who were not desirable people.” Witness 80, T. 2394.

¹⁵⁹² Witness 80, T. 2395.

¹⁵⁹³ Witness 80, T. 2657-2659; Balaj Final Brief, para. 170.

¹⁵⁹⁴ Witness 80, T. 2658-2659.

¹⁵⁹⁵ Witness 80, T. 2659.

¹⁵⁹⁶ Witness 80, T. 2393-2394.

¹⁵⁹⁷ Witness 80, T. 2656-2657.

¹⁵⁹⁸ Witness 80, T. 2694.

¹⁵⁹⁹ Witness 80, T. 2398.

evidence as to the time of the incident with the three young men in relation to his own presence in the KLA compound in Jabllanicë/Jablanica. He first testified that at the time of the ear-cutting incident he was in Jabllanicë/Jablanica after an incident in Bučan/Bučane.¹⁶⁰⁰ Earlier he had given evidence that this incident in Bučan/Bučane occurred *after* his arrival with a travelling companion.¹⁶⁰¹ He then said that the incident with the three young men occurred when he was detained in Jabllanicë/Jablanica on an occasion *before* his arrival with his travelling companion.¹⁶⁰² When asked whether the ear-cutting incident he described happened after his abduction with his travelling companion, the witness answered: “Yes. In my opinion the children were kept there for several days”.¹⁶⁰³ Initially he testified that he saw the three young men being beaten in Jabllanicë/Jablanica before the attack on Grabanicë/Grabanica,¹⁶⁰⁴ but subsequently he testified that this happened after the attack.¹⁶⁰⁵

452. Witness 80 testified that he was taken to Jabllanicë/Jablanica on over 10 occasions.¹⁶⁰⁶ He provided details, not always consistent, about several of these incidents.¹⁶⁰⁷ On Witness 80’s evidence, four of these incidents took place within about a week.¹⁶⁰⁸ While inconsistent about the date of the ear-cutting incident, the witness was consistent that the three young men were held in the KLA compound in Jabllanicë/Jablanica for several days before the ear-cutting incident he described¹⁶⁰⁹ and that Witness 80 witnessed the ill-treatment when he was in Jabllanicë/Jablanica on an occasion other than when he was there with his travelling companion.¹⁶¹⁰ Having considered all of this evidence cumulatively and against the evidence relevant to the issues the witness testified about, however, the Chamber does not accept Witness 80 as a reliable witness.¹⁶¹¹

453. In support of the allegations in Count 1, the Prosecution also called Witness 81.

454. In his evidence-in-chief Witness 81 testified that in April or May 1998 he and six other KLA soldiers, whose names he refused to provide, arrived in Jabllanicë/Jablanica. They were ordered to go there by his commander as they were needed to assist the local KLA in Jabllanicë/Jablanica.¹⁶¹² They went to the KLA compound in Jabllanicë/Jablanica where, sometime

¹⁶⁰⁰ See Confidential Annex.

¹⁶⁰¹ Witness 80, T. 2349, 2351.

¹⁶⁰² Witness 80, T. 2413-2414.

¹⁶⁰³ Witness 80, T. 2590.

¹⁶⁰⁴ Witness 80, T. 2414.

¹⁶⁰⁵ Witness 80, T. 2590.

¹⁶⁰⁶ Witness 80, T. 2583.

¹⁶⁰⁷ Witness 80, T. 2486, 2331-2332, 2333, 2342.

¹⁶⁰⁸ Witness 80, T. 2345, 2486, 2581-2582.

¹⁶⁰⁹ Witness 80, T. 2404, 2590.

¹⁶¹⁰ Witness 80, T. 2413-2414, 2663.

¹⁶¹¹ See also *infra*, paras 552-554, 606-609.

¹⁶¹² Witness 81, T. 1882-1884, 1885-1888, 1891-1892.

later, they met Lahi Brahimaj, aka Maxhup.¹⁶¹³ Maxhup showed them the basement of the house in the compound, where six or seven people were detained, including two Roma and a Serb man, approximately 22-23 years of age, two women around 45-50 years old and one or two men of the same age.¹⁶¹⁴ These people had bruises, their legs were tied.¹⁶¹⁵ There was 20 to 30 centimetres of water in the basement and mud. Witness 81 saw the people in the basement standing in the water.¹⁶¹⁶ Witness 81 testified further that Maxhup then had the young Serb man brought to a room with a table where he interrogated him for about 45 minutes about where the Serbian forces were and where the checkpoints were.¹⁶¹⁷ Witness 81 testified that after that local soldiers took the two Roma boys and the Serb man who was interrogated by Maxhup out into the yard, in front of the house.¹⁶¹⁸

455. Witness 81 testified further in his evidence-in-chief that some 10 to 15 minutes later, Ramush Haradinaj and Idriz Balaj, aka Toger appeared.¹⁶¹⁹ Ramush Haradinaj started to interrogate the two Roma about the locations of the Serbian forces and their checkpoints.¹⁶²⁰ Witness 81 further testified that the two Roma started pleading to Ramush Haradinaj and that he punched the Serb man once or twice.¹⁶²¹ He later stated that Ramush Haradinaj was interrogating the Serb boy about the location of the Serbian forces.¹⁶²² During the interrogation Maxhup was beating one of the Roma and the Serb man with a baseball bat, as they were not willing to speak.¹⁶²³ After that, on Witness 81's evidence, Toger, Maxhup, Idriz Gashi, and others got involved in the mistreatment.¹⁶²⁴ Toger then said: "[t]his is what you do to spies and enemies", took out a knife and cut off the ear of one of the Roma boys.¹⁶²⁵ Witness 81 further stated that as Toger cut the Roma boy's ear, he stabbed him in his upper body a couple of times and the man fell to the ground.¹⁶²⁶ Witness 81 also testified that as Toger was cutting the ear of one of the Roma boys, Maxhup was hitting the other Roma boy and the young Serb with a baseball bat.¹⁶²⁷ The witness then added that Maxhup was hitting both Roma boys.¹⁶²⁸ When asked by prosecuting counsel whether Toger did anything else to the Serb boy, in addition to punching him, Witness 81

¹⁶¹³ Witness 81, T. 1895-1896

¹⁶¹⁴ Witness 81, T. 1898-1901, 1953.

¹⁶¹⁵ Witness 81, T. 1900.

¹⁶¹⁶ Witness 81, T. 1898-1900.

¹⁶¹⁷ Witness 81, T. 1901-1903.

¹⁶¹⁸ Witness 81, T. 1904, 1909.

¹⁶¹⁹ Witness 81, T. 1910, 1912.

¹⁶²⁰ Witness 81, T. 1915-1916.

¹⁶²¹ Witness 81, T. 1916, 1920-1922, 1930-1931.

¹⁶²² Witness 81, T. 1920-1921.

¹⁶²³ Witness 81, T. 1919-1920.

¹⁶²⁴ Witness 81, T. 1931, 1933.

¹⁶²⁵ Witness 81, T. 1919, 1923.

¹⁶²⁶ Witness 81, T. 1923.

¹⁶²⁷ Witness 81, T. 1920, 1923, 1930.

¹⁶²⁸ Witness 81, T. 1930.

responded that Toger “did the same thing with his knife” as he had done to one of the Roma, clarifying that Toger took his knife, cut the ear of the Serb boy and stabbed him five or six times in the front part of his body.¹⁶²⁹

456. In his evidence-in-chief Witness 81 also testified that after the three young men had fallen to the ground, Ramush Haradinaj said: “[t]ake them to Adem Bace in Drenica”, meaning, kill them.¹⁶³⁰ Local soldiers, two carrying one prisoner, took the two Roma boys and the young Serb man to a house in Jabllanicë/Jablanica, some 100 metres away, which, as the witness learned later, served as a hospital.¹⁶³¹ Witness 81 testified that he and his companions were instructed to escort the local soldiers who carried the three young men.¹⁶³² The three young men were still alive when they reached the house.¹⁶³³ Witness 81 further testified that after about a quarter of an hour local soldiers carried out the three young men, who were no longer alive, on stretchers.¹⁶³⁴ The local soldiers carrying the bodies of the three young men, Witness 81 and his companions followed the road from Jabllanicë/Jablanica towards Lake Radoniq/Radonjić and arrived there in about one hour and a half to about two hours later,¹⁶³⁵ walking off the official roads, across fields and woodlands, and taking breaks from time to time.¹⁶³⁶ Witness 81 testified that the group reached a concrete canal and walked down a dirt road to the lake and that when they reached the lake, the local soldiers “dumped” the bodies “on one ridge of the lake”.¹⁶³⁷

457. During cross-examination, it became apparent that in an earlier interview with the Office of the Prosecutor, Witness 81 stated that it was Lahi Brahimaj, aka Maxhup, who cut the ear of one of the Roma prisoners.¹⁶³⁸ On the following day of this interview, Witness 81 stated that it was Toger, and not Maxhup, who cut off the ear, and that it was not the ear of the Roma boy but the ear of the Serb prisoner.¹⁶³⁹ In his evidence-in-chief Witness 81 testified that it was Toger who cut off the ear of one of the Roma boys.¹⁶⁴⁰ When prompted by the Prosecution, Witness 81 added that Toger also cut off the ear of the Serb boy.¹⁶⁴¹ It appears that in none of the accounts Witness 81 had given to the Office of the Prosecutor, he had stated that ears of two individuals, a Roma boy and the young

¹⁶²⁹ Witness 81, T. 1934-1936.

¹⁶³⁰ Witness 81, T. 1939-1940.

¹⁶³¹ Witness 81, T. 1940-1941, 1944.

¹⁶³² Witness 81, T. 1940.

¹⁶³³ Witness 81, T. 1944.

¹⁶³⁴ Witness 81, T. 1944, 1946.

¹⁶³⁵ Witness 81, T. 1946-1947.

¹⁶³⁶ Witness 81, T. 1947-1948.

¹⁶³⁷ Witness 81, T. 1947-1949.

¹⁶³⁸ Witness 81, T. 2038-2041; Exhibit D201, paras 6-7.

¹⁶³⁹ Witness 81, T. 2038-2040, 2047-2048; Exhibit D201, para. 8.

¹⁶⁴⁰ Witness 81, T. 1919, 1923. *See also supra*, para. 455.

¹⁶⁴¹ Witness 81, T. 1934-1936. *See also supra*, para. 455.

Serb man, had been cut off during this incident.¹⁶⁴² To the contrary, in his statement to the Office of the Prosecutor dated 7 and 8 December 2010, Witness 81 had specifically stated that his previous statement to the Office of the Prosecutor that Toger cut the ear of one of the Roma boys was wrong.¹⁶⁴³

458. Further, during an interview with the Office of the Prosecutor, Witness 81 had stated that Lahi Brahimaj, aka Maxhup, hit the Serb boy in the eye with his baseball bat following which he took his eye out.¹⁶⁴⁴ Witness 81 subsequently changed this account and stated to the Office of the Prosecutor that it was Toger who took out the boy's eye, and not Maxhup.¹⁶⁴⁵ In his evidence-in-chief Witness 81 did not mention that anyone took out the eye of any of the three prisoners. When the issue was raised during cross-examination, Witness 81 stated that the Serb boy's eye was taken out by Maxhup.¹⁶⁴⁶

459. Witness 81 changed his account even further in material aspects. While in an interview with the Office of the Prosecutor Witness 81 had stated that after the beatings the three prisoners were taken to a spot outside Jabllanicë/Jablanica, near a lake, where they were left behind still alive, on the following day of this interview with the Office of the Prosecutor he stated that the three prisoners were first taken to the hospital in Jabllanicë/Jablanica, from where their dead bodies were taken to the above mentioned spot near the lake later that same day.¹⁶⁴⁷ Witness 81's explanations about the reasons he changed his account in such material aspects were that the interpreters did not interpret correctly,¹⁶⁴⁸ because he was afraid,¹⁶⁴⁹ and that later in the course of this interview with the Office of the Prosecutor he felt more comfortable to speak as the location and the persons present during the interview changed.¹⁶⁵⁰ The Prosecution disclosed a statement, indicating that there was no change in circumstances as suggested by Witness 81 in his last explanation.¹⁶⁵¹ The Chamber finds the explanations provided by the witness for the changes in his evidence unpersuasive and not supported by the events preceding Witness 81's interview with the OTP. The Chamber notes in particular that Witness 81 had a number of interviews with the persons present during his interview with the OTP and that he stated that he trusted them.¹⁶⁵²

¹⁶⁴² See Exhibit D201.

¹⁶⁴³ Exhibit D201, para. 11.

¹⁶⁴⁴ Witness 81, T. 2042; Exhibit D201, para. 7.

¹⁶⁴⁵ Witness 81, T. 2042, 2044-2045; Exhibit D201, para. 12.

¹⁶⁴⁶ Witness 81, T. 2044-2045.

¹⁶⁴⁷ Witness 81, T. 2066-2068; Exhibit D201, paras 16-17.

¹⁶⁴⁸ Witness 81, T. 2033-2034.

¹⁶⁴⁹ Witness 81, T. 2057, 2067, 2069.

¹⁶⁵⁰ Witness 81, T. 2069, 2078-2080.

¹⁶⁵¹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, court session of 24 November 2011, T. 2099-2100.

¹⁶⁵² See Witness 81, T. 2090-2095.

460. Other aspects of Witness 81's evidence, cited above, also do not appear credible. Without this being an exhaustive review of the inconsistencies of Witness 81's evidence, the Chamber observes that he testified that it took the soldiers approximately one and a half to two hours to carry the three men on stretchers from Jabllanicë/Jablanica to the canal of Lake Radoniq/Radonjić where the bodies were left behind, avoiding the official roads and walking instead across fields and woodlands, and taking breaks from time to time. However, other evidence before the Chamber indicates that the distance between these two locations is approximately eight or nine kilometres over a hilly terrain,¹⁶⁵³ which casts doubt on the accuracy of Witness 81's evidence in this respect.

461. Witness 81 testified that in 1998 he was a member of the KLA.¹⁶⁵⁴ He testified that he was a member of a unit known as the "Black Tigers",¹⁶⁵⁵ that Idriz Balaj was the commander of a unit called the "Black Tigers",¹⁶⁵⁶ but that the witness's unit was different from the unit commanded by Idriz Balaj.¹⁶⁵⁷ Witness 81 then stated that he "made a mistake" and "clarif[ied]" that his unit was called the "Black Eagles" and that the unit commanded by Idriz Balaj was called the "Black Tigers".¹⁶⁵⁸ He further corrected himself during cross-examination and stated that Idriz Balaj's unit was called the "Black Eagles", explaining that his mistakes were the result of receiving wrong interpretation and his "stage fright".¹⁶⁵⁹ He stated that his unit was deployed "everywhere", depending on the needs.¹⁶⁶⁰ When asked to list the military engagements, in which his unit was involved during the 14 months the witness said he spent with this unit in Kosovo, Witness 81 mentioned "Trstenik, Grabovac and Vrbovac" but was not able to provide any dates or details of specific military engagements of this unit during this period.¹⁶⁶¹ He refused to provide the name of any person who could confirm that he was a member of this unit, as he said for security reasons.¹⁶⁶² On his evidence there were six men travelling with him and present during the events he described. Witness 81 refused to name any of these persons who could confirm the account he gave to the Chamber, again for security reasons, as he claimed.¹⁶⁶³ Witness 81 denied having knowledge of criminal convictions involving him, except for being "punished for offences in traffic".¹⁶⁶⁴ Other evidence admitted in this trial indicates that he has been convicted for making false allegations to the police,¹⁶⁶⁵ for unauthorised use of a motor vehicle belonging to another person,¹⁶⁶⁶ for

¹⁶⁵³ Exhibits P87; D202.

¹⁶⁵⁴ Witness 81, T. 1880-1881.

¹⁶⁵⁵ Witness 81, T. 1881, 1954.

¹⁶⁵⁶ Witness 81, T. 1954.

¹⁶⁵⁷ Witness 81, T. 1954-1955.

¹⁶⁵⁸ Witness 81, T. 1957.

¹⁶⁵⁹ Witness 81, T. 1995-1996.

¹⁶⁶⁰ Witness 81, T. 1991-1992, 2013.

¹⁶⁶¹ Witness 81, T. 2021-2022.

¹⁶⁶² Witness 81, T. 2015-2018.

¹⁶⁶³ Witness 81, T. 1884-1892, 1912.

¹⁶⁶⁴ Witness 81, T. 2000.

¹⁶⁶⁵ Exhibits D198; D200; Witness 81, T. 2004-2011.

obstructing an official in the course of his duties,¹⁶⁶⁷ and for domestic violence.¹⁶⁶⁸ The witness's denial only goes to his credibility.

462. During closing arguments the Prosecution submitted that it did not intend to rely on the evidence of Witness 81 and it invited the Chamber to ignore this evidence as unreliable and treat it as though it was not part of the trial record.¹⁶⁶⁹ The Chamber notes without further comment the significant litigation and Chamber's time spent during the pre-trial and trial proceedings in this case on disclosure issues involving Witness 81, which continued until just before the witness commenced his evidence on 21 November 2011.¹⁶⁷⁰ The Chamber denies the Prosecution's request to treat his evidence as though it was not part of the record.

463. The Chamber concludes that the entirety of Witness 81's evidence before the Tribunal is not reliable.

(c) Conclusion

464. The Prosecution presented no credible evidence as to the events it alleged occurred after the disappearance of Agron Berisha, Burim Bejta, and Ivan Zarić. For the reasons given above the Chamber finds that the events alleged in Count 1 are not established.

3. Count 2

(a) Allegations in the Indictment

465. The Indictment alleges that on or around 25 May 1998, KLA soldiers abducted two Roma/Egyptian men, Ukë Rexhepaj and his son-in-law Nesret Alijaj, from the village of Grabanicë/Grabanica and accused them of being Serbian collaborators. It is alleged further that the two men were taken to the KLA compound in Jabllanicë/Jablanica where Lahi Brahimaj ordered their execution and that they were killed while in KLA custody. On the basis of these allegations the three Accused are charged in the Indictment with one count of violations of the laws or customs

¹⁶⁶⁶ Exhibit D205.

¹⁶⁶⁷ Exhibit D206; Witness 81, T. 2161-2170.

¹⁶⁶⁸ Exhibits D217; D218.

¹⁶⁶⁹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Closing arguments, 25 June 2012, T. 2753.

¹⁶⁷⁰ See *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Haradinaj Motion for Disclosure of Exculpatory Materials in respect of Witness 81, issued confidentially on 18 November 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Balaj's Request for Evidentiary Hearing, issued confidentially on 18 November 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Urgent Prosecution Motion for Non-disclosure pursuant to Rules 66(C) and 68(IV) issued confidential and *ex parte* on 18 July 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Urgent Prosecution Motion for Extension of Time for Disclosure Pursuant to Rules 66(C) and 68(IV), issued confidentially and *ex parte* on 17 August 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Order for Change in Status and Service on the Accused of Two Decisions of the Trial Chamber, issued confidentially on 31 August 2011.

of war, namely murder and cruel treatment (Count 2), for their alleged participation in the joint criminal enterprise alleged in the Indictment. Lahi Brahimaj is charged, in the alternative, on the basis of other modes of individual criminal responsibility pursuant to Article 7(1) of the Statute.¹⁶⁷¹

(b) Findings

466. In May 1998 Ukë Rexhepaj and his family lived in the village of Zajm/Zajmovo in Klinë/Klina municipality.¹⁶⁷² They were of Ashkali ethnicity.¹⁶⁷³ In the Chamber's finding, on 20 May 1998 at about 1000 hours, Ukë Rexhepaj and his son-in-law Nesret Alijaj,¹⁶⁷⁴ left Zajm/Zajmovo to go to the post office in Klinë/Klina, to collect money sent to Ukë Rexhepaj by a relative.¹⁶⁷⁵ Ukë Rexhepaj was wearing a striped jacket, chequered coffee-coloured trousers, coffee-coloured shoes and black socks.¹⁶⁷⁶ They returned from the post office later that day, picked up Ukë Rexhepaj's five year and five month old son, and headed to Dollovë/Dolovo in Klinë/Klina municipality to feed the livestock.¹⁶⁷⁷ They were travelling by bicycle.¹⁶⁷⁸ Halfway to their destination, somewhere on the road between Grabanicë/Grabanica and Dollovë/Dolovo, they were stopped by two men armed with machine guns who warned them not to proceed any further or they would be shot.¹⁶⁷⁹ The men were dressed in dark-green camouflage military clothing and were speaking Albanian.¹⁶⁸⁰ Ukë Rexhepaj and Nesret Alijaj were searched and their personal belongings and bicycles were seized.¹⁶⁸¹ Their hands were then tied, they were blindfolded and thrown into a car, which had just arrived.¹⁶⁸² A man came out of the woods and the two armed men told him to collect the boy.¹⁶⁸³ The car with Ukë Rexhepaj and Nesret Alijaj left.¹⁶⁸⁴ The boy was eventually taken to his family.¹⁶⁸⁵

¹⁶⁷¹ Indictment, para. 50.

¹⁶⁷² Witness 79, Exhibit P1, paras 1, 3.

¹⁶⁷³ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8271; Witness 79, Exhibit P1, p. 1; Witness 78, Exhibit P286, p. 1.

¹⁶⁷⁴ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8273. The Chamber notes that some of the evidence refers to Nesret Alijaj as Ukë Rexhepaj's "brother-in-law" (Witness 78, Exhibit P286, para. 8; Witness 79, Exhibit P1, para. 3) but in light of the explanation provided by Witness 54 in the original *Haradinaj* trial (Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8273) the Chamber accepts that Nesret Alijaj was Ukë Rexhepaj's son-in-law.

¹⁶⁷⁵ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8273-8274, 8277; Witness 79, Exhibit P1, para. 3; Witness 79, Exhibit P284, para. 4; Witness 78, Exhibit P286, paras 17-18.

¹⁶⁷⁶ Witness 79, Exhibit P284, para. 4.

¹⁶⁷⁷ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8271, 8274-8275, 8277; Witness 78, Exhibit P286, para. 11; Witness 78, T. 836.

¹⁶⁷⁸ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8275, 8277.

¹⁶⁷⁹ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8275-8276; Witness 78, Exhibit P286, para. 11.

¹⁶⁸⁰ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8276; Witness 78, Exhibit P286, para. 11.

¹⁶⁸¹ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8275.

¹⁶⁸² Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8275-8276; Witness 79, Exhibit P1, para. 7.

¹⁶⁸³ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8275, 8277-8278.

¹⁶⁸⁴ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8276; Witness 78, Exhibit P286, para. 12.

¹⁶⁸⁵ Witness 54, Exhibit P105 (*Haradinaj* original transcript). T. 8275, 8280-8281; Witness 79, Exhibit P1, para. 8; Witness 78, Exhibit P286, paras 12-13.

467. Ukë Rexhepaj was a car mechanic by profession and was not a member of an armed group.¹⁶⁸⁶ On the date of his abduction he had the equivalent of 200 German Marks on him.¹⁶⁸⁷ At the time of the kidnapping Nesret Alijaj was also not a member of an armed group.¹⁶⁸⁸ Some time prior to these events, one of Ukë Rexhepaj's sons had joined the VJ for his military service. Ukë Rexhepaj had organised a send-off party which was attended by a MUP member. None of Ukë Rexhepaj's Kosovo Serb or Kosovo Albanian neighbours was pleased with the fact that his son was joining the VJ.¹⁶⁸⁹

468. Two or three months after the disappearance of Ukë Rexhepaj and Nesret Alijaj, a Kosovo Serb from the village of Dollovë/Dolovo told Ukë Rexhepaj's relatives that he had seen Ukë Rexhepaj and Nesret Alijaj in the village of Glogjan/Glodane, chasing and killing cows,¹⁶⁹⁰ while observing the village through binoculars.¹⁶⁹¹ This report is not confirmed and was rejected by a witness who believed that Ukë Rexhepaj and Nesret Alijaj would have returned if they could, as both men had families, in the case of Nesret Alijaj, a newborn baby and a one year old child.¹⁶⁹² The Chamber does not accept this identification as reliable.

469. On an unspecified day after 20 May 1998 Ukë Rexhepaj's disappearance was reported to the ICRC in Klinë/Klina.¹⁶⁹³ An ICRC report issued on 27 February 2001 confirms that a tracing request with respect to Ukë Rexhepaj was opened on 18 February 1999 and that as of the date of the issuance of the report the ICRC considered the case still open.¹⁶⁹⁴ The disappearance of Ukë Rexhepaj was also reported to the Klinë/Klina police station.¹⁶⁹⁵ An article published in the newspaper Blic on 28 July 1998 listed Ukë Rexhepaj and Nesret Alijaj among 245 persons missing in Kosovo.¹⁶⁹⁶

470. In 2003 a relative of Ukë Rexhepaj attended a display of personal items belonging to persons missing in Kosovo, organised by the ICRC in Zvečan/Zvečan in northern Kosovo. He gave evidence that he was able to identify some of the displayed clothing as belonging to Ukë Rexhepaj, some of which he thought he had given to Ukë Rexhepaj.¹⁶⁹⁷ The display took place some five years after Ukë Rexhepaj's disappearance and there is no evidence about the state these clothes

¹⁶⁸⁶ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8274. See also Witness 78, Exhibit P286, para. 14.

¹⁶⁸⁷ Witness 78, Exhibit P286, paras 17-18.

¹⁶⁸⁸ Witness 54, Exhibit P105 (*Haradinaj* original transcript), T. 8274; Witness 78, Exhibit P286, para. 14.

¹⁶⁸⁹ Witness 79, Exhibit P1, para. 13.

¹⁶⁹⁰ Witness 79, Exhibit P284, para. 10; Witness 78, Exhibit P286, paras 21-22.

¹⁶⁹¹ Witness 78, Exhibit P286, para. 22.

¹⁶⁹² Witness 79, Exhibit P1, para. 11; Witness 79, Exhibit P284, para. 11.

¹⁶⁹³ Witness 79, Exhibit P284, para. 15; Witness 78, Exhibit P286, para. 19.

¹⁶⁹⁴ Witness 79, Exhibit P1, p. 13 in e-court.

¹⁶⁹⁵ Witness 79, Exhibit P284, para. 15; Witness 78, Exhibit P286, para. 19.

¹⁶⁹⁶ Witness 79, Exhibit P1, p. 9 (in e-court).

¹⁶⁹⁷ Witness 78, Exhibit P286, paras 22-25; Witness 78, T. 840-841.

were in. In evidence is a black and white photograph depicting a pair of trousers and a shirt.¹⁶⁹⁸ No details of any kind, no clear shapes, no colours or shades of colours, are visible in this photograph. Moreover, there is no evidence as to the place, time, and circumstances in which these items were discovered or about who discovered them. In the circumstances the Chamber does not accept that the items identified in 2003 belonged to Ukë Rexhepaj.

471. Ukë Rexhepaj and Nesret Alijaj were last seen by a witness in these proceedings on 20 May 1998.¹⁶⁹⁹

472. The Prosecution presented no direct evidence as to what happened to Ukë Rexhepaj and Nesret Alijaj after they were abducted from the Grabanicë/Grabanica—Dollovë/Dolovo road. In its Final Brief the Prosecution seeks to rely on the evidence of Shefqet Kabashi in the *Limaj* trial.¹⁷⁰⁰ According to this evidence, in the morning of 21 May 1998 Shefqet Kabashi saw a son-in-law and a father-in-law of Roma ethnicity in Jabllanicë/Jablanica. In the evening of the same day he saw them in the “stable” of the KLA compound in Jabllanicë/Jablanica, tied with a wire. He testified that he heard “Lahija, my first leader” saying to another person that he would send them to Drenica, which meant that they would be executed.¹⁷⁰¹ Apart from the reference to a “father-in-law” and a “son-in-law” of Roma origin, Kabashi provides no description of the two persons whom he said he saw in the KLA compound in Jabllanicë/Jablanica.

473. The Chamber recalls its “Decision on Joint Defence Oral Motion pursuant to Rule 89(D)” issued on 28 September 2011 where it held that it would not be able to give any weight to Shefqet Kabashi’s evidence in the *Limaj* trial unless it is corroborated by credible evidence received in the present trial.¹⁷⁰² The Chamber reached this conclusion since Shefqet Kabashi’s evidence in the *Limaj* trial referred to matters of pivotal importance for the Prosecution in the present case and Shefqet Kabashi was not cross-examined in the *Limaj* trial on any matters of relevance to the present proceedings.¹⁷⁰³ The Prosecution submits that Shefqet Kabashi’s evidence, discussed in the preceding paragraph, is corroborated by the evidence of relatives of Ukë Rexhepaj and Nesret Alijaj and ICRC reports to the effect that the two men are still missing.¹⁷⁰⁴ The Chamber does not accept this argument. Shefqet Kabashi gives evidence about events occurring to a father-in-law and a son-in-law, whose identities are not established. The evidence of the relatives of Ukë Rexhepaj and

¹⁶⁹⁸ Witness 78, Exhibit P286, p. 10.

¹⁶⁹⁹ Witness 54, Exhibit P105 (*Haradinaj* original trial), T 8277; Exhibit P427, pp 3, 6.

¹⁷⁰⁰ Prosecution Final Brief, paras 117-118.

¹⁷⁰¹ Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4252-4253.

¹⁷⁰² *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Joint Defence Oral Motion pursuant to Rule 89(D) issued on 28 September 2011 (“Decision of 28 September 2011”), para. 13.

¹⁷⁰³ Decision of 28 September 2011, para. 13.

¹⁷⁰⁴ Prosecution Final Brief, para. 118.

Nesret Alijaj provides information relevant to establishing what happened to Ukë Rexhepaj and Nesret Alijaj before they were last seen on the Grabanicë/Grabanica—Dollovë/Dolovo road. While, on the basis of this evidence and the ICRC reports, the Chamber accepts that Ukë Rexhepaj and Nesret Alijaj are still unaccounted for and there is a probability that they may be dead, the evidence of Shefqet Kabashi, even if accepted to refer to the two men, which the Chamber does not, would offer a basis for one of many conjectures as to what may have happened to them. The two men may have been released, transferred to another place, or could have escaped. The evidence of Shefqet Kabashi, quoted above, is not corroborated by other evidence in the present proceedings and the Chamber does not accept it.

(c) Conclusion

474. In conclusion the Chamber finds that the events alleged in Count 2 are not established.

4. Count 3

(a) Allegations in the Indictment

475. The Indictment alleges that on or about 13 June 1998, Witness 6, a Catholic Kosovo Albanian, was stopped by KLA soldiers on the road between Klinë/Klina and Gjakovë/Đakovica and taken to the KLA compound in Jabllanicë/Jablanica, where, upon arrival he was severely beaten by KLA soldiers, including Nazmi Brahimaj. It is alleged further that between 13 June and approximately 25 July 1998, when he was released by Nazmi Brahimaj, Witness 6 was detained at the KLA compound in Jabllanicë/Jablanica and regularly beaten by Lahi Brahimaj, Nazmi Brahimaj and other KLA soldiers, including with baseball bats, almost to unconsciousness.¹⁷⁰⁵ These allegations support one count of violations of the laws or customs of war, namely cruel treatment and torture (Count 3), charged against Ramush Haradinaj and Idriz Balaj on the basis of their alleged participation in the joint criminal enterprise alleged in the Indictment.

476. Count 3 is not alleged against Lahi Brahimaj. The Trial Chamber in the original *Haradinaj* trial found that the same allegations forming the basis of Counts 27 and 28 in the original *Haradinaj* indictment were established and found Lahi Brahimaj guilty of Count 28.¹⁷⁰⁶ This finding was confirmed on appeal.¹⁷⁰⁷

¹⁷⁰⁵ Indictment, para. 51.

¹⁷⁰⁶ *Haradinaj* Trial Judgement, paras 395, 504.

¹⁷⁰⁷ *Haradinaj* Appeal Judgement, paras 51, 165, 191.

(b) Findings

477. On 13 June 1998, at about 1130 hours Witness 6, a farmer, left his home with his family.¹⁷⁰⁸ They travelled in the witness's vehicle, a Mercedes Benz.¹⁷⁰⁹ They took the Gjakovë/Đakovica—Klinë/Klina road in the direction of Klinë/Klina.¹⁷¹⁰ Somewhere near Grabanicë/Grabanica¹⁷¹¹ or near Dollovë/Dolovo¹⁷¹² in Klinë/Klina municipality, they were stopped at a Serbian police or military checkpoint.¹⁷¹³ The Serbian police informed the witness that he and his family would not be able to continue their trip.¹⁷¹⁴ They took the main Gjakovë/Đakovica—Klinë/Klina road back in the direction of Gjakovë/Đakovica.¹⁷¹⁵

478. On their way back Witness 6 and his family passed through a location known as Guri-i-Zi or Volljakë/Volujak in Klinë/Klina municipality.¹⁷¹⁶ As the road was in a bad condition they were driving very slowly, at a speed of about 10 kilometres per hour. At about 1300 hours,¹⁷¹⁷ Witness 6 and his family were stopped by some 10 to 15 soldiers.¹⁷¹⁸ Witness 6 believed they were members of the KLA.¹⁷¹⁹ They were armed. Some of them wore camouflage uniforms, some, civilian clothes.¹⁷²⁰ There were no insignia or patches on their clothes.¹⁷²¹ Witness 6 did not recognise any of the men, but his wife was able to recognise one of the soldiers.¹⁷²² The soldiers checked Witness 6's documents and searched him and his car. They found a pistol,¹⁷²³ seized it,

¹⁷⁰⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5168-5170, 5386, 5352.

¹⁷⁰⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5170.

¹⁷¹⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5170-5171, 5188; Exhibit P87.

¹⁷¹¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5171.

¹⁷¹² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5189; Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5173; Witness 23, Exhibit P98 (*Haradinaj* original transcript), T. 10539. Dollovë/Dolovo is outside the main road Gjakovë/Đakovica—Klinë/Klina, about three kilometres from Klinë/Klina, Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5173, 5189; Exhibit P87.

¹⁷¹³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5169, 5171, 5189; Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5173; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10539.

¹⁷¹⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5171; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10539.

¹⁷¹⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5171, 5173-5174, 5190-5191.

¹⁷¹⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5174, 5191, 5194; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10528; Witness 23, Exhibit P99, pp 2-3. The Chamber notes that the name "Guri-i-Zi" is translated into English as "Black Stone".

¹⁷¹⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5171, 5293-5294.

¹⁷¹⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5174, 5190-5194; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10528.

¹⁷¹⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5174.

¹⁷²⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5193-5194; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10539-10540.

¹⁷²¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5193-5194.

¹⁷²² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5194-5195.

¹⁷²³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5194, 5353.

and the witness's documents.¹⁷²⁴ They also found a photograph of Witness 6 with a friend of his, who was a retired policeman, in his uniform.¹⁷²⁵

479. Witness 6 and his family remained inside their car, about 200 metres away from the road, for approximately two hours during which questions about the pistol and the photograph were asked.¹⁷²⁶ At about 1530 or 1600 hours, an Opel Kadett, light-blue colour, with Gjakovë/Đakovica license plates came from the main road. Shots were fired as the Opel Kadett was approaching.¹⁷²⁷ One of the soldiers asked Witness 6 whether he recognised the car, to which he answered that he did not.¹⁷²⁸ One of the soldiers in the Opel Kadett said that they came from Gjakovë/Đakovica.¹⁷²⁹ Witness 6, his wife and one of their children, together with one of the soldiers got into the Opel Kadett. Witness 6's other children remained in his car.¹⁷³⁰ There was one soldier in each of the cars.¹⁷³¹ Inside the Opel Kadett, Witness 6 saw an album of photographs of a person whom he knew from before. This was Nenad, a Kosovo Serb or a Montenegrin, from the village of Binxhë/Bica, close to Klinë/Klina, who worked as a traffic policeman in Gjakovë/Đakovica.¹⁷³²

480. Approximately 20 minutes after the arrival of the Opel Kadett, the two cars departed in the direction of Gjakovë/Đakovica.¹⁷³³ They passed through the village of Mrauser/Mrasor, crossed a bridge over the Drini River and entered the village of Kralan/Kraljane in Gjakovë/Đakovica municipality.¹⁷³⁴ From Kralan/Kraljane they went north, passed by the village of Kpuz in Klinë/Klina municipality and went to Nepolë/Nepolje¹⁷³⁵ where Witness 6's family was released.¹⁷³⁶ Witness 6 was taken towards the village of Catholic Gllogjan/Glodane in Pejë/Peć

¹⁷²⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5194.

¹⁷²⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5353-5355; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10540.

¹⁷²⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5194-5195, 5316; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10528, 10540.

¹⁷²⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5194-5196, 5316; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10529.

¹⁷²⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5195; Witness 23, Exhibit P99, p. 3.

¹⁷²⁹ Witness 23, Exhibit P98 (*Haradinaj* original transcript), T. 10531.

¹⁷³⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5196; Witness 23, Exhibit P99, p. 3; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10531, 10534-10535.

¹⁷³¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5196, 5203-5204.

¹⁷³² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5196-5197.

¹⁷³³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5196, 5203. Witness 23 gave evidence that approximately two hours elapsed between the arrival of the second car and the two cars' departure, Witness 23, Exhibit P99, p. 3. Considering the whole of Witness 6's evidence the Chamber finds his estimate more reliable.

¹⁷³⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5197-5198, 5199; Exhibit P87.

¹⁷³⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5198-5199; Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5200; Exhibit P87.

¹⁷³⁶ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5200-5201; Witness 23, Exhibit P98 (*Haradinaj* original transcript), T. 10534.

municipality,¹⁷³⁷ from where they crossed the Bistricë/Dečanska Bistrica River and went to Jabllanicë/Jablanica.¹⁷³⁸ Witness 6's car, driven by soldiers, was following.¹⁷³⁹

481. At a time before 1800 hours on 13 June 1998, Witness 6 arrived in Jabllanicë/Jablanica.¹⁷⁴⁰ He was taken through a gate, to a courtyard of a compound with a one-storey house made of red bricks, located in the middle of the courtyard. Witness 6 found out later that the one-storey house had four rooms and a basement.¹⁷⁴¹ Later he was able to see that there was water in the basement.¹⁷⁴² Immediately to the left of the gate there was a room along the side of the road.¹⁷⁴³ Witness 6 spent approximately six weeks in this compound.¹⁷⁴⁴ The witness identified the courtyard as the one depicted in Exhibit P89¹⁷⁴⁵ and the one-storey house with red bricks as the building depicted in Exhibit P88.¹⁷⁴⁶ The Chamber accepts from this evidence that Witness 6 was brought to the KLA compound in Jabllanicë/Jablanica and finds accordingly.

482. On his arrival, Witness 6 was brought into the room, on the side of the road, immediately to the left inside the gate.¹⁷⁴⁷ He spent his first night in the KLA compound in Jabllanicë/Jablanica in this room together with Nenad, the traffic policeman from Gjakovë/Đakovica, whom he knew from before and whose photographs he had seen earlier that day in the Opel Kadett. Both were beaten in the same manner. They were tied up with a rope during the night.¹⁷⁴⁸ Witness 6 was beaten by several KLA soldiers who were constantly changing and taking turns. They beat him until they were exhausted, using baseball bats, sticks, or their fists.¹⁷⁴⁹ At the time, Witness 6 was not aware who these soldiers were but he learned subsequently that one of them was Nazmi Brahimaj.¹⁷⁵⁰ Witness 6 lost consciousness; he was not able to indicate for how long he was beaten on the first day.¹⁷⁵¹ He was kicked and punched on his legs and arms; he had some fractures and bruises on his back.¹⁷⁵² Witness 6 was not told why he was beaten.¹⁷⁵³ Nevertheless, soldiers accused him of

¹⁷³⁷ This village is different from the village of Glogjan/Glodane in Deçan/Dečani municipality.

¹⁷³⁸ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5201; Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5316; Exhibit P87.

¹⁷³⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5203-5204; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10536-10537.

¹⁷⁴⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5316.

¹⁷⁴¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5204-5206; Exhibits P88; P89. Witness 6 was never in the basement and found out about it some two weeks before he was released, Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5205-5206.

¹⁷⁴² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5271-5272.

¹⁷⁴³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5212-5214; Exhibit P89.

¹⁷⁴⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5206.

¹⁷⁴⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5212-5214, 5216; Exhibits P88; P89. The photograph admitted as Exhibit P89 is a marked version of the photograph admitted as Exhibit P60.

¹⁷⁴⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5205, 5213, 5215-5216; Exhibits P88; P89.

¹⁷⁴⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5213-5214, 5216, 5316, 5324; Exhibit P89.

¹⁷⁴⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5210-5211, 5324.

¹⁷⁴⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5207-5210, 5350-5351.

¹⁷⁵⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5207-5209.

¹⁷⁵¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5209-5210, 5350-5351.

¹⁷⁵² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5210.

staying with Serbs¹⁷⁵⁴ and told him that he was a spy for Serbia.¹⁷⁵⁵ On the following afternoon Witness 6 was transferred to the one-storey red brick building in the courtyard of the compound.¹⁷⁵⁶

483. Witness 6 stayed in one of the four rooms, four by four metres large, in the one-storey building.¹⁷⁵⁷ There was a window on the side facing the road, barred with wooden planks.¹⁷⁵⁸ There was electricity, but no light-bulb.¹⁷⁵⁹ The floor was wooden and there was blood on it.¹⁷⁶⁰ Witness 6 was detained in this building for six weeks.¹⁷⁶¹ During the first four weeks of his detention he was not able to leave the room, he was always locked.¹⁷⁶² Later he was taken out of the room by unknown persons to use the toilet.¹⁷⁶³ There were no “covers” in this room in the first three weeks of Witness 6’s detention; only the floor.¹⁷⁶⁴ Witness 6 had water but was given insufficient food.¹⁷⁶⁵ He was often unconscious and was not able to eat or drink.¹⁷⁶⁶

484. Numerous soldiers beat Witness 6 during the first four weeks of his detention in the KLA compound in Jabllanicë/Jablanica. Lahi Brahimaj, aka Maxhupi, his brother Nazmi Brahimaj and his cousin Hamza Brahimaj were the initiators of his beatings.¹⁷⁶⁷ Lahi Brahimaj, Nazmi Brahimaj, and Hamza Brahimaj were “constantly” there.¹⁷⁶⁸ Two days would not pass without Witness 6 seeing Lahi Brahimaj.¹⁷⁶⁹ Lahi Brahimaj was a member of the KLA and was wearing either camouflage or black uniform.¹⁷⁷⁰ Hamza Brahimaj was there almost every day during the first four weeks of Witness 6’s detention.¹⁷⁷¹ Nazmi Brahimaj was there continuously.¹⁷⁷² The other soldiers referred to him as deputy commander.¹⁷⁷³ During the first four weeks of his detention Witness 6

¹⁷⁵³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5210, 5351-5352.

¹⁷⁵⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5352.

¹⁷⁵⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5400.

¹⁷⁵⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5204-5205, 5210, 5216, 5316, 5324-5325; Exhibits P88; P89.

¹⁷⁵⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5216, 5229, 5324.

¹⁷⁵⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5216, 5325, 5401; Exhibit P88.

¹⁷⁵⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5401.

¹⁷⁶⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5229-5230.

¹⁷⁶¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5205-5206, 5213.

¹⁷⁶² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5217. The Chamber notes that in cross-examination Witness 6 stated that he did not know how much time exactly he spent in the room in which he was locked and that he thought that it was approximately two weeks (Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5325). Considering, however, the rest of Witness 6’s evidence about his detention cited above, and other relevant evidence the Chamber accepts that he was locked in a room for approximately four weeks.

¹⁷⁶³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5326.

¹⁷⁶⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5221.

¹⁷⁶⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5327, 5329. Witness 6 testified that he was given bread with some marmalade and later given bread and beans, Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5329.

¹⁷⁶⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5326-5327.

¹⁷⁶⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5207-5209, 5218-5220, 5372-5373.

¹⁷⁶⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5218-5219.

¹⁷⁶⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5218.

¹⁷⁷⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5245-5246.

¹⁷⁷¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5219.

¹⁷⁷² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5219-5220.

¹⁷⁷³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5245.

knew Lahi Brahimaj, Nazmi Brahimaj, and Hamza Brahimaj by appearance because he saw the three men close to him almost every day.¹⁷⁷⁴ During this period he also heard people speaking of or to these men by these names.¹⁷⁷⁵ He did not know the names of any of the other soldiers at Jabllanicë/Jablanica.¹⁷⁷⁶

485. Nazmi Brahimaj, Lahi Brahimaj, and Hamza Brahimaj used to come to the room where Witness 6 was detained and stayed there for five to 10 minutes.¹⁷⁷⁷ Usually they would beat Witness 6, but there were occasions when he was not beaten by them.¹⁷⁷⁸ Sometimes, when other soldiers would beat Witness 6 Nazmi Brahimaj, Lahi Brahimaj, and Hamza Brahimaj would leave the room, but sometimes Nazmi Brahimaj and Lahi Brahimaj would stay.¹⁷⁷⁹ Not all three of them came at the same time.¹⁷⁸⁰ Nazmi Brahimaj, Lahi Brahimaj, and Hamza Brahimaj would beat Witness 6 with baseball bats and fists. For the first two weeks of his detention Witness 6's body was swollen because of the beatings.¹⁷⁸¹

486. About four weeks after his detention in the KLA compound in Jabllanicë/Jablanica, *i.e.* on or about 11 July 1998,¹⁷⁸² the beatings of Witness 6 stopped.¹⁷⁸³ He had more freedom and even though he stayed in the same room during the night, during the day he was able to move around the courtyard.¹⁷⁸⁴ He started washing the dishes in the kitchen.¹⁷⁸⁵ In this period Witness 6 had more contact with Gani Brahimaj, who used to bring him food during his detention.¹⁷⁸⁶ Gani Brahimaj was Lahi Brahimaj's cousin and worked as a cook in the KLA compound in Jabllanicë/Jablanica.¹⁷⁸⁷ During this period Witness 6 saw Lahi Brahimaj and heard that people were addressing him by his name or the pseudonym "Maxhup".¹⁷⁸⁸

487. Following Witness 6's abduction, his relatives started searching for him. They found out that he was detained in Jabllanicë/Jablanica.¹⁷⁸⁹ A group of elders from his village went to

¹⁷⁷⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5209.

¹⁷⁷⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5297.

¹⁷⁷⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5226.

¹⁷⁷⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5219-5220.

¹⁷⁷⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5220.

¹⁷⁷⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5220- 5221.

¹⁷⁸⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5221.

¹⁷⁸¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5220.

¹⁷⁸² Witness 6 was detained in Jabllanicë/Jablanica on 13 June 1998, *see supra*, 481. Witness 6 stayed in the KLA compound in Jabllanicë/Jablanica for approximately six weeks (six weeks minus two days). He left Jabllanicë/Jablanica on 25 July 1998, Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5206.

¹⁷⁸³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5243, 5259.

¹⁷⁸⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5232, 5241-5243, 5386.

¹⁷⁸⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5244, 5334.

¹⁷⁸⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5244.

¹⁷⁸⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5218-5219, 5233-5234, 5240, 5244.

¹⁷⁸⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5245.

¹⁷⁸⁹ Witness 23, Exhibit P99, pp 3-4.

Jabllanicë/Jablanica to demand his release.¹⁷⁹⁰ They arrived at the KLA compound in Jabllanicë/Jablanica and told the guard at the front gate why they were there.¹⁷⁹¹ The guard told the elders that they would have to speak to “Commander Maxhupi”.¹⁷⁹² There is no further explanation who “Commander Maxhupi” was. Some time later, two men in black uniforms with KLA patches, armed with pistols came to the front gate. One of the men introduced himself as “Commander Maxhupi”; the elders were asked for the reason of their visit.¹⁷⁹³ When the group explained that they had come to ask for the release of Witness 6,¹⁷⁹⁴ “Maxhupi” told them that he had convicted him and that he would have to serve his time with the KLA.¹⁷⁹⁵ The group was not allowed to see Witness 6, but “Maxhupi” told his relatives that they could see him in two weeks time.¹⁷⁹⁶ During this conversation “Maxhupi” also asked the group why they were not fighting and exchanged views with them about the President of Kosovo at the time, Ibrahim Rugova.¹⁷⁹⁷

488. During the following two weeks a relative of Witness 6 visited Jabllanicë/Jablanica daily but was not allowed in the compound.¹⁷⁹⁸ When approximately two weeks passed, as “Maxhupi” had indicated, the relative attempted to visit Witness 6 again. He was allowed into the compound but “Maxhupi” did not allow him to see Witness 6.¹⁷⁹⁹ In the following days, the relative of Witness 6 managed again to enter the compound but was not allowed to see Witness 6.¹⁸⁰⁰ A few days later Nazmi Brahimaj told the relatives that they would be allowed to see Witness 6. A family visit took place soon thereafter.¹⁸⁰¹

489. Witness 6 testified that two weeks before his release, his family visited him in Jabllanicë/Jablanica.¹⁸⁰² Witness 6 had lost weight and appeared very thin and withered.¹⁸⁰³ The

¹⁷⁹⁰ Witness 7, Exhibit P93, para. 5; Witness 7, Exhibit P94, para. 5; Witness 16, Exhibit P95, para. 5. Witness 6 found out after he was released from the KLA compound in Jabllanicë/Jablanica that people from his home village had gone to Jabllanicë/Jablanica to vouch for his release, Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5252.

¹⁷⁹¹ Witness 7, Exhibit P93, para. 7; Witness 7, Exhibit P94, para. 7; Witness 16, Exhibit P95, paras 5-8.

¹⁷⁹² Witness 7, Exhibit P93, para. 7; Witness 7, Exhibit P94, para. 7.

¹⁷⁹³ Witness 7, Exhibit P93, para. 8; Witness 7, Exhibit P94, para. 8.

¹⁷⁹⁴ Witness 7, Exhibit P93, paras 10, 12; Witness 7, Exhibit P94, paras 10, 12.

¹⁷⁹⁵ Witness 7, Exhibit P93, para. 13; Witness 7, Exhibit P94, para. 13. Witness 16 provided similar evidence but he was unable to identify the commander by name or description, Witness 17, Exhibit P95, paras 13, 19; Witness 17, Exhibit P96, paras 13, 19.

¹⁷⁹⁶ Witness 7, Exhibit P93, paras 14, 16; Witness 7, Exhibit P94, paras 14, 16.

¹⁷⁹⁷ Witness 7, Exhibit P93, para. 15; Witness 7, Exhibit P94, para. 15; Witness 16, Exhibit P95, paras 15-18.

¹⁷⁹⁸ Witness 7, Exhibit P93, para. 18; Witness 7, Exhibit P94, para. 18. *See also* Witness 16, Exhibit P95, para. 18; Witness 16, Exhibit P96, para. 18.

¹⁷⁹⁹ Witness 7, Exhibit P93, paras 20-26; Witness 7, Exhibit P94, paras 20-26.

¹⁸⁰⁰ Witness 7, Exhibit P93, paras 27-30; Witness 7, Exhibit P94, paras 27-30.

¹⁸⁰¹ Witness 7, Exhibit P93, paras 33-36; Witness 7, Exhibit P94, paras 33-36.

¹⁸⁰² Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5252. *See also* Witness 7, Exhibit P93, paras 35-36; Witness 23, Exhibit P98 (*Haradinaj* original transcript), T. 10537-10538.

¹⁸⁰³ Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10559; Witness 23, Exhibit P99, p. 9.

meeting lasted approximately two hours and was monitored by one or two KLA soldiers.¹⁸⁰⁴ During the visit the relatives were told by a commander that Witness 6 would be released in a week.¹⁸⁰⁵

490. This release was conditional. It was stated in the paper that if Witness 6 repeated his mistakes, he would face criminal charges.¹⁸⁰⁶ Nazmi Brahimaj told Witness 6 that this meant that he had to stay inside his house and not move around.¹⁸⁰⁷ Witness 6 also received a paper signed by Nazmi Brahimaj informing him that the Operative Staff of the Dukagjin Operational Zone, Local Staff of Jabllanicë/Jablanica, at a meeting held on 24 July 1998, decided to confiscate his Mercedes Benz and his 7.65 millimetre revolver for the needs of the KLA.¹⁸⁰⁸ Witness 6, accompanied by a soldier, picked up these decisions from Nazmi Brahimaj's house which he said was located about 200 to 250 metres away from the KLA compound in Jabllanicë/Jablanica.¹⁸⁰⁹ He left Jabllanicë/Jablanica on 25 July 1998.¹⁸¹⁰

491. Five days after his release from the KLA compound in Jabllanicë/Jablanica, Witness 6 visited the outpatient clinic of the textile factory in Gjakovë/Đakovica. He was referred for an x-ray of the urinary tract and left forearm.¹⁸¹¹ His left forearm was broken and he had an injury to his back and shoulder.¹⁸¹² Witness 6 also visited another doctor who prescribed painkillers.¹⁸¹³ Witness 6 has been taking medications ever since and at the time of giving evidence still felt the consequences of his injuries.¹⁸¹⁴

(c) Conclusion

492. The Chamber is satisfied that Witness 6 was abducted by KLA soldiers from the Gjakovë/Đakovica—Klinë/Klina road on 13 June 1998 and detained in the KLA compound in Jabllanicë/Jablanica for approximately six weeks where he was subjected to beatings by KLA

¹⁸⁰⁴ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5252; Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5252; Witness 7, Exhibit P93 (*Haradinaj* original transcript), T. 33-36.

¹⁸⁰⁵ Witness 7, Exhibit P93, paras 37-39; Witness 23, Exhibit P99, p. 4. On the evidence of Witness 7, this commander was Nazmi Brahimaj, Witness 7, Exhibit P93, para. 37. See also Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5252 testifying that during the visit he received a document that he would be released in a week.

¹⁸⁰⁶ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5255; Exhibit P91, p. 2.

¹⁸⁰⁷ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5255-5256.

¹⁸⁰⁸ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5254; Exhibit P91, p. 1.

¹⁸⁰⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5342-5343.

¹⁸¹⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5206.

¹⁸¹¹ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5261-5262, 5259; Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5259; Exhibit P92; Witness 23, Exhibit P99, p. 4; Witness 23, Exhibit P98 (*Haradinaj* original transcript), T. 10552.

¹⁸¹² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5259, 5375; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10539, 10559.

¹⁸¹³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5267-5268.

¹⁸¹⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5268-5269, 5373; Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5268-5269, 5373; Witness 23, Exhibit P97 (*Haradinaj* original transcript), T. 10538.

soldiers including Nazmi Brahimaj, Lahi Brahimaj, and Hamza Brahimaj. These events are charged as torture and cruel treatment. In the view of the Chamber, the legal elements of torture and cruel treatment are satisfied in the present circumstances. The Chamber refers to its earlier findings that upon Witness 6's arrival at the KLA compound in Jabllanicë/Jablanica, KLA soldiers beat him using baseball bats, sticks or their fists. They were constantly taking turns, beating him until they were exhausted. The beatings continued until Witness 6 lost consciousness.¹⁸¹⁵ These acts caused Witness 6 severe pain and suffering. In the view of the Chamber, the beatings of Witness 6 upon his arrival at the KLA compound in Jabllanicë/Jablanica constitute the *actus reus* of both cruel treatment and torture. Considering the duration of the beatings and the implements used, the Chamber is satisfied that the perpetrators acted with the intent to cause Witness 6 severe physical pain and suffering. Further, considering that soldiers accused Witness 6 of staying with Serbs and of spying, the Chamber is satisfied that these acts were carried out with the intent required for torture. The Chamber is satisfied that the charges of both cruel treatment and torture have been established with respect to the beatings of Witness 6 upon his arrival at the KLA compound in Jabllanicë/Jablanica.

493. Further, the Chamber recalls its earlier finding that during the first four weeks of his detention in the KLA compound in Jabllanicë/Jablanica Witness 6 was beaten by numerous soldiers. Lahi Brahimaj, Nazmi Brahimaj, and Hamza Brahimaj were “constantly” there, they would come for five to 10 minutes into the room where he was detained and beat him.¹⁸¹⁶ Witness 6 was often unconscious and not able to eat or drink. The Chamber recalls also that in its finding, Witness 6 was kept in a locked room, with nothing inside, only the floor, for four weeks. He was given insufficient food.¹⁸¹⁷ The Chamber is satisfied that these acts constitute the *actus reus* of both torture and cruel treatment. Considering the duration of this treatment and the repeated beatings, the Chamber is satisfied that the acts were carried out with the requisite intent. With respect to the special intent required for the offence of torture, the Chamber recalls that relatives of Witness 6 were told that he had been “convicted” and he would have to serve his time with the KLA.¹⁸¹⁸ The Chamber recalls further that upon his release Witness 6 was given a document, indicating that the Operative Staff of the Dukagjin Operational Zone, Local Staff of Jabllanicë/Jablanica has decided to release him from detention and that this release was conditional—if he repeated his mistake he would be prosecuted.¹⁸¹⁹ The Chamber concludes from these findings that the four week detention

¹⁸¹⁵ See *supra*, para. 482.

¹⁸¹⁶ See *supra*, paras 484-485.

¹⁸¹⁷ See *supra*, para. 483.

¹⁸¹⁸ See *supra*, para. 487.

¹⁸¹⁹ See *supra*, para. 490.

in the conditions described above and the beatings inflicted during this period were carried out with the intent to punish Witness 6.

494. Finally, as torture and cruel treatment are charged as a violation of the laws or customs of war, to meet the general requirements of Article 3 of the Statute, it is necessary that the victim was taking no active part in the hostilities and that there was a nexus between the acts of the perpetrators and the armed conflict. The Chamber recalls that at the time of his detention Witness 6 was travelling with his family, including five children, and Witness 6's evidence that at the time of the events he was a farmer.¹⁸²⁰ The acts of torture and cruel treatment against Witness 6 took place while he was in detention. He was taking no active part in the hostilities. Further, considering that the perpetrators were KLA soldiers participating in the conflict, that they accused Witness 6 of spying for their enemy, and that the victim was held in their custody in a KLA compound, the Chamber is satisfied that the requisite nexus is established and that the general requirements of Article 3 are fulfilled.

495. For the foregoing reasons and leaving aside for present purposes the question of the individual criminal responsibility of the Accused the Chamber is satisfied that Count 3 is established.

5. Count 4

(a) Allegations in the Indictment

496. It is alleged in the Indictment that on or about 13 June 1998, Nenad Remištar, a Serbian police officer, was stopped by KLA soldiers at a KLA checkpoint on the Gjakovë/Đakovica—Klinë/Klina road and taken to the KLA compound in Jabllanicë/Jablanica, where, upon his arrival he was beaten severely with baseball bats by KLA soldiers, including Nazmi Brahimaj.¹⁸²¹ It is alleged further that on or about 14 June 1998, Nenad Remištar was taken from the KLA compound in Jabllanicë/Jablanica and was killed while in KLA custody.¹⁸²²

497. The Indictment alleges further that between mid-June 1998 and the end of July 1998, an unknown individual of Bosnian ethnicity and three unknown individuals of Montenegrin ethnicity were brought to the KLA compound in Jabllanicë/Jablanica, where they were detained for about three days and were severely beaten with baseball bats and stabbed with knives by KLA soldiers. It

¹⁸²⁰ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5352.

¹⁸²¹ Indictment, para. 53.

¹⁸²² Indictment, para. 54.

is alleged that the individuals of Bosnian and Montenegrin ethnicity were then taken from the KLA compound in Jabllanicë/Jablanica by KLA soldiers.¹⁸²³

498. These allegations support the charges in Count 4, of murder, cruel treatment, and torture, charged as a violation of the laws or customs of war against all three Accused on the basis of their alleged participation in the joint criminal enterprise alleged in the Indictment.

(b) Findings

499. Nenad Remištar was born in the village of Binxhë/Biça in Klinë/Klina municipality on 4 February 1969. In 1998 he lived in Binxhë/Biça.¹⁸²⁴ He worked as a traffic police officer in the SUP Gjakovë/Đakovica.¹⁸²⁵ Since March or April 1998, it became dangerous for him to take the Gjakovë/Đakovica—Klinë/Klina road every evening and for security reasons, he would stay in Gjakovë/Đakovica for four or five days before returning to his home in Binxhë/Biça.¹⁸²⁶

500. On 13 June 1998 around 1330 hours Nenad Remištar left his home in Binxhë/Biça for a shift from 1700 hours to midnight that day. He left alone in his car, a blue Opel Kadett 1300, license plates DJ-2711.¹⁸²⁷ He was dressed in civilian clothes, a short sleeved shirt, chequered blue, green, and yellow in colour, dark blue jeans, black leather belt, and black leather shoes with laces.¹⁸²⁸ Nenad Remištar was approximately 168 centimetres tall, he had short light brown to blond hair, blue eyes and no facial hair.¹⁸²⁹

501. A few days passed without Nenad Remištar's relatives receiving any news from him.¹⁸³⁰ A few days later colleagues of Nenad Remištar inquired about him as he had been absent from work for 10 days.¹⁸³¹ Nenad Remištar's absence from work for 10 days was confirmed by the officer on duty in the SUP Gjakovë/Đakovica.¹⁸³²

502. Nenad Remištar's relatives inquired about his disappearance from Kosovo Albanians from the village of Shtupel/Štupelj in Klinë/Klina municipality.¹⁸³³ Some 20 days after his disappearance, his relatives heard that Nenad Remištar had been kidnapped near the village of Rakovinë/Rakovina on the Klinë/Klina—Gjakovë/Đakovica road together with a Catholic Kosovo

¹⁸²³ Indictment, para. 55.

¹⁸²⁴ Witness 73, Exhibit P109, para. 1; Witness 73, Exhibit P108, para. 1.

¹⁸²⁵ Witness 73, Exhibit P108, para. 3.

¹⁸²⁶ Witness 73, Exhibit P108, para. 3.

¹⁸²⁷ Witness 73, Exhibit P108, para. 4.

¹⁸²⁸ Witness 73, Exhibit P108, para. 5.

¹⁸²⁹ Witness 73, Exhibit P108, para. 15.

¹⁸³⁰ Witness 73, Exhibit P109, paras 6-7; Witness 73, Exhibit P108, paras 6-7.

¹⁸³¹ Witness 73, Exhibit P109, para. 8; Witness 73, Exhibit P108, para. 8.

¹⁸³² Witness 73, Exhibit P109, para. 8; Witness 73, Exhibit P108, para. 8.

¹⁸³³ Witness 73, Exhibit P108, para. 9; Witness 73, Exhibit P109, para. 9.

Albanian from Gjakovë/Đakovica, that they were then imprisoned in Jabllanicë/Jablanica and that the Catholic Kosovo Albanian told this to others. They also heard that the Catholic Kosovo Albanian had been released 15 days later.¹⁸³⁴ Nenad Remištar's relatives were also told that Nenad was protected by Ali Baraba, a KLA soldier who knew him from before.¹⁸³⁵

503. Nenad Remištar's relatives attended the identification of bodies recovered from Lake Radoniq/Radonjić which took place in Gjakovë/Đakovica but were unable to identify any of the pieces of clothes as belonging to Nenad Remištar.¹⁸³⁶ Nenad Remištar's relatives also attended an identification exhibition in Prishtinë/Priština in the winter of "1998" and in Rudar/Rudare in May 2003 but were unable to identify any of the items as belonging to Nenad Remištar.¹⁸³⁷

504. The Chamber recalls its earlier finding that in the afternoon of 13 June 1998 a blue Opel Kadett, with Gjakovë/Đakovica license plates, containing photographs of Nenad, a traffic policeman from the village of Binxhë/Bica, who worked in Gjakovë/Đakovica, arrived close to a location known as Guri-i-Zi or Volljakë/Volujak on the Klinë/Klina—Gjakovë/Đakovica road, driven by KLA soldiers.¹⁸³⁸ The Chamber notes that the description of this vehicle is identical to the description of the vehicle of Nenad Remištar, in which he was last seen, that the vehicle contained photographs of a traffic policeman called Nenad from Binxhë/Bica, that it appeared near the Klinë/Klina—Gjakovë/Đakovica road, which Nenad Remištar was supposed to take on the day of his disappearance, and that this vehicle was seen (without Nenad Remištar) a few hours after Nenad Remištar was last seen. The Chamber concludes from these facts that the blue Opel Kadett driven by KLA soldiers near a location known as Guri-i-Zi or Volljakë/Volujak belonged to Nenad Remištar. While there is no direct evidence as to how the vehicle came to be driven by KLA soldiers the Chamber concludes from the circumstances that between 1330 and 1530 hours on 13 June 1998 Nenad Remištar was removed from his vehicle by KLA soldiers, somewhere on the Klinë/Klina—Gjakovë/Đakovica road.

505. The Chamber recalls further its earlier finding that in the evening hours of 13 June 1998 Nenad, a traffic policeman from the village of Binxhë/Bica, who worked in Gjakovë/Đakovica, was seen in detention in the KLA compound in Jabllanicë/Jablanica.¹⁸³⁹ In the Chamber's finding this was Nenad Remištar. Nenad Remištar spent the night of 13 to 14 June 1998 together with

¹⁸³⁴ Witness 73, Exhibit P109, para. 10; Witness 73, Exhibit P108, para. 10.

¹⁸³⁵ Witness 73, Exhibit P109, para. 11.

¹⁸³⁶ Witness 73, Exhibit P109, para. 14. *See also supra*, para. 334-335.

¹⁸³⁷ Witness 73, Exhibit P109, para. 14.

¹⁸³⁸ *See supra*, para. 479.

¹⁸³⁹ *See supra*, para. 482.

Witness 6, detained in a room along the road in the KLA compound in Jabllanicë/Jablanica.¹⁸⁴⁰ They were tied up with a rope.¹⁸⁴¹ They were both beaten in the same manner and with the same implements, namely they were kicked and punched, beaten on their legs and arms,¹⁸⁴² hit with baseball bats, sticks or fists.¹⁸⁴³ Nenad Remištar was beaten by Nazmi Brahimaj and other soldiers who were taking turns.¹⁸⁴⁴

506. Witness 6 was transferred to the one-storey red brick building in the courtyard of the KLA compound in Jabllanicë/Jablanica on 14 June 1998, the day after his arrival in the KLA compound in Jabllanicë/Jablanica.¹⁸⁴⁵ In the afternoon of that day, two soldiers came and took Nenad away; he was not able to walk and had blood and visible injuries on his body.¹⁸⁴⁶ Witness 6 never saw Nenad Remištar again.¹⁸⁴⁷ Witness 6 testified that after his release he heard from Pavle Zuvčić, a reserve policeman, that Nenad Remištar was killed in Jabllanicë/Jablanica and his body was dumped somewhere in the mountains.¹⁸⁴⁸ It is not known what the basis of this hearsay evidence is. Witness 6 had no personal knowledge of such events.

507. The Prosecution called one further witness to prove the allegations in the Indictment with respect to Nenad Remištar—Witness 81. The Chamber expressed its views about the credibility of Witness 81 earlier in the Judgement. It found Witness 81 to be an unreliable witness. For completeness of the record, the Chamber will briefly review his evidence on this point.

508. Witness 81 testified that, at a time which the Chamber believes is towards the end of June or early July 1998¹⁸⁴⁹ he visited the KLA compound in Jabllanicë/Jablanica. Maxhup took him to the basement where there were two young Serbs, one taller than the other. Witness 81 believed that one of them was blond and Witness 81 believed that he was wearing a “military style uniform”, dark green camouflage colour.¹⁸⁵⁰ Witness 81 testified that they looked badly beaten up and had bruises, and that according to Maxhup and another local soldier, one of them who was called Senad or Nenad, was a police officer.¹⁸⁵¹ Witness 81 testified further that Maxhup asked one of the

¹⁸⁴⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5213-5214, 5316, 5386.

¹⁸⁴¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5210.

¹⁸⁴² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5210-5211, 5351.

¹⁸⁴³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5208, 5210, 5350-5351.

¹⁸⁴⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5211.

¹⁸⁴⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5216, 5316-5317, 5324; Exhibits P88; P89.

¹⁸⁴⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5211, 5317.

¹⁸⁴⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5211.

¹⁸⁴⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5312-5313, 5322-5324, 5304-5305.

¹⁸⁴⁹ Witness 81 testified that the events described below occurred about a month, a month and a half after his second visit to Jabllanicë/Jablanica (Witness 81, T. 1962-1963), which he alleged took place approximately two or three weeks after his first visit (Witness 81, T. 1958), which he said took place in April or May 1998 (Witness 81, T. 1882-1883).

¹⁸⁵⁰ Witness 81, T. 1962-1964.

¹⁸⁵¹ Witness 81, T. 1963-1964.

soldiers to bring the man in uniform to the office, where he started interrogating him.¹⁸⁵² On Witness 81's evidence during the interrogation, Maxhup was hitting the man called Senad or Nenad with a baseball bat all over his body for about 15 to 20 minutes.¹⁸⁵³ The Chamber recalls that at the time of his disappearance Nenad Remištar did not wear a uniform; he wore a chequered shirt in blue, green, and yellow.¹⁸⁵⁴

509. During cross-examination of Witness 81 it became apparent that on this issue too he had changed his account in material aspects. During an interview with the Office of the Prosecutor Witness 81 stated that he did not see any beatings or mistreatment of prisoners on his "second" visit to Jabllanicë/Jablanica and that he did not recall any Serbian police or military officers being imprisoned in Jabllanicë/Jablanica.¹⁸⁵⁵ However, when asked by the Office of the Prosecutor during the same interview whether the name Nenad Remištar meant anything to him, Witness 81 stated that he saw a policeman called Nenad who was kept prisoner in Jabllanicë/Jablanica together with two other police officers and that he witnessed Nenad being beaten by Maxhup with a baseball bat during interrogation.¹⁸⁵⁶ The explanation provided by Witness 81 why he changed his account, namely that he did not want to mention the presence of a police officer in Jabllanicë/Jablanica until he was alone with the OTP officer, the Chamber finds unpersuasive. This explanation was also contradicted by a disclosure letter released by the Office of the Prosecutor in the course of Witness 81's testimony.¹⁸⁵⁷ In conclusion, the Chamber finds the evidence of Witness 81 on this point not reliable. It will give no weight to it.

510. On Witness 6's evidence, about two weeks¹⁸⁵⁸ after his abduction, a Bosnian and three Montenegrins were brought to the KLA compound in Jabllanicë/Jablanica.¹⁸⁵⁹ They all arrived together.¹⁸⁶⁰ Witness 6 did not know their names.¹⁸⁶¹ The four men were detained in the same room with Witness 6 for three or four days.¹⁸⁶² They were beaten with baseball bats and stabbed with knives all over their bodies. The wounds were about one centimetre deep.¹⁸⁶³ They were

¹⁸⁵² Witness 81, T. 1967-1968.

¹⁸⁵³ Witness 81, T. 1969-1970.

¹⁸⁵⁴ *See supra*, para. 500.

¹⁸⁵⁵ Witness 81, T. 2086-2088; Exhibit D201, para. 22.

¹⁸⁵⁶ Witness 81, T. 2086-2088; Exhibit D201, paras 23-24.

¹⁸⁵⁷ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, court session of 24 November 2011, T. 2099-2100.

¹⁸⁵⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5217, 5329. The Chamber notes that during his testimony Witness 6 put this date as three and a half or four weeks (Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227) but in light of his repeated evidence that this happened approximately two weeks after his abduction and the witness's explanation in cross-examination that the reference to three and a half or four weeks was a mistake (Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5387) the Chamber accepts that this occurred at about two weeks after his abduction.

¹⁸⁵⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5217, 5226-5227, 5329, 5387.

¹⁸⁶⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227.

¹⁸⁶¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227.

¹⁸⁶² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227, 5330, 5387.

¹⁸⁶³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5228, 5330-5331.

bleeding and spitting blood.¹⁸⁶⁴ Witness 6, who witnessed the beatings, identified Nazmi Brahimaj and Hamza Brahimaj as being in the room during the beatings¹⁸⁶⁵ but he was not able to identify the people who beat and stabbed the four men with knives.¹⁸⁶⁶

511. Witness 6 heard soldiers saying that the Bosnian was a Muslim; he spoke a little Albanian.¹⁸⁶⁷ During the beatings soldiers accused him of interrupting the power supply and Witness 6 came to know during the beatings that he worked for a company called Elektrokosova in Deçan/Dečani.¹⁸⁶⁸ He was wearing light trousers and a dark light summer shirt.¹⁸⁶⁹ The Montenegrins did not speak any Albanian and Witness 6 did not know anything about them.¹⁸⁷⁰ One of the Montenegrins was older than the others – about 35 or 40 years old and wore a jacket.¹⁸⁷¹

512. Three days later, at about 2200 hours, the Bosnian and the Montenegrins were taken away and Witness 6 never saw them again since.¹⁸⁷²

(c) Conclusion

513. The Chamber is satisfied that on 13 June 1998 Nenad Remištar was taken to the KLA compound in Jabllanicë/Jablanica where he was severely beaten by Nazmi Brahimaj and other KLA soldiers. The Chamber is also satisfied that towards the end of June 1998 one Bosnian man and three Montenegrins were brought to the KLA compound in Jabllanicë/Jablanica where they were beaten and stabbed with knives by KLA soldiers in the presence of Nazmi Brahimaj and Hamza Brahimaj. These events are charged as murder, cruel treatment, and torture. The law on these offences has been set out earlier in this Judgement.¹⁸⁷³ With respect to the charges of torture and cruel treatment of Nenad Remištar the Chamber recalls its earlier findings that Nenad Remištar was detained in the KLA compound in Jabllanicë/Jablanica, tied up with a rope, that he was kicked and punched, and that he was beaten on his legs and arms with baseball bats and sticks by Nazmi Brahimaj and other soldiers.¹⁸⁷⁴ These acts were of the nature to cause Nenad Remištar severe pain and suffering and, in the Chamber's findings, constitute the *actus reus* of both torture and cruel treatment. Considering the manner of the beatings and the nature of the implements used, the Chamber is satisfied that the perpetrators acted with the intent to cause Nenad Remištar severe pain

¹⁸⁶⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5228.

¹⁸⁶⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5228.

¹⁸⁶⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5330-5331.

¹⁸⁶⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227, 5329-5330.

¹⁸⁶⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227, 5329, 5397.

¹⁸⁶⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227.

¹⁸⁷⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227, 5230.

¹⁸⁷¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5227.

¹⁸⁷² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5230.

¹⁸⁷³ See *supra*, paras 416-427.

¹⁸⁷⁴ See *supra*, para. 505.

and suffering. With respect to the special intent required for the offence of torture, the Chamber notes that Nenad Remištar was a Kosovo Serb affiliated with the MUP, which was part of the Serbian forces, one of the parties to the armed conflict. The Chamber infers from these facts that his beatings were carried out with the intent to punish him or to discriminate against him.

514. The Prosecution presented no evidence about the death of Nenad Remištar or the circumstances of his killing. The Chamber recalls that on 14 June 1998 Nenad Remištar was taken away from the room where he was detained in the KLA compound in Jabllanicë/Jablanica. His body has not been found. In the absence of any evidence about the events that followed his removal from the room in the KLA compound in Jabllanicë/Jablanica the Chamber does not conclude beyond reasonable doubt that Nenad Remištar is dead or that he died in the circumstances alleged in the Indictment.

515. With respect to the allegations in the Indictment concerning an unknown individual of Bosnian ethnicity and the three unknown individuals of Montenegrin ethnicity, the Chamber recalls its finding that an unidentified man of Bosnian ethnicity and three unidentified men of Montenegrin ethnicity were detained in the KLA compound in Jabllanicë/Jablanica for three to four days during which time they were beaten with baseball bats and stabbed with knives.¹⁸⁷⁵ The Chamber is satisfied that these acts constitute the *actus reus* of cruel treatment and torture and that they were carried out with the requisite intent for cruel treatment. With respect to the special purpose required for torture the Chamber recalls that the Bosnian man was accused of interrupting the electricity supply and accepts on this basis that the beatings were carried out with the intent to punish him. In the absence of any evidence that the beatings of the three Montenegrin men were inflicted with the intent to punish them or discriminate against them the Chamber concludes that the allegations of torture with respect to them have not been established.

516. Finally, with respect to the general requirement of Article 3 of the Statute that the victims were taking no active part in the hostilities, the Chamber recalls that at the time of the acts of torture and cruel treatment Nenad Remištar, the unknown Bosnian man and the three unknown Montenegrin men were in detention and, therefore, were taking no active part in the hostilities. With respect to the required nexus, the Chamber recalls that the perpetrators were soldiers participating in the armed conflict and that the victims were in their custody. The Chamber accepts on this basis that the general requirements of Article 3 are satisfied.

517. On the basis of the findings made above and leaving aside for the present the question of the individual criminal responsibility of the Accused, the Chamber finds that the charges of torture and

cruel treatment of Nenad Remištar, the charges of torture and cruel treatment of the one unknown Bosnian man and the charge of cruel treatment of the three unknown Montenegrin men, supporting Count 4 are established.

6. Count 5

(a) Allegations in the Indictment

518. The Indictment alleges that on or about 10 July 1998 Pal Krasniqi, a Catholic Kosovo Albanian, went to the KLA compound in Jabllanicë/Jablanica to join the KLA. It is further alleged that he remained at the KLA compound in Jabllanicë/Jablanica for a few days until he was arrested as a spy and was beaten severely with baseball bats until he made a false confession. It is alleged that he was last seen alive on or about 26 July 1998 at the KLA compound in Jabllanicë/Jablanica and that he was killed while in KLA custody.¹⁸⁷⁶

519. The Indictment alleges further that on or about 11 July 1998, Skender Kuçi, a Kosovo Albanian, was abducted by KLA soldiers from his shop in Zahaq/Zahać and taken to the KLA compound in Jabllanicë/Jablanica where KLA soldiers beat him severely with sticks and iron bars. It is alleged that on 16 July 1998 Skender Kuçi was transferred to a KLA medical facility in Irzniq/Rznić where he died. According to the allegations in the Indictment, his kidney had been exposed through an open wound as a result of the beatings. It is alleged that his body was buried by KLA soldiers in Jabllanicë/Jablanica and that later, on instructions of Ramush Haradinaj, his remains were exhumed and given to his family.¹⁸⁷⁷

520. Further, it is alleged that on or about 13 July 1998, Lahi Brahimag asked Witness 3, a Kosovo Albanian who had refused to fight for the KLA, to accompany him to the KLA compound in Jabllanicë/Jablanica where he detained him “with two other men”.¹⁸⁷⁸ It is alleged that between 13 and 16 July 1998 KLA soldiers, including Naser Brahimag and Nazmi Brahimag repeatedly beat the two other men, and that the three men were interrogated. It is further alleged that on or about 16 July 1998 Lahi Brahimag invited two female KLA soldiers to beat Witness 3. Lahi Brahimag and Idriz Balaj encouraged the beatings and Idriz Balaj accused Witness 3 of being a spy. It is alleged that Witness 3 subsequently escaped. It is alleged further that Lahi Brahimag abducted Witness 3 again in late July 1998, that he took him to Lahi Brahimag’s house, where he beat him. Then Lahi Brahimag took Witness 3 to the KLA compound in Jabllanicë/Jablanica where he interrogated and beat him. Further it is alleged that Lahi Brahimag then took Witness 3 to the KLA headquarters in

¹⁸⁷⁵ See *supra*, para. 510.

¹⁸⁷⁶ Indictment, paras 56-57.

¹⁸⁷⁷ Indictment, paras 58-59.

Glllogjan/Glodane, where the KLA military police beat him and that Ramush Haradinaj subsequently released Witness 3 from KLA custody.¹⁸⁷⁹

521. It is alleged by the Prosecution that the above allegations support a charge of murder, cruel treatment, and torture, as violations of the laws or customs of war, charged against Ramush Haradinaj and Idriz Balaj on the basis of their alleged participation in the joint criminal enterprise alleged in the Indictment.

522. The Trial Chamber in the original *Haradinaj* trial found that Lahi Brahimag committed cruel treatment and torture against Witness 3 and on this basis found Lahi Brahimag guilty of Count 32 of the original indictment which contained essentially the same allegations as Count 5 of the present Indictment.¹⁸⁸⁰ This finding was confirmed on appeal. Count 5 of the present Indictment is not charged against Lahi Brahimag.

(b) Findings

(i) Detention of Pal Krasniqi, Skender Kuçi and Witness 3

523. Pal Krasniqi was a Catholic Kosovo Albanian who in 1998 was residing with his family in the town of Pejë/Peć.¹⁸⁸¹ In 1998 he was approximately 20 years old.¹⁸⁸²

524. On 10 July 1998 Pal Krasniqi left his home in Pejë/Peć with a friend, Mahir Demaj, to join the KLA.¹⁸⁸³ Pal Krasniqi was wearing “trainers”, blue sports trousers, and a T-shirt with stripes.¹⁸⁸⁴ They first went towards Klinë/Klina to visit Pal Krasniqi’s mother.¹⁸⁸⁵ On their way from Trëstenik/Trstenik to Krushevë/Kruševo they were stopped by a group of armed Kosovo Serb civilians who called the Serbian police. The police arrived shortly thereafter and started beating Pal Krasniqi and Mahir Demaj. The two men were brought to the police station in Klinë/Klina, where they were interrogated and beaten by the police. They were asked questions about who they were

¹⁸⁷⁸ Indictment, para. 60.

¹⁸⁷⁹ Indictment, paras 60-63.

¹⁸⁸⁰ *Haradinaj* Trial Judgement, para. 451

¹⁸⁸¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5238; Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4768.

¹⁸⁸² Ded Krasniqi, Exhibit P51 (*Haradinaj* original transcript), T. 4794.

¹⁸⁸³ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4768-4769; Mahir Demaj, Exhibit P24, para. 4.

¹⁸⁸⁴ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4787.

¹⁸⁸⁵ On the evidence of Ded Krasniqi, Pal Krasniqi’s father, they were supposed to go to Jabllanicë/Jablanica, after first collecting Ded Krasniqi’s wife in Klinë/Klina and bringing her to Pejë/Peć, Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4769-4770. Mahir Demaj testified that they were intending to go to Krushevë/Kruševo, near Klinë/Klina because Pal Krasniqi wanted to spend the night at his mother’s place, Mahir Demaj, Exhibit P24, para. 5.

and where they were going.¹⁸⁸⁶ On the evidence of Mahir Demaj, around midnight Pal Krasniqi and Mahir Demaj were allowed to leave the police station.¹⁸⁸⁷

525. On Mahir Demaj's evidence, the two men hid in a house, because they believed that the police were searching for them. They were eventually discovered by the police and put into a police vehicle which was travelling in the direction of Pejë/Peć. However, for reasons which the witness could not explain, the police vehicle returned to Klinë/Klina where the two men were released. After being released Pal Krasniqi and Mahir Demaj headed towards the church in the direction of Zllaqkan/Zlokuçane in Klinë/Klina municipality.¹⁸⁸⁸ They went inside the church and waited there. They heard sporadic shots fired by the police. At about 0400 hours Pal Krasniqi told Mahir Demaj that a police officer had ordered them to report at the police station at 0800 hours.¹⁸⁸⁹ The two men did not report to the police as ordered and instead went to the post office from where they called Pal Krasniqi's father, Ded Krasniqi, and after that continued to the village of Jabllanicë/Jablanica in Gjakovë/Đakovica municipality.¹⁸⁹⁰ This evidence is partly consistent with the evidence of Ded Krasniqi who testified that at about 0600 hours, on the day after Pal Krasniqi left, he called him from Klinë/Klina and told him that he and Mahir had been apprehended at a police checkpoint at Krushevë-e-Madhe/Veliko Kruševo and taken to Klinë/Klina.¹⁸⁹¹ On Ded Krasniqi's evidence, during the telephone conversation in the morning hours of 11 July 1998, Pal Krasniqi asked him for help but he answered that he could not help because the police were also looking for him.¹⁸⁹² Further, on Ded Krasniqi's evidence, during this conversation Pal Krasniqi told him that he was calling from the church. Ded Krasniqi told Pal to go and join the KLA as discussed prior to his departure.¹⁸⁹³

526. Not all of the evidence discussed in the preceding paragraph is consistent. Having carefully considered this evidence the Chamber accepts and finds that on 10 July 1998 Pal Krasniqi and Mahir Demaj left Pejë/Peć to join the KLA, that later that day they were detained at the Serbian police station in Klinë/Klina where they were interrogated and beaten and that on the following day,

¹⁸⁸⁶ Mahir Demaj, Exhibit P24, para. 5.

¹⁸⁸⁷ Mahir Demaj, Exhibit P24, para. 6.

¹⁸⁸⁸ Mahir Demaj, Exhibit P24, para. 6.

¹⁸⁸⁹ Mahir Demaj, Exhibit P24, para. 7.

¹⁸⁹⁰ Mahir Demaj, Exhibit P24, para. 8. In Grabanicë/Grabanica, the two men met a group of Kosovo Albanians who "seemed to be KLA village guards", armed but in civilian clothes, who showed them the way to Jabllanicë/Jablanica, Mahir Demaj, Exhibit P24, para. 8.

¹⁸⁹¹ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4770. According to the witness, Mahir later told him that Pal Krasniqi was beaten less than Mahir because a Serbian officer intervened on his behalf, Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4833-4834.

¹⁸⁹² Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4770, 4825-4828. On his evidence this appears to have been in relation to an unrelated incident in the past.

¹⁸⁹³ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4770-4771.

11 July they were able to continue their journey. They arrived in the village of Jabllanicë/Jablanica on 11 July 1998.

527. On their arrival in Jabllanicë/Jablanica, Pal Krasniqi and Mahir Demaj were brought to an improvised hospital in a private two-storey house where injured soldiers were being treated. Mahir Demaj and Pal Krasniqi told the doctor and others, including two KLA soldiers, about their beatings. On the following morning Mahir Demaj joined a group of men who were heading towards Junik to collect weapons. Pal Krasniqi stayed in Jabllanicë/Jablanica.¹⁸⁹⁴

528. In 1998 Skender Kuçi lived in the village of Lutogllavë/Ljutoglava in Pejë/Peć municipality with his wife and three sons. He owned a shop for agricultural fertilisers in the nearby village of Zahaq/Zahać in the same municipality. In 1998 he was approximately 45 years old.¹⁸⁹⁵

529. On an unspecified day in July 1998 at noon Qerim Kuçi visited Skender Kuçi at his shop in Zahaq/Zahać. Some 10 minutes after Qerim Kuçi entered the shop a car arrived and two men went into the shop. They were wearing civilian clothes and military style camouflage jackets.¹⁸⁹⁶ They had masks, in black and red colour.¹⁸⁹⁷ There were no insignia on their clothes or masks.¹⁸⁹⁸ The two men were armed with automatic weapons.¹⁸⁹⁹ They shouted in the Serbian language “Hands up!” pointing their weapons to Qerim and Skender Kuçi. They then searched Qerim Kuçi’s pockets and took Skender Kuçi outside to the garage, where Skender’s car, a Mercedes, was parked.¹⁹⁰⁰ Two or three minutes later, Qerim Kuçi saw Skender’s car leaving, driven by Skender with one of the two men in it. The car in which the two men had arrived followed, driven by the other man.¹⁹⁰¹ The two cars went in the direction of Klinë/Klina.¹⁹⁰²

530. The Chamber found earlier that Witness 6 was detained in the KLA compound in Jabllanicë/Jablanica from 13 June to 25 July 1998 and that from approximately 11 July 1998 until his release on 25 July 1998 he had more freedom to move about in the compound.¹⁹⁰³ Two or three days after Witness 6’s conditions of detention changed, in the Chamber’s finding, on approximately 13 or 14 July 1998, Witness 6 observed the arrival of a metallic colour Mercedes 190 in the KLA compound in Jabllanicë/Jablanica. A man, who, Witness 6 found out later, was a

¹⁸⁹⁴ Mahir Demaj, Exhibit P24, paras 10-14.

¹⁸⁹⁵ Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 9990.

¹⁸⁹⁶ Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 9991, 10002-10003.

¹⁸⁹⁷ Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 9998.

¹⁸⁹⁸ Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 10003.

¹⁸⁹⁹ Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 9999.

¹⁹⁰⁰ Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 9999-10001, 10005.

¹⁹⁰¹ Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 10000-10001.

¹⁹⁰² Qerim Kuçi, Exhibit P68 (*Haradinaj* original transcript), T. 10002.

¹⁹⁰³ See *supra*, para. 486.

Kosovo Albanian Muslim from Zahaq/Zahać was brought out of the boot of the car and was beaten in the yard.¹⁹⁰⁴ After that the Kosovo Albanian man from Zahaq/Zahać was brought to the room opposite Witness 6's room and was beaten there.¹⁹⁰⁵ Nazmi Brahimaj and Hamza Brahimaj participated in beatings.¹⁹⁰⁶ Lahi Brahimaj was present during the beatings.¹⁹⁰⁷

531. On the following day, in the Chamber's finding, on approximately 14 or 15 July 1998, Witness 6 saw a man, who, he learned later was Pal Krasniqi from Pejë/Pec, being brought to the KLA compound in Jabllanicë/Jablanica. Pal Krasniqi was brought to the same room as the Kosovo Albanian man from Zahaq/Zahać.¹⁹⁰⁸ Pal Krasniqi was wearing sports clothes, a track suit with a white stripe on the side with some buttons.¹⁹⁰⁹ As the Chamber found earlier, Pal Krasniqi arrived in Jabllanicë/Jablanica on 11 July 1998 with the intention of joining the KLA.¹⁹¹⁰

532. A few hours after Pal Krasniqi was brought in on approximately 14 or 15 July 1998, Witness 6 saw a third man being brought to the same room in the KLA compound in Jabllanicë/Jablanica.¹⁹¹¹ On the basis of Witness 6's description and Witness 3's evidence discussed below, the Chamber concludes that this man was Witness 3.

533. Witness 3 gave evidence that on an unspecified day in June or July 1998 Lahi Brahimaj arrived at the house where Witness 3 was staying and asked for Witness 3. Lahi Brahimaj said that he wanted Witness 3 to become one of his soldiers.¹⁹¹² Witness 3 left with Lahi Brahimaj. In the car, a Mercedes Benz which, Witness 3 found out later, belonged to Skender Kuçi, Lahi Brahimaj asked Witness 3 about his Kalashnikov. He then took Witness 3 to the KLA compound in Jabllanicë/Jablanica.¹⁹¹³ Upon Witness 3's arrival, Lahi Brahimaj led him inside the compound to a detention room. Lahi Brahimaj then left. Two men were already detained in the room. Witness 3 knew one of them from before, this was Skender Kuçi, who used to be Witness 3's teacher in primary school.¹⁹¹⁴ The other man Witness 3 did not know at the time but he found out after the war that his name was Pal Krasniqi.¹⁹¹⁵

¹⁹⁰⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5231-5232, 5388-5389, 5391; Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5395.

¹⁹⁰⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5232, 5335; Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5395.

¹⁹⁰⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5232, 5337-5338.

¹⁹⁰⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5338.

¹⁹⁰⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5235-5236, 5334-5335, 5388-5389. See Confidential Annex.

¹⁹⁰⁹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5247.

¹⁹¹⁰ See *supra*, para. 526.

¹⁹¹¹ See Confidential Annex.

¹⁹¹² Witness 3, T. 1538-1539.

¹⁹¹³ Witness 3, T. 1539-1543; Exhibit P60.

¹⁹¹⁴ Witness 3, T. 1544-1545.

¹⁹¹⁵ Witness 3, T. 1550, 1558.

534. The Chamber accepts this evidence and finds that the Kosovo Albanian man whom Witness 6 saw being brought to the KLA compound in Jabllanicë/Jablanica on approximately 13 or 14 July 1998 in a metallic coloured Mercedes car was Skender Kuçi. In the Chamber's findings Skender Kuçi was brought to the KLA compound in Jabllanicë/Jablanica in the boot of his car, a Mercedes and was detained in a room in the one-storey red brick rectangular building in the courtyard of the compound. He was beaten on his arrival in the courtyard and in this room by KLA soldiers, including by Nazmi Brahimaj and Hamza Brahimaj in the presence of Lahi Brahimaj. The Chamber finds further that on the following day, *i.e.* on approximately 14 or 15 July 1998, Pal Krasniqi who had left his home in Pejë/Peć on 10 July 1998, was brought to the KLA compound in Jabllanicë/Jablanica and detained in the room with Skender Kuçi. A few hours later on the same day Witness 3 was brought by Lahi Brahimaj to the KLA compound in Jabllanicë/Jablanica and was detained in the same room with Skender Kuçi and Pal Krasniqi.

535. Witness 3 testified that shortly after he entered the room, he was suddenly beaten with baseball bats by four or five persons in uniform. No questions were asked of Witness 3 during the beating. Witness 3 pushed one or two of the men in an effort to defend himself. Witness 3 then lost consciousness. After he regained consciousness, Witness 3 found that his body was completely bruised and swollen. He could not stand upright to go to urinate. One of the men in the KLA compound in Jabllanicë/Jablanica told him to urinate in his pants.¹⁹¹⁶ Shortly after Witness 3 had regained consciousness, Pal Krasniqi told Witness 3 to accept what he had done because Pal Krasniqi would otherwise "kill" him.¹⁹¹⁷ Witness 3 thought that Pal Krasniqi had lost his mind.¹⁹¹⁸ Naser Brahimaj then came to ask Witness 3 what had happened. Witness 3 explained to him what Pal Krasniqi had said and Naser Brahimaj then proceeded to beat Pal Krasniqi "many times" with a baseball bat. Pal Krasniqi lost consciousness because he was hit on the head repeatedly.¹⁹¹⁹

536. This evidence of Witness 3 is contradicted in part by the evidence of Witness 6, who testified that Witness 3 was not beaten because he had relatives who intervened.¹⁹²⁰ The Chamber notes that Witness 6 was not detained in the same room as Witness 3, Skender Kuçi and Pal Krasniqi. He spent the nights in a room opposite the room where they were detained but by the time they were brought in he had the freedom to move about the compound and spent a lot of time in the kitchen.¹⁹²¹ Witness 6 had the opportunity to observe the condition of the prisoners in this room while bringing them water and bread, but he testified that he would leave the water inside the

¹⁹¹⁶ Witness 3, T. 1546-1548.

¹⁹¹⁷ Witness 3, T. 1549-1551, 1555.

¹⁹¹⁸ Witness 3, T. 1555-1556.

¹⁹¹⁹ Witness 3, T. 1549-1551, 1555.

¹⁹²⁰ See Confidential Annex.

¹⁹²¹ See *supra*, para. 486.

room, close to the door and he would not enter the room.¹⁹²² The Chamber accepts, therefore, that Witness 6 was not in a position to observe all events that took place in the room where Skender Kuçi, Pal Krasniqi and Witness 3 were detained. It accepts Witness 3's evidence of his beatings. The Chamber notes further that Lahi Brahimag was convicted for his role in this event and will not discuss this matter further.

537. Naser Brahimag beat Skender Kuçi five or six times per day.¹⁹²³ Skender Kuçi told Witness 3 that he was being treated that way because he had a lot of money.¹⁹²⁴ One night Nazmi Brahimag came and kicked each detainee once.¹⁹²⁵

538. During the night the three men had their hands tied behind their backs and their ankles were bound.¹⁹²⁶ However, the men were able to move about because there was some free rope, approximately a metre, left.¹⁹²⁷ During the day the men were untied.¹⁹²⁸ They were given little or no food.¹⁹²⁹

539. Pal Krasniqi and Skender Kuçi were in a very bad condition. Witness 3 described their state as follows: "I never saw anyone in a worse condition. I have seen people dead, killed during the war. But people reduced to that plight I had never seen before. In a very, very bad condition".¹⁹³⁰ During the beatings of Pal Krasniqi Witness 3 heard one of the KLA soldiers say that a Serbian officer from Klinë/Klina had sent Pal Krasniqi to Jabllanicë/Jablanica to find out about the munitions and the number of soldiers.¹⁹³¹ Pal Krasniqi was "swollen all over", could not stand up and smelled bad. He did his bodily functions in his pants.¹⁹³² Skender Kuçi was in "a worse situation". "He was black, bruised up all over on one part of his face. [...] When he breathed, he made a strong noise. He screamed because of the pain".¹⁹³³

540. Witness 6 provided a similar description. On his evidence, Skender Kuçi was in a critical condition, lying on the ground with his eyes closed. His body was swollen.¹⁹³⁴ Pal Krasniqi, who

¹⁹²² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5336-5337.

¹⁹²³ Witness 3, T. 1552.

¹⁹²⁴ Witness 3, T. 1563.

¹⁹²⁵ Witness 3, T. 1571.

¹⁹²⁶ Witness 3, T. 1553.

¹⁹²⁷ Witness 3, T. 1553-1554.

¹⁹²⁸ Witness 3, T. 1554.

¹⁹²⁹ Witness 3, T. 1563-1564.

¹⁹³⁰ Witness 3, T. 1545.

¹⁹³¹ Witness 3, T. 1553.

¹⁹³² Witness 3, T. 1551.

¹⁹³³ Witness 3, T. 1551-1552, 1564.

¹⁹³⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5237, 5337.

himself was also in a critical condition, helped Skender Kuçi to drink water.¹⁹³⁵ Witness 6 saw Pal Krasniqi being beaten with a baseball bat.¹⁹³⁶

541. On the third day of Witness 3's detention, in the Chamber's finding on approximately 15 or 16 July 1998, Witness 3 was brought to the room that was adjacent to the room where Witness 3 was detained before. Lahi Brahimaj was there with two women and a man, all of whom were wearing black uniforms. Witness 3 did not recall whether the women had badges or insignia on their uniform, whereas the man had a "PU" patch on his arm.¹⁹³⁷ Lahi Brahimaj asked Witness 3 how the Serbian forces entered the village of Gjurgjevik-i-Madh/Veliki Đurdevik to which Witness 3 responded that he was never in this village and that he was in Gjurgjevik-i-Vogël/Mali Đurdevik.¹⁹³⁸ Witness 3 assumed that the KLA soldiers believed that someone had seen him entering the village of Gjurgjevik-i-Madh/Veliki Đurdevik on top of a Serbian tank.¹⁹³⁹ Lahi Brahimaj then asked the two women whether they wanted to practice beating on Witness 3 with batons, which they proceeded to do for five or 10 minutes.¹⁹⁴⁰ He also tendered his gun to Witness 3 and told him to kill himself because Lahi Brahimaj did not want to smear his hands with Witness 3's blood. The other man in the room told Witness 3 that he and Lahi Brahimaj were going to Glogjan/Glodane and that, if Witness 3 did not confess upon their return, he would slash his throat. Witness 3 was then returned to the detention room.¹⁹⁴¹

542. Witness 3 testified that he then decided to escape because he expected to be killed after Lahi Brahimaj and the other man returned. He told Skender Kuçi and Pal Krasniqi that he intended to escape and that they could come along if they wanted. There was a window in the room, which had not been properly framed and was tied with some wires. Witness 3 removed the window, went outside, and started running towards the woods and past a stream.¹⁹⁴² It was about 1300 hours.¹⁹⁴³ Witness 3 was fired upon and Witness 3 saw that Skender Kuçi had not made it past the stream. Skender Kuçi, who was more gravely injured than Witness 3, was not able to run or to walk on his feet so he had been crawling away.¹⁹⁴⁴ Witness 6, who was observing the events from the kitchen, saw Witness 3 opening the window and helping Skender Kuçi and Pal Krasniqi get out through the

¹⁹³⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5235, 5336-5337.

¹⁹³⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5235.

¹⁹³⁷ Witness 3, T. 1564-1567; Exhibit P407.

¹⁹³⁸ Witness 3, T. 1566-1568.

¹⁹³⁹ Witness 3, T. 1571-1572.

¹⁹⁴⁰ Witness 3, T. 1566, 1570.

¹⁹⁴¹ Witness 3, T. 1567-1568, 1570, 1707.

¹⁹⁴² Witness 3, T. 1570-1571.

¹⁹⁴³ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5237.

¹⁹⁴⁴ Witness 3, T. 1571.

window.¹⁹⁴⁵ Pal Krasniqi was also not able to run due to injuries and the two of them were caught.¹⁹⁴⁶

543. Witness 6 saw Hamza Brahimaj and other soldiers “beat and torture” Skender Kuçi and Pal Krasniqi in the meadows. The two men were then dragged to the detention room where they were “tortured” and the beatings continued.¹⁹⁴⁷ Witness 6 heard that Skender Kuçi was taken to the hospital in Gllogjan/Glodane in Deçan/Dečani on the day after his attempted escape.¹⁹⁴⁸

544. There is an inconsistency between the evidence of Witness 6 and Witness 3 as to the day of the attempted escape. Witness 3 testified that he thought he spent two nights and three days at the KLA compound in Jabllanicë/Jablanica,¹⁹⁴⁹ before he tried to escape, whereas Witness 6 testified that the attempted escape took place on the day Pal Krasniqi and Witness 3 were brought in.¹⁹⁵⁰ The Chamber accepts that not all details in their recollections may be clear and accurate because of the passage of time. While the Chamber finds both Witness 6 and Witness 3 credible witnesses, it notes that Witness 3 took direct part in the events described and accepts that he would remember the details of these events more clearly. The Chamber, therefore, accepts Witness 3’s evidence that the attempted escape took place on the third day after his and Pal Krasniqi’s detention at the KLA compound in Jabllanicë/Jablanica, *i.e.* on 15 or 16 July 1998.

545. Shefqet Kabashi also gave evidence about Skender Kuçi’s and Pal Krasniqi’s detention at the KLA compound in Jabllanicë/Jablanica. He testified in the *Limaj* trial that in the beginning of July or in mid July 1998 he saw Pal Krasniqi, who, Shefqet Kabashi said was from Klinë/Klina and Skender Kuçi from a village close to his,¹⁹⁵¹ in the KLA compound in Jabllanicë/Jablanica.¹⁹⁵² Lahi Brahimaj asked Shefqet Kabashi whether he knew the two men, referring to one of them as Shefqet Kabashi’s neighbour, and told him that his neighbour was “a big fish”, meaning a spy, and that he worked for the “Yugoslavia secret services”.¹⁹⁵³ Kabashi asked to talk to Pal Krasniqi because he was a friend of Pal’s brother. Pal Krasniqi told Shefqet Kabashi that he did not know why he was there, that he had come to enlist as a KLA soldier, that he had stayed as a soldier for one week and then he had been suspected of being a spy and was brought there. Kabashi saw that he had been maltreated.¹⁹⁵⁴ Lahi Brahimaj then left together with a KLA soldier called Bandash. Kabashi spoke

¹⁹⁴⁵ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5237-5238, 5338, 5389.

¹⁹⁴⁶ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5237-5238.

¹⁹⁴⁷ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5237, 5239-5240.

¹⁹⁴⁸ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5239-5240, 5341, 5388-5390.

¹⁹⁴⁹ Witness 3, T. 1547.

¹⁹⁵⁰ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5389, *see also* T. 5231, 5239-5240.

¹⁹⁵¹ *See Confidential Annex.*

¹⁹⁵² Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4255.

¹⁹⁵³ Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4255.

¹⁹⁵⁴ Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4255-4256.

to Pal Krasniqi again. Pal Krasniqi told Shefqet Kabashi that he had been maltreated greatly and forced to admit that an inspector for the Serbian (security) services from Pejë/Peć had sent him to get information from the KLA.¹⁹⁵⁵ Kabashi then left the KLA compound in Jabllanicë/Jablanica. When he returned, he found Pal Krasniqi there. Kabashi heard that Skender Kuçi had attempted to run away together with a person, in Kabashi's evidence, called Naser. "Naser" had managed to escape but Skender Kuçi was captured and brought back to the compound.¹⁹⁵⁶

546. Shefqet Kabashi was not cross-examined on this evidence in the *Limaj* trial.¹⁹⁵⁷ The Chamber notes also that the evidence of Shefqet Kabashi in the *Limaj* trial related to the attempted escape is hearsay evidence. The Chamber recalls that when Shefqet Kabashi was asked in this trial about Pal Krasniqi and Skender Kuçi he first stated that he did not see these two men in Jabllanicë/Jablanica,¹⁹⁵⁸ he then testified that he could not answer this question.¹⁹⁵⁹ In his testimony before the Chamber he did not remember any events in Jabllanicë/Jablanica involving these two men.¹⁹⁶⁰ When the transcript of his testimony in the *Limaj* case was shown to him, Shefqet Kabashi confirmed that in the *Limaj* case he referred to Pal Krasniqi and Skender Kuçi. However, he then stated in court that he could not remember when he saw the two men.¹⁹⁶¹ When asked whether in the *Limaj* case he answered the questions put to him to the best of his recollection and ability, he answered that he does not know how good he was at that time and where he stands now and that he could not tell the difference between the situation at the time and the current situation.¹⁹⁶² Taking into account that in the *Limaj* trial Shefqet Kabashi was not cross-examined on any of his evidence in relation to Jabllanicë/Jablanica, that some important portions of Shefqet Kabashi's evidence are hearsay, and considering further Shefqet Kabashi's demeanour before the Chamber, the Chamber is not persuaded that the evidence of Shefqet Kabashi, summarised in the preceding paragraph, is sufficiently reliable. The Chamber, therefore, will give no weight to it.

547. Another witness who gave evidence about the events described above is Witness 80. Witness 80 testified that on an occasion when he was at the KLA compound in Jabllanicë/Jablanica¹⁹⁶³ he saw Witness 3 being beaten personally by Lahi Brahimaj.¹⁹⁶⁴ He testified that Witness 3 was brought to the KLA compound in Jabllanicë/Jablanica in relation to a

¹⁹⁵⁵ Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4256-4257.

¹⁹⁵⁶ Shefqet Kabashi, Exhibit P120 (*Limaj* transcript), T. 4257-4258.

¹⁹⁵⁷ See Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4277, 4298.

¹⁹⁵⁸ Shefqet Kabashi, T. 360.

¹⁹⁵⁹ Shefqet Kabashi, T. 381.

¹⁹⁶⁰ Shefqet Kabashi, T. 381.

¹⁹⁶¹ Shefqet Kabashi, T. 388.

¹⁹⁶² Shefqet Kabashi, T. 425.

¹⁹⁶³ See Confidential Annex.

¹⁹⁶⁴ Witness 80, T. 2353.

weapon.¹⁹⁶⁵ He testified that two females also participated in the beatings of Witness 3.¹⁹⁶⁶ Lahi Brahimaj beat Witness 3 with a stick or a piece of wood and then they took him away. The beatings continued for about 10-15 minutes; Witness 80 saw Witness 3 being beaten only once.¹⁹⁶⁷

548. Witness 80 also testified that he saw Skender Kuçi, who used to be Witness 80's teacher, being beaten at the KLA compound in Jabllanicë/Jablanica.¹⁹⁶⁸ Witness 80 testified that Skender Kuçi arrived in Jabllanicë/Jablanica after Witness 80.¹⁹⁶⁹ Two persons, whom Witness 80 did not know, had abducted Skender Kuçi from his own café in Zahaq/Zahac and Witness 80 saw himself when they brought Skender Kuçi to Jabllanicë/Jablanica in the boot of his own car. Witness 80 testified that after that Lahi Brahimaj and his brother Nazmi Brahimaj accused Skender Kuçi of being a collaborator with the Serbs. Witness 80 testified that then he saw Skender Kuçi being beaten until he lost consciousness. Myftar Brahimaj (Ibrahimi) was most active in the beating. There were other soldiers involved. Lahi Brahimaj also took part in it.¹⁹⁷⁰

549. Witness 80 testified that he saw Skender Kuçi after the beatings and he was in a terrible condition. After the beatings Skender Kuçi was detained "for a long time" in the prison. After that he attempted to flee. On his evidence it was Witness 80 who offered him this possibility. However, Skender Kuçi was caught and brought back to the prison.¹⁹⁷¹ Again, newly recruited young soldiers started beating Skender and Witness 80 saw Skender die as a result of the beatings.¹⁹⁷² On Witness 80's evidence present during the beatings of Skender Kuçi were Commander Uki, Alush Agushi, Lahi Brahimaj, Myftar Brahimaj (Ibrahimi), and Bandash (or Bandashi).¹⁹⁷³ He heard Myftar Brahimaj (Ibrahimi), Nazmi Brahimaj (Ibrahimi) and another person named Ibrahimi saying that they were going to take him to hospital.¹⁹⁷⁴ Witness 80 testified that Lahi Brahimaj (Brahimi), Nazmi Brahimaj (Brahimi), and Myftar Brahimaj (Ibrahimi) were there and gave the order for Skender Kuçi to be taken to the hospital in Irzniq/Rzniç.¹⁹⁷⁵ Witness 80 thought this order was given after Skender was already dead.¹⁹⁷⁶

¹⁹⁶⁵ Witness 80, T. 2353.

¹⁹⁶⁶ Witness 80, T. 2353-2354.

¹⁹⁶⁷ Witness 80, T. 2354.

¹⁹⁶⁸ Witness 80, T. 2354.

¹⁹⁶⁹ Witness 80, T. 2354.

¹⁹⁷⁰ Witness 80, T. 2355-2356.

¹⁹⁷¹ Witness 80, T. 2356.

¹⁹⁷² Witness 80, T. 2356-2357.

¹⁹⁷³ Witness 80, T. 2357.

¹⁹⁷⁴ Witness 80, T. 2366.

¹⁹⁷⁵ Witness 80, T. 2369-2370.

¹⁹⁷⁶ Witness 80, T. 2369, 2357.

550. Witness 80 further testified that the body of Skender Kuçi, without clothes, was lying down on a board moved by some young KLA soldiers.¹⁹⁷⁷ He testified that Myftar Brahimaj (Ibrahimi), Nazmi Brahimaj (Ibrahimi), and “some other Brahimajs” who are no longer alive were there. Skender’s body was all bruised because of the beating. Witness 80 believed that his clothes were torn and his limbs were broken. Witness 80 also believed that he could see some of Skender’s organs.¹⁹⁷⁸

551. Witness 80’s account of these events was challenged in cross-examination. In particular, it was suggested that Witness 80’s description of Skender Kuçi’s body, according to which Skender Kuçi’s kidney was visible from an open wound on his back and his tongue was hanging far from his mouth, provided by Witness 80 in an earlier statement and confirmed by him in court,¹⁹⁷⁹ is unlikely or medically impossible.¹⁹⁸⁰ The medical opinion on which this suggestion was based is not in evidence.

552. Nevertheless, having considered the totality of the evidence, the Chamber does not accept Witness 80’s account of the beatings of Witness 3 and Skender Kuçi as reliable. Witness 80 testified that he saw Witness 3 being beaten by Lahi Brahimaj and that two female soldiers also participated in this beating.¹⁹⁸¹ On Witness 3’s evidence the beatings happened in a room adjacent to the room where he was detained before in the presence of Lahi Brahimaj, two female soldiers and a man, all wearing black uniforms.¹⁹⁸² It is unclear how Witness 80 was able to observe these beatings. Witness 3 does not mention him being present during the beatings. On Witness 80’s evidence, Witness 80 was not a soldier in Jabllanicë/Jablanica, therefore, it is not likely that he would be the soldier in black uniform who Witness 3 saw present at the beatings. In any event, Witness 3 knows Witness 80 and would have recognised him if he had seen him during these events or at any time during his detention. Witness 80’s explanation was that at the time he worked as a cook in the compound. Even if this evidence is accepted, it is unclear why and how Witness 80 who worked as a cook would be present during interrogations and beatings taking place in a room in a different building relatively removed from where he said he worked. The Chamber does not accept that Witness 80 was present during the beatings of Witness 3.

553. Further, while Witness 80 testified that Skender Kuçi attempted to flee, the witness did not provide any of the details, which other witnesses observing this event did. Witness 80 testified that

¹⁹⁷⁷ Witness 80, T. 2368.

¹⁹⁷⁸ Witness 80, T. 2369.

¹⁹⁷⁹ Witness 80, T. 2690-2692.

¹⁹⁸⁰ Witness 80, T. 2692-2696.

¹⁹⁸¹ See *supra*, para. 547.

¹⁹⁸² See *supra*, para. 541.

Skender Kuçi attempted to flee at Witness 80's suggestion. It is unclear how and where Witness 80 was able to make this suggestion to Skender Kuçi. The Chamber found earlier that after Skender Kuçi was brought to the KLA compound in Jabllanicë/Jablanica, he was detained in a room together with Pal Krasniqi and Witness 3.¹⁹⁸³ Skender Kuçi was not able to leave the room. Even if Witness 80's evidence that he worked at the time as a cook is accepted, the Chamber would not be able to accept on this basis that Witness 80 had an opportunity to communicate with Skender Kuçi about his escape. Witness 6, who worked in the kitchen at the time, testified that when he brought water and bread to the three detainees he would go up to the door and that he did not enter the room.¹⁹⁸⁴ Similarly, Witness 80 testified that he saw Skender Kuçi being beaten. It is unclear how he was able to observe the beatings of Skender Kuçi which took place in the room where he was detained. Nothing in the evidence suggests that Witness 80 was in a position to observe this. Witness 80 did not mention Pal Krasniqi in his evidence, even though, as the Chamber found, Pal Krasniqi was detained in the same room with Skender Kuçi and was also in a critical condition. Further, neither Witness 3 nor Witness 6, who, the Chamber found, were in the KLA compound in Jabllanicë/Jablanica and testified to the same events, mentioned seeing Witness 80 in Skender Kuçi's room or elsewhere in the KLA compound in Jabllanicë/Jablanica.

554. In conclusion, the Chamber is not persuaded that Witness 80 was in the KLA compound in Jabllanicë/Jablanica and that he actually observed the beatings of Witness 3 and Skender Kuçi. Consequently, it finds that his evidence on this matter is not reliable. The Chamber is left with the impression that Witness 80 may have retold instead what he might have heard from others.¹⁹⁸⁵ The Chamber rejects this evidence of Witness 80.

¹⁹⁸³ See *supra*, para. 534.

¹⁹⁸⁴ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5337.

¹⁹⁸⁵ See *infra*, paras 606-607.

(ii) Subsequent events

a. Witness 3

555. The Chamber found earlier that on the third day of his detention in the KLA compound in Jabllanicë/Jablanica, *i.e.* on approximately 15 or 16 July 1998, Witness 3 removed the window in the room where he was detained, climbed out of the window and started running.¹⁹⁸⁶ Witness 3 ran through the woods. He was barefoot. He went to a relative's house in the village of Bučan/Bučane where he obtained a pair of shoes. He stayed at another villager's house that night. That villager later said he could not host Witness 3 any longer because Witness 3 was wanted. Witness 3 eventually went back to the village of Jabllanicë/Jablanica to see his personal relations. No explicit explanation for this unusual behaviour is given by the witness. One of these relations offered to let Witness 3 stay at his place, and said that he would talk to Lahi Brahimagj. He later told Witness 3 that he had made an agreement with Lahi Brahimagj that Witness 3's Kalashnikov would be returned and that Witness 3 would be "a free man".¹⁹⁸⁷

556. Several days later Lahi Brahimagj saw Witness 3 in Jabllanicë/Jablanica and started to swear at him, accusing him of being a traitor. Lahi Brahimagj aimed his pistol at Witness 3 and took him to Lahi's home.¹⁹⁸⁸ Once there, Lahi Brahimagj beat Witness 3 and slapped his face. He accused him of being a traitor and berated him for having escaped from the detention facility, referring to it as "the largest prison in Kosovo".¹⁹⁸⁹ Brahimagj further accused Witness 3 of having been paid 10,000 German Marks by Skender Kuçi to help him escape. Witness 3 denied it. One of the women who had beaten Witness 3 in detention was present during these events.¹⁹⁹⁰

557. Lahi Brahimagj then took Witness 3 to the same car he had used to take him to the KLA compound in Jabllanicë/Jablanica before. Witness 3 was made to sit in front while the woman sat behind him, pressing a gun to his neck.¹⁹⁹¹ They drove Witness 3 to a location some five minutes away from the village by car, where Lahi Brahimagj had Witness 3 get out of the car's passenger seat and enter its boot.¹⁹⁹² The car then drove away. At one point, the car stopped, Brahimagj opened the boot, started to swear at Witness 3, took out his gun, pointed it at Witness 3 and pulled the trigger. Smoke came out of the gun and Witness 3 thought that he was wounded but he did not see blood coming out of his body. Brahimagj closed the boot again.¹⁹⁹³ The car drove away and Witness 3

¹⁹⁸⁶ See *supra*, para. 543.

¹⁹⁸⁷ Witness 3, T. 1573-1575.

¹⁹⁸⁸ Witness 3, T. 1576.

¹⁹⁸⁹ Witness 3, T. 1577.

¹⁹⁹⁰ Witness 3, T. 1578, 1705-1706.

¹⁹⁹¹ Witness 3, T. 1579.

¹⁹⁹² Witness 3, T. 1580.

¹⁹⁹³ Witness 3, T. 1581.

found that he had been driven to the village of Gillogjan/Glodane in Deçan/Dečani municipality, which was Ramush Haradinaj's village. Witness 3 was taken to the KLA headquarters at that location.¹⁹⁹⁴

558. At the KLA headquarters, a blond male in a uniform bearing a KLA patch escorted Witness 3 to a room. There were "four or five persons, or 10" in this room. The blond man asked Witness 3 to put his hands on a table and beat Witness 3 on his body as hard as he could for 10-15 minutes while asking him what he had done.¹⁹⁹⁵ There was no one in authority over the blond man.¹⁹⁹⁶ Witness 3 saw stains of blood on the walls. Two young men subsequently entered the room and the beating stopped. The two young men asked the witness what he had been accused of, to which he responded that he did not know. They prevented the blond man from coming back to beat Witness 3 again. They brought cigarettes and matches to Witness 3.¹⁹⁹⁷

559. Witness 3 subsequently met with a person whom he believed was Ramush Haradinaj, because the other soldiers addressed him as "the commander".¹⁹⁹⁸ After the war, he was told it was Ramush Haradinaj. He did not know who Ramush Haradinaj was at the time.¹⁹⁹⁹ That commander asked Witness 3 who had brought him to that facility. Witness 3 said that it was Lahi Brahimag.²⁰⁰⁰ The commander seemed angry that Brahimag had done so.²⁰⁰¹ The commander gave Witness 3 bread and took him away from the room.²⁰⁰² The commander asked him if he had anywhere to stay in the village.²⁰⁰³ After Witness 3 answered that he did not, the commander took him to another room where soldiers used to sleep.²⁰⁰⁴ The commander advised Witness 3 to sleep away from the window to protect himself in case of a shelling.²⁰⁰⁵ The commander added that, if nobody was available to pick up Witness 3 from the facility, the commander would take Witness 3 to Witness 3's family.²⁰⁰⁶ But that night Naser Brahimag and Myftar Brahimag came to drive Witness 3 to the house of a relative and the commander said "you are free".²⁰⁰⁷ Haradinaj told him

¹⁹⁹⁴ Witness 3, T. 1582-1583.

¹⁹⁹⁵ Witness 3, T. 1583-1585, 1672.

¹⁹⁹⁶ Witness 3, T. 1672.

¹⁹⁹⁷ Witness 3, T. 1585-1586, 1672-1675.

¹⁹⁹⁸ Witness 3, T. 1586.

¹⁹⁹⁹ Witness 3, T. 1587, 1715.

²⁰⁰⁰ Witness 3, T. 1586, 1679.

²⁰⁰¹ Witness 3, T. 1679-1680.

²⁰⁰² Witness 3, T. 1586, 1683, 1686.

²⁰⁰³ Witness 3, T. 1586.

²⁰⁰⁴ Witness 3, T. 1586, 1686.

²⁰⁰⁵ Witness 3, T. 1586-1587.

²⁰⁰⁶ Witness 3, T. 1587-1588.

²⁰⁰⁷ Witness 3, T. 1587-1588, 1723.

to stay away from what happened and to return to his family.²⁰⁰⁸ Nobody bothered Witness 3 “ever again” after he met with the commander.²⁰⁰⁹

b. Skender Kuçi

560. The Chamber found earlier that on approximately 15 or 16 July 1998 Skender Kuçi attempted to escape from the KLA compound in Jabllanicë/Jablanica but he was caught and severely beaten, following which he was brought to a hospital.²⁰¹⁰ The Chamber would note here that unlike Witness 80, Witness 6 did not provide any physical description of Skender Kuçi at the time. Witness 6 never saw Skender Kuçi after that day. He was informed subsequently by Gani Brahimaj that Skender Kuçi died in the hospital.²⁰¹¹

561. In July 1998, Rustem Tetaj, a KLA commander, was contacted by a man called Jusaj, a friend of Skender Kuçi, in relation to Skender Kuçi’s abduction. Jusaj told Rustem Tetaj that Skender Kuçi had been abducted by the KLA and was being held in Jabllanicë/Jablanica.²⁰¹² Rustem Tetaj contacted Faton Mehmetaj, who told Rustem Tetaj to talk to Ramush Haradinaj. Ramush Haradinaj had no knowledge of these events.²⁰¹³ Rustem Tetaj and Ramush Haradinaj went together to the house of Nazmi Brahimaj in Jabllanicë/Jablanica, where, on Rustem Tetaj’s evidence, the local KLA staff was based.²⁰¹⁴ On arrival they spoke with Nazmi Brahimaj and Ramush Haradinaj told Nazmi Brahimaj that Skender Kuçi should be released immediately.²⁰¹⁵ Rustem Tetaj also heard Ramush Haradinaj tell Nazmi Brahimaj that “no such thing should happen anymore because this is damaging our cause”. Nazmi Brahimaj told them that Skender Kuçi had been slightly injured by one of the soldiers as he was trying to escape and that he would be released as soon as he was well.²⁰¹⁶

562. Witness 80 also gave evidence relevant to the same events. On his evidence Ramush Haradinaj was in the KLA compound in Jabllanicë/Jablanica when Skender Kuçi died.²⁰¹⁷ Ramush Haradinaj did not see when Skender Kuçi was being beaten but he saw the condition Skender Kuçi’s body was in.²⁰¹⁸ Witness 80 testified that Skender Kuçi’s family came and intervened.²⁰¹⁹

²⁰⁰⁸ Witness 3, T. 1687, 1723.

²⁰⁰⁹ Witness 3, T. 1671, 1688.

²⁰¹⁰ See *supra*, paras 542-543.

²⁰¹¹ Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5231.

²⁰¹² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3680.

²⁰¹³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3680-3682, 3778.

²⁰¹⁴ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3681.

²⁰¹⁵ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3681, 3778, 3852.

²⁰¹⁶ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3682.

²⁰¹⁷ Witness 80, T. 2373-2374.

²⁰¹⁸ Witness 80, T. 2379.

²⁰¹⁹ Witness 80, T. 2375.

Ramush Haradinaj was very concerned about what happened to Skender Kuçi and there was a problem between Ramush Haradinaj and Lahi Brahimaj in relation to what had happened with Skender. Witness 80 heard Haradinaj say: “Why did you do that to him?”²⁰²⁰ For reasons expressed earlier the Chamber rejected Witness 80’s evidence in relation to the detention of Skender Kuçi and Witness 3. The Chamber was not persuaded that Witness 80 was in the KLA compound in Jabllanicë/Jablanica at the time and had personal knowledge of the events he testified about and, accordingly, that his account was reliable. For the same reasons the Chamber rejects Witness 80’s evidence discussed in this paragraph.

563. Three or four days after Ramush Haradinaj told Nazmi Brahimaj to release Skender Kuçi, Ramiz Berisha, a relative of Skender Kuçi, told Rustem Tetaj that Skender Kuçi had still not been released. Rustem Tetaj, Ramush Haradinaj and Ramiz Berisha went back to Jabllanicë/Jablanica. There Nazmi Brahimaj told them that Skender Kuçi had been sent to the makeshift hospital in Irzniq/Rznić but because of the lack of means they had not succeeded in saving his life.²⁰²¹ He was buried in a forest near Jabllanicë/Jablanica.²⁰²² Rustem Tetaj and Ramiz Berisha informed Skender Kuçi’s family.²⁰²³ Ramiz Berisha requested that the body be reburied in the cemetery of the village of Dubovik, Deçan/Dečani municipality; Nazmi Brahimaj agreed.²⁰²⁴

564. A statement to UNMIK of the doctor who treated Skender Kuçi at the military hospital in Irzniq/Rznić is in evidence.²⁰²⁵ According to this evidence, Skender Kuçi was brought to the hospital by a person called “Qergashi” (meaning “gipsy”) and two other persons in military uniforms who left him in front of the hospital door and left. Skender Kuçi was disoriented and in a state of trance. He had no “evident” wounds on his body, but he had signs of kidney failure and his body was bruised and a little swollen, which, according to the statement, might have been caused by “staying in an unsuitable place, staying in humidity, in unsuitable conditions”. The laboratory findings indicated that his kidneys were totally blocked which caused his death. The doctor did not remember who removed Skender Kuçi’s body from the hospital.²⁰²⁶

565. Skender Kuçi’s body was buried at the entrance of Jabllanicë/Jablanica, near the mosque.²⁰²⁷ On an unspecified date, during the night, KLA soldiers, unearthed Skender Kuçi’s body.²⁰²⁸ According to Rustem Tetaj, Skender Kuçi’s body was covered in soil and there were no visible

²⁰²⁰ Witness 80, T. 2380.

²⁰²¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3682-3683, 3779-3780.

²⁰²² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3683, 3780, 3853.

²⁰²³ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3684.

²⁰²⁴ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3853.

²⁰²⁵ Exhibit P82.

²⁰²⁶ Exhibit P82; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3780-3781.

²⁰²⁷ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3686; Exhibit P79.

²⁰²⁸ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3684.

signs of open wounds.²⁰²⁹ A coffin had been prepared and the body was put in it.²⁰³⁰ Skender Kuçi's personal belongings were collected by Rustem Tetaj and Ramiz Berisha from Nazmi Brahima and were given to Skender Kuçi's family.²⁰³¹ Skender Kuçi's car was not returned; it appears on the evidence that it was used in military operations.²⁰³²

566. On 9 March 2004, pursuant to an order of the district court of Pejë/Peć, OMPF officials exhumed the body of Skender Kuçi from the Dubovik cemetery in the presence of his family and an OTP investigator.²⁰³³ The report of the autopsy conducted on 12 April 2004 and subsequently confirmed by the OMPF of UNMIK concluded that the cause of death was unascertained. It was noted in the report, however, that the pattern and the location of the fractures on the sternum and right third rib, "if caused during the peri-mortem interval, [...] would be consistent with anterior compression of the chest caused by a blow, stomping or a similar force".²⁰³⁴

567. The Chamber concludes on the basis of the findings made above and the documentary evidence discussed that Skender Kuçi died in mid July 1998, after his attempted escape from the KLA compound in Jabllanicë/Jablanica, as a result of beatings inflicted on him while in detention at the KLA compound in Jabllanicë/Jablanica.

c. Pal Krasniqi

568. Following the attempted escape on approximately 15 or 16 July 1998 Pal Krasniqi remained in the KLA compound in Jabllanicë/Jablanica. He was in a critical condition. His body was all black and blue from the beatings, it was swollen; there was blood all over him, he was spitting blood.²⁰³⁵ On 25 July 1998 when Witness 6 was released from the KLA compound in Jabllanicë/Jablanica, Pal Krasniqi was still in the compound.²⁰³⁶ On the evidence before the Chamber, this was the last time Pal Krasniqi was seen alive.

569. Ded Krasniqi testified that his nephew Dede, who was a good friend of Pal Krasniqi, informed him that in mid-August 1998 he received a telephone call from Pal Krasniqi. According to Dede, Pal Krasniqi told him that he was in Jabllanicë/Jablanica and claimed to have a lot of money on him.²⁰³⁷ During this telephone conversation Pal arranged to meet Dede in

²⁰²⁹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3782.

²⁰³⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3845.

²⁰³¹ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3853-3854.

²⁰³² Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3854.

²⁰³³ Harjit Sandhu, Exhibit P490, paras 5-13; Exhibit P489, p. 2.

²⁰³⁴ Exhibit P488, pp 4-5.

²⁰³⁵ Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5240.

²⁰³⁶ See *supra*, para. 490; Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5239.

²⁰³⁷ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4818-4821.

Gjakovë/Dakovica but he had not shown up at the meeting. Dede never heard from Pal Krasniqi again.²⁰³⁸

570. On an unspecified day between 10 July 1998 and the end of June 1999²⁰³⁹ Ded Krasniqi and his brother Hil went to Jabllanicë/Jablanica to inquire about Pal Krasniqi. Several soldiers in Jabllanicë/Jablanica had been told that he had been taken from Jabllanicë/Jablanica to either Pejë/Pec or Klinë/Klina.²⁰⁴⁰ Ded Krasniqi believed that the expression “go to Pejë/Pec” meant that the person would not be returning²⁰⁴¹ but there is no evidence before the Chamber to confirm this.

571. In September or October 2000, Ded Krasniqi, in an attempt to locate Pal Krasniqi, went to Jabllanicë/Jablanica where he spoke with Hamez Ukshini, a KLA member whom Ded Krasniqi knew from before.²⁰⁴² Hamez Ukshini kept a notebook of KLA members who came in and out of Jabllanicë/Jablanica and he told Ded Krasniqi that he would look for Pal’s name. Some time later he told Ded Krasniqi that Pal Krasniqi had never been in Jabllanicë/Jablanica.²⁰⁴³

572. Subsequently Ded Krasniqi contacted Alush Agushi, a KLA commander, and met with him in Klinë/Klina.²⁰⁴⁴ Alush Agushi told Ded Krasniqi that Pal Krasniqi had been with the KLA until the Serbian offensive in September 1998. At the time the KLA had been surrounded by the Serbian army and Alush Agushi told his soldiers to go in whatever direction they chose.²⁰⁴⁵ Alush Agushi told Ded Krasniqi that he would get back to him in several weeks but he never did. Ded Krasniqi found out that Alush Agushi had been transferred to Prishtinë/Priština and travelled there to meet him. However, he was not allowed access to Alush Agushi.²⁰⁴⁶

573. In October or November 2000 Witness 6 visited Ded Krasniqi in his village.²⁰⁴⁷ On Ded Krasniqi’s evidence, Witness 6 told him that he had been imprisoned with Pal Krasniqi and that Pal had been mistreated and taken from Jabllanicë/Jablanica.²⁰⁴⁸ The evidence that Witness 6 had told Ded Krasniqi that Pal Krasniqi had been taken from Jabllanicë/Jablanica is hearsay evidence which

²⁰³⁸ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4820.

²⁰³⁹ The witness connected this event to the time the Serbian forces shelled his village. The time of this event is not in evidence but the Chamber notes that the armed conflict in Kosovo ended in June 1999 and accepts that this must have happened before June 1999.

²⁰⁴⁰ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4822-4823, 4825.

²⁰⁴¹ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4823-4825.

²⁰⁴² Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4775-4778, 4801-4802; Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4794-4795.

²⁰⁴³ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4777-4778.

²⁰⁴⁴ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4779-4780.

²⁰⁴⁵ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4783-4784.

²⁰⁴⁶ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4781.

²⁰⁴⁷ Ded Krasniqi, Exhibit P51 (*Haradinaj* original transcript), T. 4790, 4793, 4795; Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5250-5251, 5357-5358.

²⁰⁴⁸ Ded Krasniqi, Exhibit P51 (*Haradinaj* original transcript), T. 4794.

contradicts the direct evidence of Witness 6 before the Tribunal. The Chamber found Witness 6 to be a reliable witness and does not accept Ded Krasniqi's evidence in this respect.

574. Ded Krasniqi made a statement about Pal Krasniqi's disappearance to the ICRC in Krushë-e-Madhe/Velika Kruša.²⁰⁴⁹ It was suggested to Ded Krasniqi that a document of the OMPF of UNMIK dated 3 December 2001 records that Pal Krasniqi was last seen in September 1998 in Napolë/Nepolje in Pejë/Peć municipality. This document is not in evidence and the source of this information is not known.²⁰⁵⁰

575. The Chamber found elsewhere that in mid-September 1998 bodies were discovered at Lake Radoniq/Radonjić.²⁰⁵¹ One of these bodies, initially labelled as "R-9", was subsequently identified through DNA testing, as the body of Pal (Pale) Krasniqi.²⁰⁵² This body was found on 11 September 1998 at the concrete canal leading to Lake Radoniq/Radonjić, partially covered in dirt.²⁰⁵³ While initially there appears to have been a disagreement between the forensic experts as to whether there was damage to the bones caused by gunshot wounds,²⁰⁵⁴ the report of the autopsy performed on 13 September 1998, signed by both forensic experts, found an "entry-exit gunshot wound inflicted by a projectile fired from a small firearm; the entry is behind the left lower jaw angle and the exit in the area of the right parietal bone".²⁰⁵⁵ This autopsy report found that the cause of death could not be established solely on the basis of the autopsy due to the fact that the body was in an advanced stage of putrefaction.²⁰⁵⁶ The Parties have accepted as an agreed fact that an additional autopsy was conducted on the body of Pal Krasniqi by Dr. Gasior at the mortuary at Rahovec/Orahovac on 5 December 2003, which found "skeletonised, disarticulated and largely complete human remains. Neither clothing nor personal possessions were in the body bag. Fluoroscopy revealed a bullet core recovered from the general remains. Gunshot injuries were found to the head, trunk and upper limbs".²⁰⁵⁷ The Chamber concludes on the basis of this evidence

²⁰⁴⁹ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4815.

²⁰⁵⁰ Ded Krasniqi, Exhibit P50 (*Haradinaj* original transcript), T. 4815-4818.

²⁰⁵¹ *See supra*, paras 330, 332.

²⁰⁵² Exhibit P428; *see* Branimir Aleksandrić, Exhibit P439, paras 12, 35-36, 40; *see also supra*, para. 342. *See also Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Joint Prosecution and Defence Submission on Agreed Facts with Annex, 2 November 2011.

²⁰⁵³ Branimir Aleksandrić, Exhibit P439, paras 62, 121; Dušan Dunjić, Exhibit P470, para. 285.

²⁰⁵⁴ Branimir Aleksandrić testified that of all the bodies labelled at R-1 to R-10, body R-9 was the only one not to have damage to the bones as a result of bullet wounds, Branimir Aleksandrić, Exhibit P432 (*Haradinaj* original transcript), T. 6776-6777. Dušan Dunjić gave evidence with respect to body R-9 that there was an entry and an exit injury to the head, that the were fractures to the limbs not caused by bullets, Dušan Dunjić, Exhibit P470, para. 291.

²⁰⁵⁵ Exhibit P484, pp 5-6.

²⁰⁵⁶ Exhibit P484, p. 5.

²⁰⁵⁷ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Joint Prosecution and Defence Submission on Agreed Facts with Annex, 2 November 2011.

that the body of Pal Krasniqi was found at the concrete canal leading to Lake Radoniq/Radonjić on 11 September 1998 with gunshot injuries to the head, trunk and upper limbs.²⁰⁵⁸

(c) Conclusion

576. The events established above have been charged as murder, cruel treatment and torture as a war crime pursuant to Article 3 of the Statute. The Chamber is satisfied that the beatings, established in this section, caused severe pain and suffering to Skender Kuçi, Pal Krasniqi and Witness 3 and that accordingly the beatings constitute the *actus reus* of both cruel treatment and torture. Considering the repeated nature of the beatings and the implements used the Chamber is satisfied that the perpetrators of the beatings acted intentionally. Further, the Chamber recalls that during one of the beatings Witness 3 was interrogated by Lahi Brahimaj about his alleged participation in an attack by Serbian forces on a village²⁰⁵⁹ and concludes that the elements of torture with respect to Witness 3 are established. Following Witness 3's apprehension after his escape from the KLA compound in Jabllanicë/Jablanica, Lahi Brahimaj reproached him, subjected him to further beatings and fired his gun at him.²⁰⁶⁰ In the Chamber's finding, this was to punish him for his escape from the KLA compound in Jabllanicë/Jablanica and for his attempt to help the flight of other detainees. The Chamber recalls the evidence discussed earlier that Skender Kuçi was held at the KLA compound in Jabllanicë/Jablanica because it was believed that he had a lot of money, and accepts that he was subjected to ill-treatment for this reason. The special purpose required for torture is established. With respect to Pal Krasniqi the Chamber recalls that he was accused of being a collaborator with the Serbian forces and concludes on this basis that the requisite special purpose for torture is established with respect to the beatings of Pal Krasniqi.

577. The Chamber found earlier that Skender Kuçi was subjected to severe repeated beatings in the KLA compound in Jabllanicë/Jablanica and that subsequently he was brought to a hospital in Irzniq/Rznić where he died. The report of the autopsy conducted years after the events concluded that the cause of death was unascertained but found that the pattern and location of the fractures on the body, if caused *peri-mortem*, would be consistent with injury caused by blow, stomping or a similar force.²⁰⁶¹ The Chamber is satisfied on the basis of these findings that the death of Skender Kuçi is established and that, according to the evidence, it was caused by (complications of) the injuries inflicted on him during the beatings in the KLA compound in Jabllanicë/Jablanica. Considering that the perpetrators were aware of Skender Kuçi's general physical state and of the

²⁰⁵⁸ See *supra*, para. 342.

²⁰⁵⁹ See *supra*, para. 541.

²⁰⁶⁰ See *supra*, paras 556-557.

²⁰⁶¹ See *supra*, para. 566.

state he was in as a result of the beatings and that they nevertheless continued the beatings the Chamber is satisfied that the perpetrators acted in the knowledge that death was a probable consequence of their beatings. The Chamber is satisfied that the charge of murder of Skender Kuçi is established.

578. The Chamber recalls that Pal Krasniqi was subjected to severe and repeated beatings in the KLA compound in Jabllanicë/Jablanica.²⁰⁶² The Chamber recalls further that the body of Pal Krasniqi was discovered in September 1998 at the Lake Radoniq/Radonjić. While the autopsy reports could not establish the cause of death, the forensic findings revealed gunshot injuries to the head, trunk, and upper limbs.²⁰⁶³ The Chamber received no evidence about what became of Pal Krasniqi after he was last seen by Witness 6 at the KLA compound in Jabllanicë/Jablanica on 25 July 1998. The Prosecution has presented no evidence to explain why Pal Krasniqi's body was found in Lake Radoniq/Radonjić. While it is possible that Pal Krasniqi might have been killed while in KLA custody, this is only a conjecture. The Chamber cannot exclude other possible scenarios, especially, taking into account that the events were occurring during an armed conflict and that the village of Jabllanicë/Jablanica was affected by it.²⁰⁶⁴ The charge of murder of Pal Krasniqi, therefore, is not established.

579. With respect to the general requirements of Article 3, the Chamber recalls that at the time of their beatings Skender Kuçi, Pal Krasniqi and Witness 3 were in detention and, therefore, were not taking an active part in the hostilities. The perpetrators of the beatings, including Nazmi Brahimaj who beat Skender Kuçi and kicked Pal Krasniqi and Witness 3,²⁰⁶⁵ Hamza Brahimaj and Naser Brahimaj who beat Skender Kuçi and Pal Krasniqi,²⁰⁶⁶ and Lahi Brahimaj who ill-treated Witness 3 and was present during the beatings of Skender Kuçi,²⁰⁶⁷ were KLA soldiers. The perpetrators were KLA soldiers participating in the armed conflict and the victims were held in their custody in the KLA compound in Jabllanicë/Jablanica. The Chamber finds on this basis that the nexus element is established. The general requirements of Article 3 of the Statute are, therefore, satisfied.

580. On the basis of the findings made above and leaving aside for the present the question of the individual criminal responsibility of the Accused, the Chamber concludes that the following charges supporting Count 5 are established: the charge of cruel treatment and torture of Skender Kuçi, Pal Krasniqi and Witness 3; and the charge of murder of Skender Kuçi.

²⁰⁶² See *supra*, paras 539-540.

²⁰⁶³ See *supra*, para. 575.

²⁰⁶⁴ See *supra*, paras 287, 289, 291.

²⁰⁶⁵ See *supra*, paras 534, 537.

²⁰⁶⁶ See *supra*, paras 530, 534, 537, 543.

²⁰⁶⁷ See *supra*, paras 534-535, 541.

7. Count 6

(a) Allegations in the Indictment

581. It is alleged in the Indictment that on or around 23 May 1998, Naser Lika and Fadil Fazlija (Fazliu), Kosovo Albanians from Grabanicë/Grabanica were abducted in the village of Zhabel/Žabelj by KLA soldiers who took them to the KLA compound in Jabllanicë/Jablanica. There Lahi Brahimaj, Ramush Haradinaj, Idriz Balaj, and other KLA members threatened Naser Lika and Fadil Fazlija (Fazliu) and about 20 men from the village of Grabanicë/Grabanica. Naser Lika and Fadil Fazlija (Fazliu) had been suspected of treason for having allegedly supported the LDK. The two men were released by the KLA after a family member intervened and threatened a blood feud.²⁰⁶⁸

582. The Indictment alleges further that in July 1998 Lahi Brahimaj and other KLA soldiers again abducted Naser Lika at his house in Grabanicë/Grabanica and brought him to the KLA compound in Jabllanicë/Jablanica before Ramush Haradinaj and Idriz Balaj. A KLA soldier, known as Bandash, beat Naser Lika with a baseball bat and KLA soldiers kicked him on the testicles while he lay on the ground. It is alleged that Ramush Haradinaj repeatedly ordered the cessation and resumption of the beatings and spat in Naser Lika's face during the beatings. It is also alleged that Idriz Balaj threatened to kill Naser Lika. The Indictment alleges further that Naser Lika was then imprisoned for three days in the flooded basement of the second building in the compound and was again severely beaten. It is alleged that following these three days of detention, Naser Lika was forced to work in the kitchen of the KLA compound in Jabllanicë/Jablanica and that after approximately three weeks, he managed to escape.²⁰⁶⁹

583. It is the position of the Prosecution that these allegations support one count of cruel treatment and torture, a violation of the laws or customs of war, charged against all three Accused on the basis of their alleged participation in the joint criminal enterprise alleged in the Indictment, and, in the alternative, on the basis of other forms of individual criminal responsibility pursuant to Article 7(1) of the Statute.

²⁰⁶⁸ Indictment, para. 64.

²⁰⁶⁹ Indictment, para. 65.

(b) Findings

(i) Abduction from Zhabel/Žabelj

584. The Chamber found earlier that on or about 19 May 1998 the village of Grabanicë/Grabanica was attacked by Serbian forces.²⁰⁷⁰ Most of the village male population joined the village defence.²⁰⁷¹ KLA fighters assisted in the defence of the village.²⁰⁷² The village of Grabanicë/Grabanica was shelled repeatedly by the Serbian forces.²⁰⁷³ The attack lasted three days.²⁰⁷⁴

585. Serious challenges to the credibility of the evidence offered to prove the allegations in Count 6 were raised. In light of these challenges, the Chamber will set out below this evidence before making its factual findings.

586. Witness 80 testified that on the third day after the attack on Grabanicë/Grabanica, in May 1998, the residents of the village, some several hundred people, started walking in the direction of Jabllanicë/Jablanica.²⁰⁷⁵ They arrived first in Bokshiq/Bokšić and then continued to Catholic Glogjan/Glodane in Pejë/Peć municipality.²⁰⁷⁶ Some of the villagers stayed in Glogjan/Glodane, others continued to Jabllanicë/Jablanica.²⁰⁷⁷ Naser Lika and Fadil Fazliu were among the group of villagers retreating towards Jabllanicë/Jablanica.²⁰⁷⁸ They passed the village of Glogjan/Glodane and continued towards Jabllanicë/Jablanica.²⁰⁷⁹ At the Glogjan/Glodane gorge they were stopped by Lahi Brahimaj and Alush Agushi.²⁰⁸⁰ Lahi Brahimaj accused Naser Lika and Fadil Fazliu of being traitors and appeared to be very angry and aggressive.²⁰⁸¹ Naser Lika and Fadil Fazliu continued to Jabllanicë/Jablanica where they were stopped again by Alush Agushi, Shaqir Krasniqi and Lahi Brahimaj.²⁰⁸² Alush Agushi took the weapons Naser Lika and Fadil

²⁰⁷⁰ See *supra*, paras 155, 444. See also Confidential Annex.

²⁰⁷¹ See Confidential Annex. See Witness 80, T. 2323, 2474-2475.

²⁰⁷² See Confidential Annex. See also Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4198-4200. In particular, Shefqet Kabashi gave evidence that on or about 19 May 1998 he and others went to the villages of Kpuz, Boshq/Bokšić, Qeskovë/Ceskovo and Grabanicë/Grabanica where there was a front, to engage in combat.

²⁰⁷³ Witness 80, T. 2607-2608.

²⁰⁷⁴ See Confidential Annex.

²⁰⁷⁵ Witness 80, T. 2347, 2477-2478.

²⁰⁷⁶ Witness 80, T. 2478. The Chamber notes that this is a different village from the village of Glogjan/Glodane in Dečan/Dečani municipality.

²⁰⁷⁷ Witness 80, T. 2626.

²⁰⁷⁸ Witness 80, T. 2347.

²⁰⁷⁹ Witness 80, T. 2626.

²⁰⁸⁰ Witness 80, T. 2478.

²⁰⁸¹ Witness 80, T. 2703-2704.

²⁰⁸² See Confidential Annex.

Fazliu had with them, saying that the weapons were needed to defend the village of Qeskovë/Ceskovo.²⁰⁸³

587. Other evidence indicates that after the fall of Grabanicë/Grabanica its residents decided to withdraw to the village of Bokshiq/Bokšić. A witness saw Lahi Brahimaj midway between Bokshiq/Bokšić and Catholic Gllogjan/Glodane, together with Malos Agushi. Brahimaj was angered by the withdrawal and was swearing at the villagers. Lahi Brahimaj accused them of being traitors and deserters.²⁰⁸⁴ The villagers then reached the village of Catholic Gllogjan/Glodane, near Jabllanicë/Jablanica but found that they were unwelcome. It was suggested that this was because the people of Gllogjan/Glodane thought that they were traitors and deserters and “maybe Lahi [Brahimaj]’s people had told them not to help us”.²⁰⁸⁵

588. On Witness 80’s evidence Naser Lika and Fadil Fazliu continued their journey and eventually arrived in Zhabel/Žabelj late that evening.²⁰⁸⁶ Fadil Fazliu, Naser Lika and a third person with his family remained at a house in Zhabel/Žabelj for two days.²⁰⁸⁷ Naser Lika and Fadil Fazliu stayed in the “oda”, a room used by men for drinks and discussions, in that house from the time they arrived until the time they left Zhabel/Žabelj.²⁰⁸⁸

589. On Witness 80’s evidence, on the second day of Naser Lika’s and Fadil Fazliu’s stay in Zhabel/Žabelj, two people, Arbnor Zeneli and a commander known as “Ujku” or “Pjeter Uka”, came to that house in Zhabel/Žabelj from Jabllanicë/Jablanica.²⁰⁸⁹ Pjeter “Ujku or “Uka” was wearing a black uniform and was carrying a sword.²⁰⁹⁰ Naser Lika and Fadil Fazliu were called to go outside. There, Fadil Fazliu told Ujku that he would not go with Ujku until there was an order from Ibrahim Rugova to do so. Ujku drew his pistol and put it against Fadil Fazliu’s chest. When Naser Lika tried to intervene, Arbnor Zeneli came and put his pistol on Naser Lika’s back or on his chest.²⁰⁹¹ Other people came and Naser Lika and Fadil Fazliu were taken to the KLA compound in Jabllanicë/Jablanica.²⁰⁹²

590. Witness 3 gave evidence related to similar events. He testified that while he was in Zhabel/Žabelj, in the house mentioned above, he saw two men arriving. One of them was “Ujku”, a relative of Lahi Brahimaj, who was wearing a black uniform and had the insignia of the KLA

²⁰⁸³ See Confidential Annex.

²⁰⁸⁴ See Confidential Annex.

²⁰⁸⁵ See Confidential Annex.

²⁰⁸⁶ See Confidential Annex.

²⁰⁸⁷ See Confidential Annex.

²⁰⁸⁸ Witness 80, T. 2641.

²⁰⁸⁹ Witness 80, T. 2347-2348.

²⁰⁹⁰ Witness 80, T. 2643.

²⁰⁹¹ Witness 80, T. 2707, 2645. See also Witness 80, T. 2348.

military police and the other was Tahir Qorri, who was wearing a “normal military uniform”.²⁰⁹³ Witness 3 saw these two men abusing Naser Lika and Fadil Fazliu in the corridor of the house. Ujku and Qorri called them traitors. The incident lasted a few seconds.²⁰⁹⁴ Witness 3 described the abuse as follows: “I saw them in the corridor, when they took Naser and Fadil, beating them on the way, kicking them while they were taking them outside. [...] I saw Fadil taken out first. Qorri was dealing with him. He pushed Fadil outside the door and kicked him. Ujku took Naser Lika; he dragged him by the back of his head and also kicked him [...], while going down stairs”.²⁰⁹⁵ Witness 3 then saw Ujku and Qorri take the men away. A few weeks later, Witness 3 met Naser Lika in another village. Naser Lika told him that, after the incident, he had been taken to the “Jabllanicë/Jablanica staff” and beaten there.²⁰⁹⁶

591. Witness 80 testified that when Fadil Fazliu and Naser Lika arrived at the KLA compound in Jabllanicë/Jablanica there were some 20 or 30 residents of Grabanicë/Grabanica there, who had been taken there by force. They were told to go back to their village and fight the Serbian forces.²⁰⁹⁷ Naser Lika was offered to eat something but he refused and Lahi Brahimaj asked a KLA soldier known as Bandash to talk to him. Bandash approached Naser Lika with a heavy stick and threatened him.²⁰⁹⁸ A person called Gani invited Naser Lika and Fadil Fazliu to go and eat in the kitchen.²⁰⁹⁹ Fadil Fazliu was beaten while he was in Jabllanicë/Jablanica, Naser Lika was not.²¹⁰⁰

592. Witness 80 testified that Ramush Haradinaj was present in the KLA compound in Jabllanicë/Jablanica during these events and that he was listening to the threats made to the villagers by Lahi Brahimaj, his brother Nazmi and other people from the KLA Staff.²¹⁰¹ Ramush Haradinaj did not speak to the villagers on this occasion.²¹⁰²

593. Naser Lika and Fadil Fazliu remained in the KLA compound in Jabllanicë/Jablanica for several hours until some relatives and friends intervened and took Naser Lika and Fadil Fazliu away.²¹⁰³ These people indicated that if Naser Lika and Fadil Fazliu were not released there would

²⁰⁹² Witness 80, T. 2707.

²⁰⁹³ Witness 3, T. 1532-1534.

²⁰⁹⁴ Witness 3, T. 1532-1535.

²⁰⁹⁵ Witness 3, T. 1534-1535.

²⁰⁹⁶ Witness 3, T. 1536.

²⁰⁹⁷ Witness 80, T. 2348-2349, 2577-2578.

²⁰⁹⁸ Witness 80, T. 2348-2349.

²⁰⁹⁹ Witness 80, T. 2647-2648.

²¹⁰⁰ Witness 80, T. 2661, 2666.

²¹⁰¹ Witness 80, T. 2382.

²¹⁰² Witness 80, T. 2386.

²¹⁰³ Witness 80, T. 2349, 2578-2579.

be a war between the families.²¹⁰⁴ The residents of Grabanicë/Grabanica left in various directions.²¹⁰⁵

594. In cross-examination the evidence of Witness 80 was challenged on the basis that Fadil Fazliu, a witness in the original *Haradinaj* trial, provided a different account of these events.²¹⁰⁶ Witness 80's testimony before the Chamber differs in material respects from the evidence of Fadil Fazliu in the original *Haradinaj* trial which was read out in court by counsel in this trial. However, Fadil Fazliu is not a witness in the present proceedings and his evidence in the original *Haradinaj* trial was not admitted in this trial.

595. The evidence of Witness 80, set out above, nevertheless raises some questions. Witness 80 testified that Naser Lika and Fadil Fazliu were stopped two times on their way to Zhabel/Žabelj by Lahi Brahimaj and Alush Agushi and that their weapons were taken from them only on the second occasion.²¹⁰⁷ Further, the evidence of Witness 80 before the Chamber that Naser Lika was not beaten in the KLA compound in Jabllanicë/Jablanica²¹⁰⁸ appears to contradict what Naser Lika told Witness 3 shortly after the events, namely that he was beaten at Jabllanicë/Jablanica.²¹⁰⁹ The Chamber already expressed its serious concerns about the credibility of Witness 80.²¹¹⁰ It is not satisfied that Witness 80's evidence, summarised above, is reliable and does not accept it.

596. Witness 3 also gave evidence about the forced removal of Fadil Fazliu and Naser Lika from Zhabel/Žabelj.²¹¹¹ When Fadil Fazliu's evidence in the original *Haradinaj* trial was put to Witness 3 in cross-examination, the witness unequivocally stated that Fadil Fazliu's account was not true.²¹¹² The Chamber finds Witness 3 generally a credible witness and accepts his evidence regarding these events. Witness 3 identified the persons who removed Fadil Fazliu and Naser Lika from Zhabel/Žabelj as "Ujku" and Tahir Qorri.²¹¹³ On the basis of the evidence of Witness 3 the Chamber finds that Naser Lika and Fadil Fazliu were removed by force by KLA soldiers from Zhabel/Žabelj and that the KLA soldiers beat and kicked Naser Lika and Fadil Fazliu in

²¹⁰⁴ Witness 80, T. 2654-2655.

²¹⁰⁵ Witness 80, T. 2655.

²¹⁰⁶ See Witness 80, T. 2632-2633, 2704-2705, 2642, 2644-2645, 2652-2653, 2647-2649, 2650-2652.

²¹⁰⁷ See *supra*, para. 586.

²¹⁰⁸ See *supra*, para. 591.

²¹⁰⁹ See *supra*, para. 590.

²¹¹⁰ See *supra*, paras 552-554.

²¹¹¹ See *supra*, para. 590.

²¹¹² Witness 3, T. 1639-1640.

²¹¹³ Pjeter Shala aka "Ujku" (Pjeter Shala, Exhibit P69 (*Haradinaj* original transcript), T. 9938; Bislim Zyrap, Exhibit P160, para. 41), a witness in these proceedings, does not mention any such events in his evidence. Witness 80, who the Chamber finds not to be a credible witness, gives a different account. While the Chamber finds Witness 3 a reliable witness, in the circumstances and considering, in particular, the limited opportunity Witness 3 had to observe these two men, the Chamber finds that the evidence of Witness 3 is not sufficient to make a finding on the identity of the KLA soldiers.

Zhabel/Žabelj. In the Chamber's finding, the evidence does not establish the identity of these KLA soldiers.

597. The only evidence offered by the Prosecution in support of the allegations in the Indictment about events occurring at the KLA compound in Jabllanicë/Jablanica after the forced removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj is the evidence of Witness 80 and the hearsay evidence of Witness 3 that Naser Lika told him that he was beaten in Jabllanicë/Jablanica. For reasons given the Chamber does not accept this evidence. The events alleged in the Indictment, therefore, are not established.

(ii) Detention and mistreatment of Naser Lika

598. The Prosecution called only one witness in support of the allegations of Naser Lika's subsequent detention in the KLA compound in Jabllanicë/Jablanica charged in the Indictment, Witness 80. The Chamber already expressed its serious doubts about this witness's reliability. The Chamber will set out below, briefly, the relevant part of Witness 80's testimony.

599. Witness 80 testified that Hajdar Dulja, a soldier or a commander, took Naser Lika from the village of Bučan/Bučane to the KLA compound in Jabllanicë/Jablanica. Naser Lika's friends intervened again and after some days he was released.²¹¹⁴ Witness 80 testified that during these days Naser Lika was beaten.²¹¹⁵ He testified further that young recruits participated in the beatings of Naser Lika but it was mainly Bandash (Bandashi) and Pjeter "Ujku" who participated in the beatings.²¹¹⁶

600. Witness 80 further testified that Naser Lika was beaten and detained in the cellar with other people whom Witness 80 did not know. He testified that there was water in the basement and also barbed-wire and salt. Witness 80 testified that Naser Lika was kept in the prison for three consecutive days. He was taken out once in a while to be beaten and then taken back in.²¹¹⁷ The first one who hit Naser Lika in Jabllanicë/Jablanica was Lahi Brahimaj, together with a man known as "Bandashi" who was heavily built.²¹¹⁸ They said that Naser Lika belonged to a party they did not like and that someone had told them that he had participated in the attack against the village of Qeskovë/Ceskovo and was seen on a tank of the Serbian forces.²¹¹⁹

²¹¹⁴ Witness 80, T. 2349.

²¹¹⁵ Witness 80, T. 2351.

²¹¹⁶ Witness 80, T. 2351.

²¹¹⁷ Witness 80, T. 2415.

²¹¹⁸ Witness 80, T. 2415-2416.

²¹¹⁹ Witness 80, T. 2416.

601. Witness 80 testified that Lahi Brahimaj beat Naser Lika with hard objects, *i.e.* sticks that were prepared for such activities, and also “rubber objects that were used previously by the Serbs”.²¹²⁰ Young soldiers also participated in the beatings. Alush Agushi, Nazmi Brahimaj, Myftar Ibrahim (Brahimaj), and Naser Ibrahimaj (Brahimaj) were present during the beatings. Naser Lika was beaten several times during his detention.²¹²¹

602. On Witness 80’s evidence, Idriz Balaj was there during the beatings of Naser Lika. Balaj was very “euphoric” and said: “I am here only to kill people”.²¹²² He said this on the occasion when Naser Lika was beaten by Lahi Brahimaj and Bandash with sticks.²¹²³

603. Witness 80 testified that after the beatings by Bandash and Lahi Brahimaj, Naser Lika was put in the cellar for three days. He was beaten several times by the same persons and young soldiers.²¹²⁴ Witness 80 testified further that Gani Ibrahimaj (Brahimaj), the person responsible for the kitchen, and Lahi Brahimaj then ordered Naser Lika to work in the kitchen.²¹²⁵

604. Witness 80 testified that Naser Lika left the KLA compound in Jabllanicë/Jablanica after spending some three weeks there, “at the end of May, the beginning of June, or sometime in June 1998” when there was an attack launched against the entire area by the Serbian forces. He ran away.²¹²⁶ The Chamber found earlier in this Judgement that Jabllanicë/Jablanica was attacked by Serbian forces on or about 2 or 3 August 1998.²¹²⁷

605. Witness 80’s account of these events was challenged. It was suggested that Witness 80’s evidence as to why Naser Lika was detained in Jabllanicë/Jablanica,²¹²⁸ is identical with the answer given to the same question by Witness 3.²¹²⁹ It was suggested further that Witness 80 had discussed these events with Witness 3 and adopted elements of Witness 3’s story.²¹³⁰

606. While the Chamber is not privy to any conversations between Witness 3 and Witness 80 which may have taken place, it is difficult for the Chamber not to notice some striking similarities between the stories of these two witnesses. Witness 3 testified that during his beatings Lahi

²¹²⁰ Witness 80, T. 2416-2417.

²¹²¹ Witness 80, T. 2417.

²¹²² Witness 80, T. 2418.

²¹²³ Witness 80, T. 2418-2419, 2423.

²¹²⁴ Witness 80, T. 2423.

²¹²⁵ Witness 80, T. 2351.

²¹²⁶ Witness 80, T. 2424.

²¹²⁷ *See supra*, para. 289.

²¹²⁸ Namely, that “they” did not like “his party”, that he was alleged to participate in an attack on a village and that somebody had seen him on a tank of the Serbian forces, *see supra*, para. 600.

²¹²⁹ Witness 80, T. 2697-2700, referring to Witness 3, T. 1571, testifying that it was alleged that he had been seen on top of a Serbian tank and that he helped the Serbs enter the village of Gjorgjevik/Đurdevik.

²¹³⁰ Witness 80, T. 2699-2700.

Brahimaj asked him how the Serbian forces had entered Gjurgjevik-i-Madh/Veliki Đurdevik and that someone had seen him entering this village on top of a Serbian tank.²¹³¹ Witness 80 testified, regarding the reason for the beatings of Naser Lika, that someone had told the KLA soldiers that Naser Lika had participated in the attack against the Qeskovë/Ceskove village and was seen on a tank of the Serbian forces.²¹³² Witness 80 provided a detailed description of the beatings of Witness 3 by Lahi Brahimaj and by the two female soldiers, while on Witness 3's evidence and on all other evidence before the Chamber Witness 80 was not present during the beatings and it is unclear how he could have observed these events.²¹³³ Witness 3 testified that he told Skender Kuçi and Pal Krasniqi that he intended to escape and that they could come along if they wanted.²¹³⁴ Witness 80's evidence was that it was Witness 80 who offered Skender Kuçi the possibility to escape.²¹³⁵ Witness 3 testified that Skender Kuçi used to be his teacher in primary school.²¹³⁶ Witness 80 also stated that Skender Kuçi was his teacher,²¹³⁷ although, the Chamber would note, Skender Kuçi was only a few years older than Witness 80. The Chamber notes further that when Witness 80 was asked for the first time whether he had been in contact with Witness 3, he denied this.²¹³⁸ Witness 80 subsequently, however, admitted that he had contacts with Witness 3.²¹³⁹

607. There are further concerns about Witness 80's credibility. Witness 80 testified that one of the men who worked in the kitchen had the same first name as Witness 6. During an earlier interview with the Office of the Prosecutor Witness 80 had identified Witness 6 on a photograph as the man who worked in the kitchen.²¹⁴⁰ It was suggested in cross-examination that Witness 6 had testified that he did not know Witness 80.²¹⁴¹ The Chamber recalls the evidence of Witness 6 that he did not know Witness 80, that he had never seen him in Jabllanicë/Jablanica and that he was not in Jabllanicë/Jablanica at the time when Witness 6 was there.²¹⁴² The Chamber found earlier that Witness 6 was detained in the KLA compound in Jabllanicë/Jablanica from 13 June 1998 to 25 July 1998.²¹⁴³ While it is unclear on the evidence of Witness 80 when he says he was present in Jabllanicë/Jablanica, the Chamber recalls that Witness 80 testified about events involving Skender Kuçi and Witness 3 and concludes on this basis that Witness 80's testimony was intended to cover

²¹³¹ See *supra*, para. 541.

²¹³² See *supra*, para. 600.

²¹³³ See *supra*, paras 541, 547.

²¹³⁴ See *supra*, para. 542.

²¹³⁵ See *supra*, para. 549.

²¹³⁶ See *supra*, para. 533.

²¹³⁷ See *supra*, para. 548.

²¹³⁸ Witness 80, T. 2522.

²¹³⁹ Witness 80, T. 2527.

²¹⁴⁰ Witness 80, T. 2680-2684, 2686; Exhibit D212.

²¹⁴¹ Witness 80, T. 2685-2686.

²¹⁴² Witness 6, Exhibit P84 (*Haradinaj* original transcript), T. 5381-5382; Witness 6, Exhibit P85 (*Haradinaj* original transcript), T. 5381-5382.

²¹⁴³ See *supra*, paras 481, 490.

at least part of the period Witness 6 spent in the KLA compound in Jabllanicë/Jablanica. The Chamber found Witness 6 to be a credible witness. It accepts that Witness 6 did not see Witness 80 in the KLA compound in Jabllanicë/Jablanica.

608. In light of these concerns, and considering the concerns the Chamber expressed earlier in the Judgement and its earlier findings on the credibility of Witness 80²¹⁴⁴ the Chamber will not accept any of the evidence of Witness 80 as reliable. It must, therefore, reject the entirety of Witness 80's evidence.

609. The Prosecution has offered no other evidence to prove the detention and beatings of Naser Lika at the KLA compound in Jabllanicë/Jablanica alleged in Count 6. These allegations, therefore, are not established.

(c) Conclusion

610. The Chamber found earlier that Naser Lika and Fadil Fazliu were removed by force by KLA soldiers from Zhabel/Žabelj and that the KLA soldiers beat and kicked Naser Lika and Fadil Fazliu in Zhabel/Žabelj. The Chamber is satisfied that these acts of the KLA soldiers constitute the *actus reus* of cruel treatment and torture and that the KLA soldiers acted with the required intent. Further, the Chamber recalls that during the incident the KLA soldiers called Fadil Fazliu and Naser Lika "traitors" and concludes on this basis that the special purpose required for torture is established. Considering that the perpetrators were KLA soldiers and the victims were referred to as "traitors" the Chamber is satisfied that the nexus requirement is established. Further, on the basis of the evidence before it the Chamber is satisfied that Naser Lika and Fadil Fazliu were taking no active part in the hostilities and, therefore, that the general requirements of Article 3 are established. Leaving aside for present purposes the question of the individual criminal responsibility of the Accused the Chamber is satisfied that the allegation of cruel treatment and torture is established with respect to the forced removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj.

611. None of the other allegations relied on by the Prosecution in support of Count 6 have been established.

²¹⁴⁴ See *supra*, paras 552-554.

VII. RESPONSIBILITY

612. All three Accused are charged under Article 7(1) of the Statute. The Indictment alleges that Ramush Haradinaj and Idriz Balaj are criminally responsible for the crimes charged in each count of the Indictment as participants in a joint criminal enterprise (“JCE”). It is alleged further that Lahi Brahimaj is individually criminally responsible through his participation in the JCE for the crimes charged in Counts 1, 2, 4, and 6.

613. In the alternative, Ramush Haradinaj is charged with committing or aiding and abetting the crimes charged in Count 1 and with ordering, instigating or aiding and abetting the crimes charged in Count 6. Idriz Balaj is charged in the alternative with committing or aiding and abetting the crimes alleged in Count 1 and with committing, planning or aiding and abetting the crimes charged in Count 6. Lahi Brahimaj is charged in the alternative with ordering, instigating, or aiding and abetting the crimes charged in Counts 1 and 2 and with committing, planning or aiding and abetting the crimes charged in Count 6 of the Indictment.

A. Law

614. Article 7(1) of the Statute provides:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Article 2 to 5 of the present Statute, shall be individually responsible for the crime.

1. Committing

615. “Committing” a crime is “the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law”.²¹⁴⁵ The *actus reus* required for committing is that the accused participated, physically or otherwise directly, in the material elements of a crime provided for in the Statute, through positive acts or omissions, whether individually or jointly with others.²¹⁴⁶ The *mens rea* required for committing is that the accused acted with intent to commit the crime, or with an awareness of the substantial likelihood that a crime would occur as a consequence of his conduct.²¹⁴⁷

²¹⁴⁵ *Tadić* Appeal Judgement, para. 188; *Gacumbitsi* Appeal Judgement, para. 60; *Nahimana* Appeal Judgement, para. 478; *Seromba* Appeal Judgement, para. 161; *Kalimanzira* Appeal Judgement, paras 218-219.

²¹⁴⁶ *Limaj* Trial Judgement, para. 509.

²¹⁴⁷ *Limaj* Trial Judgement, para. 509.

2. Committing through participation in a joint criminal enterprise

616. Under the JCE doctrine, a person who contributed to the execution of a common criminal purpose by a group of persons may be held liable for committing the resultant crimes, subject to the conditions described below.²¹⁴⁸ The jurisprudence of the Tribunal has established three categories of JCE. The *actus reus* of a participant in a JCE is common to all three categories.

617. First, a plurality of persons is required.²¹⁴⁹ The persons participating in the criminal enterprise need not be organised in a military, political, or administrative structure.²¹⁵⁰ A Trial Chamber must, however, identify the plurality of persons belonging to the JCE with specificity, and as precisely as possible.²¹⁵¹ It may not be necessary to identify by name each of the persons involved. Depending on the circumstances of the case, it can be sufficient to refer to categories or groups of persons.²¹⁵²

618. Secondly, the existence of a common plan, design or purpose, which amounts to or involves the commission of a crime provided for in the Statute, must be established.²¹⁵³ The members of the joint criminal enterprise need not have previously and explicitly arranged the common criminal objective; it may materialise extemporaneously and be inferred from the facts.²¹⁵⁴ A Trial Chamber must specify the common criminal purpose in terms of both the criminal goal intended and its scope, for example, the temporal and geographic limits of this goal, and the general identities of the intended victims.²¹⁵⁵ The Trial Chamber must establish that the commonly intended crime, or, for convictions under the third category of JCE, *see* below, the foreseeable crime, did in fact take place.²¹⁵⁶ For a JCE to be established, the crime in question must form part of the common purpose. Therefore, in cases where the principal perpetrator does not belong to the JCE, the Trial Chamber must be satisfied that the Prosecution has established that the crime can be imputed to at least one member of the JCE, and that this member, when using the principal perpetrator, acted in

²¹⁴⁸ *Tadić* Appeal Judgement, para. 190.

²¹⁴⁹ *Vasiljević* Appeal Judgement, para. 100.

²¹⁵⁰ *Tadić* Appeal Judgement, para. 227; *Kvočka* Appeal Judgement, para. 96; *Vasiljević* Appeal Judgement, para. 100; *Stakić* Appeal Judgement, para. 64.

²¹⁵¹ *Krajišnik* Appeal Judgement, paras 156-157; *Limaj* Appeal Judgement, para. 99; *Krnojelac* Appeal Judgement, para. 116.

²¹⁵² *Krajišnik* Appeal Judgement, para. 156; *Limaj* Appeal Judgement, para. 104; *Brdanin* Appeal Judgement, para. 430; *Vasiljević* Appeal Judgement, para. 100. *See also* *Stakić* Appeal Judgement, para. 69.

²¹⁵³ *Tadić* Appeal Judgement, para. 227; *Krnojelac* Appeal Judgement, para. 31; *Vasiljević* Appeal Judgement para. 100. *Kvočka* Appeal Judgement, paras 81, 96; *Stakić* Appeal Judgement, para. 73; *Krajišnik* Appeal Judgement, para. 704.

²¹⁵⁴ *Tadić* Appeal Judgement, para. 227. *See also* *Vasiljević* Appeal Judgement, para. 109; *Kvočka* Appeal Judgement, paras 96, 115-119; *Brdanin* Appeal Judgement, para. 418.

²¹⁵⁵ *Brdanin* Appeal Judgement, para. 430.

²¹⁵⁶ *Brdanin* Appeal Judgement, para. 430.

accordance with the common plan.²¹⁵⁷ The existence of such a link between a member of the JCE and a principal perpetrator is assessed on a case-by-case basis.²¹⁵⁸

619. Thirdly, the accused must have participated in the common design,²¹⁵⁹ either by participating directly in the commission of the agreed crime itself, or by assisting or contributing to the execution of the common purpose.²¹⁶⁰ The accused's contribution need not be necessary, in a sense of *sine qua non*, to achieve the common criminal purpose.²¹⁶¹ However, the contribution of the accused in the common plan should at least be a significant one.²¹⁶² Although such a contribution may be achieved by the accused's commission as a principal perpetrator of a crime which forms part of the common objective, conduct which is not criminal when considered alone may also satisfy this element if it involved procuring or giving assistance to the execution of the common criminal purpose.²¹⁶³ An omission may lead to responsibility under Article 7(1), where there is a legal duty to act.²¹⁶⁴ The presence of the participant in the JCE at the time the crime is committed by the principal offender is not required.²¹⁶⁵

620. With respect to the *mens rea*, the requirements of the three categories of JCE differ.²¹⁶⁶ In the first, basic type of JCE the accused intends to perpetrate a crime and this intent is shared by all co-perpetrators.²¹⁶⁷ Intent may, in certain circumstances, be inferred from knowledge combined with continuing participation.²¹⁶⁸

621. The third type concerns cases in which one of the participants commits a crime outside the common design. The *mens rea* in such cases is twofold. First, the accused must have the intention to take part in and contribute to the common criminal purpose. Secondly, in order to be held responsible for crimes which were not part of the common criminal purpose, but which were nevertheless a natural and foreseeable consequence of it, the accused must also know that such a crime might be perpetrated by a member of the group or a person used by a member of the group,

²¹⁵⁷ *Brdanin* Appeal Judgement, paras 413, 430; *Martić* Appeal Judgement, para. 168; *Krajišnik* Appeal Judgement, paras 225-226, 235.

²¹⁵⁸ *Brdanin* Appeal Judgement, para. 413; *Martić* Appeal Judgement, para. 169.

²¹⁵⁹ *Tadić* Appeal Judgement, para. 227.

²¹⁶⁰ *Tadić* Appeal Judgement, para. 227.

²¹⁶¹ *Kvočka* Appeal Judgement, para. 98.

²¹⁶² *Brdanin* Appeal Judgement, para. 430; *Krajišnik* Appeal Judgement, para. 675.

²¹⁶³ *Tadić* Appeal Judgement, para. 227; *Krnjelac* Appeal Judgement, paras 31, 81; *Vasiljević* Appeal Judgement, para. 100; *Kvočka* Appeal Judgement, paras 96, 99; *Babić* Appeal Judgement, para. 38; *Krajišnik* Appeal Judgement, paras 215, 218, 695; *Ntakirutimana* Appeal Judgement, para. 466.

²¹⁶⁴ *Galić* Appeal Judgement, para. 175.

²¹⁶⁵ *Krnjelac* Appeal Judgement, para. 81.

²¹⁶⁶ The Chamber notes that only JCE 1 and JCE 3 are charged in the Indictment.

²¹⁶⁷ *Tadić* Appeal Judgement, paras 220, 228.

²¹⁶⁸ *Krajišnik* Appeal Judgement, para. 697.

and willingly take that risk by joining or continuing to participate in the enterprise.²¹⁶⁹ Whether the crimes committed outside the common purpose of the JCE were “a natural and foreseeable consequence thereof” must be assessed in relation to the knowledge of a particular accused, *i.e.* the Prosecution must prove that the accused had sufficient knowledge that the additional crimes were a natural and foreseeable consequence.²¹⁷⁰

3. Planning

622. Criminal liability for planning may be incurred when one or more persons design the commission of a crime, at both the preparatory and execution phases. The *actus reus* of planning is that one or more persons plan or design the criminal conduct that constitutes one or more crimes under the Statute which are later committed.²¹⁷¹ It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.²¹⁷² As regards the *mens rea*, the accused must have acted with intent that the crime be committed, or with an awareness of the substantial likelihood that a crime will be committed in the execution of that plan.²¹⁷³ A conviction for planning does not require that the accused was in a position of authority.²¹⁷⁴

4. Instigating

623. “Instigating” has been defined as “prompting another to commit an offence”.²¹⁷⁵ The offence must then be actually committed.²¹⁷⁶ Both acts and omissions may constitute instigating, which may cover both express and implied conduct.²¹⁷⁷ The prompting that constitutes the instigation need not be direct or public.²¹⁷⁸ It must be proved that a nexus between the instigation and the perpetration of the crime exists, such that the instigation substantially contributes to the commission of the crime.²¹⁷⁹ It is not necessary, however, to prove that the crime would not have

²¹⁶⁹ *Tadić* Appeal Judgement, paras 204; 227-228; *Kvočka* Appeal Judgement, para. 83; *Brdanin* Appeal Judgement, para. 365; *Martić* Appeal Judgement, para. 83. See also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.4, Decision on Prosecution’s Motion Appealing Trial Chamber’s Decision on JCE III Foreseeability, 25 June 2009, para. 18.

²¹⁷⁰ *Kvočka* Appeal Judgement, para. 86.

²¹⁷¹ *Kordić* Appeal Judgement, para. 26; *Nahimana* Appeal Judgement, para. 479; *Milošević* Appeal Judgement, para. 268; *Krstić* Trial Judgement, para. 601; *Stakić* Trial Judgement, para. 443; *Brdanin* Trial Judgement, para. 268.

²¹⁷² *Kordić* Appeal Judgement, para. 26; *Nahimana* Appeal Judgement, para. 479; *Milošević* Appeal Judgement, para. 268.

²¹⁷³ *Kordić* Appeal Judgement, paras 29, 31; *Nahimana* Appeal Judgement, para. 479; *Milošević* Appeal Judgement, para. 268.

²¹⁷⁴ *Kanyarukiga* Appeal Judgement, para. 258.

²¹⁷⁵ *Kordić* Appeal Judgement, para. 27; *Blaškić* Trial Judgement, para. 280; *Limaj* Trial Judgement, para. 514; *Popović* Trial Judgement, para. 1007; *Đorđević* Trial Judgement, para. 1870; *Gotovina* Trial Judgement, Volume II, para. 1958.

²¹⁷⁶ *Galić* Trial Judgement, para. 168.

²¹⁷⁷ *Blaškić* Trial Judgement, para. 280; *Limaj* Trial Judgement, para. 514; *Đorđević* Trial Judgement, para. 1870.

²¹⁷⁸ *Akayesu* Appeal Judgement, para. 483.

²¹⁷⁹ *Kordić* Appeal Judgement, para. 27; *Brdanin* Trial Judgement, para. 269; *Đorđević* Trial Judgement, para. 1870.

been perpetrated without the involvement of the accused.²¹⁸⁰ As regards the *mens rea*, the accused must intend that the crime be committed, or be aware of the substantial likelihood that the crime would be committed as a consequence of the instigation.²¹⁸¹ The presence of the accused at the crime scene is not a requisite element of instigating, although it can be one of the factors considered in determining the *mens rea* of the instigator.²¹⁸²

5. Ordering

624. The *actus reus* of ordering is that a person in a position of *de jure* or *de facto* authority instructs another person to commit an offence.²¹⁸³ This form of liability requires that the accused possess the authority, either *de jure* or *de facto*, to order the commission of an offence.²¹⁸⁴ Ordering, unlike instigating, requires an affirmative action; it cannot be committed through omission.²¹⁸⁵ The position of authority may be either *de jure* or *de facto*, and may be implied; that is, the relationship need not be a “formal superior-subordinate” one.²¹⁸⁶ The order does not need to be given by the accused directly to the person who performs the criminal act, but may pass down a chain of command in which each person, if acting with the requisite *mens rea*, may be held liable for ordering.²¹⁸⁷ The order need not be in writing or in any particular form.²¹⁸⁸ It may be explicit or implicit.²¹⁸⁹ Circumstantial evidence may be used to prove the existence of the order so long as it is the only reasonable inference.²¹⁹⁰ The Prosecution does not need to prove that the act would not have occurred but for the order of the accused, but the order must have had a “direct and substantial effect on the commission of the illegal act”.²¹⁹¹ The required *mens rea* is that the accused must intend that the offence be committed in the realisation of the order, or be aware of the substantial likelihood that the crime would be committed as a consequence of the execution or implementation of the order.²¹⁹² The presence of the accused at the crime scene is not a requisite element of

²¹⁸⁰ Kordić Appeal Judgement, para. 27.

²¹⁸¹ Kordić Appeal Judgement, para. 32; Gotovina Trial Judgement, para. 1958.

²¹⁸² Boškoski Appeal Judgement, para. 132.

²¹⁸³ Kordić Appeal Judgement, para. 28; Kalimanzira Appeal Judgement, para. 213; Krstić Trial Judgement, para. 601; Đorđević Trial Judgement, para. 1871.

²¹⁸⁴ Đorđević Trial Judgement, para. 1870; Limaj Trial Judgement, para. 515; Brdanin Trial Judgement, para. 270.

²¹⁸⁵ Galić Appeal Judgement, para. 176; Đorđević Trial Judgement, para. 1871.

²¹⁸⁶ Semanza Appeal Judgement, para. 361; Karera Appeal Judgement, para. 211; Galić Appeal Judgement, para. 176; Kordić Trial Judgement, para. 388; Popović Trial Judgement, para. 1012.

²¹⁸⁷ Blaškić Trial Judgement, para. 282; Milutinović Trial Judgement, Volume I, para. 87; Brdanin Trial Judgement, para. 270; Đorđević Trial Judgement, para. 1871.

²¹⁸⁸ Boškoski Appeal Judgement, para. 160; Blaškić Trial Judgement, para. 281; Limaj Trial Judgement, para. 515; Popović Trial Judgement, para. 1012.

²¹⁸⁹ Blaškić Trial Judgement, para. 281.

²¹⁹⁰ Boškoski Appeal Judgement, para. 160; Blaškić Trial Judgement, para. 281; Kordić Trial Judgement, para. 388; Đorđević Trial Judgement, para. 1871; Hategekimana Appeal Judgement, para. 67.

²¹⁹¹ Kamuhanda Appeal Judgement, para. 76; Hategekimana Appeal Judgement, para. 67.

²¹⁹² Blaškić Appeal Judgement, para. 42; Kordić Appeal Judgement, para. 30; Limaj Trial Judgement, para. 515; Boškoski Trial Judgement, para. 400; Popović Trial Judgement, para. 1010; Gotovina Trial Judgement, para. 1959.

ordering, although it can be one of the factors considered in determining the *mens rea* of the orderer.²¹⁹³

6. Aiding and abetting

625. Aiding and abetting has been defined as acts or omissions which assist, encourage or lend moral support to the perpetrator of a specific crime and which have a substantial effect on the perpetration of the crime.²¹⁹⁴ As with all forms of accessory criminal liability, for an accused to be found guilty for aiding and abetting the crime in question must actually have been committed.²¹⁹⁵ With respect to the *actus reus*, a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime need not be established.²¹⁹⁶ The assistance provided by the aider and abettor, however, must have a substantial effect on the commission of the crime.²¹⁹⁷ Aiding and abetting may occur before, during, or after the commission of the principal crime.²¹⁹⁸ Tacit approval and encouragement, based on the accused's authority and presence at the crime scene, which substantially contributed to the commission of the crime may also constitute the *actus reus* of aiding and abetting.²¹⁹⁹

626. An omission may constitute the *actus reus* of aiding and abetting where it is established that a failure to discharge a legal duty assisted, encouraged, or lent moral support to the perpetrator of the crime and had a substantial effect on the realisation of the crime.²²⁰⁰ Aiding and abetting by omission requires that the accused had the ability to act in that he had the means to fulfil his or her duty to act.²²⁰¹

627. The *mens rea* for aiding and abetting requires knowledge that, by his acts or omissions, the aider and abettor assists in the commission of the crime of the principal perpetrator.²²⁰² The aider

²¹⁹³ *Boškoski* Appeal Judgement, para. 132.

²¹⁹⁴ *Tadić* Appeal Judgement, para. 229; *Čelebići* Appeal Judgement, para. 352; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras 45-46, 48; *Kvočka* Appeal Judgement, para. 89; *Simić* Appeal Judgement, para. 85; *Blagojević* Appeal Judgement, para. 127; *Nahimana* Appeal Judgement, para. 482; *Orić* Appeal Judgement, para. 43; *Karera* Appeal Judgement, para. 321; *Mrkšić* Appeal Judgement, paras 49, 81, 146, 159; *Kalimanzira* Appeal Judgement, paras 74, 86; *Ntawukulilyayo* Appeal Judgement, para. 214; *Aleksovski* Appeal Judgement, para. 162, citing *Furundžija* Trial Judgement, para. 249.

²¹⁹⁵ *Simić* Appeal Judgement, para. 85; see also *Gotovina* Trial Judgement, para. 1956.

²¹⁹⁶ *Mrkšić* Appeal Judgement, para. 81; *Blaškić* Appeal Judgement, para. 48; *Limaj* Trial Judgement, para. 517.

²¹⁹⁷ *Blaškić* Appeal Judgement, para. 48; *Boškoski* Trial Judgement, para. 402; *Furundžija* Trial Judgement, para. 249; *Kunarać* Trial Judgement, para. 391; *Limaj* Trial Judgement, para. 517.

²¹⁹⁸ *Blaškić* Appeal Judgement, para. 48; *Simić* Appeal Judgement, para. 85; *Blagojević* Appeal Judgement, paras 127, 134; *Nahimana* Appeal Judgement, para. 482; *Mrkšić* Appeal Judgement, paras 81, 200.

²¹⁹⁹ *Brdanin* Appeal Judgement, paras 273, 277; *Boškoski* Trial Judgement, para. 402; *Limaj* Trial Judgement, para. 517.

²²⁰⁰ *Blaškić* Appeal Judgement, para. 663; *Galić* Appeal Judgement, para. 175; *Brdanin* Appeal Judgement, para. 274; *Orić* Appeal Judgement, paras 41, 43; *Mrkšić* Appeal Judgement, paras 49, 81, 134, 156, 200.

²²⁰¹ *Mrkšić* Appeal Judgement, paras 49, 82, 154.

²²⁰² *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras 45-46; *Simić* Appeal Judgement, para. 86; *Brdanin* Appeal Judgement, paras 484, 488; *Blagojević* Appeal Judgement, para. 127; *Nahimana* Appeal

and abettor need not share the *mens rea* of the principle perpetrator but he or she must be aware of the principal perpetrator's state of mind.²²⁰³ This includes the specific intent of the principal perpetrator, if the crime requires such intent.²²⁰⁴ The aider and abettor does not, however, need to know either the precise crime that was intended or the one that was actually committed; it is sufficient that he or she is aware that one of a number of crimes will probably be committed and that one of those crimes is in fact committed.²²⁰⁵

B. Findings

1. Joint criminal enterprise

(a) Alleged common purpose

628. Earlier in this Judgement, the Chamber found that the crimes alleged in Counts 3, 4, 5 and the incident in Zhabel/Žabelj alleged in Count 6 have been established. The Prosecution has presented no direct evidence that these crimes were committed as part of a JCE in which the Accused participated. The Chamber must, therefore, consider circumstantial evidence tendered by the Prosecution during the retrial.

(i) KLA communiqués

629. The Chamber received in evidence KLA communiqués published in the media which contain information about attacks or “measures” undertaken by the KLA against collaborators with the Serbian authorities.²²⁰⁶

630. These communiqués were compiled based on information received from sources within Kosovo.²²⁰⁷ Most of the communiqués were issued by the KLA General Staff, although certain

Judgement, para. 482; *Orić* Appeal Judgement, para. 43; *Karera* Appeal Judgement, para. 321; *Mrkšić* Appeal Judgement, paras 49, 146, 159; *Haradinaj* Appeal Judgement, paras 57-58; *Kalimanzira* Appeal Judgement, para. 86; *Ntawukulilyayo* Appeal Judgement, para. 222.

²²⁰³ *Aleksovski* Appeal Judgement, para. 162; *Simić* Appeal Judgement, para. 86; *Brdanin* Appeal Judgement, paras 484, 487-488; *Nahimana* Appeal Judgement, para. 482; *Orić* Appeal Judgement, para. 43; *Mrkšić* Appeal Judgement, paras 49, 146, 159; *Haradinaj* Appeal Judgement, paras 57-58.

²²⁰⁴ *Krnjelac* Appeal Judgement, para. 52; *Krstić* Appeal Judgement, para. 140; *Simić* Appeal Judgement, para. 86; *Blagojević* Appeal Judgement, para. 127; *Kalimanzira* Appeal Judgement, para. 86; *Ntawukulilyayo* Appeal Judgement, para. 222.

²²⁰⁵ *Blaškić* Appeal Judgement, para. 50; *Simić* Appeal Judgement, para. 86; *Nahimana* Appeal Judgement, para. 482; *Karera* Appeal Judgement, para. 321; *Mrkšić* Appeal Judgement, paras 49, 159; *Haradinaj* Appeal Judgement, paras 57-58.

²²⁰⁶ The Prosecution has tendered a number of communiqués, containing information about the killing or injuring of collaborators by the KLA, which refer, however, to a period prior to that charged in the Indictment, *see* Exhibits P131; P136; P137; P139; P142; P143; P145; P146; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4951-4953, 4972-4973, 4975, 5118, 5120-5122; Jakup Krasniqi, Exhibit P65, Annexes 1-2, 4-5; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3319-3326. As these communiqués do not concern the Indictment period, the Chamber will not deal with them further.

²²⁰⁷ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4953-4954, 4993.

KLA commanders issued communiqués independently on behalf of the KLA, without the knowledge of the General Staff.²²⁰⁸ Jakup Krasniqi, member of the KLA General Staff since the end of 1996 or the beginning of 1997 and the spokesperson for the KLA from 11 June 1998 within Kosovo, explained that communiqués or media statements were sometimes exaggerated and primarily used as part of the KLA propaganda campaign.²²⁰⁹ They were also compiled to boost morale of the members of the KLA and the citizens of Kosovo, to encourage recruitment to the KLA and to win the support of the citizens of Kosovo, Albania and the international community.²²¹⁰ While Jakup Krasniqi acknowledged that the events discussed in the communiqués did often take place, he explained that, given the level of organisation of the General Staff, the purpose of the communiqués was to make the people of Kosovo think that the KLA was a well organised army and to highlight successes.²²¹¹ Sometimes the successes of the KLA and the losses of the opposing side were exaggerated, while the losses and casualties of the KLA were diminished.²²¹²

631. KLA communiqué no. 42 as published in the Prishtinë/Priština newspaper “Bujku” on 28 February 1998, states that in January and February on the decision of the General Staff, attacks were carried out against the Serbian police “and their collaborators”, including on “the criminal” Desimir Vasić, “a close collaborator of Arkan” on 23 January 1998, and on “collaborator” Mustafe Kurti on 13 February 1998, who was killed.²²¹³ According to KLA communiqué no. 47, published in the Prishtinë/Priština newspaper “Koha Ditore” on 13 May 1998, from March to mid-May 1998, “operations were [...] carried out against Albanian collaborationists, who, despite earlier warnings, did not abandon their antinational courses of action”.²²¹⁴ The communiqué does not provide any details of who these “collaborationists” were, what kind of operations against them were carried out, where or by whom. KLA communiqué no. 49, published in the “Koha Ditore” newspaper on 13 July 1998, states that measures had been taken against “certain diehard collaborators, who are still working against our national interests”.²²¹⁵ No further details are provided as to where, by

²²⁰⁸ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3314-3315.

²²⁰⁹ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3305, 3311, 3346, 3353-3354, 3377, 3419-3420; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4953-4954, 4968, 5011, 5034-5035, 5044, 5060.

²²¹⁰ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3377, 3420; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4953, 5011, 5039, 5035.

²²¹¹ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3420; Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4967-4968, 5036-5037. Jakup Krasniqi spoke about an example related to a reported attack in November 1997 by a special KLA unit on Golesh aerodrome, in which an aeroplane was hit and brought down (Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4978; Jakup Krasniqi, Exhibit P65, Annex 5; Exhibit P145, p. 1). He did not dispute that the event did take place, however, it was not known if it was a KLA attack because Jakup Krasniqi did not believe the KLA had the weapons to bring down the aeroplane (Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4978). It was explained that this fitted in with the framework of the KLA propaganda (Exhibit P64 (*Haradinaj* original transcript), T. 4980).

²²¹² Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5011.

²²¹³ Jakup Krasniqi, Exhibit P65, Annex 7; Exhibit P148, p. 1.

²²¹⁴ Jakup Krasniqi, Exhibit P65, Annex 13. Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3340.

²²¹⁵ Jakup Krasniqi, Exhibit P65, Annex 16; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3345-3346.

whom and against whom these measures were taken. Jakup Krasniqi confirmed that up to 13 July 1998 the KLA was still taking “measures against the entire violent operators of the Milošević regime [...] in Kosovo”, including against collaborators.²²¹⁶ He did not specify where, by whom or against whom these measures were taken, or what these measures were.

632. The content of the General Staff’s communiqué no. 53 of 19 September 1998 was put to Jakup Krasniqi during his testimony in the *Limaj* trial. This communiqué appeared in the “Koha Ditore” newspaper and stated that punitive measures “of various kinds [were] also being undertaken against collaborationist elements that continue to serve the occupying power”.²²¹⁷ Jakup Krasniqi confirmed that “of course measures were taken against all those who have done harm to the political and military actions of the KLA”, which would include collaborators, without specifying by whom, against whom, or where and what the measures were.²²¹⁸

633. The General Staff’s communiqué no. 43 of 4 March 1998, published in the newspaper “Bujku”, generally declared “[d]eath to enemies and traitors!”²²¹⁹ Jakup Krasniqi stated that the expression “traitors” was meant to refer to “collaborators”.²²²⁰ While on the evidence of this witness, the KLA General Staff never publicly defined who it considered to be a “collaborator” in 1998,²²²¹ they considered “collaborators” to be Kosovo Albanians who had been recruited into the Serbian security services, police or military and not those who were against the war.²²²² The Chamber notes that in the *Limaj* trial, Jakup Krasniqi also referred to persons who relayed information to the Serbian authorities, for instance, on the KLA’s movement, as collaborators.²²²³

634. According to the evidence of Jakup Krasniqi, it was not the policy of the KLA to attack civilians, rather to target the Serbian police and army, in the Dukagjin zone as well as in other zones.²²²⁴ The KLA policy statement no. 2 dated 27 April 1998, along similar lines, promulgated that the KLA “condemn[ed] terrorism and other forms of violence over the civilian population and those held captive”, and that it “recognises and respects [...] the [c]onventions on war”.²²²⁵ Jakup

²²¹⁶ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3350.

²²¹⁷ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3354.

²²¹⁸ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3354.

²²¹⁹ Jakup Krasniqi, Exhibit P65, Annex 8; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3335-3336; *see also* Exhibit P145, p. 2.

²²²⁰ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3335-3336.

²²²¹ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5088.

²²²² Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5061-5062, 5064-5065, 5115, 5152-5153; *see also* Shefqet Kabashi, Exhibit P119 (*Limaj* transcript), T. 4194-4195.

²²²³ Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3324-3325, 3329.

²²²⁴ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 4959-4961; Jakup Krasniqi, Exhibit P65, Annex 18, p. 4; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3388-3389.

²²²⁵ Jakup Krasniqi, Exhibit P65, paras 6, 10 (p. 6), Annex 12, pp 1-3, *see also* Annex 18, p. 4; Annex 19, p. 2; Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3363. *See also* Jakup Krasniqi, Exhibit P67 (*Limaj* transcript), T. 3359-3360, 3363-3364.

Krasniqi gave evidence that he had no knowledge that the KLA executed collaborators who were detained, but that he heard through the communiqués that the KLA indeed executed collaborators who were not detained.²²²⁶

635. As discussed above, the KLA communiqués were part of the KLA “propaganda campaign”. The Chamber recalls the evidence of Jakup Krasniqi that the repetitive theme of retaliation against collaborators in many KLA communiqués should be interpreted in the context of the KLA’s “propaganda campaign” which aimed at preventing civilians from serving “the Serbian regime”.²²²⁷ The information contained in the KLA communiqués may have been exaggerated or altered for the purposes of this campaign. Moreover, the Chamber notes that the information contained in the communiqués on incidents involving “collaborators” is often vague and leaves out details as to the time and place of the incident, the identity of the perpetrator and the identity of the victims or their civilian or military status. Also and in particular, it is unclear whether the measures claimed to have been taken against “collaborators” were carried out in the Dukagjin zone, and whether they were taken by any person alleged in the Indictment to be a member of the JCE. In light of these considerations, the Chamber does not conclude beyond reasonable doubt that the evidence cited above indicates that a plan existed between the Accused and/or other members of the a JCE alleged in the Indictment to “consolidate the total control of the KLA over the Dukagjin Operational Zone by [*inter alia*] the mistreatment of Kosovar Albanian and Kosovar Roma/Egyptian civilians, and other civilians, who were, or were perceived to have been, collaborators with the Serbian forces or otherwise not supporting the KLA”, as alleged in the Indictment.

(ii) KLA military police

636. The Prosecution argues in its Final Brief that members of the KLA military police pursued the mistreatment of perceived opponents of the KLA, referring to “Military Police Regulations” numbers 3-4.²²²⁸ The Chamber discussed the content of these regulations elsewhere in this Judgement.²²²⁹ It recalls here that these regulations stipulate, in relevant parts, that the military police had the task of “investigating and uncovering, with persuasive facts, all those persons who collaborate in any way with the enemy” and the “tak[ing of] measures against all those working against the Kosovo Liberation Army”. Nothing in the evidence establishes, however, how these rules were understood, whether they were enforced and, if so, how. The Chamber recalls further that it received evidence suggesting that the objectives of the KLA military police were to ensure

²²²⁶ Jakup Krasniqi, Exhibit P64 (*Haradinaj* original transcript), T. 5066, 5114, 5117-5118.

²²²⁷ See *supra*, para. 630.

²²²⁸ Prosecution Final Brief, paras 62-63.

²²²⁹ See *supra*, para. 112.

that the population fled the village; to monitor persons entering and exiting villages; to prevent the commission of forbidden acts; and to enforce discipline within KLA.²²³⁰ As discussed in more detail elsewhere in this Judgement, the Chamber found that members of KLA military police were in fact involved in investigations of cases of disappearances of Kosovo Albanian civilians said to have disappeared while in KLA custody.²²³¹

637. The evidence of actual activities of the KLA military police on the ground does not support the Prosecution's submission that the KLA pursued the mistreatment of its collaborators or perceived opponents through the military police. There is evidence that one of the victims saw, while being interrogated and beaten at the KLA compound in Jabllanicë/Jablanica, a person in black uniform with "PU" patch on his arm.²²³² In the Chamber's view this single incident does not constitute a basis to conclude that the KLA military police were employed in a way to further the common criminal plan as alleged in the Indictment. There is no evidence to suggest that there were more incidents of this nature.

(iii) "KLA blacklists"

638. The Chamber received evidence relating to various lists of names. The Prosecution argues that these lists are "KLA blacklists of individuals who were suspected of being disloyal to the KLA, sympathising with the opposition LDK, or having worked for the Serbian authorities".²²³³ According to the Prosecution, these lists "were circulated amongst KLA village guards so that they could prevent these people from entering the villages" with the "objective [...] to compromise or discredit those who had been blacklisted".²²³⁴

639. The evidence refers to (i) several lists found in the Haradinaj compound in Glogjan/Glodane in March of 1998;²²³⁵ (ii) one list given to Witness 17 on 12 July 1998;²²³⁶ and (iii) several lists of people "blacklisted" by Faton Mehmetaj²²³⁷ and Fitnete Ramosaj "for not being

²²³⁰ The Chamber also received evidence that the KLA military police had no investigatory role relating to misbehaviour of KLA forces, *see supra*, paras 115-116.

²²³¹ *See supra*, paras 314, 361.

²²³² *See supra*, para. 541.

²²³³ Prosecution Final Brief, para. 58.

²²³⁴ Prosecution Final Brief, para. 58. *See also* Prosecution Final Brief, paras 59-61.

²²³⁵ Zoran Stijović, Exhibit P121, paras 41-42; Zoran Stijović, T. 570.

²²³⁶ Witness 17, Exhibit P344, paras 57-58; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7583-7584; Exhibit D146, pp 13-14.

²²³⁷ *See supra*, paras 119-122.

loyal to the [KLA], or for sympathising with the LDK, or for having worked for the MUP or other [authorities]’.”²²³⁸

a. Lists found at the Haradinaj compound in Gllogjan/Glodane

640. Zoran Stijović gave evidence that on 24 March 1998, after the incident in Gllogjan/Glodane in Dečan/Dečani municipality, the MUP or RDB carried out a search and found a number of lists in the Haradinaj family compound. According to Zoran Stijović, these included, *inter alia*, “lists of members of the KLA, including... people who manned... guard posts”; “lists of current or former MUP policemen”; and “lists of Albanians who were suspected of co-operating with members of the Serbian security forces”.²²³⁹ Zoran Stijović testified that, after comparing names included on the seized lists to “registers” of the Serbian RDB “informant network”, the MUP and RDB came to the conclusion that some of the lists seized in the Haradinaj compound named persons who were “to be targeted”.²²⁴⁰ The alleged lists found at the Haradinaj family compound were not tendered as evidence.

641. According to Zoran Stijović, one name on the list was that of Murat Haxhocaj (Hadocaj), who was then warned by “an operative of the [RDB]” that “his name was on a list found during the search of the house of the Haradinaj family”,²²⁴¹ Murat Haxhocaj (Hadocaj) “was told to be very careful where he went and that he had to inform [the RDB of his movements]”.²²⁴² Zoran Stijović testified that a family member of Murat Haxhocaj (Hadocaj) informed the RDB that he was killed by KLA members towards the end of 1998, perhaps in October or November of 1998.²²⁴³ The Chamber notes that it is not clear in the evidence whether Zoran Stijović saw the name of Murat Haxhocaj (Hadocaj) on the list²²⁴⁴ or received information that it was on the list and if so, from whom he received such information. Moreover, although it is apparent that it was not Zoran Stijović who warned Murat Haxhocaj (Hadocaj) to be careful, he does not indicate from whom he received the information that Murat Haxhocaj (Hadocaj) was warned.

642. In evidence is a Gjakovë/Đakovica SUP report stating that “[o]n 13 November 1998 [...] in Preko Luka village, Dečani municipality, an ethnic Albanian DTG carried out a terrorist attack on

²²³⁸ Rustem Tetaj, Exhibit P77, para. 29. According to Rustem Tetaj, Fitnete Ramosaj was a woman from Crnobreg/Carrabreg, who worked with Faton Mehmetaj, dealing with the media, Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript) T. 3630.

²²³⁹ Zoran Stijović, T. 570; Zoran Stijović, Exhibit P121, para. 41.

²²⁴⁰ Zoran Stijović, T. 572-573; Zoran Stijović, Exhibit P121, para. 41.

²²⁴¹ Zoran Stijović, T. 573-575.

²²⁴² Zoran Stijović, T. 575.

²²⁴³ Zoran Stijović, T. 574-575.

²²⁴⁴ While Prosecuting counsel suggested in the question that Zoran Stijović saw the lists, the witness in his answer did not confirm or deny whether he personally saw the lists, Zoran Stijović, T. 571.

the house of Murat Hadocaj from this village”.²²⁴⁵ The report states that Murat and his son “were taken out of the house” and that the “terrorists shot Murat dead and his son [...] sustained a slight injury – a grazing”.²²⁴⁶ There are no further details in the report. The Chamber notes also that this incident is outside the time frame alleged in the Indictment.

643. The Chamber also received evidence from Zoran Stijović regarding two women from the families “Zukaj” and “Coraj”, who were allegedly gathering information about KLA activities for the Serbian security forces.²²⁴⁷ However, it is unclear from the evidence whether or not these women were on the actual lists found at the Haradinaj family compound.²²⁴⁸ The Chamber received no further evidence regarding these two individuals.

b. List in handwritten notes of a meeting on 12 July 1998

644. Witness 17 gave evidence that he attended a meeting at the home of Din Krasniqi (a KLA commander at Baran/Barane Valley), in Vranoc/Vranovac in Pejë/Peć municipality, on 12 July 1998.²²⁴⁹ At the meeting, there were other KLA representatives present as well as KLA village commanders of the Baran/Barane Valley.²²⁵⁰ Witness 17 gave evidence that the meeting was intended to give information about the arrival of the FARK brigade and the fact that the FARK officers were representing the Kosovo government, and to discuss, *inter alia*, the situation on the ground, financing, formation of military police, deployment of heavy vehicles, and mobilisation of forces.²²⁵¹ Witness 17 took handwritten notes during the meeting.²²⁵²

645. At this meeting or on the next day, Witness 17 was “given a list of persons wanted by the KLA” and he transcribed the names in his handwritten notes.²²⁵³ His handwritten notes contained the following 10 listings under the heading: “Wanted/*or missing?*/Persons” (emphasis added): 1. “Zenel”; 2. “Ali”; 3. “Mehmet Alia”; 4. “Tahir Zhukri”; 5. “Zenun Gashi together with his son”; 6. “Zenel Mehmeti”; 7. “Shekrelet Sadiku together with his family”; 8. “Two women collaborators

²²⁴⁵ Exhibit P383, p. 11.

²²⁴⁶ Exhibit P383, p. 11.

²²⁴⁷ Zoran Stijović, T. 571-573.

²²⁴⁸ It appears from the evidence of Zoran Stijović that one of the two women may have been on one of the lists found at the Haradinaj family compound, but it is unclear which of the two woman he is referring to, Zoran Stijović, T. 573.

²²⁴⁹ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7583-7584; Witness 17, Exhibit P344, paras 56-58.

²²⁵⁰ Witness 17, Exhibit P344, para. 56; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7583-7586.

²²⁵¹ Witness 17, Exhibit P344, para. 56.

²²⁵² Witness 17, Exhibit P344, para. 56; Exhibit D146, pp 12-13.

²²⁵³ Witness 17, Exhibit P344, para. 57; Exhibit P342 (*Haradinaj* original transcript), T. 7583-7584; Exhibit D146, pp 13-14.

Turjak-Kosturiq”; 9. “Misin Berisha - Roman person, Glogjan”; and 10. “Skënder Sali Kuçi - Lutogllavë”.²²⁵⁴ Witness 17 gave evidence that he never told Ramush Haradinaj about this list.²²⁵⁵

646. The evidence regarding the source of this list is unclear. Witness 17 could not recall who gave him the list.²²⁵⁶ However, he brought up the possibility that it was the minute taker of the meeting or “Din Krasniqi or someone else” who gave him the list and did not know if he received the list in writing or orally.²²⁵⁷ Witness 17 also gave evidence that, at the time he took the notes, he did not know any of the persons listed in his notebook.²²⁵⁸

647. Despite the heading “Wanted/*or missing?*/Persons” (emphasis added), the evidence regarding the purpose of the list was unclear. Witness 17 gave evidence that the “wanted persons were sought by the KLA and Din Krasniqi”.²²⁵⁹ At the same time, Witness 17 accepted that the list was of persons whom the police officers under his command were looking for, and that he did not think there was anything improper about the list, or that it was evidence of a plan to commit crimes.²²⁶⁰

648. The Chamber notes that it saw further evidence related to Zenun Gashi, Misin Berisha, and Skender Kuçi, three persons among those on the lists.²²⁶¹ With respect to Zenun Gashi, the Chamber accepted that he was killed and that members of the KLA were likely involved.²²⁶² However, there was nothing in the evidence to establish that his arrest and death was related to his name being on the list. Rather, Witness 17, who had written the list in his notes, gave evidence that he intervened on two occasions to secure the release of Zenun Gashi.²²⁶³ With respect to Misin Berisha, the Chamber found that he was killed, but made no further finding due to the lack of evidence.²²⁶⁴

649. The Chamber notes that the name Skender Kuçi, listed in Count 5 of the Indictment, is also among those on the list.²²⁶⁵ The Chamber found that Skender Kuçi was brought to the KLA compound in Jabllanicë/Jablanica approximately on 13 or 14 July 1998 and that the charges of cruel treatment, torture and murder of Skender Kuçi were established in relation to the events in the

²²⁵⁴ Witness 17, Exhibit P344, para. 57; Exhibit D146, pp 13-14.

²²⁵⁵ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7700.

²²⁵⁶ Witness 17, Exhibit P344, para. 57; Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7584, 7699.

²²⁵⁷ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7584, 7694.

²²⁵⁸ Witness 17, Exhibit P344, para. 58.

²²⁵⁹ Witness 17, Exhibit P344, para. 58. See Confidential Annex.

²²⁶⁰ Witness 17, Exhibit P342 (*Haradinaj* original transcript), T. 7695, 7700.

²²⁶¹ See *supra*, paras 343-344, 346-354.

²²⁶² See *supra*, para. 355.

²²⁶³ See *supra*, paras 352-353.

²²⁶⁴ See *supra*, para. 345.

²²⁶⁵ Indictment, paras 58-59.

compound.²²⁶⁶ The Chamber accepted that he was held at the compound and subjected to ill-treatment because it was believed that he had a lot of money.²²⁶⁷ There was nothing in the evidence to establish that he was detained, subjected to ill-treatment and ultimately murdered in relation to his name being on the list of 12 or 13 July 1998. Although the Chamber considered the close proximity of the dates when the list was created and the date Skender Kuçi was brought to the compound, the Chamber does not find this list to be a “blacklist” based on the foregoing evidence, in particular due to the lack of evidence regarding the source and purpose of the list.

c. “Blacklists” of Faton Mehmetaj

650. The Chamber received evidence from Rustem Tetaj that the “blacklists” of Faton Mehmetaj and Fitnete Ramosaj were “circulated amongst the [KLA] village guards in specific villages that were sympathising with the [KLA]”.²²⁶⁸ According to Rustem Tetaj, “the guards had to check the identities of the persons who were travelling through their villages and to refuse access to the ones whose names were mentioned on the lists”.²²⁶⁹ He testified that he understood that the lists were drawn up “to compromise those on the list [who belonged to] different political parties”, and “opponents they didn’t like”; the “purpose of this procedure was to compromise or discredit the mentioned people”.²²⁷⁰ The lists themselves were not tendered as evidence.

651. According to Rustem Tetaj, he himself was on one such list, and was interrogated in May 1998 by Faton Mehmetaj and a person named “Ujka” in the village of Pozhare/Požar in Deçan/Dečani municipality.²²⁷¹ During the interrogation, he was accused of “giving information to the MUP in [Pejë/Peć] about the [KLA]”, on the basis that he was a former JNA officer.²²⁷² Rustem Tetaj gave evidence that he was interrogated for two hours, in quite a threatening manner, but was not mistreated and was free to go thereafter.²²⁷³

d. Conclusion

652. In the Chamber’s view, the evidence tendered in respect of the lists discussed above does not support the existence of the common criminal purpose of the JCE alleged in the Indictment.

²²⁶⁶ See *supra*, paras 534, 580.

²²⁶⁷ See *supra*, para. 576.

²²⁶⁸ Rustem Tetaj, Exhibit P77, para. 29.

²²⁶⁹ Rustem Tetaj, Exhibit P77, para. 29.

²²⁷⁰ Rustem Tetaj, Exhibit P77, para. 29; Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3858-3859, 3863.

²²⁷¹ Rustem Tetaj, Exhibit P77, para. 30.

²²⁷² Rustem Tetaj, Exhibit P77, para. 30.

²²⁷³ Rustem Tetaj, Exhibit P77, para. 30.

(iv) Incidents of mistreatment and killing of civilians by KLA soldiers

653. At the outset, the Chamber notes that the Prosecution tendered a lot of evidence which the Chamber found insufficient in many instances to establish specific incidents.²²⁷⁴ This was oftentimes because it constituted multiple hearsay evidence whose provenance was unknown. The Chamber also noted the concerns it had with the reliability of evidence originating from a party to the armed conflict, especially when the origin of the information and the way it was processed was unknown. Incidents between the KLA and the FARK²²⁷⁵ are not considered in the following discussion as the FARK soldiers were not civilians and, therefore, incidents involving them have no relevance to establishing the common purpose alleged in the Indictment.

654. Further, the evidence tendered to prove KLA attacks was often fragmentary and incomplete. For instance, the Prosecution tendered evidence about human remains discovered at Lake Radoniq/Radonjić but offered no or very limited evidence to establish the circumstances surrounding the deaths of these individuals. The Chamber found earlier that the remains of Misin Berisha, Zenun Gashi, Velizar Stošić, Nurije Krasniqi, Istref Krasniqi, Malush Meha, Ilira Frrokaj, Kujtim Imeraj, Rade Popadić, Vukosava Marković, Darinka Kovač, Pal Krasniqi, and Milka Vlahović were found at the Lake Radoniq/Radonjić canal and that the remains of Mehmet Rrustemaj, Tushe Tahiraj, and Ramiz Tahiraj were found at the Ekonomija Farm.²²⁷⁶ The Chamber found that the evidence presented by the Prosecution did not establish the circumstances of the death of these persons.²²⁷⁷ The Chamber, therefore, will not discuss these deaths in relation to establishing the JCE alleged in the Indictment. For the same reasons the Chamber will not further discuss the evidence regarding the unidentified remains.²²⁷⁸

655. The Chamber found earlier that several incidents of mistreatment or killing of civilians by KLA soldiers in the territory of the Dukagjin zone have been established.

656. The Chamber found in particular that on 18 April 1998 the Stojanović family compound was attacked by KLA soldiers, and that KLA soldiers forcibly took Mijat Stojanović, Dragoslav Stojanović and Veselin Stijović to Smajl Haradinaj's house in Gllogjan/Glodane, mistreating them on the way.²²⁷⁹ In the house they were further mistreated.²²⁸⁰ The KLA soldiers committing those acts included Zeqir Nimonaj, Daut Haradinaj, and Besnik Haradinaj.²²⁸¹ The Chamber notes that on

²²⁷⁴ See *supra*, paras 203-235, 238-253, 307-318, 343-372, 381-387.

²²⁷⁵ See *supra*, paras 264-278.

²²⁷⁶ See *supra*, paras 342, 381, 384.

²²⁷⁷ See *supra*, paras 221, 345, 355, 358, 363, 366, 370, 372, 578.

²²⁷⁸ See *supra*, paras 341, 376, 380.

²²⁷⁹ See *supra*, paras 183-184, 186-187, 189.

²²⁸⁰ See *supra*, paras 191-192.

²²⁸¹ See *supra*, para. 191.

24 March 1998 there was fighting between KLA members in the Haradinaj family compound and MUP members in the yard of the Stojanović family compound, that on that day the Stojanović family left their compound and members of the Stojanović family went back for the first time on 18 April 1998 when they came under attack.²²⁸² In the circumstances, the Chamber cannot exclude the possibility that the attack on the Stojanović family compound on 18 April 1998 and the subsequent ill-treatment of Mijat Stojanović, Dragoslav Stojanović, and Veselin Stijović were carried out in retaliation for their perceived specific role in the fighting on 24 March 1998, between MUP forces located in the yard of the Stojanović family compound and KLA forces located at the Haradinaj family compound, rather than this incident being part of a plan to mistreat Kosovo Serb and other civilians perceived to be collaborators. Further, the Chamber notes that in the afternoon of 18 April 1998 Nasim Haradinaj informed the three men that they would be released, that he offered a painkiller to Dragoslav Stojanović, that Hilmi Haradinaj offered the three men food and refreshments, and that the three men were eventually taken to the refugee camp in Baballoq/Babaloc where they were released and given medical assistance. While this single incident constitutes a mistreatment of Kosovo Serb civilians, considering the context of this incident and the conduct of Nasim Haradinaj and Hilmi Haradinaj outlined above, the Chamber rejects the proposition that this incident points to the existence of a common plan involving the unlawful removal and mistreatment of Kosovo Serb and other civilians perceived to be collaborators.

657. The Chamber found earlier that in the morning hours on 22 April 1998 KLA members, including Kujtim Berisha and Jusuf, last name unknown, stopped Novak Stijović, Staniša Radošević and his mother Rosanda Radošević in Pozhar/Požar.²²⁸³ The soldiers told them that they could not return to their homes and that they had no business there.²²⁸⁴ The soldiers brought Novak Stijović, Staniša Radošević and Rosanda Radošević by force to Gllogjan/Glodane in Deçan/Deçani municipality, where some 30 to 50 KLA soldiers kicked, punched and hit the two men with rods and rifle butts for 20-30 minutes.²²⁸⁵ They were again told they could not return to their homes and should leave for Serbia.²²⁸⁶ Staniša Radošević was then released to retrieve two carbine rifles; Novak Stijović and Rosanda Radošević were released about 1500 hours, after a KLA soldier conveyed the message that Staniša Radošević had handed over a weapon to the KLA.²²⁸⁷

²²⁸² See *supra*, paras 145-146, 183.

²²⁸³ See *supra*, paras 195, 199.

²²⁸⁴ See *supra*, para. 195.

²²⁸⁵ See *supra*, paras 195-196, 199.

²²⁸⁶ See *supra*, paras 196, 202.

²²⁸⁷ See *supra*, paras 196-197, 199, 201.

658. The Chamber notes that during this incident KLA soldiers told Novak Stijović, Staniša Radošević and Rosanda Radošević, who were Kosovo Serb civilians, that they could not return to their homes and that they should leave for Serbia. The Chamber notes, however, that Staniša Radošević was sent to retrieve two rifles and that all three were released after Staniša Radošević handed a weapon to a member of the KLA later that day. Rosanda Radošević was not beaten during the incident. While the Chamber accepts that the incident with Novak Stijović, Staniša Radošević and Rosanda Radošević constitutes mistreatment of Kosovo Serb civilians, in light of the fact that Staniša Radošević was sent to retrieve two weapons and that the three were released a few hours later, after the handover of a weapon, it rejects the notion that the incident is indicative of the existence of a common plan to unlawfully remove and mistreat Kosovo Serbs and other civilians as alleged in the Indictment.

659. The Chamber found earlier that on 11 August 1998, Idriz Balaj and other KLA members stopped an ECMM team, ordered them to go to Glogjan/Glodane, and accused them of spying for the Serbian forces. In Glogjan/Glodane Idriz Balaj ill-treated the Albanian interpreter.²²⁸⁸ The Chamber found further that Ramush Haradinaj questioned the members of the team in a “polite” manner and subsequently released the ECMM team and its interpreter with an escort to ensure their safety.²²⁸⁹ Another KLA soldier called Toni, whom the members of the ECMM team encountered after their release, stated that he was “very sorry but there are extremistic [sic] groups inside the KLA that were operating in their own manner”.²²⁹⁰ Considering the broader context of this incident, Ramush Haradinaj’s conduct, in particular, the release of the ECMM team, and the apology of the KLA soldier “Toni” who attributed this mistreatment to uncontrollable extremist groups within the KLA, the Chamber does not accept that this incident is indicative of the existence of a common criminal purpose of the JCE as alleged in the Indictment.

660. The Chamber also found that Fadil Fazliu and Naser Lika were removed by force from Zhabelj/Žabelj by KLA soldiers. The KLA soldiers called Fadil Fazliu and Naser Lika traitors.²²⁹¹ The Prosecution tendered no evidence to establish that this crime was part of a plan or evidence about other incidents that can establish a pattern of violence against civilians as alleged in the Indictment.

²²⁸⁸ See *supra*, paras 301-302, 304, 306.

²²⁸⁹ See *supra*, para. 303.

²²⁹⁰ See *supra*, para. 303.

²²⁹¹ See *supra*, paras 590, 596, 610.

(v) Incidents of mistreatment and killings at the KLA compound in Jabllanicë/Jablanica

661. The Chamber found earlier that in the spring of 1998 Jah Bushati was detained in the KLA compound in Jabllanicë/Jablanica, where he was subjected to beatings. The Chamber found also that after a period of time Jah Bushati joined the ranks of the KLA.²²⁹² In the circumstances the Chamber does not accept that Jah Bushati's detention at the KLA compound in Jabllanicë/Jablanica was part of a common plan to consolidate the KLA control over the Dukagjin zone by the unlawful removal and mistreatment of civilians.

662. The Chamber found earlier that on 13 June 1998 Witness 6 was abducted by KLA soldiers from the Gjakovë/Đakovica—Klinë/Klina road and was detained in the KLA compound in Jabllanicë/Jablanica for approximately six weeks where he was subjected to beatings by KLA soldiers including Nazmi Brahimaj, Lahi Brahimaj, and Hamza Brahimaj.²²⁹³ Witness 6 was accused of staying with Serbs and spying.²²⁹⁴ On the day of the release of Witness 6 Nazmi Brahimaj gave Witness 6 a paper, bearing Nazmi Brahimaj's signature and the name of the Operative Staff of the Dukagjin Operational Zone, Local Staff of Jabllanicë/Jablanica, which indicated that the Operative Staff of the Dukagjin Operational Zone had decided to release Witness 6 from detention, stating further that if he repeated his mistakes he would face criminal charges.²²⁹⁵ Nazmi Brahimaj also gave Witness 6 a similar paper, bearing the name of the Local Staff of Jabllanicë/Jablanica and Nazmi Brahimaj's signature, indicating that the Operative Staff of the Dukagjin Operational Zone had decided to confiscate his vehicle and his revolver for the needs of the army.

663. The Chamber also found that approximately on 13 June 1998 Nenad Remištar, a Kosovo Serb police officer, was taken to the KLA compound in Jabllanicë/Jablanica where he was severely beaten by Nazmi Brahimaj and other KLA soldiers. He was last seen in the KLA compound in Jabllanicë/Jablanica on 14 June 1998.²²⁹⁶ The Chamber found that an unidentified man of Bosnian ethnicity, who was accused of having interrupted the electricity supply, and three unidentified men of Montenegrin ethnicity were detained in the KLA compound in Jabllanicë/Jablanica for three to four days during which time they were beaten with baseball bats and stabbed with knives by KLA soldiers in the presence of Nazmi Brahimaj and Hamza Brahimaj.²²⁹⁷

²²⁹² See *supra*, para. 182.

²²⁹³ See *supra*, paras 477-486, 490.

²²⁹⁴ See *supra*, para. 482.

²²⁹⁵ See *supra*, para. 490.

²²⁹⁶ See *supra*, paras 499-500, 505-506.

²²⁹⁷ See *supra*, paras 510-511.

664. Further, the Chamber was satisfied that Skender Kuçi was detained in the KLA compound in Jabllanicë/Jablanica from 13 or 14 July 1998 until 15 or 16 July 1998, where he was severely beaten. He was brought to a hospital on approximately 15 or 16 July 1998, the day of his failed attempt to escape, and died there as a result of (complications caused by) his beatings.²²⁹⁸ It was established also that Pal Krasniqi was detained in the KLA compound in Jabllanicë/Jablanica from 14 or 15 July 1998 until at least 25 July 1998 where he was subjected to severe beatings. Further, the Chamber was satisfied that on 14 or 15 July 1998 Witness 3 was brought to the KLA compound in Jabllanicë/Jablanica where he was detained until 15 or 16 July 1998 when he managed to escape. During his detention he was subjected to beatings, inflicted with the intent to punish him for his perceived participation in an attack of the Serbian forces and, later, to punish him for his escape.²²⁹⁹ The perpetrators of the beatings of these three men included Nazmi Brahimaj who beat Skender Kuçi and Pal Krasniqi and kicked Witness 3;²³⁰⁰ Hamza Brahimaj²³⁰¹ and Naser Brahimaj²³⁰² who beat Skender Kuçi and Pal Krasniqi; Lahi Brahimaj who ill-treated Witness 3 and was present during the beatings of Skender Kuçi,²³⁰³ and other unnamed KLA soldiers present at the KLA compound in Jabllanicë/Jablanica.

665. Witness 6, Nenad Remištar, the Bosnian man, the three unknown Montenegrin men, Skender Kuçi, Pal Krasniqi, and Witness 3 were detained at the KLA compound in Jabllanicë/Jablanica and subjected to severe beatings. The evidence indicates that prior to their detention, with the exception of Nenad Remištar, they were all civilians. In any event at the time of their mistreatment none of them was taking active part in the hostilities. The Chamber found that with respect to all but the three Montenegrin men the beatings were inflicted with a purpose, which included to punish them or to discriminate against them. Nazmi Brahimaj participated in the ill-treatment of Witness 6, Nenad Remištar, Skender Kuçi, Pal Krasniqi, and Witness 3; he was present during the beatings of the Bosnian man, and the three unknown Montenegrin men.²³⁰⁴ He was seen as a commander of the KLA compound in Jabllanicë/Jablanica and he signed the papers for Witness 6's release.²³⁰⁵ Hamza Brahimaj participated in the beatings of Witness 6, Skender Kuçi and Pal Krasniqi; he was present during the beatings of the Bosnian man and the three Montenegrins.²³⁰⁶ Naser Brahimaj beat Skender Kuçi and Pal Krasniqi.²³⁰⁷ Lahi Brahimaj

²²⁹⁸ See *supra*, paras 530, 533-534, 537, 539-540, 542-543, 564, 566-567.

²²⁹⁹ See *supra*, paras 533-535, 539-543.

²³⁰⁰ See *supra*, paras 530-531, 537.

²³⁰¹ See *supra*, paras 530, 534, 543.

²³⁰² See *supra*, paras 534-535, 537.

²³⁰³ See *supra*, paras 530, 534, 541, 556-557.

²³⁰⁴ See *supra*, paras 482, 484-485, 505, 510, 530, 534, 537.

²³⁰⁵ See *supra*, paras 484, 490.

²³⁰⁶ See *supra*, paras 484-485, 510, 530, 543.

²³⁰⁷ See *supra*, paras 535, 537.

participated in the mistreatment of Witness 6 and Witness 3; he was present during the beatings of Skender Kuçi.²³⁰⁸

666. The findings made above tend to suggest that a common plan may have existed between Nazmi Brahimaj, Hamza Brahimaj, Naser Brahimaj, Lahi Brahimaj and other KLA soldiers present in the KLA compound in Jabllanicë/Jablanica to detain and mistreat individuals who they believed were collaborating with the Serbian forces or were not supporting the KLA. Such common plan is not alleged in the present Indictment and the issue is outside of the scope of these proceedings. The Chamber would note, however, that even if the existence of such common plan is established, which is not the finding of the Chamber, there is nothing in the evidence to indicate that Ramush Haradinaj or Idriz Balaj may have been involved in any such common plan. To the contrary, the Chamber found earlier that when Ramush Haradinaj found out about the detention and mistreatment of Skender Kuçi, he went to Jabllanicë/Jablanica to speak to Nazmi Brahimaj regarding Skender Kuçi's release but this intervention was unsuccessful.²³⁰⁹ The Chamber recalls in particular that a witness, present during this intervention, heard Ramush Haradinaj say to Nazmi Brahimaj that "no such thing should happen anymore because this is damaging our cause".²³¹⁰ When Witness 3 was brought to Ramush Haradinaj after his escape from Jabllanicë/Jablanica and subsequent apprehension by Lahi Brahimaj, Haradinaj offered food and accommodation to Witness 3 and proposed to take him to his family.²³¹¹ Ramush Haradinaj was angry when he found out that Lahi Brahimaj had brought Witness 3 to Gllogjan/Glodane.²³¹² Apart from these two incidents, no evidence has been presented by the Prosecution to establish that Ramush Haradinaj was even aware of the crimes committed at the KLA compound in Jabllanicë/Jablanica. On the evidence accepted by the Chamber there is no mention of Idriz Balaj being present in the KLA compound in Jabllanicë/Jablanica or having knowledge of these crimes.

667. The JCE pleaded in the Indictment alleges a common purpose to consolidate the total control of the KLA over Dukagjin Operational Zone by the unlawful removal and mistreatment of Kosovo Serb, Kosovo Albanian and other civilians who were or were perceived to have been collaborators with the Serbian forces or otherwise not supporting the KLA, a plan in which all three Accused are alleged to have participated. The crimes in the KLA compound in Jabllanicë/Jablanica, which the Chamber found established in this Judgement, while indicative of a pattern and possibly a plan to commit such crimes, in which certain individuals at the KLA compound in Jabllanicë/Jablanica were involved, do not establish the common plan alleged in the

²³⁰⁸ See *supra*, paras 484-485, 530, 541, 556-557.

²³⁰⁹ See *supra*, paras 561, 563.

²³¹⁰ Rustem Tetaj, Exhibit P75 (*Haradinaj* original transcript), T. 3681-3682.

²³¹¹ See *supra*, para. 559.

Indictment. The crimes established in this Judgement involved a limited number of individuals, namely Nazmi Brahimaj, Hamza Brahimaj, Naser Brahimaj, Lahi Brahimaj and other KLA soldiers present in the KLA compound in Jabllanicë/Jablanica, and nothing in the evidence indicates that other KLA members in the Dukagjin Operational Zone outside Jabllanicë/Jablanica had any involvement or knowledge of these events.

(b) Conclusion

668. Having considered the evidence offered to prove the existence of the JCE alleged in the Indictment, the Chamber finds that the common purpose of this alleged JCE is not established. The JCE alleged in the Indictment is not established.

2. Responsibility of Ramush Haradinaj

669. The Indictment alleges that Ramush Haradinaj is individually criminally responsible under Article 7(1) of the Statute for the crimes charged in Counts 1 through 6 through his participation in the JCE alleged in the Indictment. The Chamber found that Counts 1 and 2 have not been established, hence it will not discuss the Accused's criminal responsibility for these counts.

670. The Chamber found earlier that the existence of the JCE was not established. Ramush Haradinaj, therefore, is not criminally responsible for participating in a JCE in relation to the crimes charged in the Indictment under Counts 3, 4, 5, and 6.

671. Ramush Haradinaj is charged in the alternative with ordering, instigating or aiding and abetting the crimes charged in Count 6. The Chamber found the crimes alleged under this count not established, except for the forceful removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj by KLA soldiers.²³¹³

672. The evidence submitted in respect of this crime²³¹⁴ does not place Ramush Haradinaj at the scene of these events. There is no evidence before the Chamber that suggests, let alone proves beyond reasonable doubt, that Ramush Haradinaj prompted or instructed the KLA soldiers who forcefully removed Naser Lika and Fadil Fazliu from Zhabel/Žabelj to commit these acts. There is no evidence of any act or omission of Ramush Haradinaj that may have had a substantial effect on the perpetration of these acts. Neither does the evidence before the Chamber show any intention on the part of Ramush Haradinaj with regard to these acts, nor any awareness that these acts in all likelihood would be committed in consequence. Therefore, Ramush Haradinaj is not criminally

²³¹² Witness 3, T. 1679.

²³¹³ See *supra*, paras 590, 596, 610.

²³¹⁴ See *supra*, para. 590.

responsible in any respect for the crimes charged under Count 6, including the modes of liability charged in the alternative.

3. Responsibility of Idriz Balaj

673. The Indictment alleges that Idriz Balaj is individually criminally responsible under Article 7(1) of the Statute for the crimes charged in Counts 1 through 6 through his participation in the JCE alleged in the Indictment. The Chamber found that Counts 1 and 2 have not been established and it will not discuss the Accused's criminal responsibility for these counts.

674. The Chamber found earlier that the existence of the JCE has not been established. Idriz Balaj, therefore, is not criminally responsible for participating in a JCE in relation to the crimes charged in the Indictment under Counts 3, 4, 5, and 6.

675. In the alternative, Idriz Balaj was charged with individual criminal responsibility under Article 7(1) of the Statute for having committed, or planned or aided and abetted the commission of the crimes charged in Count 6. The Chamber found the alleged crimes charged under this count not established, except for the forceful removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj by KLA soldiers.²³¹⁵

676. The Prosecution provided no evidence indicating that Idriz Balaj committed, planned or aided and abetted the commission of this crime. Therefore, Idriz Balaj is not criminally responsible in any respect for the crimes charged under Count 6, including the modes of liability charged in the alternative.

4. Responsibility of Lahi Brahimaj

677. The Indictment alleges that Lahi Brahimaj is individually criminally responsible under Article 7(1) of the Statute for the crimes charged in Counts 1, 2, 4 and 6 through his participation in the JCE alleged in the Indictment. The Chamber found that Counts 1 and 2 have not been established, hence it will not discuss the Accused's criminal responsibility for these counts.

678. The Chamber found earlier that the existence of the JCE was not established. Lahi Brahimaj, therefore, is not criminally responsible for participating in a JCE in relation to the crimes charged in the Indictment under Counts 4 and 6.

679. Lahi Brahimaj is charged in the alternative with committing, or planning or aiding and abetting the crimes charged in Count 6. The Chamber found the crimes alleged under this count not

established, except for the forceful removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj by KLA soldiers.²³¹⁶

680. The Prosecution has provided no evidence supporting the allegations that Lahi Brahimaj committed, or planned or aided and abetted the commission of this crime. There is evidence indicating that somewhere between Bokshiq/Bokšić and the Gllogjan/Glodane gorge, Lahi Brahimaj met and accused the villagers from Grabanicë/Grabanica, including Naser Lika and Fadil Fazliu, of being traitors prior to Naser Lika and Fadil Fazliu's arrival in Zhabel/Žabelj.²³¹⁷ There is, however, no sufficient evidence that these accusations were directed at Fadil Fazliu and Naser Lika in particular. Moreover, there is nothing in the evidence that shows any connection between Lahi Brahimaj and what occurred in Zhabel/Žabelj. Therefore, Lahi Brahimaj is not criminally responsible in any respect for the crimes charged under Count 6, including the modes of liability charged in the alternative.

C. Conclusion

681. For the foregoing reasons the Chamber finds that the individual criminal responsibility of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj has not been established.

²³¹⁵ See *supra*, paras 590, 596, 610.

²³¹⁶ See *supra*, paras 590, 596, 610.

²³¹⁷ See *supra*, paras 586-587.

VIII. DISPOSITION

682. For the foregoing reasons, having considered all of the evidence and submissions of the Parties, the Chamber decides as follows:

683. The Chamber finds the Accused Ramush Haradinaj **NOT GUILTY** on all counts in the Indictment. Pursuant to Rule 99(A) of the Rules, the Chamber orders that Ramush Haradinaj be released from the United Nations Detention Unit unless he is detained there pursuant to any other valid order of detention.

684. The Chamber finds the Accused Idriz Balaj **NOT GUILTY** on all counts in the Indictment. Pursuant to Rule 99(A) of the Rules, the Chamber orders that Idriz Balaj be released from the United Nations Detention Unit unless he is detained there pursuant to any other valid order of detention.

685. The Chamber finds the Accused Lahi Brahimaj **NOT GUILTY** on all counts in the Indictment charged against him. Pursuant to Rule 99(A) of the Rules, the Chamber orders that Lahi Brahimaj be released from the United Nations Detention Unit unless he is detained there pursuant to any other valid order of detention.

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

Dated this twenty-ninth day of November 2012
At The Hague
The Netherlands

Judge Bakone Justice Moloto
Presiding

Judge Burton Hall

Judge Guy Delvoie

[Seal of the Tribunal]

IX. ANNEX I: PROCEDURAL HISTORY

A. Proceedings in original *Haradinaj et al.* trial

1. Initial indictment, initial appearance and original trial

686. The initial indictment against the three Accused, Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, was confirmed on 4 March 2005.²³¹⁸ This indictment alleged that the Accused were criminally responsible for 16 counts of crimes against humanity and 19 counts of violations of the laws or customs of war;²³¹⁹ it also alleged that Ramush Haradinaj was responsible for one additional count of crimes against humanity and one additional count of violations of the laws or customs of war.²³²⁰ On 14 March 2005, the Accused each entered a plea of not guilty to all of the counts alleged against them.²³²¹

687. The original trial commenced on 5 March 2007; closing arguments were made on 21 to 23 January 2008, and the Trial Chamber rendered its judgement on 3 April 2008. Ramush Haradinaj and Idriz Balaj were acquitted of all counts.²³²² Lahi Brahimaj was found guilty of Count 28 (torture as a violation of the laws or customs of war) and Count 32 (torture and cruel treatment as violations of the laws or customs of war), and was sentenced to six years' imprisonment; he was acquitted of all other charges.²³²³

2. The appeal

688. The Prosecution and Lahi Brahimaj filed appeals against the judgement of the Trial Chamber. In particular, the Prosecution's Notice of Appeal, filed on 2 May 2008, challenged the Trial Chamber's acquittal of the three Accused with respect to six counts concerning their alleged participation in a JCE to commit crimes at the KLA headquarters and the detention facility at Jabllanicë/Jablanica.²³²⁴ Lahi Brahimaj's Notice of Appeal, filed on 5 May 2008, set out 19 grounds of appeal, including seeking the reversal of his convictions for Counts 28 and 32.²³²⁵

²³¹⁸ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-I, Decision on Review of the Indictment, 4 March 2005. The initial indictment was subsequently amended and the operative indictment in the original trial was the Fourth Amended Indictment of 16 October 2007.

²³¹⁹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-I, Indictment (Second revised), 4 March 2005.

²³²⁰ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-I, Indictment (Second revised), 4 March 2005.

²³²¹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-I, Public Transcript of Hearing, 14 March 2005; *see also* *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-PT, Public Transcript of Hearing, 1 March 2007, T. 265-266.

²³²² *Haradinaj* Trial Judgement, paras 502-503.

²³²³ *Haradinaj* Trial Judgement, paras 504-505.

²³²⁴ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Prosecutions Notice of Appeal, 2 May 2008, paras 2-7.

²³²⁵ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Notice of Appeal on Behalf of Third Defendant Lahi Brahimaj, 5 May 2008, para. 27.3.

689. The Appeals Chamber heard oral submissions from the Parties concerning both appeals on 28 October 2009 and delivered its judgement on 21 July 2010. With Judge Robinson (Presiding) dissenting, the Appeals Chamber granted the Prosecution's first ground of appeal, finding that the Trial Chamber erred in refusing the Prosecution's requests for additional time to exhaust all reasonable steps to secure the testimony of two crucial witnesses before closing the Prosecution case. The Appeals Chamber ordered a partial retrial with respect to the six counts affected by the inability to secure the testimony of the two relevant witnesses, namely, Counts 24, 26, 28, 30, 32, and 34 of the initial indictment. Lahi Brahima's 18 grounds of appeal were dismissed; the nineteenth ground of appeal, concerning his conviction for torture under Count 32, was granted in part. The Appeals Chamber's judgement did not, however, alter the Trial Chamber's finding of guilt or the sentence imposed.

B. Commencement of partial retrial proceedings and amended indictment

690. On 21 July 2010, the President of the Tribunal, Judge Patrick Robinson, issued an order assigning the partial retrial to this Chamber, with the bench composed of Judge Bakone Justice Moloto (Presiding), Judge Burton Hall, and Judge Guy Delvoie.²³²⁶

691. On 15 September 2010, the Chamber ordered that the operative indictment for the partial retrial would be the same as the operative indictment in the original trial, and that the Accused's pleas of not guilty to all charges would stand.²³²⁷

692. A status conference was held on 23 September 2010, to organise exchanges between the Parties to ensure an expeditious preparation for trial. At the status conference, the Pre-Trial Judge ordered that the Parties jointly file a shortened form of the operative indictment, corresponding to what was at issue in the partial retrial, by 28 October 2010.²³²⁸ The Pre-Trial Judge further ordered that the Parties file a joint statement of agreed facts by 18 November 2010, in advance of the Prosecution's filing of its pre-trial brief, including a full list of witnesses and exhibits,²³²⁹ and that the Accused file their pre-trial briefs by 14 December 2010.²³³⁰ At a later status conference held

²³²⁶ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Order Assigning Judges to a Case Before a Trial Chamber, 21 July 2010.

²³²⁷ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Order Regarding the Operative Indictment and Pleas, 15 September 2010.

²³²⁸ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Public Transcript of Hearing, 23 September 2010, T. 5.

²³²⁹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Public Transcript of Hearing, 23 September 2010, T. 6-20.

²³³⁰ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Public Transcript of Hearing, 23 September 2010, T. 23-24.

on 26 October 2010, the Pre-Trial Judge modified his order of 23 September 2010 to require that the indictment be filed by the Prosecution alone.²³³¹

693. The Prosecution filed the Revised Fourth Amended Indictment on 28 October 2010,²³³² and, on 9 November 2010, a “tracked” and a “clean” versions were filed (“New Version of the Revised Fourth Amended Indictment”).²³³³

694. Each of the Accused filed a submission on 23 November 2010 in response to the New Version of the Revised Fourth Amended Indictment, contending that it contained allegations beyond the scope of the retrial as ordered by the Appeals Chamber, and as pleaded by the Prosecution in the appellate proceedings.²³³⁴ In particular, the Accused submitted that the allegations made in paragraph 24 of the New Version of the Revised Fourth Amended Indictment, which amended paragraph 26 of the Fourth Amended Indictment²³³⁵, concerning the JCE, the participation of the Accused in that JCE and the statement of facts which extended beyond Jabllanicë/Jablanica and the particular incidents alleged to have happened there²³³⁶ should be revised and/or struck from the New Version of the Revised Fourth Amended Indictment. It was further submitted that the Appeals Chamber’s order restricted the partial retrial to examination of the crimes specified in Counts 24, 26, 28, 30, 32, and 34 of the initial indictment, which concerned crimes allegedly committed at the KLA headquarters and the alleged detention facility at Jabllanicë/Jablanica only.

695. Following submissions from the three Accused, on 14 January 2011, the Chamber ordered that the Prosecution further amend the New Version of the Revised Fourth Amended Indictment and submit further amended “tracked” and “clean” versions of the indictment for the partial retrial.²³³⁷ These versions were submitted on 21 January 2011.²³³⁸ The “clean” version of the Revised Fourth Amended Indictment is the operative Indictment in this trial.

²³³¹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Public Transcript of Hearing, 26 October 2010, T. 23, 45-46.

²³³² *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Submission of Revised Fourth Amended Indictment, 28 October 2010.

²³³³ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Submission of New Version of the Revised Fourth Amended Indictment, 9 November 2010, Appendices A and B.

²³³⁴ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Submission on Behalf of Ramush Haradinaj on New Version of the Indictment for the Partial Retrial, 23 December 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Response to Prosecution Indictment Motion on Behalf of Lahi Brahimaj, 23 November 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Idriz Balaj’s Motion Challenging New Version of the Revised Fourth Amended Indictment, 23 November 2010.

²³³⁵ *See supra*, para. 686.

²³³⁶ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Submission of New Version of the Revised Fourth Amended Indictment, 9 November 2010, Appendix A, para. 24.

²³³⁷ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Shortened Form of the Fourth Amended Indictment, 14 January 2011, Disposition, para. 42(3).

²³³⁸ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Submission of Revised Fourth Amended Indictment,

696. The amendments as ordered by the Chamber on 14 January 2011 concerned amending inconsistencies as to dates; amending the indictment so as not to allege that Lahi Brahimaj committed the crimes charged in Count 3 or Count 5; and replacing paragraph 24 of the New Version of the Revised Fourth Indictment with paragraph 26 of the Fourth Amended Indictment.²³³⁹ With respect to the last amendment ordered, the Chamber recalled its order of 3 November 2010, in which it noted that the Fourth Amended Indictment was the operative indictment, and that it did not invite the Prosecution to make, nor did the Prosecution purport to seek to make an amendment to that operative indictment.²³⁴⁰ The Chamber held that what had been “envisioned by the Appeals Chamber is a narrower *participation* by the Accused and not a narrower JCE. Therefore, the JCE is as defined in the Fourth Amended Indictment, but the crimes for which the Accused are to be retried relate only to their participation, if any, in the crimes committed at the KLA headquarters and the prison in Jablanica/Jabllanicë”.²³⁴¹ This order, therefore, ensured that the scope of the JCE as stated in the Fourth Amended Indictment was retained in the operative Indictment for the present trial.

697. Ramush Haradinaj sought certification to appeal the Chamber’s decision of 14 January 2011, denying in part his submissions concerning the Revised Fourth Amended Indictment;²³⁴² certification was granted on 3 February 2011.²³⁴³ Idriz Balaj, joined by Lahi Brahimaj, also sought certification to appeal the Chamber’s decision dated 8 February 2011 that refused their requests for clarification of the 14 January 2011 decision;²³⁴⁴ certification was granted

21 January 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Revised Fourth Amended Indictment, 21 January 2011.

²³³⁹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Shortened Form of the Fourth Amended Indictment, 14 January 2011, Disposition, para. 42(2)(a) to (e).

²³⁴⁰ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Shortened Form of the Fourth Amended Indictment, 14 January 2011, Disposition, para. 29.

²³⁴¹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Shortened Form of the Fourth Amended Indictment, 14 January 2011, Disposition, para. 30.

²³⁴² *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Application on Behalf of Ramush Haradinaj for Certification of Appeal Pursuant to Rule 73(B), 18 January 2011.

²³⁴³ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Application on Behalf of Ramush Haradinaj for Certification of Appeal Pursuant to Rule 73(B), 3 February 2011.

²³⁴⁴ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Idriz Balaj’s Application Pursuant to Rule 73(B) of the Rules for Certification to Appeal the Trial Chamber’s Decision of 8 February 2011, 15 February 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Lahi Brahimaj’s Joinder in “Idriz Balaj’s Application Pursuant to Rule 73(B) of the Rules for Certification to Appeal the Trial Chamber’s Decision of 8 February 2011”, 15 February 2011. See also *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Idriz Balaj’s Request for Clarification of the Decision of 14 January 2011 Regarding Paragraph 24 of the Revised Shortened Indictment and for Order to the Prosecution to Amend the New Version of the Revised Shortened Indictment, 26 January 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Lahi Brahimaj’s Joinder to “Idriz Balaj’s Request for Clarification of the Decision of 14 January 2011 Regarding Paragraph 24 of the Revised Shortened Indictment and for Order to the Prosecution to Amend the New Version of the Revised Shortened Indictment”, 26 January 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Idriz Balaj’s Request for Clarification of the Decision Regarding Paragraph 24 of the Revised Shortened Indictment, 8 February 2011.

on 24 February 2011.²³⁴⁵ On 31 May 2011, the Appeals Chamber dismissed Ramush Haradinaj's appeal. In particular, it held that the Revised Fourth Amended Indictment did not place the Accused in potential double jeopardy, or otherwise affect his fundamental rights and interests, and that, as the Trial Chamber could only make findings with respect to Counts 1 to 6, inclusion of general allegations in the Indictment's "Statement of Facts" would not expose Ramush Haradinaj to any additional charges or render the retrial unfair *per se*.²³⁴⁶ The same day, the Appeals Chamber also dismissed Idriz Balaj and Lahi Brahimaj's appeals, on the basis that its earlier decision concerning Ramush Haradinaj's appeal rendered the issues raised by Idriz Balaj and Lahi Brahimaj, and the relief sought, moot.²³⁴⁷

698. The Prosecution filed its Pre-Trial Brief on 3 December 2010, accompanied by a list of witnesses and exhibits it intended to rely upon, pursuant to Rule 65*ter*(E) of the Rules.²³⁴⁸ An amended Pre-Trial Brief was filed by the Prosecution on 20 June 2011.²³⁴⁹ Pre-Trial Briefs were filed on behalf of each of the Accused on 11 July 2011.²³⁵⁰

C. Trial Proceedings

1. Overview

699. The Prosecution case opened on 18 August 2011 and closed on 20 April 2012. On 27 April 2012, Ramush Haradinaj and Lahi Brahimaj filed individual notices submitting that neither Accused intended to make a Rule 98*bis* submission, or to present an affirmative defence case.²³⁵¹ On the same day, Idriz Balaj filed a notice stating that he also did not intend to make a Rule 98*bis* submission, and did not intend to present an affirmative defence case, subject to an agreement concerning certain medical evidence.²³⁵² On 7 May 2012, the Chamber was notified that Idriz Balaj

²³⁴⁵ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-PT, Decision on Idriz Balaj's Application Pursuant to Rule 73(B) to Appeal the Trial Chamber's Decision of 8 February 2011, 24 February 2011.

²³⁴⁶ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-AR73.1, Decision on Haradinaj's Appeal on Scope of Partial Retrial, 31 May 2011.

²³⁴⁷ *Prosecutor et al.*, Case No. IT-04-84*bis*-AR73.2, Decision on Idriz Balaj and Lahi Brahimaj's Request for Clarification of the Operative Indictment, 31 May 2011.

²³⁴⁸ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-PT, Prosecution's Submission Pursuant to Rule 65*ter* (E) with Confidential Annexes I, II and III, 3 December 2010.

²³⁴⁹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-PT, Prosecution Notice of Filing of Amended Pre-Trial Brief with Annexes A and B, 20 June 2011.

²³⁵⁰ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-PT, Pre-Trial Brief on Behalf of Ramush Haradinaj for the Partial Retrial, 11 July 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-PT, Pre-Trial Brief on Idriz Balaj, 11 July 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-PT, Pre-Trial Brief on Behalf of Lahi Brahimaj, 11 July 2011.

²³⁵¹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Defence Notification on Behalf of Ramush Haradinaj on Rule 98*bis* Application and Defence Case, 27 April 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Submission on Behalf of Lahi Brahimaj Pursuant to Scheduling Order, 27 April 2012.

²³⁵² *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Idriz Balaj's Submission in Response to the Trial Chamber's Scheduling Order of 23 April 2012, 27 April 2012.

did not intend to present any *viva voce* evidence.²³⁵³ On 4 May 2012, Counsel for Idriz Balaj filed a motion to admit certain evidence from the bar table. This motion was denied in a confidential decision on 25 May 2012.

700. Final Trial Briefs were filed by the Prosecution and each of the Accused on 11 June 2012.²³⁵⁴ Closing arguments were delivered in the period of 25 to 27 June 2012.

2. Matters relating to witnesses

701. The Chamber received the evidence of 56 Prosecution witnesses; subpoenas were issued by the Chamber with respect to three of those witnesses. No Defence witnesses were called. Six witnesses testified entirely *viva voce*; the evidence of 25 witnesses was admitted in written form by agreement of the Parties; the evidence of five witnesses was presented pursuant to Rule 92*ter*; 11 witnesses gave evidence pursuant to Rule 92*bis* without cross-examination; one witness gave evidence pursuant to Rule 92*bis* with cross-examination; and eight gave evidence in accordance with Rule 89(F).

702. Protective measures were granted to 21 of the 56 witnesses who gave evidence. For 15 of the witnesses subject to protective measures, the relevant measures were those imposed in the original trial.

3. Hearing pursuant to Rule 4

703. On 14 February 2012, the Chamber issued a confidential decision requesting the President of the Tribunal to authorise a hearing at a remote location for the purpose of receiving the evidence of one witness pursuant to Rule 4. On 17 February 2012, the Acting President of the Tribunal issued an order authorising the Chamber to hold a hearing at the remote location. This hearing took place from 16 to 20 April 2012.

4. Provisional release of the Accused

704. During the pre-trial and trial stages of the proceedings, the Accused filed several applications for provisional release.

²³⁵³ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Notification, 7 May 2012.

²³⁵⁴ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Submission of Prosecution's Final Brief, 11 June 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Final Brief on Behalf of Ramush Haradinaj for the Partial Retrial, 11 June 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Final Brief on Behalf of Lahi Brahimaj, 11 June 2012.; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84*bis*-T, Final Brief of Idriz Balaj, 11 June 2012.

705. On 10 September 2010, the Chamber denied motions filed by Ramush Haradinaj and Lahi Brahimag for provisional release during the pre-trial stage of the proceedings.²³⁵⁵

706. On 8 December 2010, the Chamber respectively granted and denied motions for provisional release during the 2010/2011 winter recess filed by Ramush Haradinaj and Lahi Brahimag.²³⁵⁶ Both decisions were appealed, with the Appeals Chamber quashing the decision granting Ramush Haradinaj provisional release, and upholding the decision denying Lahi Brahimag's provisional release.²³⁵⁷

707. In advance of the 2011/2012 winter recess, Ramush Haradinaj and Lahi Brahimag again filed motions for provisional release during this period.²³⁵⁸ Both motions were granted by the Chamber on 12 December 2011,²³⁵⁹ and subsequently quashed on appeal.²³⁶⁰

708. Following the completion of the presentation of evidence, motions for provisional release until the commencement of closing arguments were filed by all three Accused.²³⁶¹ All three motions were granted by the Chamber.²³⁶² These decisions were not appealed.

²³⁵⁵ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 10 September 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Lahi Brahimag's Motion for Provisional Release, 10 September 2010. See also *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Motion on Behalf of Ramush Haradinaj for Provisional Release, 26 July 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Application for Provisional Release filed by the Accused Lahi Brahimag, 27 July 2010.

²³⁵⁶ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 8 December 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Application for Temporary Provisional Release filed by the Accused Lahi Brahimag, 8 December 2010. See also *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release During Winter Court Recess, 25 November 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-PT, Application for Temporary Provisional Release filed by the Accused Lahi Brahimag, 26 November 2010.

²³⁵⁷ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-AR65.1, Decision on the Prosecution Appeal of the Trial Chamber's Decision on Ramush Haradinaj's Motion for Provisional Release, 16 December 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-AR65.2, Decision on Lahi Brahimag's Appeal Against the Trial Chamber's "Decision on Application for Temporary Provisional Release filed by the Accused Lahi Brahimag", 21 December 2010.

²³⁵⁸ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Motion on Behalf of Ramush Haradinaj for Provisional Release During Winter Court Recess, 28 November 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Lahi Brahimag's Application for Temporary Provisional Release during the Winter Court Recess, 30 November 2011.

²³⁵⁹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release during Winter Court Recess, 12 December 2010; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Lahi Brahimag's Application for Temporary Provisional Release during the Winter Court Recess, 12 December 2011.

²³⁶⁰ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-AR65.3, Decision on Prosecution Appeal of the Trial Chamber's Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release during Winter Court Recess, 22 December 2011; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-AR65.4, Decision on Prosecution Appeal of the Trial Chamber's Decision on Lahi Brahimag's Application for Temporary Provisional Release during the Winter Court Recess, 22 December 2011.

²³⁶¹ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Defence Motion on Behalf of Ramush Haradinaj for Provisional Release, 20 April 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Lahi Brahimag's Application for Temporary Provisional Release until Closing Arguments, 2 May 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Application for Temporary Provisional Release on Behalf of Idriz Balaj, 14 May 2012.

709. Following the completion of closing arguments, all three Accused filed motions for provisional release until the delivery of Judgement.²³⁶³ The Chamber again granted the motions of each of the Accused.²³⁶⁴ Again, these Decisions were not subject to appeal.

710. Finally, on 3 and 5 October 2012 the Chamber granted motions filed by the three Accused to extend their provisional release.²³⁶⁵ For all three Accused provisional release was extended for three months or until further order.

²³⁶² *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Defence Motion on Behalf of Ramush Haradinaj for Provisional Release, 8 May 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Lahi Brahimaj's Application for Temporary Provisional Release until Closing Arguments, 15 May 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Idriz Balaj's Application for Temporary Provisional Release, 25 May 2012.

²³⁶³ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Defence Motion on Behalf of Ramush Haradinaj for Provisional Release, 2 July 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Application for Provisional Release on Behalf of Idriz Balaj, 5 July 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Lahi Brahimaj's Application for Temporary Provisional Release, 11 July 2012.

²³⁶⁴ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Defence Motion on Behalf of Ramush Haradinaj for Provisional Release, 13 July 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Application for Temporary Provisional Release on Behalf of Idriz Balaj, 17 July 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Lahi Brahimaj's Application for Temporary Provisional Release, 17 July 2012.

²³⁶⁵ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Defence Motion on Behalf of Ramush Haradinaj for Extension of Provisional Release, 3 October 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Lahi Brahimaj's Application for Extension of Provisional Release, 3 October 2012; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Motion to Extend Temporary Provisional Release on Behalf of Idriz Balaj, 5 October 2012.

X. ANNEX II: MAP

XI. ANNEX III: GLOSSARY OF TERMS

<i>Akayesu</i> Appeal Judgement	<i>The Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-A, Judgement, 1 June 2001
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000
APC	Armoured Personnel Carrier
<i>Babić</i> Appeal Judgement	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005
<i>Bagosora</i> Appeal Judgement	<i>Théoneste Bagosora and Anatole Nsengiyumva v. The Prosecutor</i> , Case No. ICTR-98-41-A, Judgement, 14 December 2011
<i>Blagojević</i> Appeal Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000
<i>Boškoski</i> Appeal Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-A, Judgement, 19 May 2010
<i>Boškoski</i> Trial Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-T, Judgement, 8 July 2008
<i>Brdanin</i> Appeal Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-A, Judgement, 3 April 2007
<i>Brdanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brdanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-A, Judgement, 20 February 2001

<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
Chamber	Section II of Trial Chamber II of the Tribunal
Common Article 3	Article 3 of Geneva Conventions I to IV
<i>Delić</i> Trial Judgement	<i>Prosecutor v. Rasim Delić</i> , Case No. IT-04-83-T, Judgement, 15 September 2008
<i>Đorđević</i> Trial Judgement	<i>Prosecutor v. Vlastimir Đorđević</i> , Case No. IT-05-87/1-T, Judgement, 23 February 2011
DTG	“Sabotage and Terrorist Group”
DTS	“Sabotage and Terrorist Group”
FARK	Armed Forces of the Republic of Kosovo (<i>Forcat e Armatosura të Republikës së Kosovës</i>)
FRY	Federal Republic of Yugoslavia
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Judgement, 21 July 2000
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<i>Gacumbitsi</i> Appeal Judgement	<i>Sylvestre Gacumbitsi v. The Prosecutor</i> , Case No. ICTR-2001-64-A, Judgement, 7 July 2006
<i>Galić</i> Appeal Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
Geneva Convention II	Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked

Members of Armed Forces at Sea of 12 August 1949

<i>Gotovina</i> Trial Judgement	<i>Prosecutor v. Ante Gotovina et al.</i> , Case No. IT-06-90-T, Judgement, 15 April 2011
<i>Halilović</i> Trial Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, Judgement, 16 November 2005
<i>Haradinaj</i> Appeal Judgement	<i>Prosecutor v. Ramush Haradinaj et al.</i> , Case No. IT-04-84, Judgement, 19 July 2010
<i>Haradinaj</i> Trial Judgement	<i>Prosecutor v. Ramush Haradinaj et al.</i> , Case No. IT-04-84, Judgement, 3 April 2008
<i>Hategekimana</i> Appeal Judgement	<i>Ildephonse Hategekimana v. The Prosecutor</i> , Case No. ICTR-00-55B-A, Judgement, 8 May 2012
HQ	Headquarters
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICRC Commentary to the Geneva Conventions II	J. Pictet, ed., <i>The Geneva Conventions of 12 August 1949: Commentary, Part II Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea</i> , International Committee of the Red Cross, Geneva, 1987
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

<i>i.e.</i>	<i>id est</i> (that is)
Indictment	<i>Prosecutor v. Haradinaj et al.</i> , Case No. IT-04-84bis-PT, Submission of Revised Fourth Amended Indictment, 21 January 2011
Indictment Period	1 March 1998 to 30 September 1998
JCE	Joint Criminal Enterprise
<i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001
JNA	Yugoslav People's Army (<i>Jugoslovenska Narodna Armija</i>)
JSO	Special Operations Unit of MUP (<i>Jedinica za Specijalne Operacije</i>)
<i>Kalimanzira</i> Appeal Judgement	<i>Callixte Kalimanzira v. The Prosecutor</i> , Case No. ICTR-05-88-A, Judgement, 20 October 2010
<i>Kamuhanda</i> Appeal Judgement	<i>Jean de Dieu Kamuhanda v. The Prosecutor</i> , Case No. ICTR-99-54A-A, Judgement, 19 September 2005
<i>Kanyarukiga</i> Appeal Judgement	<i>Gaspard Kanyarukiga v. The Prosecutor</i> , Case No. ICTR-02-78-A, Judgement, 8 May 2012
<i>Karera</i> Appeal Judgement	<i>François Karera v. The Prosecutor</i> , Case No. ICTR-01-74-A, Judgement, 2 February 2009
KLA	Kosovo Liberation Army (<i>Ushtria Çlirimtare e Kosovës</i> (UÇK))
<i>Kordić</i> Appeal Judgement	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004
<i>Kordić</i> Trial Judgement	<i>Prosecutor v. Dario Kordić & Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<i>Krajišnik</i> Appeal Judgement	<i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-

A, Judgement, 17 March 2009

Krnojelac Appeal Judgement

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 September 2003

Krnojelac Trial Judgement

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 March 2002

Krstić Appeal Judgement

Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 April 2004

Krstić Trial Judgement

Prosecutor v. Radislav Krstić, Case No. IT-98-33-T, Judgement, 2 August 2001

Kunarac Appeal Judgement

Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23&23/1-A, Judgement, 12 June 2002

Kunarac Trial Judgement

Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23/1-T, Judgement, 22 February 2001

Kvočka Appeal Judgement

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement, 28 February 2005

Kvočka Trial Judgement

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30-T, Judgement, 2 November 2001

LDK

Democratic League of Kosovo (*Lidhja Demokratike e Kosovës*)

Limaj Appeal Judgement

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-A, Judgement, 27 September 2007

Limaj Trial Judgement

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-T, Judgement, 30 November 2005

Martić Appeal Judgement

Prosecutor v. Milan Martić, Case No. IT-95-11-A, Judgement, 8 October 2008

Martić Trial Judgement

Prosecutor v. Milan Martić, Case No. IT-95-11-T, Judgement, 12 June 2007

<i>Milošević</i> Appeal Judgement	<i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, Judgement, 12 November 2009
<i>Milutinović</i> Trial Judgement	<i>Prosecutor v. Milan Milutinović et al.</i> , Case No. IT-05-87-T, Judgement, 26 February 2009
<i>Mrkšić</i> Appeal Judgement	<i>Prosecutor v. Mile Mrkšić and Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, Judgement, 5 May 2009
<i>Mrkšić</i> Trial Judgement	<i>Prosecutor v. Mile Mrkšić et al.</i> , Case No. IT-95-13/1, Judgement, 27 September 2007
mtbr	Motorised brigade
MUP	Ministry of the Interior, Republic of Serbia (<i>Ministarstvo Unutrašnjih Poslova</i>)
<i>Nahimana</i> Appeal Judgement	<i>Ferdinand Nahimana et al v. The Prosecutor</i> , Case No. ICTR-99-52-A, Judgement, 28 November 2007
<i>Naletilić</i> Trial Judgement	<i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. 98-34-T, Judgement, 31 March 2003
<i>Ntakirutimana</i> Appeal Judgement	<i>The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana</i> , Cases Nos. ICTR-96-10-A and ICTR-96-17-A , Judgement, 13 December 2004
<i>Ntawukulilyayo</i> Appeal Judgement	<i>Dominique Ntawukulilyayo v. The Prosecutor</i> , Case No. ICTR-05-82-A , Judgement, 14 December 2011
OMPF	Office on Missing Persons and Forensics
<i>Orić</i> Appeal Judgement	<i>Prosecutor v Naser Orić</i> , Case No. IT-03-68-A, Judgement, 3 July 2008
<i>Orić</i> Trial Judgement	<i>Prosecutor v Naser Orić</i> , Case No. IT-03-68-T, Judgement, 30 June 2006
OTP	Office of the Prosecutor of the ICTY
PJP	Special Police Units of MUP (<i>Posebne Jedinice</i>)

Policije)

Popović Trial Judgement

Prosecutor v. Vujadin Popović et al., Case No. IT-05-88-T, Judgement, 10 June 2010

Praga

A self-propelled anti-aircraft gun

Prosecution

Office of the Prosecutor of the ICTY

Prosecution Final Brief

Prosecutor v. Haradinaj et al., Case No. IT-04-84bis-PT, Confidential Submission of Prosecution's Final Trial Brief, 11 June 2012.

PU

KLA Military Police (*Policia Ushtarake*)

RDB

State Security Department (*Resora Drzavne Bezbednosti*)

RPG

Rocket-propelled grenade, a shoulder-launched anti-tank weapon

Rules

Rules of Procedure and Evidence of the Tribunal

SAJ

Special Anti-Terrorist Unit of MUP (*Specijalna Antiteroristička Jedinica*)

Semanza Appeal Judgement

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement, 20 May 2005

Seromba Appeal Judgement

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement, 12 March 2008

Setako Appeal Judgement

Ephrem Setako v. The Prosecutor, Case No. ICTR-04-81-A, Judgement, 28 September 2011

Simić Appeal Judgement

Prosecutor v. Blagoje Simić et al., Case No. IT-95-9-A, Judgement, 28 November 2006

Simić Trial Judgement

Prosecutor v. Blagoje Simić et al., Case No. IT-95-9-T, Judgement, 17 October 2003

<i>Stakić</i> Appeal Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003
Statute	Statute of the International Criminal Tribunal for the former Yugoslavia established by Security Council Resolution 827
<i>Strugar</i> Appeal Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, Judgement, 17 July 2008
<i>Strugar</i> Trial Judgement	<i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Judgement, 31 January 2005
SUP	Secretariat for Internal Affairs (<i>Sekretarijat Unutrašnjih Poslova</i>)
T.	Transcript of hearings in the present case. All transcript pages referred to in this Judgement are taken from the uncorrected version of the transcript. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public
T55	A type of main battle tank
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Duško Tadić aka “Dule”</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<i>Tadić</i> Jurisdiction Decision	<i>Prosecutor v. Duško Tadić aka “Dule”</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Duško Tadić aka “Dule”</i> , Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997
Tanjug	Telegraphic Agency of New Yugoslavia (<i>Telegrafska Agencija Nove Jugoslavije</i>)
Tribunal	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the

	Former Yugoslavia since 1991
UÇK	Kosovo Liberation Army (KLA) (<i>Ushtria Çlirimtare e Kosovës</i>)
UN	United Nations
UNMIK	United Nations Mission in Kosovo
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004
<i>Vasiljević</i> Trial Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002
VJ	Army of Yugoslavia (<i>Vojska Jugoslavije</i>)

XII. ANNEX IV: CONFIDENTIAL ANNEX