



**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-T**

**Date:**

**3 April 2008**

**Original:**

**English**

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**IN TRIAL CHAMBER I**

**Before:** **Judge Alphons Orie, Presiding**  
**Judge Frank Höpfel**  
**Judge Ole Bjørn Støle**

**Registrar:** **Mr Hans Holthuis**

**Judgement of:** **3 April 2008**

**PROSECUTOR**

**v.**

**RAMUSH HARADINAJ**  
**IDRIZ BALAJ**  
**LAHI BRAHIMAJ**

**PUBLIC**

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**JUDGEMENT**

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### General abbreviations

DEM	<i>Deutsche Mark</i>
ECMM	European Community Monitoring Mission
FARK	<i>Forcat e Armatousa të Republikës së Kosovës</i> – Armed Forces of the Republic of Kosovo
FRY	Federal Republic of Yugoslavia
HLC	Humanitarian Law Center
ICMP	International Commission on Missing Persons
JNA	<i>Jugoslovenska Narodna Armija</i> – Yugoslav People's Army
JSO	<i>Jedinica za Specijalne Operacije</i> – Special Operations Unit, also known as Red Berets or "Frenki's boys"
KLA	Kosovo Liberation Army – <i>Ushtria Çlirimtare e Kosovës</i> (UÇK)
LDK	<i>Lidhja Demokratike e Kosovës</i> – Democratic League of Kosovo
MUP	<i>Ministarstvo Unutrašnjih Poslova</i> – Ministry of Internal Affairs
NATO	North Atlantic Treaty Organization
OMPF	UNMIK's Office on Missing Persons and Forensics
PJP	<i>Posebne Jedinice Policije</i> – Special Units of the Police
RDB	<i>Resor Drzavne Bezbednosti</i> – State Security Service
SFRY	Socialist Federal Republic of Yugoslavia
SAJ	<i>Specijalna Anit-teroristička Jedinica</i> – Special Anti-terrorist Unit
T	Transcripts in <i>Prosecutor v. Ramush Haradinaj et al.</i>
TO	<i>Teritorijalna Odbrana</i> – Territorial Defence
UNMIK	United Nations Interim Administration Mission in Kosovo
VJ	<i>Vojска Југославије</i> – Yugoslav Army, former JNA, army of the FRY

## **1. Introduction**

1. The Accused, Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj, are jointly charged in the Fourth Amended Indictment (hereinafter referred to as “the Indictment”), with crimes allegedly committed between 1 March 1998 and 30 September 1998 against Serbian and Kosovar Roma/Egyptian civilians, as well as Kosovar Albanian civilians perceived to be collaborating with Serbian forces in the Dukagjin area of Kosovo/Kosova.<sup>1</sup> It is alleged that during this period the KLA persecuted and abducted the victims mentioned in the Indictment in order to consolidate total control over the Dukagjin area. In doing so, the Indictment alleges that the KLA used the Radonjić/Radoniq canal area to carry out executions and dump the bodies of 30 of their victims. It is further alleged that the KLA established a make-shift detention facility at the Jablanica/Jabllanicë compound, in Đakovica/Gjakovë municipality, where detainees were regularly beaten and subjected to other forms of physical mistreatment.

2. The Prosecution alleges that from at least 1 March 1998 until mid-June 1998, Ramush Haradinaj was a *de facto* commander in the KLA and that from mid-June he became a *de jure* commander. According to the Indictment, each KLA operational area in Kosovo/Kosova, such as the Dukagjin area located in western Kosovo/Kosova and allegedly commanded by Ramush Haradinaj, acted independently of the senior command authority. As such, Ramush Haradinaj had overall command of the KLA forces in the Dukagjin area. This area was extensive, encompassing the municipalities of Peć/Pejë, Dečani/Deçan, Đakovica/Gjakovë, and parts of the municipalities of Istok/Istog and Klina/Klinë.

3. The Prosecution alleges that Idriz Balaj, at all times relevant to the Indictment, commanded a unit within the KLA known as the Black Eagles, which operated throughout the Dukagjin area as a Rapid Intervention Special Unit. According to the Indictment, as Commander of the Black Eagles, Idriz Balaj was directly subordinate to Ramush Haradinaj and worked closely with him.

4. The Prosecution alleges that Lahi Brahimaj, throughout the indictment period, was a member of the KLA and stationed at the headquarters in Jablanica/Jabllanicë. According to the Indictment, he was appointed Deputy Commander of the Dukagjin

<sup>1</sup> The Trial Chamber has referred to locations in Kosovo/Kosova throughout the Judgement both by their Bosnian/Croatian/Serbian (BCS) and their Albanian names. The name of any given location therefore appears in the text in BCS/Albanian.

area on 23 June 1998, a post he retained until 5 July 1998 when he was removed from this position. Despite his removal from this post, he continued to serve as Finance Director of the KLA General Staff. The Prosecution alleges that throughout the indictment period, Lahi Brahimaj was subordinate to and worked closely with Ramush Haradinaj.

5. The three Accused are each charged as participants in a joint criminal enterprise for the crimes under all counts of the Indictment. The alleged common criminal purpose was to consolidate total KLA control over the Dukagjin area, by the unlawful removal and mistreatment of the aforementioned types of civilians. According to the Indictment, this involved the commission of crimes against humanity under Article 5 of the Statute and violations of the laws or customs of war under Article 3 of the Statute, including murder, torture, and cruel treatment. In the alternative, all three Accused are charged, in respect of several of these crimes, with individual criminal responsibility under Article 7 (1) of the Statute for allegedly committing them, or planning, instigating, ordering, or aiding and abetting their commission. The Defence, on behalf of each of the three Accused, has submitted that the Accused are not guilty and should, therefore, be acquitted.

6. The Trial Chamber heard a total of 81 *viva voce* witnesses and received the evidence of 16 witnesses pursuant to Rule 92 bis and quater of the Rules of Procedure and Evidence (“Rules”). The Defence chose neither to make any submissions pursuant to Rule 98 bis nor to call any witnesses. The Trial Chamber has therefore relied on the evidence provided by the Prosecution and elicited by the Defence in cross-examination as well as the evidence of one Trial Chamber witness in evaluating the case against the three Accused. As will be discussed in section 2.2, below, throughout the trial the Trial Chamber encountered significant difficulties in securing the testimony of a large number of witnesses. Many witnesses cited fear as a prominent reason for not wishing to appear before the Trial Chamber to give evidence. The Trial Chamber gained a strong impression that the trial was being held in an atmosphere where witnesses felt unsafe. This was due to a number of factors specific to Kosovo/Kosova, for example Kosovo/Kosova’s small communities and tight family and community networks which made guaranteeing anonymity difficult.<sup>2</sup> The parties themselves agreed that an unstable security situation existed in Kosovo/Kosova that was particularly unfavourable to

<sup>2</sup> See Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 20 July 2007.

witnesses.<sup>3</sup> Given these circumstance, the Trial Chamber made use of all its powers under the Rules to ensure the fair and expeditious conduct of the proceedings as well as the protection and well-being of witnesses who appeared before it.

<sup>3</sup> T. 3955-3956.

## **2. Evidentiary issues**

### 2.1 Sources and use of evidence

7. Pursuant to Article 21 (3) of the Statute, the Accused are entitled to a presumption of innocence. Pursuant to Rule 87 (A) of the Rules, the standard for determining guilt is proof beyond a reasonable doubt. Accordingly, each and every element of the offences charged against an accused must be proven beyond a reasonable doubt. This burden remains with the Prosecution throughout the trial.<sup>4</sup> An accused must be acquitted if there is any reasonable explanation of the evidence other than the guilt of the accused.<sup>5</sup>

8. The sources of evidence in the present case included the *viva voce* testimonies of fact and expert witnesses appearing before the Trial Chamber and called by the Prosecution, or in the case of one witness by the Trial Chamber;<sup>6</sup> written witness statements admitted pursuant to Rules 92 bis, 92 ter, and 92 quater of the Rules, including transcripts of the testimony of witnesses who were heard by other Trial Chambers of this Tribunal; agreed facts; and documents such as exhumation reports, orders, photographs, and maps tendered and admitted as exhibits in connection with witness testimonies, or admitted from the bar table pursuant to Rule 89 (C) of the Rules.<sup>7</sup>

9. According to Rule 89 (C), a party introducing evidence must show that it is relevant and has probative value. Generally, the reliability of evidence is a factor going to weight rather than admissibility.

10. The Trial Chamber has admitted evidence tendered pursuant to Rule 92 ter in relation to 38 witnesses, out of a total of 81 *viva voce* witnesses. The Trial Chamber also admitted testimony of 16 witnesses pursuant to Rule 92 bis. Rule 92 ter allows for the admission of evidence that goes to proof of acts and conduct of an accused.<sup>8</sup> Nevertheless, the Trial Chamber expressed a strong preference that such evidence, as well as evidence that was central and critical to the case, be elicited orally from a

<sup>4</sup> *Brđanin* Trial Judgement, para. 22.

<sup>5</sup> *Čelebići* Appeal Judgement, para. 458.

<sup>6</sup> The Trial Chamber called one witness, Maklen Misha, during the Prosecution's case. The Defence did not call any witnesses.

<sup>7</sup> See Decision on Prosecution's Motion to Tender Documents on Its 65ter Exhibit List, 30 November 2007.

<sup>8</sup> Rule 92 ter (B).

witness in court.<sup>9</sup> Also Rule 92 quater allows for the admission of evidence that goes to proof of acts and conduct of an accused, although this may be a factor weighing against admission.<sup>10</sup> The Trial Chamber admitted statements of two deceased witnesses pursuant to this rule.<sup>11</sup> As for such portions of the statements that went to proof of the acts and conduct of one of the Accused or were central to the Prosecution's case, the Trial Chamber decided to only admit them if it was satisfied that they were reliable.<sup>12</sup> In its assessment, the Trial Chamber considered whether the statements were corroborated by other evidence and whether the statements were internally consistent.<sup>13</sup>

11. As for the admission of documentary evidence, the Trial Chamber emphasized that it was for the Prosecution to carefully select the evidence to present to the Trial Chamber in the most comprehensible and efficient manner.<sup>14</sup> When better evidence on an issue had already been admitted, the Trial Chamber would at times not admit repetitive evidence of lesser quality on that same issue.<sup>15</sup>

12. The Trial Chamber considered the charges against the Accused in light of all the evidence it admitted during the trial. It assessed the evidence in accordance with the Statute, the Rules, and the jurisprudence of the Tribunal. When no guidance was found in these sources the Trial Chamber decided matters of evidence in such a way as would best favour a fair determination of the case in consonance with the spirit of the Statute and the general principles of law.<sup>16</sup>

13. When evaluating the evidence given *viva voce*, the Trial Chamber considered the demeanour of witnesses. It further considered the individual circumstances of a witness, including his or her possible involvement in the events and fear of self-incrimination, the witness's relationship with any of the Accused, and whether the witness would have

<sup>9</sup> T. 5085; Decision on the Admission of Zoran Stijović's Rule 92 ter Statement and Its Annexes, 29 November 2007, para. 11.

<sup>10</sup> Rule 92 quater (B).

<sup>11</sup> Decision on Prosecution's Motion for Admission of Evidence pursuant to Rule 92 *quater* and 13th Motion for Trial-Related Protective Measures, 7 September 2007; Decision on Prosecution's Motion to Admit Five Statements of Witness 1 into Evidence Pursuant to Rule 92 *quater* with Confidential Annex, 28 November 2007.

<sup>12</sup> Decision on Prosecution's Motion to Admit Five Statements of Witness 1 into Evidence Pursuant to Rule 92 *quater* with Confidential Annex, 28 November 2007, para. 11.

<sup>13</sup> Ibid., paras 11-20.

<sup>14</sup> Decision on Admission into Evidence of Documents Tendered during Testimony of Achilleas Pappas, 17 September 2007, para. 6.

<sup>15</sup> Decision on Admission into Evidence of Documents Tendered during Testimony of Bislim Zyrapi, 15 October 2007, para. 12; Decision on Admission into Evidence of Documents Tendered during Testimony of Witness 69, 28 November 2007, para. 9; Decision on the Admission of Zoran Stijović's Rule 92 ter Statement and Its Annexes, 29 November 2007, para. 12.

an underlying motive to give a certain version of the events. The Trial Chamber also assessed the internal consistency of each witness's testimony and other features of his or her evidence, as well as whether there was corroborating evidence. The evidence presented in this case relates to events which occurred in 1998, the Trial Chamber has therefore not treated minor discrepancies between the evidence of witnesses, or between the evidence of a particular witness in court and his or her prior statement, as discrediting the evidence where the witnesses nevertheless recounted the essence of an incident charged in acceptable detail, without undermining the fundamental features of their evidence.<sup>17</sup> Some of the witnesses that were former members of the warring factions were evasive or not entirely truthful regarding the roles they played in the events in Kosovo/Kosova in 1998. Although aware of this, the Trial Chamber nevertheless sometimes relied on other aspects of these witnesses' testimonies. This is consistent with the jurisprudence of the Tribunal according to which it is not unreasonable for a Trial Chamber to accept certain parts of witness's testimony while rejecting others.<sup>18</sup>

14. On several occasions, only one witness gave evidence of an incident with which the Accused were charged. The Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.<sup>19</sup> On these occasions, the Trial Chamber exercised particular caution, considering all circumstances relevant to the testimony of the witness, including any possible underlying motive for the witness's testimony and other factors mentioned.

15. The Trial Chamber decided not to consider the testimony of one witness, Witness 8. It found this witness to be so lacking in reliability and credibility that it could not rely on his testimony for any findings concerning the facts alleged in the Indictment.<sup>20</sup> As set out in section 6.12.11, below, the Trial Chamber found Medin Gashi's testimony largely unreliable and therefore accepted only a small portion of it as factually accurate.

<sup>16</sup> Rule 89 (B) of the Rules.

<sup>17</sup> See *Čelebići* Appeal Judgement, paras 484-485, 496-498; *Kupreškić et al.* Appeal Judgement, para. 31.

<sup>18</sup> *Kupreškić et al.* Appeal Judgement, para. 333; *Blagojević and Jokić* Appeal Judgement, para. 82.

<sup>19</sup> *Tadić* Appeal Judgement, para. 65; *Aleksovski* Appeal Judgement, para. 62; *Čelebići* Appeal Judgement, para. 492; *Kupreškić et al.* Appeal Judgement, para. 33.

<sup>20</sup> For more details see Decision on Whether to Resume Hearing Testimony of Witness 8 and Call Chamber Witness, 20 June 2007.

16. When assessing and weighing the testimony of expert witnesses, the Trial Chamber considered factors such as the professional competence of the expert, the methodologies used, the credibility of the findings made in light of these factors and other evidence, the position or positions held by the expert, the limits of the expertise of each witness, and the relevance and reliability of his or her evidence.

17. The parties filed joint motions on agreed facts on 26 and 30 November 2007, after hearing the last witness called by the Prosecution. The Trial Chamber considered these agreed facts together with all the other evidence presented in the case.

18. When assessing documentary evidence, the Trial Chamber considered the origin of the document, the author and his or her role in the relevant events, the chain of custody of the document to the extent that it was known, the source of the information contained in the document, and whether that information was corroborated by witnesses or other documents. The Trial Chamber did not consider unsigned, undated, or unstamped documents *a priori* to be void of authenticity. When the Trial Chamber was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the facts. Accordingly, the Trial Chamber could admit a document into evidence because it seemed genuine and relevant to the case, but finally find that the document's significance in the context of all the evidence remained obscure and therefore give it little or no weight.<sup>21</sup> As a general rule, the less the Trial Chamber knew about a document, the circumstances of its creation and usage, the less weight it gave to it.<sup>22</sup>

19. In addition to direct evidence, the Trial Chamber has admitted hearsay and circumstantial evidence. In evaluating the probative value of hearsay evidence, the Trial Chamber carefully considered all indicia of its reliability, including whether the evidence was truthful, trustworthy, and stemmed from a source that gave it voluntarily, whether it was first-hand or further removed, the absence of an opportunity to cross-examine the person who made the statement, and the circumstances under which the hearsay evidence arose.<sup>23</sup> In general, the Trial Chamber clarified that it attached little, if any, weight to unexplained opinions and untested hearsay and that an accumulation of

<sup>21</sup> Decision on Admission into Evidence of Documents Tendered during Testimony of Bislim Zyrapi, 15 October 2007, para. 9.

<sup>22</sup> Decision on Admission into Evidence of Documents Tendered during Testimony of Bislim Zyrapi, 15 October 2007, para. 8.

such evidence did not necessarily make it stronger.<sup>24</sup> The Trial Chamber denied admission of many documents containing statements concerning the acts and conduct of the Accused given by persons who were not available for cross-examination by the Defence.<sup>25</sup> These were not statements tendered pursuant to Rules 92 bis, 92 ter, or 92 quater of the Rules, but documents such as reports of interviews conducted by the police or intelligence services. In this respect, the Trial Chamber received evidence that some of the persons interviewed by the Serbian police might have been beaten.<sup>26</sup> The Trial Chamber also heard evidence that the RDB would receive information from informers, who were rewarded depending on both the significance and type of information provided.<sup>27</sup> The motivation of these informers was money, politics, or sometimes they were blackmailed by the RDB.<sup>28</sup> One example of documents that the Trial Chamber decided not to admit was the two statements given to the Serbian MUP by Krist and Lëk Pervorfi in October 1998, which the Prosecution sought to have admitted through Zoran Stijović. They concerned the alleged involvement of a witness in this case, Pjetër Shala, in the disappearance of Zdravko Radunović. Zoran Stijović was not in a position to shed any light on the circumstances in which the statements were produced, merely confirming that the two statements were given to the MUP.<sup>29</sup> Pjetër Shala was not questioned about the disappearance of Zdravko Radunović. Furthermore, the Defence alleged, and the Prosecution acknowledged, that Lëk Pervorfi had later denied the truth of the account in the statement, adding that the statement was not given voluntarily.<sup>30</sup> For these reasons, the Trial Chamber denied their admission as it considered that the doubts as to their reliability were so strong that the documents lacked probative value.<sup>31</sup>

20. As for circumstantial evidence, the Trial Chamber considered that such evidence alone may be sufficient for a conviction or a finding of fact beyond a reasonable

<sup>23</sup> See *Prosecutor v. Aleksovski*, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

<sup>24</sup> Decision on Admission into Evidence of Documents Tendered during Testimony of Achilleas Pappas, 17 September 2007, para. 6.

<sup>25</sup> See, for example, Decision on Admission into Evidence of Documents Tendered during Testimony of Witness 69, 28 November 2007, para. 13; Decision on the Admission of Zoran Stijović's Rule 92ter Statement and Its Annexes, 29 November 2007, para. 11.

<sup>26</sup> Nebojša Avramović, T. 6626-6627.

<sup>27</sup> Zoran Stijović, T. 8884, 8891, 8893-8894.

<sup>28</sup> Zoran Stijović, T. 8884-8886.

<sup>29</sup> T. 9093-9094.

<sup>30</sup> See Decision on the Admission of Zoran Stijović's Rule 92ter Statement and Its Annexes, 29 November 2007, para. 13.

<sup>31</sup> Decision on the Admission of Zoran Stijović's Rule 92ter Statement and Its Annexes, 29 November 2007, para. 13.

doubt.<sup>32</sup> However the conclusion drawn from the circumstantial evidence had to be the only reasonable conclusion available.<sup>33</sup>

21. Article 21 (4) (g) of the Statute provides that no accused shall be compelled to testify against himself. In the present case all of the Accused exercised their right not to testify. No adverse inferences were drawn from this fact.

## 2.2 Difficulties with obtaining witness testimony

22. A high proportion of Prosecution witnesses in this case expressed a fear of appearing before the Trial Chamber to give evidence. Protective measures, aimed at concealing the identity of a witness from the public, were granted to 34 Prosecution witnesses. The test used by the Trial Chamber for granting protective measures was the demonstration of an objectively grounded risk to the security or welfare of the witness or the witness's family should it become known that the witness had given evidence before the Tribunal.<sup>34</sup> Subpoenas to testify were issued to 18 Prosecution witnesses. The main reason for having requested the subpoenas was that the prospect of protective measures did not allay the witnesses' fears. Of the subpoenaed witnesses, 13 ultimately complied with the subpoena and appeared before the Trial Chamber to testify. The statement of one was admitted pursuant to Rule 92 bis.<sup>35</sup> One of the subpoenaed witnesses, Witness 55, began to testify but claimed that he was under a great deal of stress and feared for his safety and that he was therefore unable to complete his testimony. The Trial Chamber observed that the witness was clearly not in good health and the Victims and Witnesses Section of the Tribunal informed the Trial Chamber that the witness had been taken to a doctor and prescribed medication. The witness had at this stage not completed his testimony in chief, and consequently had not been subjected to cross-examination by the Defence. The Trial Chamber concluded that it would not be

<sup>32</sup> See *Kupreškić* Appeal Judgement, para. 303.

<sup>33</sup> See *Čelebići* Appeal Judgement, para. 458.

<sup>34</sup> See for example, T. 694-695; Decision on the Admission of a Prosecution Witness Statement under Rule 92 bis and Prosecution's 17th Motion for Protective Measures, 29 October 2007, para. 3; Decision on Prosecution's 30th and 31st Motions for Trial-Related Protective Measures, 6 November 2007, para. 2; Decision on Fourth Batch of 92 bis Witnesses and Protective Measures for One of These Witnesses, 6 November 2007.

<sup>35</sup> See Decision on the Admission of a Prosecution Witness Statement under Rule 92 bis and Prosecution's 17th Motion for Protective Measures, 29 October 2007.

in the interests of justice to continue hearing Witness 55's testimony.<sup>36</sup> The witness was not recalled and his testimony was excluded from the evidence.<sup>37</sup>

23. Two subpoenaed witnesses, Ramo Jollaj and Witness 65, stated that they were unwilling to travel to The Hague to give testimony because of a combination of personal, family, and security concerns. The witnesses were living under extreme economic and social hardship in a refugee camp and their large families were dependent solely or primarily on them for their livelihood and security. The Trial Chamber acknowledged that some of the concerns expressed by the witnesses could possibly be addressed through applications for protective measures, while others could not. The Trial Chamber found that the conditions described amounted to good reasons for the witnesses's unwillingness to travel to The Hague to give testimony and decided to hear the testimonies of these witnesses via video-conference link.<sup>38</sup>

24. Four subpoenas issued by the Trial Chamber were not complied with.<sup>39</sup> They were issued to Naser Lika, Qerim Kuqi, Avni Krasniqi, and Sadri Selca. For Qerim Kuqi and Sadri Selca, rather than to issue an order in lieu of indictment and prosecute these matters itself, the Trial Chamber invited the Prosecution to advise it on whether an investigation for contempt should be undertaken by the Prosecution. The Trial Chamber considered in this respect that the Prosecution was best placed to consider all the circumstances relating to the witnesses, including the value of their testimony, any impact their non-compliance might have upon other prospective witnesses, and the resource implications of an investigation for contempt.<sup>40</sup> The Prosecution recommended, for both witnesses, that the Trial Chamber issue an order to the Prosecution to investigate the matter with a view to the preparation and submission of an indictment for contempt. It also recommended that such an order be issued with regard to the non-compliance of the subpoena issued to Avni Krasniqi. The Trial

<sup>36</sup> T. 9820-9822.

<sup>37</sup> T. 10118, 10652, 10655; Reasons for the Trial Chamber's Decision Not to Recall [Witness 55] to Complete His Testimony, 6 November 2007; Reasons for Trial Chamber's Decision to Exclude the Evidence of Witness 55 under Rule 89 (D) and Deny His Testimony Pursuant to Rule 92 quater, 14 December 2007.

<sup>38</sup> Decision on Video-conference Link for Witness 10, 28 August 2007; Decision on Video-conference Link for Witness Number 48 in the Tentative Order of Testimony, 28 August 2007.

<sup>39</sup> The full procedural history with regard to Naser Lika, Avni Krasniqi, and Sadri Selca is set out in Annex A.

<sup>40</sup> Invitation to Prosecution to Consider Initiating Contempt Proceedings against Qerim Kuqi, 16 July 2007; Invitation to Prosecution to Consider Initiating Contempt Proceedings against Sadri Selca, 23 August 2007. The Trial Chamber issued such invitations to two other witnesses as well (see Invitation to

Chamber accepted the Prosecution's recommendations and directed the Prosecution to investigate those persons with a view to the preparation and submission of an indictment for contempt.<sup>41</sup> On 31 October 2007, Qerim Kuqi testified by means of video-conference link. No indictment for contempt was issued against him. As for Avni Krasniqi and Sadri Selca, the Prosecution submitted indictments for contempt of the Tribunal. The Trial Chamber confirmed these indictments.<sup>42</sup> Avni Krasniqi and Sadri Selca were subsequently arrested and transferred to The Hague. Before the initial appearances in their contempt cases, the two decided to testify. Avni Krasniqi testified on 14-15 November 2007 and Sadri Selca testified on 15 November 2007. Following their testimonies, the Prosecution requested leave to withdraw the indictment for contempt. This was granted by the Trial Chamber that heard the contempt cases.<sup>43</sup>

25. In relation to the fourth witness who defied a subpoena, Naser Lika, the Trial Chamber undertook various measures in order to obtain his testimony. On 14 September 2007, it decided to hear the witness via video-conference link since the evidence about the witness's medical conditions allowed it to conclude that he was not able to travel to The Hague to testify.<sup>44</sup> On the day of the expected testimony, the witness did however not appear before the Trial Chamber via video-conference link. The Trial Chamber rescheduled the hearing but was on the relevant day informed that the witness had been hospitalized.<sup>45</sup> The Trial Chamber did not receive Naser Lika's testimony.

26. Three Prosecution requests for subpoena were denied. In the first case, the Trial Chamber considered the expected testimony of the witness to be of low evidentiary value and therefore denied the application for a subpoena.<sup>46</sup> For Vera Kovačević, the Trial Chamber found the expected testimony to be of limited importance and not necessitating the issuance of a subpoena. The testimony of this witness was, however,

Prosecution to Consider Initiating Contempt Proceedings against [Witness 55], 20 July 2007; Invitation to Prosecution to Consider Initiating Contempt Proceedings against [Witness 69], 26 September 2007).

<sup>41</sup> Order to Prosecution to Investigate with a View to Preparation and Submission of an Indictment for Contempt, 7 September 2007; Order Pursuant to Rule 77 (C) (i) in relation to Witness 18, 31 October 2007; Order to Prosecution to Investigate with a View to Preparation and Submission of an Indictment for Contempt, 31 October 2007.

<sup>42</sup> Decision on Review of Indictment, 5 November 2007; Decision on Review of Indictment, 7 November 2007; Lifting of Confidentiality, 9 November 2007; Order on Lifting of Confidentiality, 13 November 2007.

<sup>43</sup> T. 10850, 10891; Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Avni Krasniqi, 5 December 2007; Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Sadri Selca, 5 December 2007.

<sup>44</sup> Decision on Motion for Videolink (Witness 30), 14 September 2007.

<sup>45</sup> T. 10621-10647, 10975.

<sup>46</sup> T. 4766-4767.

admitted pursuant to Rule 92 bis.<sup>47</sup> The third denied request concerned a witness who was experiencing extreme emotions about testifying before the Tribunal. The Victims and Witness Section of the Tribunal warned the Prosecution that there were risks in using this person as a witness unless threat assessment as well as other assessments were made. The Prosecution had taken no steps to undertake such assessments. Under those circumstances the Trial Chamber found it imprudent to compel the witness's testimony.<sup>48</sup>

27. Two witnesses came to the Tribunal without being subpoenaed, only to refuse to testify when invited to do so. One witness refused to enter the courtroom. After hearing a representative of the Victims and Witness Section of the Tribunal, the Trial Chamber decided not to pursue the matter. The Prosecution informed the Trial Chamber that the witness, for all practical purposes, was dropped from the witness list unless he should change his mind about testifying.<sup>49</sup> Another witness, Shefqet Kabashi, entered the courtroom. After confirming a few personal details, he refused to answer any questions put to him by the Prosecution or the Trial Chamber on the substance of the case.<sup>50</sup> Consequently, the Trial Chamber issued an Order in Lieu of Indictment for contempt.<sup>51</sup> However, before his trial for contempt was due to start, Kabashi left the Netherlands and returned to his place of residence in the United States. The Trial Chamber considered and undertook various steps to obtain his evidence.<sup>52</sup> On 1 November 2007, the Trial Chamber decided to hear Shefqet Kabashi by means of video-conference link.<sup>53</sup> On 20 November 2007, the witness again refused to testify. On 18 February 2008, the Trial Chamber granted the Prosecution leave to amend the indictment against Kabashi and ordered the Prosecution to make the indictment public.<sup>54</sup> The contempt case against Shefqet Kabashi is still pending his arrest and transfer to The Hague.

28. The difficulty in obtaining evidence was a prominent feature of this trial and a few witnesses who were expected to give evidence on central aspects of the case were

<sup>47</sup> Decision Denying Subpoena ad Testificandum for Witness 15 and Instead Conditionally Admitting the Witness's Statements Pursuant to Rule 92 bis, 2 November 2007.

<sup>48</sup> Decision on Prosecution's Motion to Have Witness 25 Subpoenaed to Testify, 30 October 2007.

<sup>49</sup> T. 1810-1820.

<sup>50</sup> The full procedural history is set out in Annex A.

<sup>51</sup> Order in Lieu of Indictment on Contempt Concerning Shefqet Kabashi, 5 June 2007.

<sup>52</sup> See for an explanation T. 10977; Decision on Prosecution's Request for Certification to Appeal the Trial Chamber's Decision Concerning Shefqet Kabashi, 5 December 2007; Decision on Prosecution's Request to Reopen Its Case to Hear Evidence of Shefqet Kabashi and for a Judicial Representation to the Authorities of the United States of America, 21 December 2007.

<sup>53</sup> T. 10118.

never heard. As described, the Trial Chamber made use of all its powers under the Rules to facilitate the reception of evidence without stepping beyond its role as an impartial finder of facts. This resulted in the Trial Chamber receiving evidence from more than 90 witnesses.

### 2.3 Identification evidence

29. On several occasions, in order to determine the presence of an accused at a given time and place, the Trial Chamber had to rely on the identification evidence of a single witness. The Trial Chamber understands identification evidence to include both identification evidence *stricto sensu* and recognition evidence. It was mindful of the differences between the two. Identification evidence *stricto sensu* concerns the identification of a person the witness had not previously known as having been present at the relevant time and place. Recognition evidence concerns the presence of a person at the relevant time and place when the witness knew the person from before. In both cases, identification evidence must be treated with caution as its quality can depend on many variables, such as the vagaries of human perception and recollection. The Trial Chamber has carefully evaluated any identification evidence, especially if it was the only or vital evidence for an incident covered by a charge.<sup>55</sup> In this evaluation, the Trial Chamber was mindful of the guidance provided by the Appeals Chamber in the *Kupreškić et al.* case. The Appeals Chamber highlighted several factors to be considered when evaluating identification evidence, including identification by witnesses who only had a fleeting glance or an obstructed view of an accused; identification occurring in the dark; identification as a result of a traumatic event experienced by the witness; inconsistent or inaccurate testimony about the accused's physical characteristics at the time of the event; and a witness's delayed assertion of memory regarding an accused coupled with the clear possibility from the circumstances that the witness had been influenced by suggestions from others.<sup>56</sup> When confronted with recognition evidence, rather than identification evidence *stricto sensu*, the Trial Chamber also took into account the possibility of bias, and the interval between the time the witness recognized the person and the time he had last seen him.

<sup>54</sup> Decision Granting Leave to Amend the Indictment, 18 February 2008.

<sup>55</sup> See *Kupreškić et al.* Appeal Judgement, para. 34.

<sup>56</sup> *Kupreškić et al.* Appeal Judgement, para. 40; *Limaj et al.* Appeal Judgement, para. 30.

30. Sometimes the Prosecution used photo boards as a means of obtaining identification evidence. In general, the Trial Chamber is satisfied that the photo boards were compiled in an effort to avoid influencing the witnesses to whom they were shown. This included the selection of photographs of similar size, colour, and background lighting and portraying individuals bearing a resemblance to the Accused.<sup>57</sup>

31. The Prosecution has issued guidelines for the conduct of photo board identifications.<sup>58</sup> The evidence shows that those guidelines were often not followed. For example, in some instances the Prosecution investigators forgot to first ascertain whether a witness had seen pictures of the suspect on television or in the newspapers, or whether the witness's recollection could have been tainted by various witnesses communicating with each other.<sup>59</sup> In some cases the witness was not told that the photo board may or may not include the Accused.<sup>60</sup> The physical responses of the witness were sometimes not noted down by the investigators.<sup>61</sup> The Trial Chamber has considered, when evaluating the weight of their evidence, that the photo board identifications were often not carried out in full compliance with the guidelines.

<sup>57</sup> José Antonio Lorenzo Quiroz, T. 5864-5865, 5909-5912; P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 3; Pekka Haverinen, T. 6314-6315, 6326-6327, 6351. See also D119 (ICTY OTP Photo board identification guidelines, photographic procedures).

<sup>58</sup> D119 (ICTY OTP Photo board identification guidelines, photographic procedures); D120 (ICTY OTP Photo board identification report).

<sup>59</sup> Pekka Haverinen, T. 6327-6328, 6333-6334, 6351.

<sup>60</sup> José Antonio Lorenzo Quiroz, T. 5948-5949; D120 (ICTY OTP Photo board identification report), p.1.

<sup>61</sup> Pekka Haverinen, T. 6330; Barney Kelly, T. 6101-6102.

### **3. General elements for Article 3 of the Statute**

#### **3.1 Law on general elements**

32. The Indictment charges the Accused with 19 counts of violations of the laws or customs of war under Article 3 of the Statute, of which 18 are pursuant to Common Article 3 to the four Geneva Conventions of 1949 (“Common Article 3”).<sup>62</sup> Article 3 of the Statute states: “The International Tribunal shall have the power to prosecute persons violating the laws or customs of war”. The jurisdictional requirements and general elements are analysed below.

33. Article 3 of the Statute is a “residual clause” which gives the Tribunal jurisdiction over any serious violation of international humanitarian law not covered by Articles 2, 4, or 5 of the Statute.<sup>63</sup> To fall within this residual jurisdiction, the offence charged must meet four conditions: (i) it must violate a rule of international humanitarian law; (ii) the rule must bind the parties at the time of the alleged offence; (iii) the rule must protect important values and its violation must have grave consequences for the victim; and (iv) such a violation must entail the individual criminal responsibility of the perpetrator.<sup>64</sup>

34. It is well established in the jurisprudence of this Tribunal that violations of Common Article 3 fall within the ambit of Article 3 of the Statute.<sup>65</sup> In the present case, the charges of murder, cruel treatment, and torture as violations of the laws or customs of war are based on Common Article 3 (1) (a). The charges of outrages upon personal dignity are based on Common Article 3 (1) (c). All of these charges clearly meet the four jurisdictional requirements set out above. The rules contained in Common Article 3 are part of customary international law applicable in non-international armed conflict.<sup>66</sup> The crimes prohibited by Common Article 3 undoubtedly breach rules protecting important values and involve grave consequences for the victims. They also entail

<sup>62</sup> Counts 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, and 37 of the Indictment charge the Accused with violations of the laws or customs of war under Article 3 of the Statute, of which only Count 36 is not based on Common Article 3.

<sup>63</sup> *Tadić Jurisdiction Decision*, paras 89-93; *Čelebići Appeal Judgement* paras 125, 131, 133.

<sup>64</sup> *Tadić Jurisdiction Decision*, paras 94, 143.

<sup>65</sup> *Tadić Jurisdiction Decision*, para. 89; *Čelebići Appeal Judgement*, paras 125, 133-136; *Kunarac et al. Appeal Judgement*, para. 68.

<sup>66</sup> *Tadić Jurisdiction Decision*, paras 89, 98; *Čelebići Appeal Judgement*, paras 138-139, 147.

individual criminal responsibility.<sup>67</sup> The Chamber therefore has jurisdiction over such violations.

35. Article 3 of the Statute also encompasses other rules of customary international law applicable in non-international armed conflict.<sup>68</sup> One such rule forms the basis of the charge of rape in Count 36 of the Indictment. The Appeals Chamber has found that rape constitutes a war crime under customary international law applicable in non-international armed conflict, and is encompassed by Article 3 of the Statute.<sup>69</sup>

36. Once jurisdiction is established, there are three general conditions that must be met for the applicability of Article 3 of the Statute: first, there must be an armed conflict; second, there must be a nexus between the alleged offence and the armed conflict;<sup>70</sup> and third, for charges based on Common Article 3, the victim must not take active part in the hostilities at the time of the alleged offence.<sup>71</sup>

37. *Armed Conflict.* The test for determining the existence of an armed conflict was set out by the Appeals Chamber in the *Tadić Jurisdiction Decision*:

[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.<sup>72</sup>

38. This test serves to distinguish non-international armed conflict from banditry, riots, isolated acts of terrorism, or similar situations.<sup>73</sup> The Trial Chamber must determine whether (i) the armed violence is protracted and (ii) the parties to the conflict

<sup>67</sup> *Tadić Jurisdiction Decision*, para. 134; *Čelebići Appeal Judgement*, paras 173-174.

<sup>68</sup> *Tadić Jurisdiction Decision*, para. 89; *Čelebići Appeal Judgement*, paras 125, 133.

<sup>69</sup> *Kunarac et al. Appeal Judgement*, paras 187-195.

<sup>70</sup> *Tadić Jurisdiction Decision*, para. 70; *Kunarac et al. Appeal Judgement*, para. 55; *Stakić Appeal Judgement*, para. 342.

<sup>71</sup> Common Article 3 (1); *Čelebići Appeal Judgement*, para. 420; *Krajišnik Trial Judgement*, para. 847.

<sup>72</sup> *Tadić Jurisdiction Decision*, para. 70. See also *Kunarac et al. Appeal Judgement*, paras 56-57; *Kordić and Čerkez Appeal Judgement*, paras 319, 336.

<sup>73</sup> *Kordić and Čerkez Appeal Judgement*, para. 341; *Tadić Trial Judgement*, para. 562; *Čelebići Trial Judgement*, para. 184; *Limaj et al. Trial Judgement*, paras 84, 89. See also Articles 8 (2) (d) and (f) of the Rome Statute of the International Criminal Court.

are organized. The Trial Chamber will proceed to examine how these criteria have been interpreted in previous cases of the Tribunal.

39. The Trial Chamber will first examine how the criterion of “protracted armed violence” has been interpreted in practice.

40. In the *Tadić* case, the Appeals Chamber, when applying its own test, found that the fighting among various entities within the former Yugoslavia since 1991 exceeded the “intensity requirements” applicable to armed conflict.<sup>74</sup> The Trial Chamber consequently interpreted the term “protracted armed violence” to refer to the “intensity of the conflict”.<sup>75</sup> It faced the question whether an armed conflict existed in Bosnia-Herzegovina between the Government of Bosnia-Herzegovina and the Bosnian-Serb forces during the indictment period, beginning on 23 May 1992 and ending about 31 December 1992.<sup>76</sup> On 23 May 1992, armed Bosnian-Serb forces attacked the village of Hambarine, shelling it during several hours and then entering the area supported by tanks; this was followed by brief intermittent fighting.<sup>77</sup> Many inhabitants fled.<sup>78</sup> On 24 May 1992, Bosnian-Serb forces attacked Kozarac town and surrounding villages.<sup>79</sup> The attack began with heavy shelling which lasted until 26 May 1992, followed by the advance of tanks and infantry.<sup>80</sup> By 28 May 1992, many dwellings had been destroyed.<sup>81</sup> Approximately 800 people were killed in the attack on Kozarac and an additional 1,200 captured; among the attackers, four soldiers were killed and fifteen injured.<sup>82</sup> The Bosnian-Serb infantry forced the surviving civilian inhabitants to leave the town and surrounding villages.<sup>83</sup> On 14 June 1992, armed Bosnian Serbs attacked two other villages with similar consequences.<sup>84</sup> Kozarac was looted and further destroyed between June and August 1992.<sup>85</sup> The Trial Chamber found that the fighting between the parties continued throughout Bosnia-Herzegovina until the conclusion of

<sup>74</sup> *Tadić* Jurisdiction Decision, para. 70.

<sup>75</sup> *Tadić* Trial Judgement, para. 562.

<sup>76</sup> *Tadić* Trial Judgement, paras 560, 563; *Tadić* Second Amended Indictment, 14 December 1995, para. 1.

<sup>77</sup> *Tadić* Trial Judgement, para. 140.

<sup>78</sup> *Tadić* Trial Judgement, para. 141.

<sup>79</sup> *Tadić* Trial Judgement, paras 143, 565.

<sup>80</sup> *Tadić* Trial Judgement, paras 143, 565.

<sup>81</sup> *Tadić* Trial Judgement, paras 143, 565.

<sup>82</sup> *Tadić* Trial Judgement, paras 145, 565.

<sup>83</sup> *Tadić* Trial Judgement, paras 143, 146, 565.

<sup>84</sup> *Tadić* Trial Judgement, para. 565.

<sup>85</sup> *Tadić* Trial Judgement, paras 143, 146.

the Dayton peace agreement.<sup>86</sup> The Trial Chamber found a reflection of the intensity of the conflict in the continuous involvement of the UN Security Council, acting under Chapter VII of the UN Charter.<sup>87</sup> The Trial Chamber concluded that the intensity requirement was satisfied.<sup>88</sup>

41. In the *Čelebići* case, the Trial Chamber applied the *Tadić* test to determine whether there was an armed conflict in Bosnia-Herzegovina involving the JNA, the Bosnian TO, the Bosnian MUP, the Croatian Defence Council, and the Bosnian-Serb army, between May and December 1992.<sup>89</sup> It found that in Bosnia-Herzegovina as a whole there was continuing armed violence at least from the date of its declaration of independence – 6 March 1992 – until the signing of the Dayton Peace Agreement in November 1995.<sup>90</sup> Serb forces attacked and shelled many villages in Konjic municipality, while the Bosnian TO, the Bosnian MUP and the Croatian Defence Council mounted military operations against other villages.<sup>91</sup> The shelling of Konjic town, which began on 4 May 1992, continued daily for over three years, inflicted substantial damage and resulted in the loss of many lives.<sup>92</sup> The conflict caused many people to flee their homes.<sup>93</sup> The Trial Chamber found that the fighting in Bosnia-Herzegovina as a whole, as in Konjic itself, was “clearly intense”, consequently attracting the attention of international organizations including the UN Security Council, which acted under Chapter VII of the UN Charter.<sup>94</sup> Hence, the conflict was sufficiently intense to satisfy the *Tadić* test.<sup>95</sup>

42. In the *Slobodan Milošević* case, the Trial Chamber had to determine whether there was sufficient evidence, for the purposes of Rule 98 bis, of an armed conflict in Kosovo/Kosova between 1 January 1999, which was the beginning of the related indictment period, and 24 March 1999, when the NATO bombing campaign began.<sup>96</sup> Relying on the *Tadić* “protracted armed violence” criterion, the Trial Chamber

<sup>86</sup> *Tadić* Trial Judgement, para. 566.

<sup>87</sup> *Tadić* Trial Judgement, para. 567.

<sup>88</sup> *Tadić* Trial Judgement, para. 568.

<sup>89</sup> *Čelebići* Trial Judgement, paras 182-187; *Čelebići* Initial Indictment, 21 March 1996, para. 2.

<sup>90</sup> *Čelebići* Trial Judgement, para. 186.

<sup>91</sup> *Čelebići* Trial Judgement, paras 134, 138-139, 189.

<sup>92</sup> *Čelebići* Trial Judgement, para. 134.

<sup>93</sup> *Čelebići* Trial Judgement, paras 129-130, 133, 139.

<sup>94</sup> *Čelebići* Trial Judgement, para. 190.

<sup>95</sup> *Čelebići* Trial Judgement, para. 192.

<sup>96</sup> *Slobodan Milošević* Rule 98 bis Decision, paras 14, 22; *Slobodan Milošević* Second Amended Indictment (for Kosovo), 29 October 2001, paras 17, 53.

examined the “intensity” of the conflict.<sup>97</sup> Considering at first the time prior to the indictment period, the Trial Chamber found that the KLA conducted many operations against the police during 1996 and 1997, and in 1997 killed about 20 persons having worked for or cooperated with the police.<sup>98</sup> The KLA was equipped with rifles, guns and mortars, and by March 1997 received many weapons from Albania.<sup>99</sup> The Trial Chamber noted a “large scale offensive” by Serbian forces against several villages on 23 August 1998, several armed clashes in the period 1998 through March 1999, and a “massive attack” by Serb forces around 10 January 1999 on many villages, which were heavily shelled for two days.<sup>100</sup> It also noted a major Serbian offensive between 24 September 1998 and 4 October 1998, involving “massive” Serbian forces and special military and paramilitary groups.<sup>101</sup> There were clashes in many municipalities across Kosovo/Kosova.<sup>102</sup> The Trial Chamber was satisfied that the conflict in Kosovo/Kosova during the period described above met the intensity part of the *Tadić* test for the purposes of Rule 98 bis.<sup>103</sup>

43. In the *Kordić and Čerkez* case, in which the indictment period extended between November 1991 and March 1994, the Appeals Chamber had to decide a ground of appeal according to which the Trial Chamber had not made a factual finding that there had been protracted armed violence between the Croatian Defence Council and the Bosnian Army in Central Bosnia prior to 15 April 1993.<sup>104</sup> The Appeals Chamber noted that the Croatian Defence Council had met “significant opposition” when taking control of the towns of Novi Travnik and Ahmići in October 1992.<sup>105</sup> During a week of fighting in Novi Travnik, civilian buildings were set on fire and demolished.<sup>106</sup> In January 1993, the Croatian Defence Council attacked the Muslim part of Busovača town, which was under fire from surrounding hills, resulting in at least 27 deaths.<sup>107</sup> The fighting spread throughout the municipality, leading to the destruction of buildings in one village and the evacuation of its population.<sup>108</sup> The fighting in Busovača municipality lasted at least

<sup>97</sup> *Slobodan Milošević* Rule 98 bis Decision, para. 17.

<sup>98</sup> *Slobodan Milošević* Rule 98 bis Decision, para. 28.

<sup>99</sup> *Slobodan Milošević* Rule 98 bis Decision, para. 31.

<sup>100</sup> *Slobodan Milošević* Rule 98 bis Decision, para. 28.

<sup>101</sup> *Slobodan Milošević* Rule 98 bis Decision, para. 30.

<sup>102</sup> *Slobodan Milošević* Rule 98 bis Decision, para. 29.

<sup>103</sup> *Slobodan Milošević* Rule 98 bis Decision, paras 17, 27, 32, 40.

<sup>104</sup> *Kordić and Čerkez* Appeal Judgement, para. 334.

<sup>105</sup> *Kordić and Čerkez* Appeal Judgement, para. 338.

<sup>106</sup> *Kordić and Čerkez* Appeal Judgement, paras 337-338.

<sup>107</sup> *Kordić and Čerkez* Appeal Judgement, para. 339.

<sup>108</sup> *Kordić and Čerkez* Appeal Judgement, para. 340.

three days.<sup>109</sup> Noting “serious fighting for an extended period of time” since October 1992, the Appeals Chamber upheld the Trial Chamber’s finding that an armed conflict existed prior to April 1993.<sup>110</sup>

44. In the *Halilović* case, the Trial Chamber applied the *Tadić* test to determine whether there was an armed conflict between the Croatian Defence Council, the Bosnian Army and Bosnian-Serb army in the territory of Bosnia-Herzegovina between 8 and 14 September 1993.<sup>111</sup> The Trial Chamber examined facts relevant to intensity in various areas of Bosnia-Herzegovina. It noted many armed confrontations in the spring and summer of 1993,<sup>112</sup> sometimes involving heavy shelling of towns and civilian casualties,<sup>113</sup> and effectively cutting off lines of communication or transportation.<sup>114</sup> It also noted blockades or sieges of towns lasting many months,<sup>115</sup> the deployment of tens of thousands of troops,<sup>116</sup> as well as the shifting of front lines.<sup>117</sup> The Trial Chamber concluded that the conflict was sufficiently intense to satisfy the *Tadić* test and that an armed conflict existed at the relevant time.<sup>118</sup>

45. In the *Limaj et al.* case, the Trial Chamber had to examine whether an armed conflict between Serbian forces and the KLA existed in Kosovo/Kosova by May 1998 and lasted until August 1998.<sup>119</sup> Applying the “protracted armed violence” requirement of the *Tadić* test, the Trial Chamber proceeded to examine the intensity of the conflict.<sup>120</sup> It found that, between early March and July 1998, in a wide geographical area of Kosovo/Kosova, there were many clashes, combat operations and major offensives, involving attacks on villages and police stations, dozens of casualties, heavy military vehicles (such as armoured personnel carriers and tanks) and heavy weapons (such as machine guns, mortars, rocket launchers, artillery and mines), destruction of many buildings and departure of thousands of civilians.<sup>121</sup> The Trial Chamber concluded that, by the end of May 1998 and at least until 26 July 1998, armed clashes

<sup>109</sup> *Kordić and Čerkez* Appeal Judgement, paras 339-340.

<sup>110</sup> *Kordić and Čerkez* Appeal Judgement, paras 336, 341.

<sup>111</sup> *Halilović* Trial Judgement, paras 6, 8, 24, 160, 173.

<sup>112</sup> *Halilović* Trial Judgement, paras 161, 163-166, 169.

<sup>113</sup> *Halilović* Trial Judgement, paras 164-165, 168.

<sup>114</sup> *Halilović* Trial Judgement, paras 164-165.

<sup>115</sup> *Halilović* Trial Judgement, paras 166-168.

<sup>116</sup> *Halilović* Trial Judgement, para. 168.

<sup>117</sup> *Halilović* Trial Judgement, paras 161-162, 164-165, 169, 172.

<sup>118</sup> *Halilović* Trial Judgement, para. 173.

<sup>119</sup> *Limaj et al.* Trial Judgement, paras 83, 93; *Limaj et al.* Second Amended Indictment, 12 February 2004, para. 7.

<sup>120</sup> *Limaj et al.* Trial Judgement, paras 84, 93.

occurred at intervals averaging three to seven days over a widespread and expanding geographic area.<sup>122</sup> Faced with Serbian forces that were superior in number, training and equipment, the KLA nevertheless offered strong resistance and used effective guerrilla-type tactics, avoiding prolonged fixed engagements with the Serb forces.<sup>123</sup> In concluding that the level of intensity needed to establish the existence of an armed conflict had been reached before the end of May 1998, the Trial Chamber emphasized the sustained and geographically widespread nature of the armed clashes, the military might of the Serbian forces, the forced departure of civilians and the number of casualties.<sup>124</sup>

46. In the *Hadžihasanović and Kubura* case, the Trial Chamber applied the *Tadić* test to examine whether there was sufficient evidence of an armed conflict between the Croatian Defence Council and the Bosnian Army in Central Bosnia-Herzegovina from 1993 up until 18 March 1994, when the parties signed the Washington peace accords.<sup>125</sup> The Chamber noted numerous confrontations between the two armies in many municipalities in Central Bosnia-Herzegovina between late 1992 and January 1993, including an “outbreak of open hostilities” towards the end of January 1993.<sup>126</sup> The fighting continued with “varying degrees of intensity” in several municipalities, followed by an escalation in June 1993 and fighting continuing into the autumn of 1993.<sup>127</sup> The Trial Chamber concluded that the intensity criterion had been met and that an armed conflict existed up until the conclusion of the Washington accords.<sup>128</sup>

47. In the *Martić* case, the Trial Chamber applied the *Tadić* test to examine whether an armed conflict existed between Serb and Croat forces in the territory of Croatia between August 1991 and August 1995.<sup>129</sup> With regard to intensity, the Trial Chamber noted that armed clashes involving police and local people from both sides erupted already in April 1991, leading the JNA to create buffer zones between the parties.<sup>130</sup> In August 1991, the hostilities intensified with the JNA, the Serb TO and a unit within the

<sup>121</sup> *Limaj et al.* Trial Judgement, paras 135-167.

<sup>122</sup> *Limaj et al.* Trial Judgement, para. 168.

<sup>123</sup> *Limaj et al.* Trial Judgement, paras 169-170.

<sup>124</sup> *Limaj et al.* Trial Judgement, paras 134, 171-173.

<sup>125</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 7, 14, 25, Annex I.

<sup>126</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 20-21.

<sup>127</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 22.

<sup>128</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 20, 25.

<sup>129</sup> *Martić* Trial Judgement, paras 41, 343; *Martić* Prosecution’s Final Brief, 17 January 2007, para. 356.

<sup>130</sup> *Martić* Trial Judgement, para. 344.

Serb MUP carrying out numerous attacks on villages with Croat majorities.<sup>131</sup> Croatian National Guards Corps were also engaged in the hostilities.<sup>132</sup> The conflict continued through 1995 with several attacks and incursions from both sides.<sup>133</sup> The Trial Chamber concluded that the fighting was sufficiently intense and that an armed conflict existed at all relevant times.<sup>134</sup>

48. In the *Mrkšić et al.* case, the Trial Chamber applied the *Tadić* test to determine whether there was an armed conflict in Vukovar between Serb forces, including the JNA, Serb TOs, and volunteer or paramilitary units, and Croatian forces, including the Croatian MUP, National Guard Corps, and other local volunteer defence groups, on or about 18-21 November 1991.<sup>135</sup> The Trial Chamber found that combat operations in the Vukovar area had gained in intensity during August and September 1991.<sup>136</sup> Between 2 October and 18 November 1991, there was daily combat, usually involving artillery, mortars, armoured vehicles, including tanks, weapons such as multiple rocket launchers and anti aircraft batteries, as well as infantry weapons, and at times air and naval forces.<sup>137</sup> After the general surrender of Croat forces on 18 November 1991, isolated and less intense combat continued on 19 and 20 November 1991.<sup>138</sup> The events attracted the attention of international organizations including the UN Security Council.<sup>139</sup> The Trial Chamber was persuaded that the conflict was sufficiently intense to satisfy the *Tadić* test.<sup>140</sup>

49. The criterion of protracted armed violence has therefore been interpreted in practice, including by the *Tadić* Trial Chamber itself, as referring more to the intensity of the armed violence than to its duration. Trial Chambers have relied on indicative factors relevant for assessing the “intensity” criterion, none of which are, in themselves, essential to establish that the criterion is satisfied. These indicative factors include the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent

<sup>131</sup> *Martić* Trial Judgement, paras 135, 344.

<sup>132</sup> *Martić* Trial Judgement, para. 344.

<sup>133</sup> *Martić* Trial Judgement, para. 345.

<sup>134</sup> *Martić* Trial Judgement, para. 347.

<sup>135</sup> *Mrkšić et al.* Trial Judgement, paras 1, 39-40, 407-408.

<sup>136</sup> *Mrkšić et al.* Trial Judgement, para. 419.

<sup>137</sup> *Mrkšić et al.* Trial Judgement, para. 419.

<sup>138</sup> *Mrkšić et al.* Trial Judgement, para. 419.

<sup>139</sup> *Mrkšić et al.* Trial Judgement, paras 420-421.

<sup>140</sup> *Mrkšić et al.* Trial Judgement, para. 422.

of material destruction; and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict.

50. The Trial Chamber now turns to examine how the criterion of the organization of the parties has been interpreted in practice.

51. In *Tadić*, the Trial Chamber had to assess whether the Government of Bosnia-Herzegovina and the Bosnian-Serb forces had the requisite level of organization.<sup>141</sup> It found that the Republic of Bosnia-Herzegovina was an organized political entity, with institutions dedicated to defence, and that it became a *de jure* state on 22 May 1992.<sup>142</sup> The Bosnian Serbs disposed of an “organized military force”, the Bosnian-Serb army comprising forces formerly part of the JNA, which was under the command of the Bosnian-Serb administration in Pale.<sup>143</sup> They occupied a significant part of Bosnia-Herzegovina.<sup>144</sup> Having considered also the factors relevant to intensity, the Trial Chamber concluded that an armed conflict existed.<sup>145</sup>

52. In the *Čelebići* case, the Trial Chamber had to determine whether the JNA, the Bosnian TO, the Bosnian MUP, the Croatian Defence Council and the Bosnian-Serb army satisfied the “organization” criterion of the *Tadić* test.<sup>146</sup> The Trial Chamber pointed out that the JNA was the official army of the SFRY, later the VJ under the FRY, and was controlled from Belgrade.<sup>147</sup> The Bosnian-Serb army, composed of units formerly part of the JNA, was controlled by the leadership of the Bosnian-Serb administration and occupied significant areas of Bosnia-Herzegovina.<sup>148</sup> Similarly, the self-proclaimed Bosnian-Croat state established as its army the Croatian Defence Council, which operated from territory under its control.<sup>149</sup> The Croatian Defence Council received arms, training and some personnel from the army of Croatia.<sup>150</sup> As for the Bosnian TO and MUP, the Trial Chamber noted that they were gradually transformed into a Bosnian Army, which was formally established on 15 April 1992, under the supreme command of the President of the Bosnian State Presidency and the

<sup>141</sup> *Tadić* Trial Judgement, paras 562-563.

<sup>142</sup> *Tadić* Trial Judgement, para. 563.

<sup>143</sup> *Tadić* Trial Judgement, para. 564.

<sup>144</sup> *Tadić* Trial Judgement, paras 564, 566.

<sup>145</sup> *Tadić* Trial Judgement, para. 568.

<sup>146</sup> *Čelebići* Trial Judgement, paras 182-187.

<sup>147</sup> *Čelebići* Trial Judgement, paras 110, 112, 187.

<sup>148</sup> *Čelebići* Trial Judgement, paras 117, 187.

<sup>149</sup> *Čelebići* Trial Judgement, paras 118, 187.

General Staff based in Sarajevo.<sup>151</sup> In Konjic, the Municipal Assembly formed a “War Presidency” responsible for organizing the local defence.<sup>152</sup> Moreover, the local TO and Croatian Defence Council created a Joint Command.<sup>153</sup> The Trial Chamber concluded that the parties to the conflict were “governmental authorities” or “organized armed groups” within the meaning of the *Tadić* test.<sup>154</sup>

53. The *Slobodan Milošević* Trial Chamber examined whether the KLA, from on or about 1 January 1999, qualified as an “organized armed group”.<sup>155</sup> It found that the KLA constituted an organized military force having an official joint command structure, headquarters, designated zones of operation, and the ability to procure, transport and distribute arms.<sup>156</sup> On that basis, the Trial Chamber concluded that the “organization” criterion of the *Tadić* test was satisfied for the purposes of Rule 98 bis.<sup>157</sup>

54. In the *Halilović* case, the Trial Chamber examined facts relevant to establishing whether the Croatian Defence Council, the Bosnian-Serb army and the Bosnian Army satisfied the “organization” criterion. The parties possessed military structures.<sup>158</sup> They engaged in military tactics in order to achieve military objectives.<sup>159</sup> They also controlled various parts of the territory.<sup>160</sup> The Bosnian-Serb army and the Croatian Defence Council negotiated a cease-fire agreement.<sup>161</sup> The Trial Chamber also took into account that the Command of the Army of the Republic of Bosnia-Herzegovina issued orders, restructured the army and deployed officers and troops.<sup>162</sup> Taking into consideration also factors relevant to the intensity of the armed violence, the Trial Chamber concluded that there was an armed conflict during the indictment period in Bosnia-Herzegovina.<sup>163</sup>

55. In the *Limaj et al.* case, the Trial Chamber found that the Serbian forces involved in Kosovo/Kosova in 1998 constituted “governmental authorities” within the meaning

<sup>150</sup> *Čelebići* Trial Judgement, para. 118.

<sup>151</sup> *Čelebići* Trial Judgement, paras 109, 136, 186-187.

<sup>152</sup> *Čelebići* Trial Judgement, paras 125-126, 131, 188.

<sup>153</sup> *Čelebići* Trial Judgement, paras 135, 137, 140, 191.

<sup>154</sup> *Čelebići* Trial Judgement, paras 191-192.

<sup>155</sup> *Slobodan Milošević* Rule 98 bis Decision, paras 14, 22 f.

<sup>156</sup> *Slobodan Milošević* Rule 98 bis Decision, paras 23-24.

<sup>157</sup> *Slobodan Milošević* Rule 98 bis Decision, paras 17, 25, 40.

<sup>158</sup> *Halilović* Trial Judgement, paras 162, 165-166, 168-172.

<sup>159</sup> *Halilović* Trial Judgement, paras 161, 163, 166, 168-169, 172.

<sup>160</sup> *Halilović* Trial Judgement, paras 162-164, 169.

<sup>161</sup> *Halilović* Trial Judgement, para. 164.

<sup>162</sup> *Halilović* Trial Judgement, paras 170-172.

<sup>163</sup> *Halilović* Trial Judgement, para. 173.

of the *Tadić* test and then examined whether the KLA qualified as an organized armed group.<sup>164</sup> Summing up the findings that it deemed most relevant to this question, the Trial Chamber concluded that by the end of May 1998:

[T]he KLA had a General Staff, which appointed zone commanders, gave directions to the various units formed or in the process of being formed, and issued public statements on behalf of the organisation. Unit commanders gave combat orders and subordinate units and soldiers generally acted in accordance with these orders. Steps [were taken] to introduce disciplinary rules and military police, as well as to recruit, train and equip new members. Although generally inferior to the VJ and MUP's equipment, the KLA soldiers had weapons, which included artillery mortars and rocket launchers. By July 1998 the KLA had gained acceptance as a necessary and valid participant in negotiations with international governments and bodies to determine a solution for the Kosovo [...] crisis, and to lay down conditions in these negotiations for refraining from military action.<sup>165</sup>

56. The Trial Chamber also interpreted the KLA's ability to engage in armed clashes across Kosovo/Kosova as a further indicator of its level of organization.<sup>166</sup> It interpreted the existence of KLA disciplinary rules and military police as evidence of the growing formality and effectiveness of its organizational structure and of the progress towards ensuring discipline and coordination within the KLA, even though it was unclear on the evidence to what extent enforcement was actually taking place.<sup>167</sup> The Trial Chamber noted that the General Staff did not meet regularly or have any fixed location,<sup>168</sup> and that the KLA had mostly light weapons and inadequate communications equipment.<sup>169</sup> The Trial Chamber downplayed the significance of uniforms as they had "little bearing on the functioning of the KLA".<sup>170</sup> It viewed the fact that the KLA became a key negotiating partner, giving it the recognized ability to speak with one authoritative voice on behalf of its members, as confirmation of its "organisational stability and effectiveness".<sup>171</sup> The Trial Chamber also found evidence of the existence of an established hierarchy within the KLA.<sup>172</sup> It found that the KLA had the ability to coordinate military planning and activities and to determine a unified military strategy,

<sup>164</sup> *Limaj et al.* Trial Judgement, paras 83, 93.

<sup>165</sup> *Limaj et al.* Trial Judgement, para. 171 (omitting footnotes referring to its previous detailed findings on the matter).

<sup>166</sup> *Limaj et al.* Trial Judgement, para. 172.

<sup>167</sup> *Limaj et al.* Trial Judgement, paras 98, 110-117.

<sup>168</sup> *Limaj et al.* Trial Judgement, paras 104, 132.

<sup>169</sup> *Limaj et al.* Trial Judgement, paras 121-122, 124.

<sup>170</sup> *Limaj et al.* Trial Judgement, para. 123.

<sup>171</sup> *Limaj et al.* Trial Judgement, para. 129.

as well as the ability to conduct military operations of a larger scale.<sup>173</sup> The Trial Chamber concluded that before the end of May 1998 “the KLA sufficiently possessed the characteristics of an organised armed group, able to engage in an internal armed conflict”.<sup>174</sup>

57. In the *Hadžihasanović and Kubura* case, the Trial Chamber had to determine whether there was sufficient evidence that the Croatian Defence Council and the Bosnian Army satisfied the “organization” criterion.<sup>175</sup> The Trial Chamber relied on cease-fire orders issued by the general staffs and political leaders of each party as well as cease-fire agreements between the two parties, which representatives of international organizations attempted to broker and enforce.<sup>176</sup> It found further indication of the existence of an armed conflict in the “repeated failed attempts to form a joint command” between the two parties.<sup>177</sup> Based also on considerations relevant to intensity, the Trial Chamber was satisfied that the conditions for the existence of an armed conflict were fulfilled.<sup>178</sup>

58. In the *Martić* case, the Trial Chamber had to determine whether the opposing Serb and Croat forces qualified as organized for the purposes of the *Tadić* test.<sup>179</sup> It noted that in August 1991, the JNA and the armed forces of the Croatian-Serb leadership, consisting of the Serb TO and a unit within the Serb MUP, were directly involved in the hostilities and cooperating in organizing operations on the ground.<sup>180</sup> The Croatian-Serb leadership received military assistance from Serbia and participated in establishing a camp to train units that later took part in the hostilities.<sup>181</sup> The Croatian authorities also organized the Croatian Army.<sup>182</sup> The Trial Chamber furthermore took into account the adoption of agreements between the parties.<sup>183</sup> The Trial Chamber concluded that the “organization” criterion was fulfilled.<sup>184</sup>

<sup>172</sup> *Limaj et al.* Trial Judgement, para. 129.

<sup>173</sup> *Limaj et al.* Trial Judgement, para. 129.

<sup>174</sup> *Limaj et al.* Trial Judgement, paras 134, 173.

<sup>175</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 14, 20.

<sup>176</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 20, 23.

<sup>177</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 23.

<sup>178</sup> *Hadžihasanović and Kubura* Trial Judgement, paras 20, 25.

<sup>179</sup> *Martić* Trial Judgement, paras 41, 343; *Martić* Prosecution’s Final Brief, 17 January 2007, para. 356.

<sup>180</sup> *Martić* Trial Judgement, paras 135, 344.

<sup>181</sup> *Martić* Trial Judgement, para. 344.

<sup>182</sup> *Martić* Trial Judgement, para. 344.

<sup>183</sup> *Martić* Trial Judgement, para. 345.

<sup>184</sup> *Martić* Trial Judgement, para. 347.

59. In the *Mrkšić et al.* case, the Trial Chamber had to determine whether the opposing Serbian and Croatian forces satisfied the “organization” requirement of the *Tadić* test.<sup>185</sup> The Serb forces consisted of the JNA, Serb TOs, and Serb volunteer or paramilitary units.<sup>186</sup> They all acted under a temporary military structure formed by the command of the 1st Military District of the JNA.<sup>187</sup> The Trial Chamber found that the Serbian forces constituted government authorities within the meaning of the *Tadić* test.<sup>188</sup> The Croatian forces consisted of the Croatian MUP, National Guard Corps, and local volunteer defence groups.<sup>189</sup> The Croatian MUP had regular as well as reserve police forces, numbering 20,000 across Croatia.<sup>190</sup> The National Guard Corps was formed on 28 May 1991 and was part of the MUP.<sup>191</sup> At first, its members were in large part volunteers and members of the reserve forces of the MUP.<sup>192</sup> They were armed, though inadequately, with MUP weapons.<sup>193</sup> Before November 1991, the National Guard Corps in Croatia consisted of four brigades, with 8,000-9,000 men.<sup>194</sup> In Vukovar, in the autumn of 1991, the Croatian MUP and National Guard Corps, along with local volunteer defence groups, numbered around 1,500-1,800.<sup>195</sup> They were under a unified command, which had a designated headquarters in Vukovar.<sup>196</sup> The Trial Chamber concluded that the Croatian forces constituted organized armed groups within the meaning of the *Tadić* test.<sup>197</sup>

60. These cases highlight the principle that an armed conflict can exist only between parties that are sufficiently organized to confront each other with military means. State governmental authorities have been presumed to dispose of armed forces that satisfy this criterion. As for armed groups, Trial Chambers have relied on several indicative factors, none of which are, in themselves, essential to establish whether the “organization” criterion is fulfilled. Such indicative factors include the existence of a command structure and disciplinary rules and mechanisms within the group; the

<sup>185</sup> *Mrkšić et al.* Trial Judgement, paras 39-40, 407-408.

<sup>186</sup> *Mrkšić et al.* Trial Judgement, para. 409.

<sup>187</sup> *Mrkšić et al.* Trial Judgement, para. 409.

<sup>188</sup> *Mrkšić et al.* Trial Judgement, para. 409.

<sup>189</sup> *Mrkšić et al.* Trial Judgement, para. 410.

<sup>190</sup> *Mrkšić et al.* Trial Judgement, para. 411.

<sup>191</sup> *Mrkšić et al.* Trial Judgement, para. 413.

<sup>192</sup> *Mrkšić et al.* Trial Judgement, paras 413-414.

<sup>193</sup> *Mrkšić et al.* Trial Judgement, paras 413-414.

<sup>194</sup> *Mrkšić et al.* Trial Judgement, para. 414.

<sup>195</sup> *Mrkšić et al.* Trial Judgement, paras 410, 412, 414, 415.

<sup>196</sup> *Mrkšić et al.* Trial Judgement, paras 410, 417.

<sup>197</sup> *Mrkšić et al.* Trial Judgement, para. 418.

existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords.

61. *Nexus*. The alleged crime need not have occurred at a time and place in which there was actual combat, so long as the acts of the perpetrator were “closely related” to hostilities occurring in territories controlled by parties to the conflict.<sup>198</sup> The existence of this close relationship between the crime and the armed conflict will be established where it can be shown that the conflict played a substantial part 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.<sup>199</sup>

62. *Status of Victims*. The final requirement for the application of an Article 3 charge based on Common Article 3 is that the victim was taking no active part in the hostilities at the time the offence was committed.<sup>200</sup> This covers, among other persons, members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.<sup>201</sup> The perpetrator must know or should have known the status of the victims as persons taking no active part in the hostilities.<sup>202</sup>

### 3.2 Findings on the existence of an armed conflict

#### *3.2.1 Organization of the KLA*

63. The evidence before the Trial Chamber shows the existence of a conflict between the armed forces of the Government of FRY, consisting of VJ, PJP, JSO, SAJ, and MUP forces (“Serbian forces”), and the KLA in Kosovo/Kosova in the indictment period March-September 1998. Although most of the evidence before the Trial Chamber concerns events that occurred in an area approximately between the towns of Peć/Pejë, Đakovica/Gjakovë and Grabanica/Grabanicë in Klina/Klinë municipality

<sup>198</sup> *Kunarac et al.* Appeal Judgement, para. 57; *Stakić* Appeal Judgement, para. 342.

<sup>199</sup> *Kunarac et al.* Appeal Judgement, para. 58.

<sup>200</sup> Common Article 3 (1); *Ćelebići* Appeal Judgement, para. 420; *Krajišnik* Trial Judgement, para. 847.

<sup>201</sup> Common Article 3 (1).

<sup>202</sup> *Halilović* Trial Judgement, para. 36; *Krajišnik* Trial Judgement, para. 847.

(“Dukagjin area”), the Trial Chamber does not limit its legal analysis to this area of Kosovo/Kosova. In order to determine if and when an armed conflict came into existence in Kosovo/Kosova, the Trial Chamber must examine if the KLA constituted an “organized armed group” and if the conflict reached the level of intensity required under the *Tadić* test.

64. In light of the specific features of the present case, the Trial Chamber has identified and will examine the following indicative factors of the level of organization of the KLA: the existence of KLA headquarters and command structure; the existence of KLA disciplinary rules and mechanisms; territorial control exerted by the KLA; the ability of the KLA to gain access to weapons and other military equipment; to recruit members; to provide them with military training; to carry out military operations and use tactics and strategy; and to speak with one voice.

65. *Headquarters and command structure.* The first KLA headquarters in the Dukagjin area were established in Jablanica/Jabllanicë, in Đakovica/Gjakovë municipality, and Glogane/Gllogjan, in Dečani/Deçan municipality. Cufë Krasniqi testified that in February 1998 the KLA had headquarters in Jablanica/Jabllanicë and Glogane/Gllogjan.<sup>203</sup> Jablanica/Jabllanicë, which the witness understood to be under the command of Lahi Brahimaj, was the oldest KLA headquarters in Western Kosovo/Kosova.<sup>204</sup> After the attack on the Haradinaj family compound in Glogane/Gllogjan in March 1998, this village became the base for the most important KLA headquarters after Jablanica/Jabllanicë.<sup>205</sup> KLA members went to Glogane/Gllogjan to learn how to protect their villages and obtain weapons.<sup>206</sup> Zoran Stijović and Witness 69 corroborated the KLA’s presence, by early 1998, in Glogane/Gllogjan and Jablanica/Jabllanicë, as well as Lahi Brahimaj’s role as a leader in Jablanica/Jabllanicë.<sup>207</sup> Pjeter Shala testified that in early spring 1998, he and twenty or thirty other armed men entered Kosovo/Kosova from Albania and went to Jablanica/Jabllanicë.<sup>208</sup> The witness testified that KLA commanders would meet in Lahi

<sup>203</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 33, 35; Cufë Krasniqi, T. 5756-5757.

<sup>204</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 33, 35, 62; Cufë Krasniqi, T. 5732, 5753-5754, 5846, 5855; P357 (Photograph of building containing the KLA staff in Jablanica/Jabllanicë in 1998).

<sup>205</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 38, 40, 42; Cufë Krasniqi, T. 5706.

<sup>206</sup> Cufë Krasniqi, T. 5708.

<sup>207</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), paras 23, 49; Zoran Stijović, T. 9000-9001; P1231 (Witness 69, witness statement, 20 June 2007), paras 11, 27; Witness 69, T. 9846, 9850-9853.

<sup>208</sup> Pjeter Shala, T. 9938-9939, 9943-9947.

Brahimaj's house, in the centre of Jablanica/Jabllanicë.<sup>209</sup> He further testified that there were barracks at the entrance to the village.<sup>210</sup> Nazmi Brahimaj was the village commander and gave orders pertaining to who was to collect weapons and who was to go on a particular assignment.<sup>211</sup>

66. In March and April 1998, villagers in many villages in the Dukagjin area began to organize themselves in support of the KLA. Rrustem Tetaj testified that villagers in some of the villages that surrounded Glogane/Gllogjan, such as Dubrava/Dubravë, Babaloć/Baballoq, Gramočelj/Gramaqel, and Šaptelj/Shaptej, all in Dečani/Deçan municipality, had started to set up KLA headquarters around the end of March and the beginning of April 1998.<sup>212</sup> Around the same time, he saw the KLA headquarters in Ljumbarda/Lumbardh in Dečani/Deçan municipality.<sup>213</sup> The commander of Gramočelj/Gramaqel at the time was Ali Avdija, a.k.a. Baraba, and the commander of Ljumbarda/Lumbardh was Deli Lekaj.<sup>214</sup> According to Rrustem Tetaj, villagers organized themselves on their own initiative, which resulted in an expansion of the KLA in the Dukagjin area.<sup>215</sup> The organization consisted mainly of ordinary people appointing night guards and setting up checkpoints at village entrances.<sup>216</sup> The Trial Chamber received further consistent evidence about KLA organization at the village level in the Dukagjin area since late March 1998 from Ismet Kadrijaj,<sup>217</sup> Ahmet Ukaj,<sup>218</sup> Zymer Hasanaj,<sup>219</sup> Witness 29,<sup>220</sup> and Shemsedin Cekaj.<sup>221</sup>

67. The Trial Chamber also received evidence about the role of Ramush Haradinaj in organizing the KLA as of April 1998. According to Zoran Stijović, in late March, April and early May, Haradinaj and his entourage would come to a village and call a meeting of prominent residents in which they would discuss the establishment of a KLA staff in

<sup>209</sup> Pjeter Shala, T. 9946-9948.

<sup>210</sup> Pjeter Shala, T. 9948-9950; P1185 (Diagram of the Jablanica/Jabllanicë barracks); P1186 (Photograph marked by Pjeter Shala).

<sup>211</sup> Pjeter Shala, T. 9947, 9954.

<sup>212</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 20.

<sup>213</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 20.

<sup>214</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 20.

<sup>215</sup> Rrustem Tetaj, T. 3625-3626, 3628, 3707, 3709, 3800-3801.

<sup>216</sup> Rrustem Tetaj, T. 3626, 3707.

<sup>217</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 7-9.

<sup>218</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 1.

<sup>219</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 2; Zymer Hasanaj, T. 8720.

<sup>220</sup> Witness 29, T. 3483-3484, 3586.

<sup>221</sup> P317 (Shemsedin Cekaj, witness statement, 14 May 2007), para. 6; Shemsedin Cekaj, T. 4390, 4398-4399, 4401-4403.

the village and influence the selection of leaders and staff.<sup>222</sup> Haradinaj would ask the villagers to raise money for the purchase of weapons.<sup>223</sup> Around mid-April 1998, Rrustem Tetaj went to Glogjan/Gllogjan to join the KLA and to discuss the organization and preparation of the village of Donja Luka/Lluka e Ultë, in Deçani/Deçan municipality.<sup>224</sup> He met with Haradinaj, who asked the witness to return to his village to organize the people there, gather some young people in order to go to Glogjan/Gllogjan, and go from there to Albania to collect weapons.<sup>225</sup> Zymer Hasanaj testified that, in mid-April 1998, Haradinaj went to Velika Vranovac/Vranoc e Madhe, in Peć/Pejë municipality, to announce the appointment of Din Krasniqi to the position of KLA commander of a region consisting of 25 villages, including Velika Vranovac/Vranoc e Madhe.<sup>226</sup> Haradinaj was armed and in KLA uniform.<sup>227</sup> Hasanaj stated that “the people” accepted Haradinaj’s authority to make this appointment, considering him superior to everyone else in the region.<sup>228</sup> Cufë Krasniqi testified that after the clash at the Haradinaj family compound, Haradinaj became the “popular commander” of the KLA forces in the Dukagjin area.<sup>229</sup> Although in April 1998 Haradinaj was not officially the commander, the KLA soldiers regarded him as the *de facto* commander of the area.<sup>230</sup>

68. On the evidence, the “KLA General Staff” appears to have been hardly involved with the above-mentioned developments on the ground in early 1998. Jakup Krasniqi, member of the KLA General Staff since late 1996 or the beginning of 1997,<sup>231</sup> confirmed that, beginning in March-April 1998, villagers, particularly in the Drenica/Drenicë and Dukagjin areas, would organize themselves into defence units spontaneously, often electing a village commander.<sup>232</sup> He testified that the KLA

<sup>222</sup> Zoran Stijović, T. 9073-9074.

<sup>223</sup> Zoran Stijović, T. 9074-9076.

<sup>224</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 20, 22; Rrustem Tetaj, T. 3613, 3709-3710.

<sup>225</sup> Rrustem Tetaj, T. 3621, 3840-3841.

<sup>226</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 4-6; Zymer Hasanaj, T. 8743.

<sup>227</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 5.

<sup>228</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 5.

<sup>229</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 43. See also P931 (Zoran Stijović, witness statement, 27 September 2007), paras 45-46.

<sup>230</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 41, 61, 65.

<sup>231</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 4; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3296, 3298, 3307, 3427-3429; Jakup Krasniqi, T. 4989, 5022, 5024, 5075, 5078.

<sup>232</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 8; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3330, 3378-3379, 3415, 3450-3452, 3470-3471; Jakup Krasniqi, T. 5007-5009; 5046-5049.

General Staff wanted these villagers to become part of a more organized structure, led by the KLA General Staff.<sup>233</sup> At least until June 1998, the KLA General Staff had no main building, while some members of the KLA General Staff were in Kosovo/Kosova, some in Albania and some in western European countries.<sup>234</sup> According to Jakup Krasniqi, until August 1998, the KLA had no rigid hierarchical structure, but a horizontal command structure, and communication between KLA groups was limited.<sup>235</sup>

69. *Disciplinary rules and mechanisms.* Discipline of KLA soldiers does not appear to have been a significant concern for the KLA in the early months of 1998. Jakup Krasniqi testified that from March to September 1998, the KLA had no courts, judges, or prisons.<sup>236</sup> During 1998, the KLA General Staff had no system for disciplining KLA soldiers, and disciplining by zone commanders was, according to Jakup Krasniqi, difficult or impossible, due to lack of organization and regular communication.<sup>237</sup> On 29 April 1998, the KLA General Staff issued a policy statement, according to which the KLA recognized and respected the international treaties of the United Nations and the conventions on war.<sup>238</sup> The KLA also circulated documents containing these conventions, originating from the International Red Cross.<sup>239</sup> Due to organizational problems, it was not possible to send the documents to every KLA soldier and the purpose of the policy statement was therefore to inform KLA soldiers.<sup>240</sup>

70. *Control of territory.* Serbian control of certain parts of the Dukagjin area weakened already before 1998. Zoran Stijović testified that, starting in 1996, the MUP stayed out of several areas across Kosovo/Kosova, including around Jablanica/Jabllanicë, in order to avoid confrontations with the KLA.<sup>241</sup> Nebojša Avramović testified that even before the conflict the police were unable to go to Jablanica/Jabllanicë, because the villagers were armed and there were attacks on the

<sup>233</sup> Jakup Krasniqi, T. 5007-5008, 5047-5048.

<sup>234</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3306, 3311, 3401-3402; Jakup Krasniqi, T. 4951, 4990, 5012, 5027-5029, 5072.

<sup>235</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3350-3351, 3454-3455.

<sup>236</sup> Jakup Krasniqi, T. 5089, 5153.

<sup>237</sup> Jakup Krasniqi, T. 4970-4971.

<sup>238</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 12 (KLA political statement, 29 April 1998), pp. 1, 2; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3371.

<sup>239</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3387-3388.

<sup>240</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 6; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3387-3388.

<sup>241</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 23; Zoran Stijović, T. 9000.

police and other state officials.<sup>242</sup> In January 1998, Branko Gajić received information that an area of 90 square kilometres in Đakovica/Gjakovë municipality had not been under Serbian control for several years, and had fallen under KLA control in late 1997.<sup>243</sup>

71. The KLA exerted territorial control by setting up manned checkpoints on roads in the Dukagjin area. Branko Gajić stated that, following the MUP operation on Adem Jashari's compound on 5 March 1998, the number of KLA checkpoints increased.<sup>244</sup> The Trial Chamber received specific evidence on the existence of KLA checkpoints in March 1998. Dragoslav Stojanović testified that one evening around the beginning of March 1998, at the entrance to Glodane/Gllogjan, four KLA soldiers stopped him, asked for his identity papers, and searched him and his car.<sup>245</sup> John Crosland testified that between March and July 1998, he observed small groups of around 10-15 KLA soldiers, most of whom wore uniforms with KLA insignia, in the areas of Rznić/Irzniq, Prilep/Prelep, and on the outskirts of Đakovica/Gjakovë.<sup>246</sup> They were armed with rifles, revolvers, some light machine-guns, and some grenades.<sup>247</sup> These soldiers would sometimes try to prevent Crosland's passage.<sup>248</sup>

72. By late April 1998, there was a considerable number of KLA checkpoints in the Dukagjin area. Shemsedin Cekaj testified that, around 20 April 1998, he travelled to Rznić/Irzniq to meet Ramush Haradinaj for the first time.<sup>249</sup> He drove through the villages of Ljubenić/Lybeniq, Peć/Pejë municipality, Donji Streoc/Strelci i Ultë, Požar/Pozhare and Kodralija/Kodrali, all in Dečani/Deçan municipality.<sup>250</sup> There were checkpoints guarded by KLA soldiers, some of whom were uniformed, in several villages along the way.<sup>251</sup> Shemsedin Cekaj did not need any papers to pass through these checkpoints as he was known to the men guarding them.<sup>252</sup> At that time, one did not need a permit from local KLA staff to travel through KLA checkpoints.<sup>253</sup>

<sup>242</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 10.

<sup>243</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 13; P1142 (549th Motorised Brigade Command report on the Đakovica/Gjakovë municipality in early 1998, 23 February 1998), p. 1.

<sup>244</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 17.

<sup>245</sup> Dragoslav Stojanović, T. 1854-1857, 1880, 1941-1942, 1983.

<sup>246</sup> John Crosland, T. 2949, 2951-2952.

<sup>247</sup> John Crosland, T. 2951-2952.

<sup>248</sup> John Crosland, T. 2951.

<sup>249</sup> Shemsedin Cekaj, T. 4390, 4460-4461.

<sup>250</sup> Shemsedin Cekaj, T. 4390-4391.

<sup>251</sup> Shemsedin Cekaj, T. 4391.

<sup>252</sup> Shemsedin Cekaj, T. 4392.

<sup>253</sup> Shemsedin Cekaj, T. 4392.

Shemsedin Cekaj testified that, after 22 April 1998, the KLA set up check-points on the western side of Rznić/Irzniq, towards Prilep/Prelep.<sup>254</sup> Shaban Balaj testified that there was a KLA checkpoint in Rasić/Rasiq in Peć/Pejë municipality, at the end of April 1998.<sup>255</sup> Nebojša Avramović testified that by 21-22 April 1998 the KLA had checkpoints, bunkers and trenches on both sides of the Đakovica/Gjakovë-Peć/Pejë road.<sup>256</sup> The existence of KLA trenches in Dečani/Deçan municipality by 22-24 April was corroborated by Miloica Vlahović<sup>257</sup> and Staniša Radošević.<sup>258</sup> In sections 6.4 and 6.7, below, the Trial Chamber examines further evidence of KLA checkpoints in Dečani/Deçan municipality, around Dašinovac/Dashinoc, Glođane/Gllogjan, Požar/Pozhare, and Rznić/Irzniq, by 22 April 1998.

73. As a result, between April 1998 and late August 1998 the Dukagjin area was, as explained by Cufë Krasniqi, mainly under the control of the KLA.<sup>259</sup> The area was, according to the witness, considered a “free zone” because it was freed from Serbian “occupation” and because the KLA could move within that area.<sup>260</sup> However, due to their military superiority, the Serbian forces were still able to enter the area, and did so repeatedly.<sup>261</sup> The KLA’s control of the Dukagjin area since around April 1998, though offset by Serbian incursions, found further support in the evidence of Ylber Haskaj,<sup>262</sup> Shemsedin Cekaj,<sup>263</sup> Zymer Hasanaj,<sup>264</sup> Žarko Bajčetić,<sup>265</sup> and Witness 28.<sup>266</sup> The evidence examined in sections 6.5, 6.6, and 6.7, below shows that the KLA took control of Gornji Ratiš/Ratishë ë Eperm and Dašinovac/Dashinoc, both in Dečani/Deçan municipality, on 21-22 April 1998.

<sup>254</sup> Shemsedin Cekaj, T. 4404; P1156 (Intelligence report from the Priština Corps Command forward command post, 22 April 1998), para. 8.

<sup>255</sup> P922 (Shaban Balaj, witness statement, 2 June 2007), para. 16; Shaban Balaj, T. 8648.

<sup>256</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 13, 15; see also P385 (Map of unsafe area for Serbs according to Nebojša Avramović).

<sup>257</sup> Miloica Vlahović, T. 1583-1584.

<sup>258</sup> See section 6.15, below.

<sup>259</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 90; Cufë Krasniqi, T. 5815; P355 (Map on which the witness marked Serbian positions and an area controlled by the KLA).

<sup>260</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 90; Cufë Krasniqi, T. 5751.

<sup>261</sup> Cufë Krasniqi, T. 5751, 5815, 5820.

<sup>262</sup> P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 34; Ylber Haskaj, T. 10330-10332.

<sup>263</sup> Shemsedin Cekaj, T. 4403-4406, 4419-4422, 4427-4428, 4478-4481; P318 (Map marked by Shemsedin Cekaj).

<sup>264</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 10 and Annex A to the statement, showing the villages which, according to Hasanaj, were part of the “free zone”.

<sup>265</sup> P377 (Žarko Bajčetić, witness statement, 24 May 2007), paras 19, 31-32; Žarko Bajčetić, T. 6405-6406, 6408-6412, 6533-6534; P379 (Map on which Žarko Bajčetić marked an inaccessible area).

<sup>266</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 51, 72; Witness 28, T. 10178-10179.

74. As KLA control of the Dukagjin area expanded, permanent Serbian positions were withdrawn. Nebojša Avramović testified that the police stations in Rznić/Irzniq and Junik were closed in April 1998, as the roads leading to these stations were blocked and policemen were constantly attacked.<sup>267</sup> Overnight between 21 and 22 April 1998, the police station in Rznić/Irzniq was evacuated.<sup>268</sup> Zoran Stijović testified that when the police withdrew from the police station in Rznić/Irzniq, which was the last Serbian outpost in the vicinity of Glogjan/Gllogjan, control of the territory off the main road was in effect ceded to the KLA.<sup>269</sup>

75. The evidence indicates that in early 1998 the main roads were predominantly under Serbian control, which by April was increasingly challenged by the KLA. Dragan Živanović testified that the MUP, following increased KLA activity, had set up permanently manned checkpoints along the main roads in Western Kosovo/Kosova in the first half of 1998.<sup>270</sup> KLA attacks on these checkpoints increased during the months up to June 1998.<sup>271</sup> Nebojša Avramović testified that a section of the Đakovica/Gjakovë-Priština/Prishtinë road, between Rakovina/Rakovine in Đakovica/Gjakovë municipality and Dolac/Dollc in Klina/Klinë municipality was completely blocked by the KLA between April and September 1998.<sup>272</sup> John Crosland and Cufë Krasniqi testified that since February or March 1998, Serbs controlled the Peć/Pejë-Đakovica/Gjakovë main road, although the KLA blocked it near Prilep/Prelep for some time around April 1998.<sup>273</sup> On 22 April 1998, Colonel Vladimir Lazarević ordered that movement of military vehicles on the Đakovica/Gjakovë-Dečani/Deçan-Peć/Pejë road required prior authorisation and maximum security measures.<sup>274</sup> Witness 28 testified that, by the end of April 1998, bus services along the Priština/Prishtinë-Peć/Pejë-Đakovica/Gjakovë road were not operating due to clashes between KLA and

<sup>267</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 18.

<sup>268</sup> P1156 (Intelligence report from the Priština Corps Command forward command post, 22 April 1998), para. 8. See also P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 48; Cufë Krasniqi, T. 5814; P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 34; Shemsedin Cekaj, T. 4403, 4470.

<sup>269</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), paras 41-43; Zoran Stijović, T. 8992.

<sup>270</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), paras 30-31.

<sup>271</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 31.

<sup>272</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 17; P386 (Map indicating the safe section of the Đakovica/Gjakovë-Priština/Prishtinë road drawn by Nebojša Avramović).

<sup>273</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 47-48; Cufë Krasniqi, T. 5746, 5813; John Crosland, T. 2961-2962.

<sup>274</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 61; P1022 (Order by Col. Vladimir Lazarević, 22 April 1998).

Serbian military forces.<sup>275</sup> Serbian police officers told the witness that the KLA had been attacking the Serbian police along the road and were trying to take control of it.<sup>276</sup> The witness noticed an increase in checkpoints and a more tangible police presence along the road.<sup>277</sup>

76. *Weapons and other military equipment.* The KLA was, as explained by Jakup Krasniqi, financially supported by two funds.<sup>278</sup> The Bukoshi Fund, set up at the end of 1991 or the beginning of 1992, donated around 4 million DEM to the KLA, during 1998 and 1999.<sup>279</sup> The Homeland Calling Fund, set up in 1995, was controlled by the KLA General Staff.<sup>280</sup> It was used to finance the transport of weapons and supplies from Albania into Kosovo/Kosova.<sup>281</sup> Contributions came from the Albanian diaspora and were encouraged by KLA communiqués.<sup>282</sup> Witness 17 corroborated this evidence.<sup>283</sup> Cufë Krasniqi and Dragan Živanović testified that the KLA got money to buy weapons from donations of the Albanian diaspora and funds collected in the villages.<sup>284</sup>

77. While two witnesses testified that large-scale KLA smuggling of weapons began in early 1997, the Trial Chamber received concrete evidence substantiating this claim only as of March 1998. Zoran Stijović testified that in early 1997, the Albanian Government collapsed and Albanian army barracks were looted.<sup>285</sup> According to the witness, in early spring 1997, the KLA began to smuggle large quantities of weapons and other military equipment from Albania into Kosovo/Kosova.<sup>286</sup> Dragan Živanović corroborated this evidence.<sup>287</sup> Bislim Zyrapi testified that he was in Albania between the second half of March and 28 May 1998.<sup>288</sup> He was frequently visited by members of

<sup>275</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 55; Witness 28, T. 10197.

<sup>276</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 57-58.

<sup>277</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 63; Witness 28, T. 10197.

<sup>278</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5.

<sup>279</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5.

<sup>280</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5, Annex 17 (Jakup Krasniqi interview in Koha Ditore, 11 July 1998), p. 6, Annex 18 (Jakup Krasniqi interview in Koha Ditore, 12 July 1998), p. 2.

<sup>281</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5.

<sup>282</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 5, Annex 12 (KLA political statement, 29 April 1998), p. 3; see also Annex 14 (KLA policy statement in Bujku, 12 June 1998), Annex 16 (KLA communiqué in Koha Ditore, 13 July 1998).

<sup>283</sup> P885 (Witness 17, witness statement, 14 August 2007), paras 2, 5-6.

<sup>284</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 45; Cufë Krasniqi, T. 5712, 5798; Dragan Živanović, T. 9294.

<sup>285</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 24; Zoran Stijović, T. 9009-9010.

<sup>286</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 24; Zoran Stijović, T. 9010-9011.

<sup>287</sup> Dragan Živanović, T. 9294.

<sup>288</sup> P118 (Bislim Zyrapi, witness statement, 25 November 2005), para. 17; Bislim Zyrapi, T. 3186, 3188-3190, 3257, 3396.

the KLA's General Staff for advice on weapons procurement and weapons supply to Kosovo/Kosova.<sup>289</sup> The witness visited private premises to inspect weapons for purchase, viewing between 50 and 100 weapons at a time, many of them decades old and some no longer functional.<sup>290</sup> Weapons acquired in this way were transported by the KLA into Kosovo/Kosova.<sup>291</sup>

78. In the beginning of 1998, the number of illegal border crossings increased around the border between Kosovo/Kosova, Montenegro, and Albania.<sup>292</sup> According to Branko Gajić, following the MUP operation on Adem Jashari's compound on 5 March 1998, the KLA intensified its weapons smuggling operations from Albania, Montenegro, and Macedonia.<sup>293</sup> John Crosland testified that by 24 March 1998 the KLA would get supplies across the border from Albania and later also from across the Macedonian border.<sup>294</sup> According to Cufë Krasniqi, around March 1998 people would bring weapons from Albania, Serbia, and Montenegro.<sup>295</sup> After March 1998, village commanders sent young men to Ramush Haradinaj who would send them on to contacts in Albania in order to pick up weapons.<sup>296</sup> These unarmed young men were usually escorted by two or three armed KLA soldiers and brought the weapons through the mountains back to their villages.<sup>297</sup> Dragan Živanović testified that, by April 1998, groups of up to 200 persons smuggled arms across the border into Kosovo/Kosova for the KLA.<sup>298</sup> Guides, who knew the state border security system well, led columns of pedestrians or mules across the border.<sup>299</sup>

79. The Trial Chamber received specific evidence of smuggling expeditions from Albania in March and April 1998. In the beginning of March, Avdullah Avdija went to Tropoje in Albania with three friends to get weapons.<sup>300</sup> The witness stated that he was not a member of the KLA at that point, but a volunteer.<sup>301</sup> The distribution and issuing

<sup>289</sup> Bislim Zyrapi, T. 3188-3191, 3197, 3259, 3263.

<sup>290</sup> Bislim Zyrapi, T. 3197, 3267-3271, 3427-3428.

<sup>291</sup> Bislim Zyrapi, T. 3198, 3415-3416.

<sup>292</sup> Dragan Živanović, T. 9293.

<sup>293</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 17.

<sup>294</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), p. 1960.

<sup>295</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 45; Cufë Krasniqi, T. 5711-5712.

<sup>296</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 45; Cufë Krasniqi, T. 5709.

<sup>297</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 45; Cufë Krasniqi, T. 5848-5849.

<sup>298</sup> Dragan Živanović, T. 9293.

<sup>299</sup> Dragan Živanović, T. 9294, 9296-9297.

<sup>300</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 1; Avdullah Avdija, T. 10572-10573.

<sup>301</sup> Avdullah Avdija, T. 10579-10580.

of weapons in Albania was supervised by people whom Avdija did not know.<sup>302</sup> He returned several nights later, with around 420 others, transporting Kalashnikovs and other weapons loaded onto horses.<sup>303</sup> Some of them were wearing uniforms.<sup>304</sup> Ismet Kadrijaj testified that after the Serbian attack on the Haradinaj family compound in March 1998 he travelled to Albania with fellow villagers to purchase weapons.<sup>305</sup> Ylber Haskaj went to Albania together with a great number of other villagers in Rznić/Irzniq to purchase weapons in mid-April 1998.<sup>306</sup> They travelled on foot and he brought back a weapon, ammunition, and a uniform for himself.<sup>307</sup> At the end of April 1998, Shaban Balaj travelled with a group of some 500 people from various villages to Tropoë to obtain weapons and supplies.<sup>308</sup> On their return to Kosovo/Kosova, transporting the purchased weapons (15 millimetre machine guns on tripods, long range mortars, sub-machine guns, and rifles), the group was escorted by approximately five KLA soldiers.<sup>309</sup> The witness was aware of numerous large convoys travelling from Kosovo/Kosova to Albania in this period.<sup>310</sup>

80. The weapons were transported through established routes. According to Zoran Stijović, these passed through Jablanica/Jabllanicë and Glogjan/Gllogjan.<sup>311</sup> Branko Gajić confirmed that by March 1998 there were illegal channels along which large quantities of weapons were being imported from Albania.<sup>312</sup> John Crosland testified that weapons would be smuggled into Kosovo/Kosova along routes across the FRY/Albania border, and that many would go through the Dukagjin area to the Drenica/Drenicë area or Kosovska Mitrovica/Mitrovicë.<sup>313</sup> By 24 April 1998 the KLA tried to create a corridor from Albania through the west of Kosovo/Kosova, the Jablanica/Jabllanicë area, and onto the Drenica/Drenicë area, along which some of the major KLA

<sup>302</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 1; Avdullah Avdija, T. 10574.

<sup>303</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 1; Avdullah Avdija, T. 10572-10573.

<sup>304</sup> Avdullah Avdija, T. 10573, 10580.

<sup>305</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 7-8.

<sup>306</sup> P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 6.

<sup>307</sup> P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 6.

<sup>308</sup> P922 (Shaban Balaj, witness statement, 2 June 2007), paras 5-6; Shaban Balaj, T. 8648.

<sup>309</sup> P922 (Shaban Balaj, witness statement, 2 June 2007), paras 6-7.

<sup>310</sup> P922 (Shaban Balaj, witness statement, 2 June 2007), paras 8-9.

<sup>311</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 25; Zoran Stijović, T. 9004, 9011-9015, 9028.

<sup>312</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 19; P1150 (Command report by the 549th Motorised Brigade, 5 March 1998), pp. 2-3.

<sup>313</sup> John Crosland, T. 2953, 2955-2959; P71 (Map marked by John Crosland indicating trails across the FRY/Albania border).

headquarters were situated.<sup>314</sup> Branko Gajić corroborated this testimony.<sup>315</sup> Dragan Živanović testified that the weapons would go to village staffs in Kosovo/Kosova, which would distribute them to KLA volunteers.<sup>316</sup>

81. The weapons obtained by the KLA in the early months of 1998 were light, compared to those of the Serbian forces. In the first half of 1998, the VJ primarily intercepted Chinese-made weapons which had belonged to the Albanian Army.<sup>317</sup> The weaponry included semi-automatic and automatic rifles, machine guns, hand-held launchers, mortars, anti-personnel mines, recoilless guns, and ammunition.<sup>318</sup> Branko Gajić testified that, in that same period, the VJ discovered some 25,000 weapons of differing calibre and type, 500,000 bullets and shells of different calibre, 10,000 hand-grenades, larger quantities of hand-held launchers and mortars, and several tonnes of military equipment, which had apparently been abandoned by KLA members attempting to cross the Albanian border into Kosovo/Kosova.<sup>319</sup> Further and largely consistent evidence on KLA smuggling of weapons from Albania was received from Žarko Bajčetić<sup>320</sup> and Witness 69.<sup>321</sup>

82. The transportation of weapons across the border prompted Serbian counter-measures in March and April 1998. Branko Gajić testified that in March 1998 Colonel Delić made requests for the approval of operations designed to inhibit the smuggling of weapons by the KLA and secure the border.<sup>322</sup> According to Dragan Živanović, starting around April 1998, the VJ reinforced the border posts in response to the increased number of border crossings.<sup>323</sup> Branko Gajić testified that, in an attempt to prevent the

<sup>314</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), p. 1897; P829 (Situation report, 24 April 1998), para. 5.

<sup>315</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 33; P1142 (549th Motorised Brigade Command report on the Đakovica/Gjakovë municipality in early 1998, 23 February 1998), p. 3; P1166 (Regular Combat report from Priština Corps Command, 13 May 1998), pp. 2-3.

<sup>316</sup> Dragan Živanović, T. 9297.

<sup>317</sup> Dragan Živanović, T. 9295.

<sup>318</sup> Dragan Živanović, T. 9295-9296.

<sup>319</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 15; Branko Gajić, T. 9699-9700; see also P1143 (549th Motorised Brigade report signed by Ljubiša Lojanica, 2 March 1998).

<sup>320</sup> P377 (Žarko Bajčetić, witness statement, 24 May 2007), paras 23-26, 28; Žarko Bajčetić, T. 6381, 6414.

<sup>321</sup> P1231 (Witness 69, witness statement, 20 June 2007), paras 20-21, 27; Witness 69, T. 9846.

<sup>322</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 20; for example, P1151 (Command report by the 549th Motorised Brigade, 17 March 1998); P1152 (Command report by the 549th Motorised Brigade, 23 March 1998).

<sup>323</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), paras 28, 65, 70; Dragan Živanović, T. 9299-9302, 9328; P1021 (Order by Maj. Gen. Nebojša Pavković, 18 March 1998); P1024 (Order by Maj. Gen. Nebojša Pavković, 25 April 1998); P1026 (Order by Col. Dragan Živanović, 27 April 1998); P1027

smuggling of weapons, the Government of FRY decided on 23 April 1998 to extend the frontier zone with Albania, giving the army military responsibilities up to five kilometres from the Albanian border.<sup>324</sup>

83. *Recruits.* The first public appearance of the KLA was on 28 November 1997, during the funeral of Halit Geci, when three people wearing KLA uniforms gave a speech calling on the people of Kosovo/Kosova to fight.<sup>325</sup> Bislim Zyrapi, a JNA-trained officer,<sup>326</sup> testified that, from late 1997 onwards, KLA representatives attended Albanian clubs around Europe to raise funds and recruit personnel for the KLA.<sup>327</sup> At one such event, in early 1998, Zyrapi was invited by two KLA members, who knew about his military background, to join the KLA.<sup>328</sup> Bislim Zyrapi testified that he moved to Albania in the second half of March 1998.<sup>329</sup> From that time, until 28 May 1998, when the witness crossed into Kosovo/Kosova, he shared an apartment in Tirana with other KLA recruits, including three other former JNA officers.<sup>330</sup> Branko Gajić testified that there was an international network supporting the KLA, which was primarily based in Germany, Sweden, Switzerland, and Albania.<sup>331</sup> This network provided finances for the KLA, recruited new members, organized their transportation to and training in Albania, before smuggling them across the border to Kosovo/Kosova.<sup>332</sup>

84. The Trial Chamber received differing estimates of the number of KLA recruits in the early months of 1998. Branko Gajić testified that, based on discussions with imprisoned KLA members and those who had contact with the KLA, in January, February, and March 1998, in Kosovo/Kosova, the KLA consisted of up to 3,000 men,

(Order by Col. Vladimir Lazarević, 27 April 1998); P1029 (Order by Col. Vladimir Lazarević, 1 May 1998); P1030 (Order by Col. Vladimir Lazarević, 2 May 1998).

<sup>324</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 28; Branko Gajić, T. 9688-9689; P1174 (Proclamation extending the border zone, 18 May 1998).

<sup>325</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 5-6; P885 (Witness 17, witness statement, 14 August 2007), para. 4; P931 (Zoran Stijović, witness statement, 27 September 2007), para. 28.

<sup>326</sup> P118 (Bislim Zyrapi, witness statement, 25 November 2005), para. 2; Bislim Zyrapi, T. 3187.

<sup>327</sup> Bislim Zyrapi, T. 3181-3183, 3201.

<sup>328</sup> Bislim Zyrapi, T. 3181, 3185, 3188, 3201.

<sup>329</sup> Bislim Zyrapi, T. 3186.

<sup>330</sup> P118 (Bislim Zyrapi, witness statement, 25 November 2005), para. 17; Bislim Zyrapi, T. 3188-3190, 3257, 3396.

<sup>331</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 16.

<sup>332</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 16; for example, P1144 (Report from 14th Counter-intelligence Group, 6 March 1998); P1145 (Report from 14th Counter-intelligence Group, 11 March 1998); P1146 (Report from 14th Counter-intelligence Group, 18 March 1998); P1147 (Report from 14th Counter-intelligence Group, 8 April 1998).

armed and organized into units, and a further 6,000 to 8,000 men who had weapons and occasionally participated in operations.<sup>333</sup> A VJ report, dated 23 February 1998, estimated that, at the end of 1997 and beginning of 1998, there were 200 KLA soldiers in Đakovica/Gjakovë, and in addition a greater number were engaged as farmers by day and KLA soldiers by night.<sup>334</sup> Zoran Stijović testified that by 30 March 1998, the RDB estimated that the KLA had between 50 and 150 militarily trained and well-equipped members in the Jablanica/Jabllanicë area.<sup>335</sup> In addition to this core group of members, the KLA was a grassroots organization with supporters in the villages where it was active.<sup>336</sup> According to Jakup Krasniqi, before March 1998 there were fewer than 1,000 KLA soldiers.<sup>337</sup> John Crosland estimated, based on his field observations, that in the period between March and May 1998 the KLA consisted of a hard core of 400-500 fighters.<sup>338</sup>

85. The second category of KLA recruits, that of villagers volunteering to help the KLA, began to expand considerably in March and April 1998. Jakup Krasniqi testified that from April until August 1998, the KLA became a “people’s army”, with a vast increase in the number of KLA volunteers.<sup>339</sup> The number of volunteers was so large that the KLA General Staff could not arm and discipline them all.<sup>340</sup> Corroboration for this surge in KLA recruitment was provided by Branko Gajić, Zoran Stijović, and Witness 17, who testified that it had already begun as of 5 and 6 March 1998.<sup>341</sup> Witness 28 testified that by the end of April 1998, the KLA were mobilizing the villagers.<sup>342</sup> The evidence examined above in this section of the judgement establishes that Avdullah Avdija, Ylber Haskaj, Ismet Kadrijaj, Pjeter Shala, Rrustem Tetaj and Bislim Zyrapi joined the KLA in March or April 1998. Other witnesses who joined the

<sup>333</sup> Branko Gajić, T. 9684-9685, 9746-9749, 9807-9808.

<sup>334</sup> Branko Gajić, T. 9750-9753, 9807-9810; P1142 (549th Motorised Brigade Command report on the Đakovica/Gjakovë municipality in early 1998, 23 February 1998), p. 2.

<sup>335</sup> Zoran Stijović, T. 9065-9068.

<sup>336</sup> Zoran Stijović, T. 9066.

<sup>337</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 8.

<sup>338</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), p. 1919; John Crosland, T. 2963-2964, 3016-3017; P115 (ECMM special report, 9 April 1998), para. 3.

<sup>339</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 8; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3330, 3378-3379, 3415, 3450-3452, 3470-3471; Jakup Krasniqi, T. 5007-5009.

<sup>340</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 8, Annex 18 (Jakup Krasniqi interview in Koha Ditore, 12 July 1998), p. 3.

<sup>341</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 7; P931 (Zoran Stijović, witness statement, 27 September 2007), para. 38; P1138 (Branko Gajić, witness statement, 2 October 2007), para. 17; P970 (RDB official note, 10 March 1998).

<sup>342</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 72.

KLA during the same period were Zymer Hasanaj,<sup>343</sup> Shaban Balaj,<sup>344</sup> and Ahmet Ukaj.<sup>345</sup> The evidence examined in section 6.4, below, indicates the presence of large numbers of KLA soldiers in Dečani/Deçan municipality on 22 April 1998.

86. *Military training.* As a former police officer, Cufë Krasniqi started training KLA soldiers in Vranovac/Vranoc, Peć/Pejë municipality, in February 1998.<sup>346</sup> Around this time, the majority of the young men who possessed weapons had not had any training.<sup>347</sup> At first he trained 21 soldiers, but the number grew considerably over time.<sup>348</sup> Cufë Krasniqi taught them how to use weapons, and how to treat prisoners of war, persons who surrendered, and civilians.<sup>349</sup> Ylber Haskaj testified that around mid-April 1998 he received some basic training in Rznić/Irzniq and then took part in guarding the village.<sup>350</sup> Dragan Živanović testified that he received occasional information from VJ, MUP, and RDB sources indicating that, since 28 February 1998, professionals were giving military training to KLA soldiers in several villages in Dečani/Deçan municipality.<sup>351</sup> Bislim Zyrapi, who as previously mentioned was in Albania between the second half of March and 28 May 1998, testified that he was frequently visited by members of the KLA's General Staff for advice on military training.<sup>352</sup> He also secretly took part in the training of approximately 300 KLA recruits in military tactics and the use of weapons.<sup>353</sup> Recruits would receive an average of two weeks' training.<sup>354</sup> Expenses were covered by the logistics department of the KLA's General Staff from funds raised abroad.<sup>355</sup>

87. *Military operations, strategy and tactics.* Early KLA tactics were to ambush Serbian forces, as illustrated by the attack on a police convoy in Lausa/Llaushe, Srbica/Skenderaj municipality, on 26 November 1997.<sup>356</sup> Another ambush was carried

<sup>343</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 1-2; Zymer Hasanaj, T. 8720.

<sup>344</sup> P922 (Shaban Balaj, witness statement, 2 June 2007), paras 4, 17; Shaban Balaj, T. 8649, 8703.

<sup>345</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 1.

<sup>346</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 24, 30-31; Cufë Krasniqi, T. 5715, 5795, 5851.

<sup>347</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 28.

<sup>348</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 34; Cufë Krasniqi, T. 5715.

<sup>349</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 34; Cufë Krasniqi, T. 5715, 5721.

<sup>350</sup> P1213 (Ylber Haskaj, witness statement, 5 November 2007), paras 1, 6.

<sup>351</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 26; Dragan Živanović, T. 9318-9319, 9321-9323, 9414-9415.

<sup>352</sup> Bislim Zyrapi, T. 3188-3191, 3197, 3259, 3263.

<sup>353</sup> Bislim Zyrapi, T. 3191-3193, 3411, 3430.

<sup>354</sup> Bislim Zyrapi, T. 3194.

<sup>355</sup> Bislim Zyrapi, T. 3193, 3265.

<sup>356</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), paras 27, 37; Zoran Stijović, T. 8939-8940, 9015-9016, 9054-9055.

out on 28 February 1998 in Likošane/Likoshan, Glogovac/Gllogovc municipality, in which four policemen were killed and two were wounded.<sup>357</sup> By January-February 1998, according to Zoran Stijović, KLA would attack police checkpoints using hit and run tactics, while trying to avoid engaging the Serbian forces in open conflict.<sup>358</sup> They would attempt to spread the police forces thinly and divert their attention away from where they would launch an attack.<sup>359</sup> John Crosland testified that, after the attack on the Jashari family compound in March 1998, they learned not to engage the Serbian forces in an open area, such as the Drenica/Drenicë countryside, as it favoured the better armed and better equipped Serbian forces.<sup>360</sup> On 9 April 1998, Crosland reported that KLA soldiers were widely dispersed throughout the province, aiming to stretch the police forces into a wide deployment, thereby creating a number of soft targets it could attack more easily.<sup>361</sup> He also reported that the KLA was in the early stages of a standard insurgency movement, mainly using hit and run tactics.<sup>362</sup> According to Jakup Krasniqi, around this time the KLA was a guerrilla army, operating clandestinely and employing hit and run tactics.<sup>363</sup>

88. *Ability to speak with one voice.* Jakup Krasniqi testified that during 1997 and until 1998, he was involved in issuing political statements on behalf of the KLA.<sup>364</sup> Until 11 June 1998, KLA communiqés were issued by KLA units on behalf of the KLA General Staff.<sup>365</sup> KLA communiqés aimed to inform the public of KLA activity, but were also used as propaganda, exaggerating the successes and the organizational level of the KLA while downplaying its failures and losses, in order to boost KLA morale, raise KLA standing and encourage recruitment.<sup>366</sup> The Trial Chamber has

<sup>357</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 37; Zoran Stijović, T. 9031, 9054-9057; P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 24; Dragan Živanović, T. 9314-9315.

<sup>358</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 32; Zoran Stijović, T. 9020-9023, 9029-9031, 9055.

<sup>359</sup> Zoran Stijović, T. 9058-9059.

<sup>360</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1879, 1881; John Crosland, T. 2931-2932.

<sup>361</sup> John Crosland, T. 3016-3017; P115 (ECMM special report, 9 April 1998), paras 3-4.

<sup>362</sup> John Crosland, T. 3016-3017; P115 (ECMM special report, 9 April 1998), paras 3-4.

<sup>363</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 8; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3330, 3378, 3450-3451; Jakup Krasniqi, T. 4949, 5007.

<sup>364</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3230, 3430; Jakup Krasniqi, T. 4949, 4952, 5010-5011, 5015-5016, 5032-5033.

<sup>365</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3314-3315, 3317-3318, 3320, 3430; Jakup Krasniqi, T. 4948-4949, 4965, 5032-5034, 5122.

<sup>366</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3321-3327, 3339-3341, 3346, 3350-3351, 3353-3354, 3377, 3419-3420; Jakup Krasniqi, T. 4953-4954, 4967-4968, 4978-4980, 5011-5012, 5035, 5038, 5044.

received into evidence KLA communiq s dated between June 1995 and August 1998.<sup>367</sup>

89. The above evidence shows that in addition to many hundreds if not thousands of full-fledged KLA soldiers in early 1998, the months of March and April saw a surge in the number of KLA volunteers. This contributed to the development of a mainly spontaneous and rudimentary military organization at the village level. The evidence shows, in April, the initial phases of a centralized command structure above the various village commands, in particular through the efforts of Ramush Haradinaj, who was consolidating *de facto* authority. By this time, the KLA also controlled, by the presence of checkpoints and armed soldiers, a considerable amount of territory in the Dukagjin area. It had established logistics that provided access to considerable numbers of weapons, although they may not have been sufficient to arm all the new recruits. Furthermore, the evidence establishes that KLA soldiers received at least rudimentary military training and used guerrilla tactics. Finally, the KLA issued communiq s in its name. On the basis of this evidence, and in light of the Trial Chamber's finding in section 3.2.2, below, the Trial Chamber is satisfied that by 22 April 1998 the KLA qualified as an "organized armed group" under the *Tadi * test.

### 3.2.2 Intensity

90. The Trial Chamber will examine the evidence relevant to the intensity of the conflict between the KLA and the Serbian forces in Kosovo/Kosova chronologically, while considering each of the indicative factors described in paragraph 49.

91. The Trial Chamber received some statistical evidence of KLA attacks since the early-to-mid-1990s, on which it relies only as early signs of KLA activity. Using media reports and VJ and MUP data, Zoran Stijovi  calculated that the number of KLA attacks increased from nine in 1995 to 1,486 in 1998 (excluding December 1998).<sup>368</sup> By "attacks", Zoran Stijovi  understood incidents in which firearms, hand-grenades, and other explosive devices were used against civilians or members of the MUP or the

<sup>367</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annexes 1-10, 13, 15-18; P937; P938; P940; P943; P944; P945; P947; P948; P951; P952; P953; P954; P958; P963; P964; P966.

<sup>368</sup> P931 (Zoran Stijovi , witness statement, 27 September 2007), paras 20, 62; Zoran Stijovi , T. 8933-8940, 8943-8947, 9058.

VJ.<sup>369</sup> Since late 1994, the KLA issued communiqués assuming responsibility for such attacks.<sup>370</sup> Branko Gajić testified that the KLA started to attack the VJ along the border with Albania in 1996.<sup>371</sup> Gajić defined an “attack” as involving an organized group of at least three people, with a particular objective.<sup>372</sup> Gajić testified that in 1997 there were 55 KLA attacks against the VJ along the Albanian border and a further 51 in the rest of Kosovo/Kosova.<sup>373</sup> According to Gajić, Serbian counter-intelligence reports suggested that this number increased in 1998 to 196 attacks along the Albanian border and 191 attacks in the rest of Kosovo/Kosova.<sup>374</sup>

92. The Trial Chamber received hearsay evidence about two major clashes between KLA and Serbian forces in late February and early March 1998, on which it relies only to find that these clashes occurred. John Crosland testified that on 28 February and 1 or 5 March 1998, Serbian security forces attacked the Ahmeti family compound in Likošane/Likoshan and the Jashari family compound in Donji Prekaz/Prekazi-i-Poshtem, Srbica/Skenderaj municipality.<sup>375</sup> On this occasion, 26 people were killed in Likošane/Likoshan.<sup>376</sup> The attack lasted for about 36 hours and was a reaction to the attack on a MUP station in Rudnik/Runik, Srbica/Skenderaj municipality, where three or four Serbian policemen were killed.<sup>377</sup> Heavy fighting took place during the attack on the Jashari family compound, in which the Serbian security forces numbered 1,500 to 2,000 men and used armoured vehicles and heavy weapons.<sup>378</sup> According to Crosland, the Serbian forces used extremely heavy force during this event, which was primarily a MUP operation.<sup>379</sup> The Jashari family compound was severely damaged, and there were 54 casualties on the Kosovar Albanian side.<sup>380</sup> Crosland saw their bodies two or three days after the clash and observed that there were people of fighting age, but also elderly

<sup>369</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), paras 20, 62; Zoran Stijović, T. 8934-8936.

<sup>370</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), paras 19-20, 33, 55; Zoran Stijović, T. 8940, 8987-8988.

<sup>371</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 11.

<sup>372</sup> Branko Gajić, T. 9683.

<sup>373</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 11; Branko Gajić, T. 9681-9683.

<sup>374</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 11; Branko Gajić, T. 9682-9684.

<sup>375</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1858-1860; John Crosland, T. 2932, 3098; P819 (Situation report, 2 March 1998), paras 1, 3.

<sup>376</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), p. 1863; John Crosland, T. 3098-3099.

<sup>377</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1861, 1863, 1866; John Crosland, T. 2931.

<sup>378</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1863, 1865; John Crosland, T. 2932-2933.

<sup>379</sup> John Crosland, T. 2932, 2934-2935, 3100.

<sup>380</sup> John Crosland, T. 2932-2933.

people, women, and children, that none of them wore uniforms, and that many had been shot at close range.<sup>381</sup> The Trial Chamber also received consistent hearsay evidence on the clashes at the Ahmeti and Jashari family compounds from Rrustem Tetaj,<sup>382</sup> Witness 28,<sup>383</sup> Witness 17,<sup>384</sup> and Zoran Stijović.<sup>385</sup>

93. Zoran Stijović and Branko Gajić testified that, following the operation on Adem Jashari's compound on 5 March 1998, the KLA increased its attacks on Serbian forces.<sup>386</sup> The specific evidence received by the Trial Chamber does not substantiate this claim. It therefore chooses to rely, for the period between 6 March and 23 March 1998, on John Crosland's evidence, which describes a situation of relative calm with Serbian forces on high alert. On 8 March 1998, the British ambassador Brian Donnelly, relying on field observations from John Crosland, reported that Prekaz/Prekazi had become quiet, but that a heavy police presence and police roadblocks remained in parts of the Drenica/Drenicë area.<sup>387</sup> He further reported that there were no signs of VJ involvement, other than the provision of transport vehicles.<sup>388</sup> He also reported that large numbers of women and children had fled the area.<sup>389</sup> On 9 March 1998, Donnelly reported continuing police operations in the area of Lauša/Llaushe.<sup>390</sup> On 13 March 1998, the special police remained in position in Prekaz/Prekazi and the Drenica/Drenicë area remained generally quiet but the VJ was on high alert in the area of Peć/Pejë and Đakovica/Gjakovë.<sup>391</sup> On 17 March 1998, Crosland visited the Drenica/Drenicë area and noticed a large PJP presence on the Lauša/Llaushe-Klina/Klinë road, including PJP checkpoints and positions.<sup>392</sup> He stated that the presence of around 150 PJP policemen and 50 regular policemen in an area of ten square kilometres indicated that an operation

<sup>381</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1863-1864; John Crosland, T. 2932-2933, 2935-2936.

<sup>382</sup> Rrustem Tetaj, T. 3701.

<sup>383</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 17-20; Witness 28, T. 10169-10170, 10172-10174, 10205, 10295; see also P6 (Spotlight report, Numbers 26 and 27).

<sup>384</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 7.

<sup>385</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 38; Zoran Stijović, T. 9173-9174.

<sup>386</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 37; Zoran Stijović, T. 9246; P1138 (Branko Gajić, witness statement, 2 October 2007), para. 17. See also P1211 (Witness 28, witness statement, 28 October 2007), para. 56.

<sup>387</sup> John Crosland, T. 2928; P73 (Situation report, 8 March 1998), paras 2-4.

<sup>388</sup> P73 (Situation report, 8 March 1998), para. 5.

<sup>389</sup> P73 (Situation report, 8 March 1998), para. 7.

<sup>390</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1864-1866; P820 (Situation report, 9 March 1998), para. 2.

<sup>391</sup> P74 (Situation report, 13 March 1998), para. 4.

<sup>392</sup> P76 (Situation report, 18 March 1998), para. 3.

was still ongoing.<sup>393</sup> On 23 March 1998, Donnelly referred to Crosland's report that the special police was still in the Drenica/Drenicë area, although in lesser numbers, but was also installing infrastructure for a longer stay there.<sup>394</sup> On 24 March 1998, Donnelly reported that Crosland had informed him that there was still a substantial police presence of 100-200 men with armed personnel carriers and checkpoints in the Drenica/Drenicë area, as well as VJ special forces on high alert in the areas of Dečani/Deçan and Đakovica/Gjakovë.<sup>395</sup>

94. The Trial Chamber received large amounts of evidence on the clash at the Haradinaj family compound on 24 March 1998. It relies in particular on the evidence of Radovan Zlatković, who, around 11 a.m. on 24 March 1998, went to Glogjan/Gllogjan to investigate the death of a police officer, Miodrag Otović, chief of the Rznić/Irniq MUP, in an exchange of gunfire.<sup>396</sup> When the witness arrived in the village, the fighting between the MUP and KLA supporters was still ongoing.<sup>397</sup> Zlatković and his colleagues carried out an on-site investigation on the road where Otović had fallen when he was shot, as well as in the yard of Ramush Haradinaj's house, which was close by.<sup>398</sup> Within the compound of Haradinaj's house they found hand-grenades, tank mines, and a light machine-gun.<sup>399</sup> Because the intensity of the fighting in the meantime had increased, they took shelter in a house about 150 metres from Haradinaj's house, where they remained until the end of the day.<sup>400</sup> From there, Zlatković could see the fighting and hear the sound of gunfire and hand-grenade explosions coming from all directions.<sup>401</sup> According to the witness, hand-grenades and semi-automatic and automatic rifles were being used by both sides.<sup>402</sup> He estimated the KLA side to be about 40 men strong.<sup>403</sup> The MUP officers were reinforced in the course of the day; first, police officers from Dečani/Deçan went to Glogjan/Gllogjan to help the police patrol of which Otović had been a member; then the Đakovica/Gjakovë police arrived;

<sup>393</sup> P76 (Situation report, 18 March 1998), para. 3.

<sup>394</sup> P77 (Situation report, 23 March 1998), paras 3, 8.

<sup>395</sup> John Crosland, T. 3000-3001; P78 (Situation report, 24 March 1998), para. 3.

<sup>396</sup> Radovan Zlatković, T. 6865, 6867.

<sup>397</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 23; Radovan Zlatković, T. 6865.

<sup>398</sup> Radovan Zlatković, T. 6868, 6875.

<sup>399</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 24.

<sup>400</sup> Radovan Zlatković, T. 6868-6869, 6900-6902, 7007; P818 (Aerial photograph of area around Haradinaj compound with witness markings).

<sup>401</sup> Radovan Zlatković, T. 6869-6870, 6879.

<sup>402</sup> Radovan Zlatković, T. 6867-6868, 6877.

<sup>403</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 23; Radovan Zlatković, T. 6877, 6899-6900.

the MUP anti-terrorist unit arrived last and did not take part in the fighting.<sup>404</sup> The exchange of fire continued until about 8 p.m., when the MUP forces withdrew from Glogjan/Gllogjan.<sup>405</sup> Apart from the killing of Otović, Zlatković estimated that four police officers were wounded on the MUP side, and that two young men were killed on the KLA side.<sup>406</sup> The Trial Chamber also received largely consistent evidence about this confrontation from Ramo Jollaj,<sup>407</sup> Rrustem Tetaj,<sup>408</sup> Zoran Stijović,<sup>409</sup> Branko Gajić,<sup>410</sup> Dragoslav Stojanović,<sup>411</sup> and Mijat Stojanović.<sup>412</sup> The latter two witnesses also testified that after this day they left their home in Dubrava/Dubravë for security reasons.<sup>413</sup> On 24 March 1998, John Crosland reported exchanges of fire in several villages between Dečani/Deçan and Đakovica/Gjakovë, and in Jošanica/Jashanicë in the Drenica/Drenicë area.<sup>414</sup> In this area, Serbian special police had deployed heavy weapons including the PRAGA air defence system and a BOV-3 armed personnel carrier with a triple-barrelled gun.<sup>415</sup>

95. The Trial Chamber has received little specific evidence of clashes between the KLA and Serbian forces between 25 March and 21 April 1998. On 1 April 1998, Donnelly reported that, according to Crosland, the situation throughout Kosovo/Kosova remained calm and that the number of special police had not changed, although they appeared to be at a lower alert level.<sup>416</sup> On 9 April 1998, Donnelly reported minor incidents in the Drenica/Drenicë and Dečani/Deçan areas, including an attack on a police checkpoint by unknown persons.<sup>417</sup> On 13 April 1998, a police station in a Priština/Prishtinë suburb was attacked and damaged by unknown persons and one

<sup>404</sup> Radovan Zlatković, T. 6866.

<sup>405</sup> Radovan Zlatković, T. 6865-6866.

<sup>406</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), paras 26-27; Radovan Zlatković, T. 6867.

<sup>407</sup> Ramo Jollaj, T. 8193-8194, 8197-8204, 8207, 8215-8218, 8222-8225, 8227-8229.

<sup>408</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 8-10, 13; Rrustem Tetaj, T. 3702-3704, 3797.

<sup>409</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), para. 41; Zoran Stijović, T. 8992, 9253-9254.

<sup>410</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 21; P1153 (549th Motorised Brigade report signed by Bozidar Delić, 30 March 1998), pp. 1-2.

<sup>411</sup> Dragoslav Stojanović, T. 1858-1860, 1968-1973, 1977.

<sup>412</sup> Mijat Stojanović, T. 2005-2010, 2103-2104.

<sup>413</sup> Dragoslav Stojanović, T. 1844-1845, 1860-1861, 1881-1882, 1940, 1973; Mijat Stojanović, T. 1985, 2011-2012.

<sup>414</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1867, 1869-1873; John Crosland, T. 3001-3002, 3104-3106; P822 (Situation report, 24 March 1998), paras 2-3.

<sup>415</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), p. 1873; P822 (Situation report, 24 March 1998), para. 4.

<sup>416</sup> P79 (Situation report, 1 April 1998), para. 6.

<sup>417</sup> P81 (Situation report, 9 April 1998), para. 6.

policeman was wounded.<sup>418</sup> On 15 April 1998, the situation in Kosovo/Kosova was relatively quiet, apart from a few incidents of unknown persons shooting at the police.<sup>419</sup>

96. By at least late April, Serbian forces shelled the Dukagjin area. Shemsedin Cekaj testified that from no later than 21 April 1998 until the end of May 1998 he was able to hear from his home in Peć/Pejë, and from Rznić/Irzniq where he sometimes travelled, the almost daily shelling of several villages towards the south.<sup>420</sup> Rrustem Tetaj testified that Glodane/Gllogjan was shelled consistently between April and September 1998.<sup>421</sup> Cufë Krasniqi testified that from April 1998 to late August 1998, the villages of the Dukagjin area were shelled by Serbian artillery, which led people to leave their villages in May 1998.<sup>422</sup> Witness 28 testified that by 22 April 1998, she had heard from Albanian refugees of extensive shelling by the Serbian police in Dečani/Deçan municipality.<sup>423</sup> ECMM reported that Serbian forces fired on villages in Dečani/Deçan municipality on 23 April 1998.<sup>424</sup>

97. The evidence shows that civilians were disappearing in, or escaping from, combat zones in Dečani/Deçan municipality by late April. The Trial Chamber examines such evidence in sections 4.2, 6.5, 6.6, 6.7, and 6.12.3, below. In addition, Zvonko Marković testified that Albanians were passing through Ljumbarda/Lumbardh while shooting, which led all Serbs in about six Serbian households in the village to flee to Dečani/Deçan around that time.<sup>425</sup> Cufë Krasniqi confirmed that Serbian families left Dečani/Deçan municipality in April and May 1998.<sup>426</sup>

98. The Trial Chamber received reliable contemporaneous evidence indicating that clashes between the KLA and Serbian forces resumed on 22 April 1998. In the morning of 22 April 1998, 20-30 persons attacked the 52nd Military Police Battalion from a hill named “Suka e Vogelj”, to which Serbian forces responded with a double-barrelled

<sup>418</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1882-1884; P826 (Situation report, 15 April 1998), para. 2.

<sup>419</sup> P83 (Situation report, 16 April 1998), para. 2.

<sup>420</sup> Shemsedin Cekaj, T. 4387-4390, 4471-4474.

<sup>421</sup> Rrustem Tetaj, T. 3724-3725, 3730, 3831-3832, 3844, 3847-3848; D38 (Map of the Dukagjin zone, marked in blue and red by Rrustem Tetaj); P268 (Map of the Radonjić/Radoniq canal area, marked by Rrustem Tetaj).

<sup>422</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 56, 90.

<sup>423</sup> Witness 28, T. 10264-10265.

<sup>424</sup> P290 (Daily report to HQ ECMM, 24 April 1998), p. 2.

<sup>425</sup> Zvonko Marković, T. 2327-2328, 2341-2343.

<sup>426</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 74.

anti-aircraft gun and a 155 millimetre Howitzer.<sup>427</sup> In the early afternoon, there was another attack on the 52nd Military Police Battalion from Suka e Vogelj.<sup>428</sup> Also on the same day, there was an exchange of fire between troops of the 53rd border battalion and persons at a barricade in Babaloć/Baballoq, Dečani/Deçan municipality.<sup>429</sup> Colonel Delić ordered the deployment of standby forces in response to KLA activities.<sup>430</sup> John Crosland noted that on 23 April 1998, the situation in Dečani/Deçan and Đakovica/Gjakovë remained extremely tense following substantial shooting in the area on the day before as a result of which many civilians, both Serbs and Kosovar Albanians, left the most affected areas.<sup>431</sup> According to him, the clashes, which had commenced in the Drenica/Drenicë area, had now moved to the Dečani/Deçan area.<sup>432</sup> On that day, Crosland was in the Dečani/Deçan area where he observed an “unprecedented” presence of VJ men and material, including heavy guns dug in at strategic positions near the FRY/Albania border, convoys with lorries full of soldiers, and Gazelle helicopters and an Orao (“Eagle”) jet bomber in the air.<sup>433</sup> He also reported that the Serbian refugee centre near Babaloć/Baballoq was defended by up to 100 MUP men,<sup>434</sup> and that life in bigger towns like Peć/Pejë and Đakovica/Gjakovë proceeded normally.<sup>435</sup> On the same day, VJ from the Košare/Koshare border post clashed with the KLA at the FRY/Albania border, killing 16 of them.<sup>436</sup> During the night, the 52nd Military Police Battalion came under prolonged fire from automatic rifles and

<sup>427</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 62; P1138 (Branko Gajić, witness statement, 2 October 2007), para. 23; P1022 (Order by Col. Vladimir Lazarević, 22 April 1998), p. 1; P1091 (Report by Col. Vladimir Lazarević on attacks by the KLA on the VJ, 1 September 1998), p. 1; P1155 (Combat report from the Priština Corps Command forward command post, 22 April 1998), paras 1-2; P1156 (Intelligence report from the Priština Corps Command forward command post, 22 April 1998), para. 8.

<sup>428</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 23; P1156 (Intelligence report from the Priština Corps Command forward command post, 22 April 1998), para. 8.

<sup>429</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 23; P1155 (Combat report from the Priština Corps Command forward command post, 22 April 1998), para. 4; P1156 (Intelligence report from the Priština Corps Command forward command post, 22 April 1998), para. 8. See also John Crosland, T. 3006-3007; P84 (Situation report, 22 April 1998).

<sup>430</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 24; Branko Gajić, T. 9702-9704; P1157 (Order for the Deployment of Standby Forces, 22 April 1998), pp. 1-6.

<sup>431</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), p. 1887; P828 (Situation report, 23 April 1998), para. 2.

<sup>432</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1887-1889; P828 (Situation report, 23 April 1998), para. 3.

<sup>433</sup> John Crosland, T. 3008-3009; P85 (Situation report, 23 April 1998), para. 2.

<sup>434</sup> P85 (Situation report, 23 April 1998), para. 2.

<sup>435</sup> P85 (Situation report, 23 April 1998), para. 3.

<sup>436</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 25; P1091 (Report by Col. Vladimir Lazarević, 1 September 1998), p. 1; P1158 (Operations report from the Priština Corps Command, 23 April 1998), p. 1.

mortars.<sup>437</sup> In the morning of 24 April 1998, unidentified persons attacked a police checkpoint in Turicevac/Turiceve, Srbica/Skenderaj municipality, killing one policeman and seriously wounding another.<sup>438</sup> Around noon, a police station in Klinčina/Kliqinë, Peć/Pejë municipality was attacked.<sup>439</sup> In the evening of 25 April 1998, the KLA launched an infantry attack on the 52nd Military Police Battalion at the Lake Radonjić/Radoniq dam.<sup>440</sup> On 27 April 1998, there were three separate clashes between the KLA and the VJ at the FRY/Albania border.<sup>441</sup> The next day, Crosland observed movements of increased numbers of VJ men and material, including artillery, which he for the first time saw engaged in joint operations with the MUP.<sup>442</sup> He assessed that the number of police and VJ in Kosovo/Kosova was higher than at any stage so far in the crisis, having been reinforced from outside the province.<sup>443</sup>

99. The attacks on the Ahmeti, Jashari, and Haradinaj compounds between late February and late March 1998 marked a significant escalation in the conflict between the KLA and the Serbian forces. However, they were isolated events followed by periods of relative calm. The conflict intensified on 22 April 1998. Considering in particular the frequent shelling in Dečani/Deçan municipality, the flight of civilians from the countryside, the daily clashes between the KLA and the Serbian forces, and the unprecedented scale of deployment of VJ forces on the ground and their participation in combat, the Trial Chamber finds, on the basis of the evidence before it, that the conflict came to meet the intensity requirement of the *Tadić* test on 22 April 1998.

### 3.2.3 Conclusion

100. Considering the evidence and the Trial Chamber's findings on both prongs of the *Tadić* test, the Trial Chamber is convinced that an armed conflict existed in Kosovo/Kosova from and including 22 April 1998 onwards. The Trial Chamber

<sup>437</sup> P1023 (Priština Corps forward command post regular combat report, 24 April 1998), p. 2.

<sup>438</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 31; P284 (Daily report to HQ ECMM, 25 April 1998), p. 2; P1023 (Priština Corps forward command post regular combat report, 24 April 1998), p. 2.

<sup>439</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 31; P284 (Daily report to HQ ECMM, 25 April 1998), p. 2; P1023 (Priština Corps forward command post regular combat report, 24 April 1998), p. 2.

<sup>440</sup> P1025 (Report by Col. Vladimir Lazarević, 26 April 1998), p. 3; P1091 (Report by Col. Vladimir Lazarević, 1 September 1998), p. 2.

<sup>441</sup> P1091 (Report by Col. Vladimir Lazarević, 1 September 1998), p. 2.

<sup>442</sup> P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1897, 1899-1900; P830 (Situation report, 28 April 1998), para. 3.

received a voluminous amount of evidence relevant to armed conflict from May through September 1998. The KLA further developed its organization throughout the indictment period. Combat operations continued and reached high levels of intensity during major offensives of Serbian forces into the Dukagjin area in late May, early-to-mid-August, and early September 1998.<sup>444</sup> However, since according to the *Tadić* test an internal armed conflict continues until a peaceful settlement is achieved, and since there is no evidence of such a settlement during the indictment period, there is no need for the Trial Chamber to explore the oscillating intensity of the armed conflict in the remainder of the indictment period.

<sup>443</sup> John Crosland, T. 3012-3013; P89 (Situation report, 28 April 1998), para. 2.

<sup>444</sup> For late May see, for example, P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1925-1927; John Crosland, T. 4608, 4611, 4616; P1017 (Dragan Živanović, witness statement, 9 August 2007), paras 34, 81, 84-86; Rrustem Tetaj, T. 3661, 3714-3717; P94 (UK Telegram, 28 May 1998); P836 (UK Telegram, 27 May 2007), paras 8-9; P1047 (Report by Col. Vladimir Lazarević, 22 May 1998), pp. 2-3; P1049 (Report by Col. Vladimir Lazarević, 23 May 1998); P1091 (Report by Col. Vladimir Lazarević, 1 September 1998); D71 (UK Telegram, 28 May 1998). For early-to-mid August see, for example, P69 (John Crosland, *Limaj et al.* transcript, 13 January 2007), pp. 1966-1967; John Crosland, T. 4654-4655, 4735-4738; P317 (Shemsedin Cekaj, witness statement, 14 May 2007), para. 28; Shemsedin Cekaj, T. 4427-4428, 4487, 4516, 4493-4496; P885 (Witness 17, witness statement, 14 August 2007), paras 86-88, 90, 93-94; P1017 (Dragan Živanović, witness statement, 9 August 2007), paras 96, 98-120; P324 (Map marked by John Crosland); D81 (Report by Colonel Mladen Ćirković, 7 August 1998). For early September see, for example, P885 (Witness 17, witness statement, 14 August 2007), para. 121; P1017 (Dragan Živanović, witness statement, 9 August 2007), paras 130-138; John Crosland, T. 2970-2971; Shemsedin Cekaj, T. 4422, 4464-4465.

## **4. General elements and jurisdictional requirement for Article 5 of the Statute**

### 4.1 Law on general elements and the jurisdictional requirement

101. The Indictment charges the Accused with 18 counts of crimes against humanity under Article 5 of the Statute.<sup>445</sup> Article 5 states: “The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against a civilian population”. The jurisdictional requirements and general elements are analysed below.

102. *Committed in armed conflict.* The crimes must be committed in an armed conflict, whether international or internal in character. This requirement is not part of the customary-law definition of crimes against humanity.<sup>446</sup> It is a jurisdictional requirement,<sup>447</sup> which translates into the need for proof that there was an armed conflict at the relevant time and place.<sup>448</sup> The definition of armed conflict is found above, in section 3.1.

103. *Widespread or systematic attack directed against a civilian population.* The general elements for the applicability of Article 5 of the Statute are:

- (i) there was an attack;
- (ii) the attack was widespread or systematic;
- (iii) the attack was directed against a civilian population;
- (iv) the acts of the perpetrator were part of the attack;
- (v) the perpetrator knew that there was, at the time of his or her acts, a widespread or systematic attack directed against a civilian population and that his or her acts were part of that attack.<sup>449</sup>

104. *Attack.* An attack on a civilian population is a separate and distinct concept from that of an armed conflict.<sup>450</sup> The attack is not limited to the use of force, but encompasses any mistreatment of the civilian population, and can commence before,

<sup>445</sup> Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35 of the Indictment charge the Accused with crimes against humanity under Article 5 of the Statute.

<sup>446</sup> *Tadić Appeal Judgement*, para. 249.

<sup>447</sup> *Tadić Appeal Judgement*, para. 249; *Kunarac et al. Appeal Judgement*, para. 83.

<sup>448</sup> *Tadić Appeal Judgement*, para. 249, 251; *Kunarac et al. Appeal Judgement*, para. 83.

<sup>449</sup> *Kunarac et al. Appeal Judgement*, para. 85.

<sup>450</sup> *Tadić Appeal Judgement*, para. 251.

outlast, or continue during the armed conflict.<sup>451</sup> An attack is composed of conduct causing physical or mental injury, as well as acts preparatory to such conduct.<sup>452</sup>

105. *Widespread or systematic.* “Widespread” refers to the large-scale nature of the attack and the number of targeted persons.<sup>453</sup> “Systematic” refers to the “organized nature of the acts of violence”.<sup>454</sup> The existence of a plan or policy can be indicative of the systematic character of the attack but it is not a distinct legal element.<sup>455</sup>

106. *Directed against a civilian population.* “Directed against” indicates that it is the civilian population which is the primary object of the attack.<sup>456</sup> The attack does not have to be directed against the civilian population of the entire area relevant to the indictment.<sup>457</sup> It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Trial Chamber that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.<sup>458</sup>

107. Common Article 3 of the 1949 Geneva Conventions and Article 50 of Additional Protocol I of the same Conventions provide guidance when defining “civilian” for purposes of Article 5 of the Statute. Additional Protocol I defines a “civilian” as “an individual who is not a member of the armed forces or otherwise a combatant”.<sup>459</sup> Common Article 3 reflects customary international law for the minimum level of protection of persons taking no active part in hostilities.<sup>460</sup> The Appeals Chamber has adopted a broad understanding of “civilian” for the purposes of Article 5, which goes beyond the definition set out in Additional Protocol I.<sup>461</sup> A civilian population may therefore include not only civilians narrowly defined, but also persons who are not taking active part in the hostilities.

<sup>451</sup> *Tadić* Appeal Judgement, para. 251; *Kunarac et al.* Appeal Judgement, para. 86.

<sup>452</sup> *Krajišnik* Trial Judgement, para. 706.

<sup>453</sup> *Kunarac et al.* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kordić and Čerkez* Appeal Judgement, para. 94.

<sup>454</sup> *Kunarac et al.* Appeal Judgement, para. 94.

<sup>455</sup> *Kunarac et al.* Appeal Judgement, paras 98, 101; *Blaškić* Appeal Judgement, para. 120.

<sup>456</sup> *Kunarac et al.* Appeal Judgement, para. 91.

<sup>457</sup> *Kunarac et al.* Appeal Judgement, para. 90.

<sup>458</sup> *Kunarac et al.* Appeal Judgement, para. 90; *Blaškić* Appeal Judgement, para. 105; *Kordić and Čerkez* Appeal Judgement, para. 95; *Stakić* Appeal Judgement, para. 247.

<sup>459</sup> Additional Protocol I, Art. 50 (2).

<sup>460</sup> *Tadić* Jurisdiction Decision, para. 102.

<sup>461</sup> *Kordić and Čerkez* Appeal Judgement, paras 421, 570, 580.

108. *Acts of the perpetrator are part of the attack.* Acts which cannot reasonably be understood to be objectively part of the attack fail this requirement.<sup>462</sup>

109. *Perpetrator's knowledge.* The perpetrator must know that there is a widespread or systematic attack against a civilian population and that his or her acts are part of that attack.<sup>463</sup> The perpetrator does not need to have detailed knowledge of the attack or share the purpose of it.<sup>464</sup>

#### 4.2 Findings

110. As concluded in section 3, above, the Trial Chamber is convinced that an armed conflict existed in Kosovo/Kosova from and including 22 April 1998 onwards. The jurisdictional requirement for crimes against humanity committed from this date onwards has therefore been met. The Trial Chamber will now deal with the general elements of crimes against humanity.

111. The Prosecution alleges that there was “a widespread or systematic attack by the KLA directed against part of the civilian population in the Dečani/Deçan, Peć/Pejë, Đakovica/Gjakovë, Istok/Istog, and Klina/Klinë municipalities of Kosovo”.<sup>465</sup> This part of the civilian population included, according to the Prosecution, “the Serb civilian population in these municipalities as well as civilians perceived to be collaborating with the Serbs or otherwise not supporting the KLA”.<sup>466</sup> According to the Prosecution’s estimates, in 1998 the non-Albanian population in the above mentioned municipalities amounted to approximately 60,000 people (14% of the total population).<sup>467</sup> Of this number, approximately 30,000 people were Serbs (7% of the total population).<sup>468</sup>

112. The alleged attack against the civilian population consisted of “a military campaign [...] to drive ethnic Serbs out of the villages where they were living”.<sup>469</sup> According to the Prosecution, the KLA also harassed, beat, and killed many Serbian and

<sup>462</sup> *Kunarac et al.* Appeal Judgement, para. 100.

<sup>463</sup> *Kunarac et al.* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124; *Kordić and Čerkez* Appeal Judgement, paras 99-100.

<sup>464</sup> *Tadić* Appeal Judgement, paras. 248, 252; *Kunarac et al.* Appeal Judgement, para. 102-3; *Blaškić* Appeal Judgement, para. 124; *Kordić and Čerkez* Appeal Judgement, para. 99.

<sup>465</sup> Indictment, para. 15.

<sup>466</sup> Indictment, para. 15.

<sup>467</sup> Indictment, para. 34.

<sup>468</sup> Indictment, para. 34.

<sup>469</sup> Indictment, para. 37.

Roma civilians.<sup>470</sup> Finally, the Prosecution alleges that the KLA abducted more than 60 Serbian and Roma civilians, as well as Kosovar Albanian civilians perceived to be collaborators or perceived not supporting the KLA, in the above mentioned municipalities and killed many of them.<sup>471</sup> These victims are not the ones referred to under the individual counts in the Indictment.<sup>472</sup> The alleged attack also consisted of detaining and ill-treating persons at a KLA headquarters in Jablanica/Jabllanicë.<sup>473</sup>

113. In addition to the evidence that the Trial Chamber will review below in this section, the evidence on the incidents charged as individual counts in the Indictment is relevant for findings on the general elements of crimes against humanity. The evidence the Prosecution presented with respect to Kosovar Albanians perceived to be collaborators or not supporting the KLA only addresses those incidents that have been charged as individual counts. The incidents in these counts concern allegations of murder of 17 Kosovar Albanian men and women in three municipalities between April and August 1998 and the detention and ill-treatment of four men at the Jablanica/Jabllanicë headquarters. No evidence was presented in relation to incidents beyond those mentioned, where Kosovar Albanians perceived to be collaborators or not supporting the KLA were targeted. As far as the non-Albanian civilian population is concerned, the counts deal with the alleged murder of 21 Serb, Montenegrin, and Roma men and women in four municipalities from April to July 1998. They also deal with the alleged detention, ill-treatment, and expulsion of approximately 14 Serb, Montenegrin, Bosnian, and Roma men and women during approximately the same period.

114. The Trial Chamber will examine these counts in greater detail in section 6, below. Here, it is sufficient to state that for many of them the evidence does not allow the Trial Chamber to conclude whether a crime has been committed or that the KLA was involved as alleged. The evidence on some of the other counts indicates that the victims may have been targeted primarily for reasons pertaining to them individually rather than them being members of the targeted civilian population.<sup>474</sup> Therefore, these counts cannot properly be taken into account in this section when determining whether there was an attack against a civilian population.

<sup>470</sup> Indictment, para. 38.

<sup>471</sup> Indictment, para. 40.

<sup>472</sup> Indictment, para. 40.

<sup>473</sup> Indictment, para. 43.

<sup>474</sup> See sections 6.4, 6.12.6, and 6.12.12, below.

115. The Trial Chamber has heard some additional evidence relating to whether there was an attack against a civilian population in the municipalities listed in the Indictment. This evidence describes various attacks on Serbs which, in combination with the incidents charged as individual counts, allegedly forced Serbian civilians to leave their homes. Nebojša Avramović, a crime technician in Đakovica/Gjakovë MUP,<sup>475</sup> testified that during January and February 1998, the KLA attacked around a dozen or more Serbian civilian cars which were travelling at night on the Đakovica/Gjakovë-Peć/Pejë road.<sup>476</sup> He further testified that from the end of April or the beginning of May 1998 until September 1998, such attacks became more frequent and also began to take place during the day.<sup>477</sup> Avramović heard from his colleagues that Albanian civilians would leave on the light in their cars when driving at night, as a sign to the KLA that the car belonged to an Albanian rather than a Serb.<sup>478</sup> The car that Avramović travelled in along the Đakovica/Gjakovë-Peć/Pejë road, which had no distinguishing features that would identify it as a MUP car, was attacked many times.<sup>479</sup> These attacks described by Avramović should be distinguished from attacks on the Serbian police, evidence of which has also been presented and which was reviewed in section 3.2, above.

116. The Trial Chamber has also received some evidence about the alleged attack on the refugee settlement near Babaloć/Baballoq, in Dečani/Deçan municipality. Witness 28 testified that Serbian refugees from Albania living in the refugee settlement informed the witness that, from late 1997 onwards, the KLA occasionally attacked the settlement, at times using grenade launchers.<sup>480</sup> These attacks increased in intensity from 18 April 1998 onwards, with KLA forces shooting at the settlement from Babaloć/Baballoq village and the surrounding hills on a daily basis.<sup>481</sup> However, Albanians told Witness 28 that, starting on 20 April 1998, the Serbian police shot at them from the Babaloć/Baballoq refugee settlement and the surrounding hills (Suka Babaloć/Baballoq and Suka Crmljane/Cermjan), and around 22 April 1998, shelled the village of

<sup>475</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 4.

<sup>476</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 11; Nebojša Avramović, T. 6597.

<sup>477</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 11.

<sup>478</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 11; Nebojša Avramović, T. 6598.

<sup>479</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 14.

<sup>480</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 37, 39; Witness 28, T. 10181.

<sup>481</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 40-42; Witness 28, T. 10181-10183, 10243.

Babaloć/Baballoq.<sup>482</sup> At the end of April 1998, the Serbian refugees left the refugee settlement and the VJ moved in, establishing a defensive front line position.<sup>483</sup>

117. With regard to the attacks on Serbian homes, Marijana Andelković testified that at the end of March 1998 she spoke to Jela Ćulafić and his wife Nastadin in Ratiš/Ratishë, in Dečani/Deçan municipality.<sup>484</sup> The couple pointed out holes in the roof and walls of their house, which they said had been caused by rocket-propelled grenades and automatic weapons.<sup>485</sup> The Trial Chamber has also heard evidence about the attack on the Ćulafić house from other witnesses.<sup>486</sup> None of the witnesses provided any details about who attacked the house and why, although Witness 60 testified that the Ćulafić family was the first to leave the area, followed by all other Serbs.<sup>487</sup> The Trial Chamber has also heard evidence from Miloica Vlahović concerning another attack on Serbian property. He testified that he heard from his younger sister Natalia, who lived in the village of Crmljane/Cermjan in Đakovica/Gjakovë municipality, that at the end of February or early March 1998 all three households of the Babović brothers in the village were attacked by several men using automatic weapons.<sup>488</sup> The witness himself saw the bullet holes in the walls of the house as well as the bullet casings.<sup>489</sup> The Trial Chamber has received less detailed evidence about another eight to ten attacks in Đakovica/Gjakovë and Klina/Klinë municipalities during the first days of March 1998.<sup>490</sup>

118. In conclusion, the Trial Chamber has heard evidence on a relatively small number of incidents. Moreover, the evidence is often insufficiently precise to conclude who was or were responsible for the incidents and whether they formed part of a larger attack against a civilian population. The evidence that has been presented with regard to the allegation in the Indictment that the KLA abducted 60 civilians, and subsequently killed many of them, is not nearly sufficient to establish that this number of civilians

<sup>482</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 42; Witness 28, T. 10182-10183, 10239-10241, 10244, 10264.

<sup>483</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 43; Witness 28, T. 10179.

<sup>484</sup> Marijana Andelković, T. 476, 479, 482, 484-486; P3 (Andelković's notebook, volume 1), p. 32.

<sup>485</sup> Marijana Andelković, T. 484; P3 (Andelković's notebook, volume 1), p. 32.

<sup>486</sup> Miloica Vlahović, T. 1550-1551, 1638; Witness 60, T. 2221-2222. See also P855 (MUP criminal incident report, 4 March 1998).

<sup>487</sup> Witness 60, T. 2223.

<sup>488</sup> Miloica Vlahović, T. 1552-1553.

<sup>489</sup> Miloica Vlahović, T. 1553.

<sup>490</sup> See P857 (MUP criminal incident report, 10 March 1998); P1143 (549th Motorised Brigade report signed by Ljubiša Lojanica, 2 March 1998); P967 (RDB official note, 3 March 1998); P968 (RDB official note, 4 March 1998).

were abducted, that many of them were killed, and that the KLA bear responsibility for the alleged acts. The evidence points to many people in the area hearing about the individual incidents mentioned above, with the possibility that this would have spread fear among the Serbian population and therefore contributed to people feeling forced to leave their homes. Witness 60 testified that in the beginning of 1998 there were nine Serbian households in Dašinovac/Dasinoc in Dečani/Deçan municipality but that in early March 1998, Serbs in the village and surrounding villages began to leave out of fear of the KLA.<sup>491</sup> Serbian neighbours tried to convince the witness that it was safer to go elsewhere than to stay.<sup>492</sup> Witness 60 testified that around 17-18 April 1998, the witness was in a car driving towards Peć/Pejë, when at Ljumbarda/Lumbardh in Dečani/Deçan municipality one man out of a group of approximately ten men, dressed in black and standing in a meadow on the left side of the road, pulled out a gun and fired in the direction of the car.<sup>493</sup> This incident led the witness to fear for his safety and that of his family.<sup>494</sup> Witness 60 further testified how he and his family left the village with the help of two men from their village, one of whom the witness understood to be a KLA member.<sup>495</sup> The family found accommodation in a holiday resort near Dečani/Deçan along with other Serbs who had left their homes.<sup>496</sup> The witness testified that they were from Papračane/Prapacan, Donji Ratiš/Ratishë e Ultë, Gornji Ratiš/Ratishë e Eperm, Dašinovac/Dasinoc, and Ljumbarda/Lumbardh in Dečani/Deçan municipality.<sup>497</sup> When the witness returned to his property in September or October 1998, he found it empty and destroyed.<sup>498</sup> He also visited the houses of Radun Dabetić and Novak Stijović, which were also destroyed and almost empty.<sup>499</sup> He also saw some burned-down Albanian houses.<sup>500</sup>

119. Witness 28, a researcher for a humanitarian organization,<sup>501</sup> testified that in the last week of April 1998, the witness counted 34 Serbian families having left their

<sup>491</sup> Witness 60, T. 2216, 2220, 2250-2255; P38 (Map with the Serb houses in Dašinovac/Dasinoq marked).

<sup>492</sup> Witness 60, T. 2223-2224.

<sup>493</sup> Witness 60, T. 2225-2226.

<sup>494</sup> Witness 60, T. 2228.

<sup>495</sup> Witness 60, T. 2229-2237, 2247-2249, 2251, 2267-2268, 2272-2273, 2275-2277, 2288-2289

<sup>496</sup> Witness 60, T. 2237-2238, 2277-2278.

<sup>497</sup> Witness 60, T. 2238.

<sup>498</sup> Witness 60, T. 2238-2241.

<sup>499</sup> Witness 60, T. 2242.

<sup>500</sup> Witness 60, T. 2268.

<sup>501</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 2, 9, 11, 14; Witness 28, T. 10172.

villages in the “Dukagjin area”, and living in Dečani/Deçan as refugees.<sup>502</sup> According to the witness, 123 Serbian families had been living in the “Dečani/Deçan area” in early 1998.<sup>503</sup> The numbers mentioned are difficult to compare with each other since the 34 Serbian families came from villages all over the “Dukagjin area” while the 123 Serbian families came from the “Dečani/Deçan area”. Whether this refers to the town or the municipality of Dečani/Deçan, it is still a smaller area than the “Dukagjin area”. Even if the Trial Chamber could rely on statistics such as the one provided by Witness 28, they would not provide an answer to the question of why Serbs left their homes. In Dečani/Deçan, Serbs told the witness that by 19 April 1998, some Serbs had left in fear of attacks,<sup>504</sup> just like Witness 60 had done. However, Momčilo Antić testified that he and several members of his family moved from Ločane/Lloçan to Peć/Pejë in April 1998, following sounds of gunfire and the sight of tracer bullets somewhere in the direction of Prilep/Prelep.<sup>505</sup> The witness clarified that they were not told by anyone to leave.<sup>506</sup> Other Serbian families from the village also moved out during those days, leaving some of the elderly behind.<sup>507</sup> Similarly, Witness 61 testified that she and her family left their village in Dečani/Deçan in August 1998, because of heavy fighting between KLA and Serbian forces.<sup>508</sup> Dragoslav Stojanović testified that in the evening of 24 March 1998, after the attack on the Haradinaj compound, a police commander came to the Stojanović home and told him that Ramush Haradinaj and his group were armed so anything could happen and therefore the witness and his family should leave.<sup>509</sup> This was confirmed by Dragoslav’s brother, Mijat Stojanović, who testified that in the evening of 24 March 1998 he and his family were ordered by a police officer to leave their home for security reasons.<sup>510</sup> The Trial Chamber has also received other evidence about Serbs leaving their homes either on their own initiative, assisted, encouraged, or ordered to do so by Serbian police, due to the ongoing conflict between the Serbian forces and the KLA.<sup>511</sup> Witness 28 testified that Kosovar Albanian families also fled their homes during this period, due to the risk of attacks from the Serbian

<sup>502</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 44-45; Witness 28, T. 10185-10186.

<sup>503</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 45.

<sup>504</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 46; Witness 28, T. 10201, 10223.

<sup>505</sup> Momčilo Antić, T. 2409-2415, 2417.

<sup>506</sup> Momčilo Antić, T. 2435.

<sup>507</sup> Momčilo Antić, T. 2412-2417.

<sup>508</sup> Witness 61, T. 3999, 4006.

<sup>509</sup> Dragoslav Stojanović, T. 1860.

<sup>510</sup> Mijat Stojanović, T. 2011.

<sup>511</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 74; Zvonko Marković, T. 2327-2328, 2341-2343; Goran Vlahović, T. 1737-1742.

police or because of the conflict between the Serbian forces and the KLA.<sup>512</sup> Other witnesses also testified about Kosovar Albanians leaving their homes as result of, or because of the risk of, Serbian military attacks.<sup>513</sup>

120. In conclusion, many Serbs left their homes out of fear, grounded or not, of being deliberately attacked by the KLA but there were also those who fled out of general fear of being caught up in the armed conflict between Serbian forces and the KLA. This is further confirmed by the fact that Kosovar Albanians fled from their homes during the indictment period as well. The Trial Chamber can therefore not draw any general conclusion with regard to the alleged attack against a civilian population from the mere fact that many Serbian civilians left their homes during this period.

121. The Trial Chamber has heard much evidence about the tense situation in Kosovo/Kosova from long before the indictment period, with the Serbian authorities and the Serbian minority in Kosovo/Kosova, on the one hand, and Kosovar Albanians, on the other, as adversaries. This situation calls for caution when determining the authorship of violence against victims of a certain ethnicity or affiliation. Lacking evidence to the contrary, the Trial Chamber allows for the possibility that animosity among the factions may have caused individuals belonging to one faction to act violently against individuals belonging to the other out of personal anger rather than in a structured or organized manner.

122. The Trial Chamber finds that, based on the evidence received, the ill-treatment, forcible transfer, and killings of Serbian and Roma civilians, as well as Kosovar Albanian civilians perceived to be collaborators or perceived not supporting the KLA (whether taking these groups separately or as a whole), was not on a scale or frequency that would allow for a conclusion that there was an attack against a civilian population. The Trial Chamber also finds that some of the victims were singled out primarily for reasons pertaining to them individually, such as their real or perceived connection with the Serbian authorities or for other reasons, rather than being members of the civilian population. The Trial Chamber does not address the other general elements of crimes against humanity, “widespread or systematic”, since these can only be examined in

<sup>512</sup> Witness 28, T. 10195-10196; P1211 (Witness 28, witness statement, 28 October 2007), para. 50.

<sup>513</sup> P317 (Shemsedin Cekaj, witness statement, 14 May 2007), para. 28; Shemsedin Cekaj, T. 4487, 4495; P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 56, 81-82; Zymer Hasanaj, T. 8723; Avni Krasniqi, T. 10716-10717; P1223 (Avdullah Avdija, witness statement, 11 November 2007), paras 5-6;

relation to an attack against a civilian population. The Trial Chamber concludes that the Accused should be acquitted of Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35 of the Indictment.

P270 (Achilleas Pappas, witness statement, 9 May 2007), paras 9, 14; Achilleas Pappas, T. 4083, 4264, 4282, 4306-4308.

## **5. Law on crimes under Article 3 of the Statute and individual responsibility**

### 5.1 Crimes

#### *5.1.1 Murder*

123. Counts 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 30, and 32 of the Indictment charge the Accused with murder as a violation of the laws or customs of war under Article 3. The general elements for murder under Article 3 have been discussed in section 3.1, above.

124. The crime of murder is constituted of the following elements:

- (a) the victim died;
- (b) an act or omission of the perpetrator caused the victim's death; and
- (c) the act or omission was committed with intent to kill the victim or to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.<sup>514</sup>

#### *5.1.2 Torture and cruel treatment*

125. Counts 2, 4, 6, 14, 16, 18, 20, 24, 26, 28, 30, 32, 34, and 37 of the Indictment charge the Accused with cruel treatment as a violation of the laws or customs of war, punishable under Article 3 of the Statute. Counts 2, 4, 6, 20, 24, 28, 30, 32, 34, and 37 of the Indictment charge the Accused with torture as a violation of the laws or customs of war, punishable under Article 3 of the Statute. The general elements for these crimes as violations of the laws or customs of war have been discussed in section 3.1, above.

126. *Cruel treatment.* Cruel treatment requires proof of the following elements:

- (a) an act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity;<sup>515</sup> and
- (b) the act or omission was committed with intent, or alternatively with knowledge that the act or omission was likely to cause serious mental or physical suffering or a

<sup>514</sup> *Kvočka et al.* Appeal Judgement, para. 261.

<sup>515</sup> *Čelebići* Appeal Judgement, para 424; *Blaškić* Appeal Judgement, para. 595.

serious attack on human dignity and the perpetrator was indifferent as to whether such consequences would result from his act or omission.<sup>516</sup>

127. *Torture.* The crime of torture consists of the following elements:

- (a) an act or omission inflicted severe pain or physical or mental suffering;
- (b) the act or omission was committed with intent; and
- (c) the act or omission was aimed at obtaining information or a confession, or at punishing, intimidating, or coercing the victim or a third person; or at discriminating, on any ground, against the victim or a third person.<sup>517</sup>

128. 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 behind the conduct.<sup>518</sup>

### *5.1.3 Rape*

129. Count 36 of the Indictment charges the Accused with rape as a violation of the laws or customs of war, punishable under Article 3 of the Statute. The general elements for rape under Article 3 have been discussed in section 3.1, above.

130. The crime of rape consists of the following elements:

- (a) a sexual penetration however slight: (i) of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator; or (ii) of the mouth of the victim by the penis of the perpetrator;
- (b) the sexual penetration occurred without the consent of the victim. Consent for this purpose must be consent given voluntarily; and
- (c) the sexual penetration was committed with intent, and with the knowledge that it occurred without the consent of the victim.<sup>519</sup>

<sup>516</sup> *Krnojelac* Trial Judgement, para. 132.

<sup>517</sup> *Kunarac et al.* Appeal Judgement, paras 142, 144.

<sup>518</sup> *Kunarac et al.* Appeal Judgement, para. 155.

<sup>519</sup> *Kunarac et al.* Appeal Judgement, paras 127-128.

#### *5.1.4 Outrages upon personal dignity*

131. Count 2 of the Indictment charges the Accused with outrages upon personal dignity as a violation of the laws or customs of war, punishable under Article 3 of the Statute. The general elements for outrages upon personal dignity under Article 3 have been discussed in section 3.1, above.

132. The crime of outrages upon personal dignity consists of the following elements:

- (a) an act or omission which, from an objective point of view, caused severe humiliation or degradation, or otherwise was a serious attack on human dignity; and
- (b) the act or omission was committed with intent, and with the knowledge that it could have that effect.<sup>520</sup>

### 5.2 Responsibility for crimes

#### *5.2.1 Joint criminal enterprise*

133. The Prosecution's case is that each Accused is responsible pursuant to Article 7(1) of the Statute for the crimes charged in the Indictment, and in particular that the Accused are responsible as participants in a joint criminal enterprise.<sup>521</sup> The Indictment alleges that each crime charged was within the common criminal purpose of the JCE, and that each Accused shared the intent with the other co-perpetrators to commit those crimes. Alternatively, to the extent that some of the crimes charged did not fall within the JCE, they were a natural and foreseeable consequence of the JCE, and each Accused was aware that those crimes were a natural and foreseeable consequence of the execution of the JCE.<sup>522</sup>

134. The Indictment further specifies that by virtue of the participation of each Accused in the JCE, each is individually responsible for the acts of his co-Accused and of other members of the JCE, insofar as those acts were in furtherance of the common criminal purpose and were either within the objective of the JCE or were a natural and foreseeable consequence of its execution.<sup>523</sup> It is alleged, moreover, that each Accused is also individually responsible for the acts of persons who were not members of the

<sup>520</sup> *Kunarac et al.* Appeal Judgement, paras 161-163.

<sup>521</sup> Indictment, paras 17, 25.

<sup>522</sup> Indictment, para. 25.

<sup>523</sup> Indictment, para. 28.

JCE, but who were used by the members of the JCE to carry out crimes committed in furtherance of the common criminal purpose, which were either within the scope of the JCE or were a natural and foreseeable consequence of its execution.<sup>524</sup>

135. In the context of the Tribunal's jurisprudence, the JCE doctrine received its first detailed treatment in the *Tadić* Appeal Judgement.<sup>525</sup> The *Tadić* Appeals Chamber found in broad terms that a person who in execution of a common criminal purpose contributes to the commission of crimes by a group of persons may be held criminally liable subject to certain conditions.<sup>526</sup> The Appeals Chamber's analysis of customary international law resulted in the identification and definition of three forms of JCE liability. In the first JCE form:

all co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they ... all possess the intent to kill.

The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proven to have effected the killing are as follows:

- (i) the accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitating the activities of his co-perpetrators); and
- (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result.<sup>527</sup>

136. The second form of JCE, which is described as a type of the first form, was found to have served cases where the offences charged were alleged to have been committed by members of military or administrative units, such as those running concentration camps and comparable "systems".<sup>528</sup>

137. The third form of JCE is characterized by a common criminal design to pursue a course of conduct where one or more of the co-perpetrators commits an act which, while outside the common design, is a natural and foreseeable consequence of the

<sup>524</sup> Indictment, para. 29.

<sup>525</sup> *Tadić* Appeal Judgement, paras 172-185.

<sup>526</sup> *Tadić* Appeal Judgement, para. 190.

<sup>527</sup> *Tadić* Appeal Judgement, para. 196.

<sup>528</sup> *Tadić* Appeal Judgement, paras 202-203. For the notion of "system", see *Krnojelac* Appeal Judgement, para. 89 and *Vasiljević* Appeal Judgement, para. 105.

implementation of that design.<sup>529</sup> There are two additional requirements for this form, one objective, the other subjective.<sup>530</sup> The objective element does not depend upon the accused's state of mind. This is the requirement that the resulting crime was a natural and foreseeable consequence of the JCE's execution. It is to be distinguished from the subjective state of mind, namely that the accused was aware that the resulting crime was a possible consequence of the execution of the JCE, and participated with that awareness.<sup>531</sup>

138. To summarize the elements of the first and third forms of JCE:

(i) *Plurality of persons.* A joint criminal enterprise exists when a plurality of persons participates in the realization of a common criminal objective.<sup>532</sup> The persons participating in the criminal enterprise need not be organized in a military, political, or administrative structure.<sup>533</sup>

(ii) *A common objective which amounts to or involves the commission of a crime provided for in the Statute.* The first form of the JCE exists where the common objective amounts to, or involves the commission of a crime provided for in the Statute. The mens rea required for the first form is that the JCE participants, including the accused person, had a common state of mind, namely the state of mind that the statutory crime(s) forming part of the objective should be carried out.<sup>534</sup>

The third form of the JCE depends on whether it is natural and foreseeable that the execution of the JCE in its first form will lead to the commission of one or more other statutory crimes. In addition to the intent of the first form, the third form requires proof that the accused person took the risk that another statutory crime, not forming part of the common criminal objective, but nevertheless being a natural and foreseeable consequence of the JCE, would be committed.<sup>535</sup>

<sup>529</sup> *Tadić* Appeal Judgement, para. 204.

<sup>530</sup> *Prosecutor v. Radoslav Brđanin and Momir Talić*, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, paras 28-30.

<sup>531</sup> *Blaškić* Appeal Judgement, para. 33.

<sup>532</sup> *Kvočka et al.* Trial Judgement, para. 307.

<sup>533</sup> *Tadić* Appeal Judgement, para. 227.

<sup>534</sup> *Tadić* Appeal Judgement, paras 227-228.

<sup>535</sup> *Tadić* Appeal Judgement, paras 227-228; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 31; *Krstić* Trial Judgement, para. 613; *Blaškić* Appeal Judgement, para. 33.

According to the Appeals Chamber, the common objective need not have been previously arranged or formulated.<sup>536</sup> This means that the second JCE element does not presume preparatory planning or explicit agreement among JCE participants, or between JCE participants and third persons.<sup>537</sup>

Moreover, a JCE may exist even if none or only some of the principal perpetrators of the crimes are members of the JCE. For example, a JCE may exist where none of the principal perpetrators are aware of the JCE or its objective, yet are procured by one or more members of the JCE to commit crimes which further that objective. Thus, “to hold a member of a JCE responsible for crimes committed by non-members of the enterprise, it has to be shown that the crime can be imputed to one member of the joint criminal enterprise, and that this member – when using a principal perpetrator – acted in accordance with the common plan.”<sup>538</sup>

(iii) *Participation of the accused in the objective’s implementation.* This is achieved by the accused’s commission of a crime forming part of the common objective (and provided for in the Statute). Alternatively, instead of committing the intended crime as a principal perpetrator, the accused’s conduct may satisfy this element if it involved procuring or giving assistance to the execution of a crime forming part of the common objective.<sup>539</sup> A contribution of an accused person to the JCE need not have been, as a matter of law, either substantial<sup>540</sup> or necessary to the achievement of the JCE’s objective.<sup>541</sup> However, “it should at least be a significant contribution to the crimes for which the accused is to be found responsible.”<sup>542</sup>

139. In relation to the first two elements of JCE liability, it is the common objective that begins to transform a plurality of persons into a group, or enterprise, because what this plurality then has in common is the particular objective. It is evident, however, that a common objective alone is not always sufficient to determine a group, because different and independent groups may happen to share identical objectives. It is thus the interaction or cooperation among persons – their joint action – in addition to their

<sup>536</sup> *Tadić* Appeal Judgement, para. 227.

<sup>537</sup> *Kvočka et al.* Appeal Judgement, paras 115-119; *Brđanin* Appeal Judgement, para. 418.

<sup>538</sup> *Brđanin* Appeal Judgement, para. 413.

<sup>539</sup> *Tadić* Appeal Judgement, para. 227; *Prosecutor v. Milorad Krnojelac*, Decision on Form of Second Amended Indictment, 11 May 2000, para. 15.

<sup>540</sup> *Kvočka et al.* Appeal Judgement, para. 97.

<sup>541</sup> *Kvočka et al.* Appeal Judgement, para. 98.

<sup>542</sup> *Brđanin* Appeal Judgement, para. 430.

common objective, that forges a group out of a mere plurality.<sup>543</sup> In other words, the persons in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for crimes committed through the JCE.<sup>544</sup>

### *5.2.2 Committing, planning, instigating, ordering, and aiding and abetting*

140. The Indictment charges each of the Accused, alternatively to their participation in the joint criminal enterprise, with individual criminal responsibility under Article 7 (1) pursuant to the modes of liability of committing, planning, instigating, ordering, or aiding and abetting. Ramush Haradinaj is charged for committing under Counts 4, 16, and 24; for planning under Count 16; for instigating or ordering under Counts 2 and 34; and for aiding and abetting under Counts 2, 4, 16, 24, 32, and 34. Idriz Balaj is charged for committing under Counts 8, 14, 18, 20, 24, 32, 34, 36, and 37; for planning under Counts 14, 32, 34, 36, and 37; for instigating under Counts 14 and 32; and for aiding and abetting under Counts 8, 14, 18, 20, 24, 32, and 34. Lahi Brahimaj is charged for committing under Counts 28, 32, and 34; for planning under Counts 32 and 34; for instigating under Counts 24, 26, and 32; for ordering under Counts 24 and 26; and for aiding and abetting under Counts 24, 26, 28, 32, and 34.

141. Article 7 (1) covers first and foremost the physical perpetration of a crime or the culpable omission of an act that was mandated by law.<sup>545</sup> Article 7 (1) also reflects the principle that criminal responsibility for a crime in Articles 2 to 5 of the Statute does not attach solely to individuals who commit crimes, but may also extend to individuals who contribute to crimes in the other ways referred to above. For an accused to be found liable for a crime pursuant to one of these modes of responsibility, the crime in question must actually have been committed.<sup>546</sup> Furthermore, his or her actions must have contributed substantially to the commission of the crime.<sup>547</sup> Liability may also attach to omissions, where there is a duty to act.<sup>548</sup>

<sup>543</sup> *Krajišnik* Trial Judgement, para. 884.

<sup>544</sup> *Brđanin* Appeal Judgement, paras 410, 430.

<sup>545</sup> *Tadić* Appeal Judgement, para. 188.

<sup>546</sup> For planning, see *Kordić and Čerkez* Appeal Judgement, para. 26. For instigating, see *Kordić and Čerkez* Appeal Judgement, para. 27. For ordering, see *Kamuhanda* Appeal Judgement, para. 75. For aiding and abetting, see *Simić et al.* Appeal Judgement, para. 85.

<sup>547</sup> For planning, see *Kordić and Čerkez* Appeal Judgement, para. 26. For instigating, see *Kordić and Čerkez* Appeal Judgement, para. 27. For ordering, see *Kayishema and Ruzindana* Appeal Judgement, para. 186; *Kamuhanda* Appeal Judgement, para. 75. For aiding and abetting, see *Tadić* Appeal

142. *Planning*. Liability may be incurred by planning a crime that is later committed by the principal perpetrator.<sup>549</sup> The planner must intend that the crime be committed, or intend that the plan be executed in the awareness of the substantial likelihood that it would lead to the commission of the crime.<sup>550</sup>

143. *Instigating*. Liability may be incurred by instigating the principal perpetrator to commit a crime.<sup>551</sup> The instigator must intend that the crime be committed or be aware of the substantial likelihood that the crime would be committed as a consequence of his or her conduct.<sup>552</sup>

144. *Ordering*. Liability may be incurred by ordering the principal perpetrator to commit a crime or to engage in conduct that results in the commission of a crime.<sup>553</sup> The person giving the order must, at the time it is given, be in a position of formal or informal authority over the person who commits the crime.<sup>554</sup> The person giving the order must intend that the crime be committed or be aware of the substantial likelihood that the crime would be committed in the execution of the order.<sup>555</sup>

145. *Aiding and abetting*. Liability may be incurred by carrying out acts directed to assist, encourage or lend moral support to the commission of a crime.<sup>556</sup> Such encouragement may consist of tacit approval of an aider and abettor who is in a position of authority and physically present on the crime scene, even where he or she has no duty to act.<sup>557</sup> The aiding and abetting may occur before, during, or after the commission of the principal crime.<sup>558</sup> Aiding and abetting after the commission of a crime is possible if the perpetrator committed the crime in the knowledge that the aider and abettor was to

Judgement, para. 229; Čelebić Appeal Judgement, para. 352; Vasiljević Appeal Judgement, para. 102; Blaškić Appeal Judgement, paras 45-46, 48; Kvočka et al. Appeal Judgement, para. 89; Simić et al. Appeal Judgement, para. 85; Blagojević and Jokić Appeal Judgement, para. 127.

<sup>548</sup> Blaškić Appeal Judgement, para. 663; Galić Appeal Judgement, para. 175; Brđanin Appeal Judgement, para. 274.

<sup>549</sup> Kordić and Čerkez Appeal Judgement, para. 26.

<sup>550</sup> Kordić and Čerkez Appeal Judgement, paras 29, 31.

<sup>551</sup> Kordić and Čerkez Appeal Judgement, para. 27.

<sup>552</sup> Kordić and Čerkez Appeal Judgement, paras 29, 32.

<sup>553</sup> Kordić and Čerkez Appeal Judgement, para. 28; Galić Appeal Judgement, para. 176.

<sup>554</sup> Kordić and Čerkez Appeal Judgement, para. 28; Galić Appeal Judgement, para. 176.

<sup>555</sup> Blaškić Appeal Judgement, para. 42; Kordić and Čerkez Appeal Judgement, paras 29-30.

<sup>556</sup> Tadić Appeal Judgement, para. 229; Čelebić Appeal Judgement, para. 352; Vasiljević Appeal Judgement, para. 102; Blaškić Appeal Judgement, paras 45-46, 48; Kvočka et al. Appeal Judgement, para. 89; Simić et al. Appeal Judgement, para. 85; Blagojević and Jokić Appeal Judgement, para. 127.

<sup>557</sup> Brđanin Appeal Judgement, paras 273, 277.

<sup>558</sup> Blaškić Appeal Judgement, para. 48; Simić et al. Appeal Judgement, para. 85; Blagojević and Jokić Appeal Judgement, para. 127.

supply practical assistance.<sup>559</sup> The aider and abettor must have knowledge that his or her acts assist in the commission of the crime of the principal perpetrator.<sup>560</sup> The aider and abettor must also be aware of the principal perpetrator's criminal acts, although not their legal characterization, and his or her criminal state of mind.<sup>561</sup> 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 be aware that one of a number of crimes will probably be committed, if one of those crimes is in fact committed.<sup>562</sup>

<sup>559</sup> *Blagojević and Jokić* Trial Judgement, para. 731.

<sup>560</sup> *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, paras 45-46; *Simić et al.* Appeal Judgement, para. 86; *Brđanin* Appeal Judgement, paras 484, 488; *Blagojević and Jokić* Appeal Judgement, para. 127.

<sup>561</sup> *Aleksovski* Appeal Judgement, para. 162; *Simić et al.* Appeal Judgement, para. 86; *Brđanin* Appeal Judgement, paras 484, 487-488.

<sup>562</sup> *Blaškić* Appeal Judgement, para. 50; *Simić et al.* Appeal Judgement, para. 86.

## **6. Findings on counts**

### 6.1 General findings concerning the Radonjić/Radoniq canal area

146. In sections 6.2 through 6.19, below, the Trial Chamber will deal with 30 alleged murders for which the most prominent common factor is that the victims were found in an area stretching from the Radonjić/Radoniq canal to Lake Radonjić/Radoniq, in Dečani/Deçan municipality.<sup>563</sup> The Radonjić/Radoniq canal and lake water system consisted of a water intake point along the course of the Bistrica/Bistricë river, at Gornji Luka/Lluka e Epërme, in Dečani/Deçan municipality; a seven-kilometre concrete canal ending in a natural ravine, which conducted the water to a reservoir/lake; the lake itself; and a water-treatment and distribution plant at the southern end of the lake.<sup>564</sup> The alleged murders are charged under Counts 8, 10, 14, 16, 18, 20, 22, and 32 in the Indictment. The Prosecution alleges that all the victims under these counts were killed while “in KLA custody”.<sup>565</sup> The Trial Chamber understands this to mean that, according to the Prosecution, the KLA was involved in the killing, as opposed to the involvement of any other organization or entity, and as opposed to killings carried out by non-members of the KLA or KLA soldiers acting in a purely private capacity and not under direction or in obedience to the policies of the KLA.

147. The evidence before the Trial Chamber with regard to perpetrators and circumstances of many of the alleged murders is vague, inconclusive, or simply non-existent. Often the evidence stops where the person disappears under suspicious circumstances and resumes where the bodily remains are found with signs of a violent death and are identified. What has happened to the individual in the meantime usually remains unclear. However, the Trial Chamber has received extensive evidence for a small number of the alleged murders. The question the Trial Chamber is therefore faced with is whether this extensive evidence only allows for conclusions in relation to the alleged murders for which it was specifically presented, or also for a conclusion that the other alleged murders were committed while the victim was in KLA custody.

<sup>563</sup> The two bodies found near Dašinovac/Dashinoc will be dealt with in section 6.7, below.

<sup>564</sup> P367 (Faton Sefa, witness statement, 29 May 2007), paras 11, 33-35, 80-81; Faton Sefa, T. 5999. The Trial Chamber will refer to the two main areas where bodies were found as “at the Radonjić/Radoniq canal” and “in the ravine downstream from the Radonjić/Radoniq canal”. The Trial Chamber uses the term “in the Radonjić/Radoniq canal area” to cover both areas where bodies were found.

<sup>565</sup> This expression is mentioned in the Indictment for all the alleged murders with the exception of the alleged murder of Sanije Balaj under Count 22.

148. The control the KLA exercised of the area around the Radonjić/Radoniq canal and Lake Radonjić/Radoniq was considerable but not in every respect complete during the indictment period (see also section 3.2.1, above).<sup>566</sup> There were Serbian forces stationed on Suka Babaloć/Baballoq, Suka Biteš/Bitesh, and Suka Crmljane/Cermjan for at least part of this period.<sup>567</sup> There were also Serbian forces stationed at the southern end of Lake Radonjić/Radoniq.<sup>568</sup> Serbian forces were able to enter the area on a temporary basis only in order to conduct military operations.<sup>569</sup> Witness 69, a Serbian police officer stationed in Đakovica/Gjakovë MUP during the indictment period,<sup>570</sup> testified that the police informed him that until mid-1998 police patrols could access the north of Lake Radonjić/Radoniq, either on the road through Ratiš/Ratishë or on the road through Crmljane/Cermjan, both in Đakovica/Gjakovë municipality, but rarely went to the area around the lake and could do so only if the area was secured by the police or military.<sup>571</sup> Witness 69 also learned from the police that between mid-1998 and September 1998 the police entered, only when conducting a police operation, the KLA-controlled area approximately between Požar/Pozhare in Dečani/Deçan municipality, Jablanica/Jabllanicë and Dujak/Dujakë, both in Đakovica/Gjakovë municipality.<sup>572</sup>

149. The Trial Chamber has heard extensive evidence about how many bodies were discovered by Serbian police in the Radonjić/Radoniq canal area in September 1998, about the exhumation of these bodies, and about the subsequent identification of the victims. On 3 September 1998, MUP forces arrested two KLA members, Bekim Kalimashi and Zenel Alija.<sup>573</sup> These men were taken to the Đakovica/Gjakovë police station where they were interrogated.<sup>574</sup> Several witnesses testified that Kalimashi and

<sup>566</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), paras 28-36; Radovan Zlatković, T. 6925-6939; Shemsedin Cekaj, T. 4486, 4488-4489; Žarko Bajčetić, T. 6533-6534.

<sup>567</sup> Witness 21, T. 2716, 2789-2790, 2792, 2794, 2804-2807, 2814-2815.

<sup>568</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 8; Dragan Živanović, T. 9394-9396; D83 (Order by General Nebojša Pavković, 18 August 1998), p. 2.

<sup>569</sup> Achilleas Pappas, T. 4284-4286, 4288-4290; P309 (Daily Summary Report to HQ ECMM, 13 August 1998).

<sup>570</sup> P1231 (Witness 69, witness statement, 20 June 2007), paras 1-2; Witness 69, T. 9832-9833, 9846, 9848, 9892.

<sup>571</sup> P1231 (Witness 69, witness statement, 20 June 2007), paras 30-31; Witness 69, T. 9846, 9876-9879, 9904.

<sup>572</sup> P1231 (Witness 69, witness statement, 20 June 2007), paras 31-32; Witness 69, T. 9846, 9864-9865, 9878-9880; P1179 (Map marked by Witness 69).

<sup>573</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 47; Radovan Zlatković, T. 6940, 7012, 7014-7016, 7018; P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 23, 25; Nebojša Avramović, T. 6625; P388 (MUP-PJP Official note on the arrest of KLA members); P395 (Decision on the detention of Zenel Alija, 6 September 1998).

<sup>574</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), paras 50-52; Radovan Zlatković, T. 6940-6941, 6955-6956; P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 28, 30; P371

Alija gave details about bodies to be found in the Radonjić/Radoniq canal area.<sup>575</sup> On 8 and 9 September 1998, MUP officers as well as RDB officials, together with Bekim Kalimashi, travelled to the end of the Radonjić/Radoniq canal.<sup>576</sup> There, Kalimashi pointed out where the bodies could be found.<sup>577</sup>

150. The fact that there were bodies at the Radonjić/Radoniq canal appears to have been known to both the KLA and to Serbian authorities prior to September 1998. Witness 17 testified that on 20 August 1998, 68 village representatives attended a meeting, chaired by Tahir Zemaj, in the canteen of the Papračane/Prapacan headquarters.<sup>578</sup> During the meeting Ramush Haradinaj stated that he was unable to lead the forces in the Dukagjin area, after having lost a number of villages during Serbian offensives in August, and it was agreed that Tahir Zemaj should be the commander of the Operational Staff of the Plain of Dukagjin, and Haradinaj his deputy.<sup>579</sup> At the meeting, one person spoke about misconduct that was being committed by certain people and because of this “the fish in Lake Radoniq were getting fat on human flesh”.<sup>580</sup> The person asked for these people “to be disciplined and well-behaved, and to stop committing these crimes”.<sup>581</sup> Witness 17 did not remember whether anyone at the meeting reacted to the allegation.<sup>582</sup> The witness remembered that Idriz Balaj came to the meeting but thought that he remained outside as security.<sup>583</sup> The information that there were human remains at the Radonjić/Radoniq canal also reached the Serbian intelligence service.<sup>584</sup> The fact that Serbian authorities had such knowledge prior to Kalimashi and Alija informing them about the bodies and may have manipulated their statements is not material to the determination that the Trial Chamber needs to make in

(Bogdan Tomaš, witness statement, 24 May 2007), paras 22-23; Bogdan Tomaš, T. 6134-6135; P1231 (Witness 69, witness statement, 20 June 2007), paras 33-34; Witness 69, T. 9846, 9888.

<sup>575</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), paras 53, 55; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 31; P371 (Bogdan Tomaš, witness statement, 24 May 2007), paras 24-25; P1231 (Witness 69, witness statement, 20 June 2007), paras 34, 59, 65.

<sup>576</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 64-65, 68-73; Radovan Zlatković, T. 6972-6973, 6975; P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 43-45; Nebojša Avramović, T. 6649-6658; P371 (Bogdan Tomaš, witness statement, 24 May 2007), paras 29-34; Bogdan Tomaš, T. 6227, 6232; P377 (Žarko Bajčetić, witness statement, 24 May 2007), paras 32, 41-43, 48-51, 91; Žarko Bajčetić, T. 6414, 6455-6456.

<sup>577</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), paras 74, 80; Radovan Zlatković, T. 6974.

<sup>578</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 100; Witness 17, T. 7592-7593.

<sup>579</sup> P885 (Witness 17, witness statement, 14 August 2007), paras 100, 107; Witness 17, T. 7592, 7600; D161 (Communiqué signed by Tahir Zemaj, 22 August 1998).

<sup>580</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 101; Witness 17, T. 7593-7597.

<sup>581</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 101; Witness 17, T. 7597.

<sup>582</sup> Witness 17, T. 7750.

<sup>583</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 106.

this section. The Trial Chamber does not accept the implied suggestion that the bodies in the Radonjić/Radoniq canal area were “planted” there by the Serbian police or military. There is no reliable evidence that supports a scenario wherein one or more of the bodily remains covered by the counts in the Indictment were brought to the area where they were found after the Serbian forces had restored the control necessary for the on-site investigations in early September.

151. The investigating judge of the Peć/Pejë District Court, Radomir Gojković, was informed about the bodies on 9 September 1998.<sup>585</sup> He went to the Radonjić/Radoniq canal on the same day and initiated an investigation that was conducted over the following days.<sup>586</sup> His investigation team consisted of himself, Deputy Public Prosecutor Zoran Babić and a number of MUP members including Nebojša Avramović and Radovan Zlatković.<sup>587</sup> Gojković requested that representatives of the Forensic Institute of the Medical Faculty in Belgrade be sent to Kosovo/Kosova to conduct the exhumations of the discovered bodies.<sup>588</sup> This team arrived at the site on 11 September 1998 and worked there until 16 September 1998, by which time the exhumation of the bodies had been completed.<sup>589</sup> The team included Professor Dušan Dunjić, who led the forensic team, and Professor Branimir Aleksandrić.<sup>590</sup> On 12 September 1998, the forensic team split in two: one team, including Professor Aleksandrić, which worked with recovering the bodies at the canal and the other, which included Professor Dušan Dunjić, which conducted the forensic examination of the remains.<sup>591</sup>

152. The forensic team exhumed 17 bodies at the west bank of the canal.<sup>592</sup> The investigation and forensic teams found one overturned car lying in the ravine

<sup>584</sup> D153 (Official Note, 20 August 1998).

<sup>585</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 15, 21; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 68; Nebojša Avramović, T. 6721.

<sup>586</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 24, 26, 32, 36-37, 43, 58, 60, 62, 66, 68.

<sup>587</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 35.

<sup>588</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 33; P409 (Request sent by Radomir Gojković, 9 September 1998).

<sup>589</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 44, 66, 70; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 110; Nebojša Avramović, T. 6607; P411 (Letter from Radomir Gojković, 17 September 1998); P412 (Report of the forensic team, 16 September 1998).

<sup>590</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 23, 40, 151; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 4, 9; Branimir Aleksandrić, T. 6737; P1113 (CV of Branimir Aleksandrić), p. 1.

<sup>591</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 56; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 33, 45; P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 72, 91.

<sup>592</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 271; P1116 (Aerial Photographs marked by Branimir Aleksandrić).

downstream of the end of the canal.<sup>593</sup> When members of the forensics team tried to move the car the body of a woman fell out of the trunk (see section 6.10, below).<sup>594</sup> Many of the persons taking part in the investigation and exhumation of bodies observed bullet holes in the wall of the canal.<sup>595</sup> The Trial Chamber accepts that persons found at that precise location may have been executed there. However, it is unable to draw broader conclusions, especially with regard to bodies that were found at some distance from this location. On 15 September 1998, Serbian police officer Slobodan Panić and other divers searched the canal and parts of the terrain around it and reported finding several more human bodies or body parts between 700 metres and 2500 metres from the end of the canal.<sup>596</sup> A number of additional bodies were also found at the Ekonomija farm close by.<sup>597</sup> There the investigation team also found barbed wire with attached to it what seemed to be human hair, and electric cables which were tied to the metal cattle stalls.<sup>598</sup> When a body was located, the forensic team labelled it with a number and an indication of the area in which it was found (“R” for Rznić/Irzniq, that is the Radonjić/Radoniq canal, and “Re” for Ekonomija Farm).<sup>599</sup>

<sup>593</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 27; Radomir Gojković, T. 10112; P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 88; P377 (Žarko Bajčetić, witness statement, 24 May 2007), paras 62-63; Žarko Bajčetić, T. 6526-6527; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 31, 151, 153-156, 212; Branimir Aleksandrić, T. 9605.

<sup>594</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 88; P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 63-64; Nebojša Avramović, T. 6621-6622, 6663-6665.

<sup>595</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 76; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 59; P377 (Žarko Bajčetić, witness statement, 24 May 2007), para. 59; P270 (Achilleas Pappas, witness statement, 9 May 2007), para. 21; Achilleas Pappas, T. 4151-4158; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 17-18, 22-23, 62, 67, 79; Branimir Aleksandrić, T. 6739, 9570-9571; P452 (Video of body recovery at canal), 0:03'41"- 0:04'20", 0:23'38".

<sup>596</sup> D131 (Report by Slobodan Panić, 16 September 1998).

<sup>597</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 42; P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 91-95, 181-182; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 54, 56; Branimir Aleksandrić, T. 6741; P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 28, 57, 147-149, 153-155, 160, 180, 601, 611-612, 623, 635, 650, 661, 673; Dušan Dunjić, T. 7296-7297, 7383-7385; P630 (Record of exhumations, 16 September 1998), p. 1; P643 (Summary of operation relating to Ekonomija Farm bodies), pp. 1-2; Agreed Facts, 26 November 2007, No. 138.

<sup>598</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 42; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 97; Nebojša Avramović, T. 6619; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 55, 57-58; Branimir Aleksandrić, T. 6743-6744, 6750; P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 59; P630 (Record of exhumations, 16 September 1998), p. 1.

<sup>599</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 117; P1231 (Witness 69, witness statement, 20 June 2007), para. 41; Witness 69, T. 9846; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 40; Branimir Aleksandrić, T. 6741-6742; P1181 (Report of the Đakovica/Gjakovë MUP Crime Police Department), pp. 28-33.

153. A makeshift mortuary was set up at Hotel Paštrik in Đakovica/Gjakovë where the human remains from the canal area were brought.<sup>600</sup> The autopsy process started on 12 September 1998 and finished on 19 September 1998.<sup>601</sup> Between 17 and 19 September 1998, relatives of persons who were missing were invited to Hotel Paštrik in order to try to identify the bodies by traditional means.<sup>602</sup> The process involved relatives giving the forensic experts details of the missing persons, after which they were shown clothing and personal belongings, and were asked for photographs or medical documents relating to the missing person.<sup>603</sup> If a relative recognized clothing or artefacts, the experts would document evidence such as the victim's age, sex, height, weight, previous injuries, and dental and medical histories and try to match these with the bodies.<sup>604</sup> If the information matched, the body was deemed identified.<sup>605</sup> Ten of the victims were positively identified through this process: Velizar Stošić, Ilira and Tush Frrokaj, Ilija Antić, Vukosava Vukošević, Darinka Kovač, Milovan Vlahović, Isuf Hodža, Agžija Seferaj, and Hajrullah Gaši.<sup>606</sup> Identified bodies were placed in coffins, sealed, and handed over to family members.<sup>607</sup> The unidentified bodies were handed over to Milan Stanojević, MUP chief in Đakovica/Gjakovë, on 19 September 1998, for burial in Piskote/Piskotë cemetery in Đakovica/Gjakovë.<sup>608</sup>

154. Barney Kelly was one of the Prosecution investigators tasked with ascertaining by the use of DNA analysis whether the identifications made by relatives were

<sup>600</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 42, 54-55; P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 122, 133; P1231 (Witness 69, witness statement, 20 June 2007), paras 42, 46; Witness 69, T. 9846; P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 41, 62; P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 50, 62; Dušan Dunjić, T. 7376.

<sup>601</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), paras 136-137; P420 (Autopsy Report of 12 September 1998).

<sup>602</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 71-72; Radomir Gojković, T. 10067; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 137.

<sup>603</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 73.

<sup>604</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 73.

<sup>605</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), para. 73.

<sup>606</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 78-81; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 170; P368 (Barney Kelly, witness statement, 21 June 2007), para. 5; Barney Kelly T. 6085-6086; P423 (Identification report of 19 September 1998), p. 1; P1198 (Documents relating to the Lake Radonjić/Radoniq investigation), pp. 15-17.

<sup>607</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 75-77; P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 169; P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 133; Dušan Dunjić, T. 6850, 7377.

<sup>608</sup> P1193 (Radomir Gojković, witness statement, 23 October 2007), paras 83-86; P423 (Identification report of 19 September 1998); P380 (Nebojša Avramović, witness statement, 4 June 2007), paras. 142-168; P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 136; Dušan Dunjić, T. 6850-6851, 7377; P423 (Identification report of 19 September 1998); P641 (Summary report for Judge Gojković), p. 2.

accurate.<sup>609</sup> In carrying out this task, Kelly asked the victims' relatives to assist in locating the graves of their relatives and in providing blood samples required to perform the DNA analysis.<sup>610</sup> Out of the ten sets of remains found at the Lake Radonjić/Radoniq site and identified through traditional means, only the identities of Velizar Stošić (labelled as "R-8"), Ilira Frrokaj ("R-18"), and Ilija Antić ("R-20") were confirmed by DNA analysis.<sup>611</sup> In respect of some of the other bodies presented for DNA identification, no match could be established with the identification by traditional means.<sup>612</sup>

155. On the basis of the testimony given by Milutin Višnjić, a ballistics expert, and a report he prepared on 2 December 1998,<sup>613</sup> the Prosecution contended that the same weapon that was used at the Radonjić/Radoniq canal area by the KLA to "murder its opponents" was previously used by the KLA against the MUP in Pljančor/Plançar on 7 March 1998, and during the clash at the Haradinaj family compound on 24 March 1998.<sup>614</sup> In his report, Višnjić compared cartridges found in the Radonjić/Radoniq canal area in early September 1998 with cartridges found in Pljančor/Plançar on 7 March 1998 and at the Haradinaj compound on 24 March 1998.<sup>615</sup> On the basis of comparative microscopic examination of significant individual features on the cartridges, Višnjić concluded that 14 of the cartridges found in the Radonjić/Radoniq canal area were identical to 29 cartridges found in Pljančor/Plançar and 29 cartridges found at the Haradinaj compound.<sup>616</sup>

156. The Trial Chamber found Milutin Višnjić to be a credible witness. During the NATO bombing in 1999, the forensic department was hit and the original material examined by Višnjić and his personal notes of that examination were lost and therefore

<sup>609</sup> P368 (Barney Kelly, witness statement, 21 June 2007), para. 8; Barney Kelly, T. 6086.

<sup>610</sup> P368 (Barney Kelly, witness statement, 21 June 2007), paras 7-10, 34, 36.

<sup>611</sup> Barney Kelly, T. 6087-6090.

<sup>612</sup> Subsequent DNA identifications of the victims found in the Radonjić/Radoniq canal area will be discussed in the relevant sections below.

<sup>613</sup> See the testimony of Milutin Višnjić, T. 8317-8357, and P916 (Ballistics report by Milutin Višnjić).

<sup>614</sup> Prosecution Final Brief, para. 676.

<sup>615</sup> P916 (Ballistics report by Milutin Višnjić). Višnjić's report refers to Gramočelj/Gramaql as the place where cartridges were found on 24 March 1998. The Trial Chamber understands this to be a reference to the Haradinaj family compound which is located between the villages of Glogane/Gllogjan and Gramočelj/Gramaql in Dečani/Deçan municipality. See also P446 (MUP Documentation referring to the incident of 24 March 1998 in Glogane/Gllogjan); P448 (Official note by Nebojša Avramović, 4 December 1998) which indicate where the cartridges were found.

<sup>616</sup> P916 (Ballistics report by Milutin Višnjić); See also P446 (MUP Documentation referring to the incident of 24 March 1998 in Glogane/Gllogjan) and P448 (Official note by Nebojša Avramović, 4 December 1998).

unavailable to Defence experts.<sup>617</sup> It was furthermore impossible to verify the accuracy of Višnjić's findings because no photographic records of his examination were made.<sup>618</sup> Additionally, Višnjić did not record in his report the details of the patterns he observed that led him to conclude that the cartridges matched.<sup>619</sup> His report states where the respective series of cartridges he examined had been found, a brief description of the method he used, and his conclusions based on the number of matches and where the cartridges were found.<sup>620</sup> Upon examination by the Trial Chamber regarding the number of cartridges that Višnjić received from the various locations, it became apparent that not all of the cartridges were accounted for. Višnjić was unable to adequately explain the discrepancy between the total number of cartridges received for comparison and the total number of examined cartridges.<sup>621</sup> This and the impossibility of verifying Višnjić's conclusions led the Trial Chamber to decide that it could not rely on this evidence. Even if the Trial Chamber would have been able to conclude that the weapon fired at the three locations was indeed the same, this would still not have answered important questions such as who had fired that weapon, when it was fired in the Radonjić/Radoniq canal area, and what the chain of custody of that weapon had been.

157. As will be discussed in detail in sections 6.5, 6.6, 6.8 through 6.12, and 6.16, below, the evidence presented to the Trial Chamber regarding the 30 alleged murders varies in the level of detail. The evidence with regard to the identity of the perpetrators and circumstances under which death occurred, is for many of them non-existent. The Trial Chamber will, in the mentioned sections, consider evidence regarding: the identity of the victim; whether the victim was abducted or just reported as missing; if abducted, by whom he or she was abducted or to which group the abductor or abductors were affiliated; if the victim was reported missing, how he or she may have ended up in the hands of those who committed the killing or disposed of the body; the whereabouts of the abducted or missing person between his or her disappearance and the time he or she died; the cause of death and whether intentionally killed; by whom the victim was killed or to which group those who killed the victim were affiliated; and how the body ended up in the Radonjić/Radoniq canal area where it ultimately was found.

<sup>617</sup> Milutin Višnjić, T. 8331-8332.

<sup>618</sup> Milutin Višnjić, T. 8351.

<sup>619</sup> Milutin Višnjić, T. 8346-8347, 8349.

<sup>620</sup> P916 (Ballistics report by Milutin Višnjić).

<sup>621</sup> T. 8338-8341; See also P445 (Request for a ballistics examination, 21 September 1998) and P916 (Ballistics report by Milutin Višnjić).

158. The Trial Chamber did not receive complete evidence covering the issues described for any of the victims found in the Radonjić/Radoniq canal area. In relation to most of the victims the Trial Chamber received evidence merely about where and when they were last seen alive and about them being found dead in the Radonjić/Radoniq canal area. The victims were last seen alive at different locations in three municipalities over a period of five months. Many of them were last seen alive in areas which were under KLA control at the time. As stated above, the Radonjić/Radoniq canal area where the bodies were found was generally under KLA control throughout the indictment period. This raises the likelihood that the KLA abducted the victims and either killed them and deposited their bodies in the Radonjić/Radoniq canal area or took the victims to this area and executed them there.

159. The Trial Chamber has received extensive evidence, in particular about the perpetrators and the circumstances surrounding the death, of only one of the alleged murders, namely that of Sanije Balaj. The case of this victim demonstrates the level of caution with which the Trial Chamber should proceed when considering inferences as to responsibility on the mere basis of the disappearance or abduction of a person and the discovery of the body of that person in the Radonjić/Radoniq canal area. As the Trial Chamber will discuss in detail in section 6.12.12, below, a reasonable alternative to KLA involvement in the alleged murder is that Sanije Balaj was targeted by people who were not acting under the direction of or in pursuit of the policies of the KLA and that she therefore was not killed in KLA custody.

160. The Trial Chamber has also received some evidence regarding the abduction of some other victims and about their subsequent death. In one such case, namely the alleged murder of Nurije and Istref Krasniqi, to be discussed in section 6.12.6, below, the Trial Chamber cannot ignore the reasonable alternative of the alleged murder having been committed in the context of a family dispute or private revenge.

161. If the Trial Chamber would not have received the more detailed evidence in relation to the alleged murder of Sanije Balaj this incident would likely have impressed upon the Trial Chamber that the murder had been committed “in KLA custody”, as defined above. All the elements appear to be present: an arrest by KLA soldiers; the inclusion of Sanije Balaj on what seems to have been a wanted list, used by those soldiers; transportation to and interrogation in a KLA headquarters; retrieval of the

bodily remains in the Radonjić/Radoniq canal area; and forensic medical evidence of a violent death. At first sight this would make it among the strongest cases for which the Prosecution asks the Trial Chamber to draw the inference about murders committed “in KLA custody”. However, in this case, where detailed evidence was led about the circumstances under which Sanije Balaj met her death, the apparent conclusion would have been the wrong conclusion. As stated above, the Trial Chamber has received less evidence for most of the alleged murders. The evidence the Trial Chamber has received with regard to the alleged murder of Sanije Balaj calls for a most cautious approach. It shows how deceptive a first impression based on an incomplete story can be.

162. In conclusion, there are only a few alleged murders for which the evidence allows identification of a perpetrator or perpetrators. Even for those few, the evidence does not consistently support KLA involvement as alleged. Therefore, the evidence does not allow the Trial Chamber to draw a general conclusion with regard to victims found in the Radonjić/Radoniq canal area as to who committed the killing and with which group, if any, the perpetrator was affiliated. In this respect, the Trial Chamber cannot rely significantly on them being found at this location rather than on specific evidence in relation to their disappearance and death. This does not, however, prevent the Trial Chamber from concluding on a count-by-count basis that a given victim was killed “in KLA custody”. The Trial Chamber will now proceed to examine each count.

## 6.2 Cruel treatment, torture, and outrages upon the personal dignity of Witness 38 and the witness’s family (Count 2)

163. All three Accused are charged, as participants in a joint criminal enterprise, with cruel treatment, torture, and outrages upon the personal dignity of Witness 38 and the witness’s family in violation of the laws or customs of war. In the alternative, Ramush Haradinaj is charged with the ordering of, instigating, or aiding and abetting the commission of, the crimes. The Trial Chamber has heard relevant evidence from Witness 38, Witness 58, and Dragan Živanović.

164. Witness 38, a Roma from Junik, in Dečani/Deçan municipality,<sup>622</sup> testified that one night, in the beginning of May 1998, she saw people distributing weapons to a group of men on the road in her village.<sup>623</sup> The witness recognized two of these men as

<sup>622</sup> Witness 38, T. 704, 750.

<sup>623</sup> Witness 38, T. 705-707.

being Albanian inhabitants of Junik.<sup>624</sup> The following day, Qemalj Shalja, who was armed and wearing a green camouflage uniform with KLA insignia, gave a speech in Junik.<sup>625</sup> Witness 38 saw Roma families leaving Junik after this speech.<sup>626</sup> According to the witness, they were leaving out of fear.<sup>627</sup> At that time, no members of other ethnic groups left the village.<sup>628</sup> The witness remained in Junik, but was afraid to return to the family apartment so he spent the night with neighbours.<sup>629</sup> The witness testified that on that night or early the next morning, fierce fighting broke out between the police and the KLA.<sup>630</sup> The witness's apartment and the neighbour's house were targeted.<sup>631</sup> Witness 38 and her family left their neighbour's house and went back to the family apartment.<sup>632</sup> Shortly thereafter, four armed men, two dressed in camouflage uniforms and wearing black balaclavas and two dressed in civilian clothes, came to the apartment.<sup>633</sup> The men in camouflage ordered the witness and the witness's family to leave the apartment and join a convoy of civilians, and they obeyed.<sup>634</sup> The convoy left for Gacifer, a neighbourhood near Junik.<sup>635</sup> Some of the men dressed in civilian clothes who accompanied the convoy were carrying weapons.<sup>636</sup> According to the witness, KLA members prevented the witness and the witness's family from leaving the convoy.<sup>637</sup> The witness testified that men in camouflage uniforms and KLA insignia and men in civilian clothes carrying weapons were KLA members.<sup>638</sup>

165. At some point, Witness 38 and her family were ordered by two KLA members to leave the convoy and go to Qazim Gaciferi's house.<sup>639</sup> Other Romas were ordered to leave the convoy as well.<sup>640</sup> Witness 38 testified that she and her family arrived at Gaciferi's house and from there were taken to a mill approximately half a kilometre

<sup>624</sup> Witness 38, T. 706.

<sup>625</sup> Witness 38, T. 709, 711.

<sup>626</sup> Witness 38, T. 714.

<sup>627</sup> Witness 38, T. 715.

<sup>628</sup> Witness 38, T. 715.

<sup>629</sup> Witness 38, T. 715, 718.

<sup>630</sup> Witness 38, T. 718.

<sup>631</sup> Witness 38, T. 718, 802.

<sup>632</sup> Witness 38, T. 719.

<sup>633</sup> Witness 38, T. 719-720.

<sup>634</sup> Witness 38, T. 720-722, 725, 802-803.

<sup>635</sup> Witness 38, T. 725, 758.

<sup>636</sup> Witness 38, T. 725, 834.

<sup>637</sup> Witness 38, T. 725.

<sup>638</sup> Witness 38, T. 833-834.

<sup>639</sup> Witness 38, T. 726-727.

<sup>640</sup> Witness 38, T. 727.

from the house.<sup>641</sup> One of the KLA members, Aslan Luluni, told the witness and the witness's father to undress, forced the witness to eat a bank book, and tore half of the father's moustache off his face.<sup>642</sup> The witness's father was allowed to put his clothes back on after he had been searched, but the witness remained naked.<sup>643</sup> Luluni tied the witness's hands and the witness's father's hands with barbed wire.<sup>644</sup> Then a black Suzuki vehicle arrived at the mill.<sup>645</sup> The witness identified two of the men riding in the vehicle as Muharem Knushi and Ramush Haradinaj; the latter wearing a cap and a camouflage uniform with two badges in the form of a V, and carrying a two-way radio.<sup>646</sup> Witness 38 sat on the ground some 20-30 metres away from the two men and saw the man she later identified as Ramush Haradinaj from one side.<sup>647</sup> There were bushes between the witness and the men.<sup>648</sup> The witness did not recognize Haradinaj at the time, but when she saw Haradinaj some three to four months later on television, the witness realized that it had been him.<sup>649</sup> The broadcasts referred to Ramush Haradinaj as a commander.<sup>650</sup> Witness 38 testified that upon the arrival of the vehicle, the maltreatment of the witness and the witness's father stopped.<sup>651</sup> The men in the vehicle and Aslan Luluni conversed among themselves, and the witness heard either of the two men in the car being addressed as "commander".<sup>652</sup> Other than that the witness could not hear anything the men were saying.<sup>653</sup> The vehicle remained at the mill for 10 to 15 minutes.<sup>654</sup> During this time, the witness and the witness's father were not mistreated.<sup>655</sup> The witness conceded the possibility that the person whom she later identified as Ramush Haradinaj did not notice her.<sup>656</sup> When the vehicle left, the mistreatment recommenced.<sup>657</sup> After approximately two hours, Witness 38 and her family rejoined the convoy which was heading in the direction of the Albanian

<sup>641</sup> Witness 38, T. 729, 819.

<sup>642</sup> Witness 38, T. 731, 792.

<sup>643</sup> Witness 38, T. 731-732, 739, 792-795.

<sup>644</sup> Witness 38, T. 731-733.

<sup>645</sup> Witness 38, T. 729, 731, 785, 789, 830-831.

<sup>646</sup> Witness 38, T. 733-734.

<sup>647</sup> Witness 38, T. 734, 755-758, 822.

<sup>648</sup> Witness 38, T. 756-757.

<sup>649</sup> Witness 38, T. 734, 736-737, 752, 760.

<sup>650</sup> Witness 38, T. 823.

<sup>651</sup> Witness 38, T. 736, 740, 754.

<sup>652</sup> Witness 38, T. 733, 749, 755, 787, 821, 823.

<sup>653</sup> Witness 38, T. 754-755, 820-821.

<sup>654</sup> Witness 38, T. 756.

<sup>655</sup> Witness 38, T. 740, 756.

<sup>656</sup> Witness 38, T. 757.

<sup>657</sup> Witness 38, T. 740, 748, 754, 825.

border.<sup>658</sup> According to the witness, she was still naked and her hands and those of her father were still tied.<sup>659</sup> At some point, an escorting KLA member, dressed in civilian clothes, separated the witness and the witness's family from the convoy.<sup>660</sup> The KLA member kept them in the woods overnight.<sup>661</sup> Unidentified men tried to rape the witness's sister, but the KLA member prevented them from doing so.<sup>662</sup> According to the witness, she was still naked and tied at this time, but was allowed to dress on the second night.<sup>663</sup> However, in her statement to the MUP, the witness had said that she was allowed to dress after half an hour.<sup>664</sup> The witness and the witness's family were ordered by KLA members to go to Aslan Djoci's house in Jasić/Jasiq, which she described as the KLA headquarters.<sup>665</sup> There the witness and her family were told to stand in line at the edge of a hill or ravine, and a soldier ordered a boy to execute them.<sup>666</sup> At that point, someone intervened, and in the confusion the witness and her family managed to escape and make their way to Batusha/Batusa, in Đakovica/Gjakovë municipality, where they were offered assistance by VJ soldiers.<sup>667</sup>

166. Witness 58, a Roma from the village of Ponoševac/Ponoshec, in Đakovica/Gjakovë municipality,<sup>668</sup> testified that in the beginning of May 1998, KLA soldiers told her and her family to leave their home whereupon the witness moved to Witness 38's house, in Junik, in Dečani/Deçan municipality.<sup>669</sup> One morning, two or three weeks after Witness 58's arrival at Witness 38's house, firing began outside, with some bullets hitting the house.<sup>670</sup> Armed men in KLA uniforms with red badges on their arms came into the house and told those inside, in Albanian, that Witness 38 had killed people and that they had to leave.<sup>671</sup> Witness 58 took her children and they left for a place called Tofaj where they were stopped at a mill.<sup>672</sup> There they were encircled by armed soldiers in green KLA uniforms, including Aslan Luluni whom the witness knew

<sup>658</sup> Witness 38, T. 740-741, 793.

<sup>659</sup> Witness 38, T. 740-741.

<sup>660</sup> Witness 38, T. 741-742.

<sup>661</sup> Witness 38, T. 742.

<sup>662</sup> Witness 38, T. 742.

<sup>663</sup> Witness 38, T. 742-743.

<sup>664</sup> D1 (Witness 38 Statement to MUP), page 2.

<sup>665</sup> Witness 38, T. 743.

<sup>666</sup> Witness 38, T. 746-747.

<sup>667</sup> Witness 38, T. 747.

<sup>668</sup> Witness 58, T. 869.

<sup>669</sup> Witness 58, T. 870-871, 939.

<sup>670</sup> Witness 58, T. 871-872.

<sup>671</sup> Witness 58, T. 872, 876-877, 931.

<sup>672</sup> Witness 58, T. 881-882, 931-932.

from before.<sup>673</sup> Luluni told them that he had to search them for weapons and that they should all be killed since Witness 38 had worked with the Serbs.<sup>674</sup> Witness 58 testified that Luluni then started to mistreat her sister-in-law and her father-in-law.<sup>675</sup> The witness could not remember what Luluni did to her father-in-law, but testified that he searched Witness 58's sister-in-law's bag and then tried to rape her.<sup>676</sup> He was prevented from doing so by Witness 58's implorations.<sup>677</sup> Witness 58 did not notice whether Witness 38 or other relatives were naked.<sup>678</sup> Witness 58 and her family then managed to get away from the mill and headed towards the Jasić/Jasiq Mountain.<sup>679</sup> The following day, Witness 58 and her family arrived in Djoci/Gjocaj.<sup>680</sup> Both at the Jasić/Jasiq Mountain and in Djoci/Gjocaj there were a lot of KLA soldiers.<sup>681</sup> Several soldiers ordered Witness 58 and her family to line up and then pointed their guns at them.<sup>682</sup> The soldiers were about to shoot when someone intervened and prevented this.<sup>683</sup> Witness 58 and the witness's family then fled, with the soldiers shooting after them.<sup>684</sup> They arrived in Batusha/Batusa, in Đakovica/Gjakovë municipality, where they reached Serbian forces who took them to the town of Đakovica/Gjakovë.<sup>685</sup>

167. Dragan Živanović testified that in the beginning of June 1998, Witness 38, a Roma civilian, approached his men and told one of his officers that she and her family had been arrested by the KLA.<sup>686</sup> Živanović did not remember if she had mentioned any mistreatment at the hands of her captors, but he had noticed some bruises on her face.<sup>687</sup>

168. Based on the evidence, the Trial Chamber concludes that sometime in May 1998, KLA soldiers forced Witness 38 and her relatives to join a convoy of people. At some point, they were taken from the convoy and brought to a mill in Junik. She and her father were forced to undress. She further testified that she was kept naked for a considerable amount of time and that she was forced to re-join the convoy while still

<sup>673</sup> Witness 58, T. 882-883, 898-899.

<sup>674</sup> Witness 58, T. 884, 899.

<sup>675</sup> Witness 58, T. 883, 906.

<sup>676</sup> Witness 58, T. 883-884, 901, 907.

<sup>677</sup> Witness 58, T. 903-904.

<sup>678</sup> Witness 58, T. 933-936.

<sup>679</sup> Witness 58, T. 908, 933.

<sup>680</sup> Witness 58, T. 909.

<sup>681</sup> Witness 58, T. 908-909, 912.

<sup>682</sup> Witness 58, T. 912, 917-921.

<sup>683</sup> Witness 58, T. 909, 911, 916-921, 936-938.

<sup>684</sup> Witness 58, T. 920, 938.

<sup>685</sup> Witness 58, T. 923, 939.

<sup>686</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), paras 50-51.

<sup>687</sup> P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 58.

naked. Witness 38 also testified that the soldier forced her to eat a bank book, tore off half of her father's moustache, and tied both their hands with barbed wire. Witness 38 testified that a vehicle with at least two men arrived at the location where she was held and that she saw the men when she was sitting on the ground some 20-30 metres away. There were, according to Witness 38, bushes between herself and the men. Witness 38 heard the word "commander", but was not sure to whom it was addressed. Three to four months later, the witness recognized one of the men as Ramush Haradinaj when she saw him on television. The broadcast referred to Ramush Haradinaj as a commander.

169. Although the Trial Chamber is convinced that Witness 38 and Witness 58 were taken from their home, it considers that the testimonies of Witness 38 and 58 lack coherence and specificity with regard to important details. In a statement Witness 38 gave to the Serbian MUP in 2002, she stated that she was allowed to dress after half an hour, whereas in Court she testified that she was naked for about two days. Witness 58 confirmed that Witness 38 and her father were mistreated by the KLA soldier, but did not provide any details as to how they were ill-treated. Moreover, although Witness 58 was with Witness 38 for most of the time, she testified that she did not notice that Witness 38 was naked. Witness 58 also did not corroborate Witness 38's testimony on the arrival of a vehicle with two men. The Trial Chamber further considers that, absent any corroborating evidence, it is possible that Witness 38's delayed identification of Ramush Haradinaj was influenced by the suggestion of the television broadcast.

170. Due to the significant inconsistencies and lack of corroboration on important details, the Trial Chamber is not convinced, beyond a reasonable doubt that Witness 38 or her family were subjected to serious mental or physical suffering, or injury or to an act constituting a serious attack on human dignity. Likewise, the Trial Chamber cannot conclude that Witness 38 or her family were subjected to acts causing severe humiliation or degradation. The Trial Chamber further finds that the evidence before it is insufficient to conclude that Ramush Haradinaj was at the location where the alleged mistreatment of Witness 38 and her father took place. That a witness appeared to have difficulties in giving an adequate account of what he or she has experienced does not immediately lead the Trial Chamber to find the witness's testimony unreliable. Although the Trial Chamber gained the impression that both Witness 38 and Witness 58 had such difficulties, it considers their testimonies unreliable primarily on the basis of the objective incoherence, inconsistency, and lack of specificity on important details.

For these reasons, the Trial Chamber finds that all three Accused should be acquitted of this count.

### 6.3 Cruel treatment and torture of Dragoslav Stojanović and others (Count 4)

171. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment and torture of Dragoslav Stojanović and others in violation of the laws or customs of war. In the alternative, Ramush Haradinaj is charged with the commission of, or aiding and abetting the commission of, the crimes. The Trial Chamber has heard relevant evidence from Dragoslav Stojanović, Mijat Stojanović, and Veselin Stijović.

172. Dragoslav Stojanović, a Serb from the village of Dubrava/Dubravë, in Dečani/Deçan municipality,<sup>688</sup> testified that his house was about 150 metres from the family house of Ramush Haradinaj and that he knew Ramush Haradinaj from childhood.<sup>689</sup> Dragoslav Stojanović had not seen Ramush Haradinaj for about ten years prior to April 1998.<sup>690</sup> In the morning of 18 April 1998 the witness, along with his brother Mijat Stojanović and cousin Veselin Stijović went to check on the witness's house and cattle.<sup>691</sup> The Trial Chamber received evidence that Serbian police had taken positions on or adjacent to the yard of the Stojanović's house on 24 March during the attack on the Haradinaj family compound that was launched after the policeman Otović had been killed. At the time, the brothers were living as refugees in Dečani/Deçan.<sup>692</sup> At a certain point shots were fired at them from the Haradinaj house and armed men began to approach the house from all sides.<sup>693</sup> The men shouted in Albanian at the men inside to leave the house and surrender.<sup>694</sup> Grenades were thrown on the roof and a shot came through the window.<sup>695</sup> When the witness opened the door, Zecir Nimonaj, Daut Haradinaj, and 20 to 30 others, most dressed in camouflage, came in and began searching the house, kicking and beating the three men with rifle-butts.<sup>696</sup> The mistreatment of the witness resulted in the rupturing of his pancreas in two places and a

<sup>688</sup> Dragoslav Stojanović, T. 1844-1845, 1940.

<sup>689</sup> Dragoslav Stojanović, T. 1846-1847, 1853, 1915.

<sup>690</sup> Dragoslav Stojanović, T. 1915.

<sup>691</sup> Dragoslav Stojanović, T. 1846, 1863-1864.

<sup>692</sup> Dragoslav Stojanović, T. 1858-1861, 1865.

<sup>693</sup> Dragoslav Stojanović, T. 1864.

<sup>694</sup> Dragoslav Stojanović, T. 1865, 1868.

<sup>695</sup> Dragoslav Stojanović, T. 1865.

<sup>696</sup> Dragoslav Stojanović, T. 1865-1867.

number of other injuries.<sup>697</sup> After a while Nasim Haradinaj arrived and told the men to stop beating the witness and to take the three men to the headquarters.<sup>698</sup> While being brought there, armed local people along the way were beating them and firing shots past their heads.<sup>699</sup> The three men were taken to the house of Smajl Haradinaj.<sup>700</sup> Once inside, Daut Haradinaj, Zecir Nimonaj, and Besnik Haradinaj took the witness to a small room on the top floor to be interrogated while Mijat Stojanović and Veselin Stijović were left in the corridor outside the room.<sup>701</sup> The men were armed and wearing black clothes and caps bearing an insignia with a two headed eagle and “Kosovo Liberation Army” written in yellow letters.<sup>702</sup> Besnik Haradinaj interrogated the witness about the police, why he was in Dubrava/Dubravë without a permit from them, and why he had not joined “them”.<sup>703</sup> At a certain point, after taking a sip from a cup of coffee, the witness started to choke and was thrown out in the corridor where he passed out.<sup>704</sup> The witness regained consciousness after Mijat Stojanović and Veselin Stijović revived him although he did lose consciousness several times again after that.<sup>705</sup> Soon Veselin Stijović, and later Mijat Stojanović, were taken into the room and the witness heard them shouting while they were being ill-treated.<sup>706</sup>

173. While Dragoslav Stojanović lay in the corridor, a person the witness identified as Ramush Haradinaj came by with five or six soldiers.<sup>707</sup> The witness believed that the man was a commander as the soldiers guarding him greeted him with their right fists raised up to their foreheads.<sup>708</sup> He was wearing camouflage bottoms and a jumper, and was carrying an automatic rifle in his right hand.<sup>709</sup> He shoved the witness with his leg and said, “hello neighbour, do you recognize me”.<sup>710</sup> The witness claimed not to recognize him, and the man the witness identified as Ramush Haradinaj kicked him hard in the back and told him that he would recognize him soon.<sup>711</sup> The witness had already

<sup>697</sup> Dragoslav Stojanović, T. 1873.

<sup>698</sup> Dragoslav Stojanović, T. 1866, 1904.

<sup>699</sup> Dragoslav Stojanović, T. 1866, 1869.

<sup>700</sup> Dragoslav Stojanović, T. 1868.

<sup>701</sup> Dragoslav Stojanović, T. 1871-1872, 1884, 1918.

<sup>702</sup> Dragoslav Stojanović, T. 1873-1875; P9 (KLA insignia).

<sup>703</sup> Dragoslav Stojanović, T. 1872-1873, 1881-1882.

<sup>704</sup> Dragoslav Stojanović, T. 1872, 1882-1883.

<sup>705</sup> Dragoslav Stojanović, T. 1885-1886, 1916, 1918.

<sup>706</sup> Dragoslav Stojanović, T. 1890, 1918-1919, 1928.

<sup>707</sup> Dragoslav Stojanović, T. 1886.

<sup>708</sup> Dragoslav Stojanović, T. 1886-1887, 1920-1921, 1935.

<sup>709</sup> Dragoslav Stojanović, T. 1886.

<sup>710</sup> Dragoslav Stojanović, T. 1886, 1920.

<sup>711</sup> Dragoslav Stojanović, T. 1886, 1888, 1920, 1932.

suffered serious internal injuries from beatings, was in a lot of pain and had blood on his face.<sup>712</sup> The man the witness identified as Ramush Haradinaj stayed in the corridor for at least five to six minutes.<sup>713</sup> Dragoslav Stojanović stated that at least three other people also kicked him in the corridor and asked him if he recognized them.<sup>714</sup> Dragoslav Stojanović was unable to recognize the men accompanying Ramush Haradinaj, stating that this was because he had passed out multiple times, and it hurt him just to look around.<sup>715</sup> Soon after the man had left, a person whom the others called “the Russian” came and started to severely kick and beat the witness with a metre long metal pipe, telling the witness that what was being done to him was nothing compared to what was being done to their men by the police.<sup>716</sup> The witness kept on going in and out of consciousness and at one point began vomiting blood.<sup>717</sup> The witness and Veselin Stijović were eventually let out into the yard and washed the blood off their faces at the water pump.<sup>718</sup> When they came back in the house, Hilmi Haradinaj offered the witness something to drink.<sup>719</sup> After about 20 minutes Nasim Haradinaj and another soldier took the witness, Mijat Stojanović and Veselin Stijović to the witness’s house and told them to remove the straw around the fig tree so they could see if there were any weapons hidden there.<sup>720</sup> Once this was done, they blindfolded the three men and drove them to Baboloć/Baballoq, in Deçan/Dečani municipality, and stopped near a refugee camp.<sup>721</sup> Here the three men were told by Nasim Haradinaj to walk straight ahead and if they looked back they would be shot.<sup>722</sup> Mijat Stojanović went to get help for the witness and one of the refugees came with a car and took him to a health centre in Dečani/Deçan.<sup>723</sup> From there the witness was taken to the hospital in Peć/Pejë and then in an ambulance to the hospital in Priština/Prishtinë where he spent 28 days and underwent surgery for his injuries.<sup>724</sup>

<sup>712</sup> Dragoslav Stojanović, T. 1889-1890.

<sup>713</sup> Dragoslav Stojanović, T. 1922.

<sup>714</sup> Dragoslav Stojanović, T. 1921.

<sup>715</sup> Dragoslav Stojanović, T. 1885-1886, 1931-1933.

<sup>716</sup> Dragoslav Stojanović, T. 1891-1892.

<sup>717</sup> Dragoslav Stojanović, T. 1891-1892.

<sup>718</sup> Dragoslav Stojanović, T. 1893-1894, 1935.

<sup>719</sup> Dragoslav Stojanović, T. 1894, 1935.

<sup>720</sup> Dragoslav Stojanović, T. 1894-1895.

<sup>721</sup> Dragoslav Stojanović, T. 1895-1896.

<sup>722</sup> Dragoslav Stojanović, T. 1896.

<sup>723</sup> Dragoslav Stojanović, T. 1896.

<sup>724</sup> Dragoslav Stojanović, T. 1898-1900, 1903; P33 (Release sheet issued by Priština/Prishtinë hospital, 6 October 2005); P34 (News footage dealing with the beating of Dragoslav Stojanović, Mijat Stojanović, and Veselin Stijović).

174. Mijat Stojanović, from the village of Dubrava/Dubravë in Dečani/Deçan municipality,<sup>725</sup> testified that he had gone to school with Ramush Haradinaj from the ages of 12 to 15, though Ramush Haradinaj was around four and a half years younger.<sup>726</sup> The witness further testified that he left Dubrava/Dubravë in 1982 to live in Belgrade, returning permanently in 1995.<sup>727</sup> While he would return home for annual leave between 1982 and 1995, he did not remember when he last saw Ramush Haradinaj prior to 18 April 1998.<sup>728</sup> Mijat Stojanović also testified that on 18 April 1998 around 8:30 a.m., he went to his home in Dubrava/Dubravë with his brother Dragoslav Stojanović and his cousin Veselin Stijović.<sup>729</sup> After a short time, he heard one shot from the direction of Dubrava/Dubravë and then more shots coming from the direction of Glodane/Gllogjan whereupon the three men entered the house to take cover.<sup>730</sup> The shooting lasted for approximately 40 minutes.<sup>731</sup> The shots smashed the window panes of the house, and the car that was parked out front was damaged on all sides.<sup>732</sup> The three men were unarmed.<sup>733</sup> The men that approached the home wore a mixture of camouflage uniforms and civilian clothing with KLA insignia and were armed with small arms.<sup>734</sup> The first person through the door was Ramush Haradinaj's brother, Daut Haradinaj, followed by Xhavit Nimonaj.<sup>735</sup> The armed men ordered the three men to lie face down and then started beating, kicking and hitting them with rifle butts.<sup>736</sup> The men also verbally abused the three men, referencing their Serb ethnicity as well as cursing their Serbian mothers.<sup>737</sup> Nasim Haradinaj arrived after approximately twenty minutes and told the men to stop the beating.<sup>738</sup>

175. According to Mijat Stojanović, he was taken from the house along with Dragoslav Stojanović and Veselin Stijović to what was referred to as the "Glodane/Gllogjan headquarters", which was Smajl Haradinaj's house.<sup>739</sup> While they

<sup>725</sup> Mijat Stojanović, T. 1985.

<sup>726</sup> Mijat Stojanović, T. 2046.

<sup>727</sup> Mijat Stojanović, T. 2047.

<sup>728</sup> Mijat Stojanović, T. 2050.

<sup>729</sup> Mijat Stojanović, T. 2019-2020.

<sup>730</sup> Mijat Stojanović, T. 2021, 2051.

<sup>731</sup> Mijat Stojanović, T. 2021.

<sup>732</sup> Mijat Stojanović, T. 2021.

<sup>733</sup> Mijat Stojanović, T. 2022.

<sup>734</sup> Mijat Stojanović, T. 2022-2023; Exhibit P9 (KLA insignia).

<sup>735</sup> Mijat Stojanović, T. 2023.

<sup>736</sup> Mijat Stojanović, T. 2023-2025.

<sup>737</sup> Mijat Stojanović, T. 2024.

<sup>738</sup> Mijat Stojanović, T. 2024-2025, 2076, 2088.

<sup>739</sup> Mijat Stojanović, T. 2025.

were walking towards the house, the men continued to verbally abuse the captives as well as hitting them and firing bullets past them.<sup>740</sup> Mijat Stojanović stated that they were told not to look right or left but just to keep their heads down.<sup>741</sup> On the way, the witness testified that he saw Ramush Haradinaj in green camouflage and a black beret standing outside of his house together with two or three other individuals.<sup>742</sup> The witness was at the time approximately 70 metres from the person he believed was Ramush Haradinaj.<sup>743</sup> At Smajl Haradinaj's house, Dragoslav Stojanović was taken into a small room on the top floor while the other two waited in the corridor.<sup>744</sup> The witness could hear Dragoslav Stojanović scream while being beaten.<sup>745</sup> A short while later, Dragoslav Stojanović was thrown back out into the corridor.<sup>746</sup> He was clutching his stomach, had blood on his face, lay curled-up on the concrete floor, and was unable to speak.<sup>747</sup> At that point, Veselin Stijović was taken into the room and the witness could hear him moan and scream.<sup>748</sup> The men then brought the witness into the room, where he could see Veselin Stijović standing, naked from the waist up, facing a corner.<sup>749</sup> Zeqir Nimonaj, Nasim Haradinaj, and Besnik Haradinaj, Ramush Haradinaj's cousin, were in the room along with two other men that the witness did not know.<sup>750</sup> Zeqir Nimonaj, who was wearing a camouflage uniform, ordered the witness to strip down to his waist and he complied.<sup>751</sup> All of the men in the room wore KLA insignia.<sup>752</sup> The witness and Veselin Stijović were interrogated and beaten by all the men present.<sup>753</sup> The men accused the witness of being a spy.<sup>754</sup> The beating lasted a long time, after which the two men were thrown back out into the hallway.<sup>755</sup> The witness did not have any blood on him while Veselin Stijović was in a lot of pain and had blood around his ears.<sup>756</sup> There Dragoslav Stojanović was lying in a pool of blood.<sup>757</sup> He had a head

<sup>740</sup> Mijat Stojanović, T. 2025, 2091.

<sup>741</sup> Mijat Stojanović, T. 2026, 2062-2063.

<sup>742</sup> Mijat Stojanović, T. 2026, 2052-2058, 2062-2067, 2070-2071; D27 (Photograph of Haradinaj house, with marking); D28 (Photograph of Haradinaj house, with marking).

<sup>743</sup> Joint Motion on Additional Agreed Facts, 30 November 2007, para. 2.

<sup>744</sup> Mijat Stojanović, T. 2028.

<sup>745</sup> Mijat Stojanović, T. 2029.

<sup>746</sup> Mijat Stojanović, T. 2029-2030.

<sup>747</sup> Mijat Stojanović, T. 2030, 2094.

<sup>748</sup> Mijat Stojanović, T. 2029.

<sup>749</sup> Mijat Stojanović, T. 2030.

<sup>750</sup> Mijat Stojanović, T. 2030-2031, 2087-2088.

<sup>751</sup> Mijat Stojanović, T. 2030-2031.

<sup>752</sup> Mijat Stojanović, T. 2031.

<sup>753</sup> Mijat Stojanović, T. 2031-2032, 2088.

<sup>754</sup> Mijat Stojanović, T. 2039-2040, 2091.

<sup>755</sup> Mijat Stojanović, T. 2032.

<sup>756</sup> Mijat Stojanović, T. 2032.

injury, a nose injury and had vomited blood.<sup>758</sup> His condition had worsened since the witness had entered the room.<sup>759</sup> He was going in and out of consciousness.<sup>760</sup> A person referred to as the “Russian” was also present, and he hit Dragoslav Stojanović even though he was unconscious.<sup>761</sup> At some point, Nasim Haradinaj approached the three men in the corridor and told them that they would be released.<sup>762</sup> He also asked the witness why they did not “join them”.<sup>763</sup> The witness thought that Nasim Haradinaj was one of the men in charge because the other soldiers saluted him.<sup>764</sup> Nasim Haradinaj and a third person took the witness out of the house in order to fetch his car.<sup>765</sup> On the way, he testified that he saw Hilmi and Ramush Haradinaj in the courtyard of Smajl Haradinaj’s house, along with other soldiers standing in groups of two or three.<sup>766</sup> Mijat Stojanović testified that he was only present in the courtyard for a short period.<sup>767</sup> When the witness realized that his car was broken beyond repair, Nasim Haradinaj and the third person brought him back into Smajl Haradinaj’s house.<sup>768</sup> After asking permission from Nasim Haradinaj, the witness went upstairs to get Dragoslav Stojanović, whereupon the two and Veselin Stijović started to walk back to Dubrava/Dubravë.<sup>769</sup> A tractor was used to carry Dragoslav Stojanović.<sup>770</sup> When they arrived at the witness’s house, Nasim Haradinaj and one other person searched the garden and the house for weapons but did not find any.<sup>771</sup> Nasim Haradinaj then cut curtains and used them to blindfold the three men.<sup>772</sup> After that, a car pulled up and the three men were taken to Baboloć/Baballoq.<sup>773</sup> There, Nasim Haradinaj took off their blindfolds and ordered them to walk away and not to look back or else they would be fired upon.<sup>774</sup> The Serbs in Baboloć/Baballoq came and took the three men to a health centre in Dečani/Deçan,

<sup>757</sup> Mijat Stojanović, T. 2032.

<sup>758</sup> Mijat Stojanović, T. 2032-2033, 2096.

<sup>759</sup> Mijat Stojanović, T. 2095-2096.

<sup>760</sup> Mijat Stojanović, T. 2033-2034, 2092-2096.

<sup>761</sup> Mijat Stojanović, T. 2033.

<sup>762</sup> Mijat Stojanović, T. 2034, 2096.

<sup>763</sup> Mijat Stojanović, T. 2034.

<sup>764</sup> Mijat Stojanović, T. 2071-2072.

<sup>765</sup> Mijat Stojanović, T. 2034-2035.

<sup>766</sup> Mijat Stojanović, T. 2034-2036, 2067-2069, 2098.

<sup>767</sup> Mijat Stojanović, T. 2069.

<sup>768</sup> Mijat Stojanović, T. 2036-2037.

<sup>769</sup> Mijat Stojanović, T. 2037.

<sup>770</sup> Mijat Stojanović, T. 2037-2038.

<sup>771</sup> Mijat Stojanović, T. 2038, 2041.

<sup>772</sup> Mijat Stojanović, T. 2041.

<sup>773</sup> Mijat Stojanović, T. 2041.

<sup>774</sup> Mijat Stojanović, T. 2041, 2043.

where they were transferred immediately to Peć/Pejë.<sup>775</sup> Mijat Stojanović received medical attention in a hospital in Peć/Pejë.<sup>776</sup> He refused to be admitted, but had to return there every day with Veselin Stijović to receive treatment.<sup>777</sup> Mijat Stojanović gave an interview to a Serbian magazine on 25 April 1998, in which he stated that Nasim Haradinaj was probably the “boss” of the men who beat him.<sup>778</sup> While he gave some names of those present and participating in the beating, he made no mention of Ramush Haradinaj.<sup>779</sup> Mijat Stojanović also gave an account of the incident to the Humanitarian Law Center on 25 April 1998, but made no mention of Ramush Haradinaj having been present.<sup>780</sup>

176. Veselin Stijović, a Serb from the village of Dašinovac/Dasinoc, in Dečani/Deçan municipality,<sup>781</sup> testified that the day before Orthodox Easter in April 1998 he accompanied his cousins Dragoslav and Mijat Stojanović back to their home in Dubrava/Dubravë, in Dečani/Deçan municipality.<sup>782</sup> The cousins had left their home the day before for safety.<sup>783</sup> While the three men were in the house, they were shot at with automatic weapons and hand-held launchers from the direction of Glogjan/Gllogjan “and all directions”.<sup>784</sup> The shooting continued for about 45 minutes.<sup>785</sup> The men did not respond to the fire since they did not have any weapons.<sup>786</sup> After the shooting had ceased, the three men heard shouts in Albanian outside, asking for them to come out.<sup>787</sup> There were 20 or 30 armed men in front of the house, most of them in camouflage uniforms with KLA insignia, and some in civilian clothes.<sup>788</sup> The witness described the KLA insignia as a black two-headed eagle against a red background and with the words “Kosovo Liberation Army”.<sup>789</sup> When Dragoslav Stojanović opened the door the men rushed into the house.<sup>790</sup> Dragoslav Stojanović was beaten and all three men were

<sup>775</sup> Mijat Stojanović, T. 2042-2043.

<sup>776</sup> Mijat Stojanović, T. 2043.

<sup>777</sup> Mijat Stojanović, T. 2043.

<sup>778</sup> D25 (*Ilustrovana Politika* article, 25 April 1998).

<sup>779</sup> D25 (*Ilustrovana Politika* article, 25 April 1998); Mijat Stojanović, T. 2070.

<sup>780</sup> D29 (Incident Report, Humanitarian Law Center, 25 April 1998 ); Mijat Stojanović, T. 2085-2086; Marijana Andelković, T. 657-661.

<sup>781</sup> Veselin Stijović, T. 2119.

<sup>782</sup> Veselin Stijović, T. 2124-2126, 2177.

<sup>783</sup> Veselin Stijović, T. 2125, 2172.

<sup>784</sup> Veselin Stijović, T. 2125-2127.

<sup>785</sup> Veselin Stijović, T. 2125-2127.

<sup>786</sup> Veselin Stijović, T. 2127.

<sup>787</sup> Veselin Stijović, T. 2126-2128.

<sup>788</sup> Veselin Stijović, T. 2128.

<sup>789</sup> Veselin Stijović, T. 2128.

<sup>790</sup> Veselin Stijović, T. 2126-2127.

ordered to lie down.<sup>791</sup> More men entered the house and the three men were beaten, kicked, and hit by rifle butts as they were lying down.<sup>792</sup> The witness testified that one man called Nasim (the witness believed, but was not certain, that his last name was Haradinaj) was trying to protect the three men.<sup>793</sup> After a while the men that had entered the house took the witness and Dragoslav and Mijat Stojanović to Glodane/Gllogjan.<sup>794</sup> The witness testified that there were many soldiers and civilians, all armed, along the road beating the three men.<sup>795</sup> Some of the soldiers were wearing KLA insignia.<sup>796</sup> The soldiers were swearing at the three men, saying that Kosovo/Kosova belonged to the Albanians, while continuing to beat them.<sup>797</sup> The three men were in pain, bleeding, and Dragoslav Stojanović was barely able to walk.<sup>798</sup> Once in Glodane/Gllogjan, the three men were taken inside a house which the witness believed was a headquarters because of the many soldiers there.<sup>799</sup> The witness and Mijat Stojanović were left in a corridor while Dragoslav Stojanović was brought into a small room.<sup>800</sup> When he was thrown out of the room after about half an hour he was in a very serious condition, vomiting blood and drifting in and out of consciousness.<sup>801</sup> Mijat Stojanović was then brought into the room and the witness could hear him being beaten.<sup>802</sup> After about an hour he was thrown out and the witness was brought in. In the room there were two or three soldiers.<sup>803</sup> The witness was asked, among other things, whether he had any weapons, although he believed that the questioning was merely a pretext for the soldiers to beat him.<sup>804</sup> The witness did not recognize anybody, but Dragoslav and Mijat Stojanović later told him who some of them were.<sup>805</sup> Among the soldiers were two men known to Dragoslav and Mijat Stojanović, namely Daut Haradinaj and a man called “Zeqir”.<sup>806</sup> The witness was severely beaten for about an hour, with a bat or baton, fists, and rifle

<sup>791</sup> Veselin Stijović, T. 2126-2129.

<sup>792</sup> Veselin Stijović, T. 2126-2129.

<sup>793</sup> Veselin Stijović, T. 2132, 2162-2164.

<sup>794</sup> Veselin Stijović, T. 2129, 2132.

<sup>795</sup> Veselin Stijović, T. 2129-2130, 2132-2134, 2174-2175.

<sup>796</sup> Veselin Stijović, T. 2133-2134.

<sup>797</sup> Veselin Stijović, T. 2130-2131, 2133, 2182.

<sup>798</sup> Veselin Stijović, T. 2134, 2167.

<sup>799</sup> Veselin Stijović, T. 2132, 2135.

<sup>800</sup> Veselin Stijović, T. 2133-2134.

<sup>801</sup> Veselin Stijović, T. 2135-2136, 2139.

<sup>802</sup> Veselin Stijović, T. 2135, 2137.

<sup>803</sup> Veselin Stijović, T. 2135.

<sup>804</sup> Veselin Stijović, T. 2137.

<sup>805</sup> Veselin Stijović, T. 2132.

<sup>806</sup> Veselin Stijović, T. 2132, 2137-2138, 2165-2166.

butts.<sup>807</sup> After that Mijat Stojanović was brought back in and both of them were beaten again and then thrown out of the room.<sup>808</sup> The witness saw that some soldiers were beating Dragoslav Stojanović, who was lying in the corridor.<sup>809</sup> While in the corridor, the witness met a person he knew, Deli Lekaj, who was armed and wearing civilian clothes.<sup>810</sup> Lekaj told him that should he get out of the house alive he should not go back to Dašinovac/Dasinoc as it was only a matter of time before they would put up a roadblock in Požar/Pozhare, on the road leading to Dašinovac/Dasinoc, and the witness would risk being imprisoned again.<sup>811</sup> Dragoslav Stojanović and the witness were soon taken out in the yard in front of the house and forced to wash the blood off at a water-pump.<sup>812</sup> Dragoslav Stojanović had to pump the water for the witness despite his condition, and vice versa.<sup>813</sup> The three men were then ordered to return to Dubrava/Dubravë by foot, escorted by soldiers.<sup>814</sup> Dragoslav Stojanović was in such bad condition that Mijat Stojanović and the witness put him on a tractor that was going in the same direction.<sup>815</sup> Once back at the house of Dragoslav and Mijat Stojanović in Dubrava/Dubravë, the escorting soldiers blindfolded the three men, tied their hands, put them in a car and took them to an area close to the village of Babaloć/Baballoq, in Dečani/Deçan municipality.<sup>816</sup> One of the men in the car was Nasim.<sup>817</sup> The three men were untied and told to walk straight ahead without looking back.<sup>818</sup> The three men eventually managed to reach the hospital in Dečani/Deçan.<sup>819</sup> There, they received first-aid and were told to go to the hospital in Peć/Pejë, where Dragoslav Stojanović was X-rayed and sent by ambulance to Priština/Prishtinë.<sup>820</sup> Mijat Stojanović and Veselin Stijović were told to stay at the hospital in Peć/Pejë for treatment, which they refused.<sup>821</sup> Veselin Stijović had suffered cuts to his ears and head, bruises to his back and backside, and he experienced pain for about 20 days thereafter.<sup>822</sup>

<sup>807</sup> Veselin Stijović, T. 2137-2139.

<sup>808</sup> Veselin Stijović, T. 2137, 2139.

<sup>809</sup> Veselin Stijović, T. 2139.

<sup>810</sup> Veselin Stijović, T. 2138, 2140.

<sup>811</sup> Veselin Stijović, T. 2138, 2140, 2180.

<sup>812</sup> Veselin Stijović, T. 2141-2142.

<sup>813</sup> Veselin Stijović, T. 2141-2142.

<sup>814</sup> Veselin Stijović, T. 2141, 2143.

<sup>815</sup> Veselin Stijović, T. 2141, 2143-2144.

<sup>816</sup> Veselin Stijović, T. 2143, 2145-2146.

<sup>817</sup> Veselin Stijović, T. 2145.

<sup>818</sup> Veselin Stijović, T. 2143, 2146.

<sup>819</sup> Veselin Stijović, T. 2144, 2146-2148.

<sup>820</sup> Veselin Stijović, T. 2148.

<sup>821</sup> Veselin Stijović, T. 2148.

<sup>822</sup> Veselin Stijović, T. 2148-2149.

177. Based on the evidence, the Trial Chamber is convinced that on 18 April 1998, KLA soldiers entered the Stojanović family house in Dubrava/Dubravë. There, they kicked, beat, and hit with rifle butts Dragoslav Stojanović, Mijat Stojanović, and Veselin Stijović. The KLA soldiers then brought the three men, in a poor condition, to the house of Smajl Haradinaj in Glodane/Gllogjan. A KLA soldier interrogated Dragoslav Stojanović about the police, why he was in Dubrava/Dubravë without a permit, and why he had not joined “them”. Dragoslav Stojanović was then thrown into a corridor where he was further beaten as he lay on the floor in pain, injured, vomiting blood, and drifting in and out of consciousness. Mijat Stojanović and Veselin Stijović were interrogated in turn. Mijat Stojanović was accused of being a spy. Veselin Stijović was asked whether he had any weapons. Veselin Stijović was beaten with a baton, fists, and rifle butts, was in pain, and bloody around the ears. Once the beating was over, KLA soldiers brought Dragoslav Stojanović, Mijat Stojanović, and Veselin Stijović back to the Stojanović family’s house, in order to search for weapons. Dragoslav Stojanović was in such a bad state that he had to be transported by a tractor, while Veselin Stijović had cuts on his head and bruises on his back. As a result of the ill-treatment, Dragoslav Stojanović underwent surgery and was hospitalized for 28 days. Mijat Stojanović and Veselin Stijović received hospital treatment over several days. On the basis of this evidence, the Trial Chamber is convinced that the ill-treatment caused severe pain and suffering to the three men and was intentionally inflicted with the aim of obtaining information as well as punishing the three men.

178. Dragoslav Stojanović testified that while he was lying in the corridor, Ramush Haradinaj arrived and, after asking if he recognized him, kicked Dragoslav Stojanović in the back. The Trial Chamber is convinced that Dragoslav Stojanović believed that this person was Ramush Haradinaj. However, given the circumstances under which this occurred, and the lack of corroboration, the Trial Chamber must proceed with utmost caution when evaluating whether the person Dragoslav Stojanović believed he recognized was indeed Ramush Haradinaj. In this respect, Dragoslav Stojanović testified that at least three other persons also asked him a similar question and kicked him while he was lying on the floor. Although Dragoslav Stojanović testified that Ramush Haradinaj was present in the corridor between five and six minutes, he failed to recognize any of the other men accompanying Ramush Haradinaj, giving as a reason that his condition was too poor to allow him to have a proper look. All three witnesses

testified that Dragoslav Stojanović was in a very poor condition and drifting in and out of consciousness. Dragoslav Stojanović also testified that he had not seen Ramush Haradinaj for about ten years. The Trial Chamber has also considered what weight to give to the fact that in contemporaneous conversations, Ramush Haradinaj was not mentioned as having been involved in the ill-treatment of Dragoslav Stojanović. Had the Trial Chamber been presented with some evidence of a contemporaneous account of Ramush Haradinaj's presence, the Trial Chamber could have excluded the possibility of a delayed assertion of memory by Dragoslav Stojanović. However, absent such evidence, the Trial Chamber can make no such finding. In this respect therefore, the Trial Chamber finds no grounds that would weigh in favour of Dragoslav Stojanović having positively identified Ramush Haradinaj. This said, the fact that Ramush Haradinaj was not mentioned in any contemporaneous accounts is not considered by the Trial Chamber as an indication that Dragoslav Stojanović intentionally provided false testimony as to the presence and participation of Ramush Haradinaj in his ill-treatment. Moreover, the Trial Chamber rejects the argument that Dragoslav Stojanović may have falsely implicated Ramush Haradinaj because the witness held Ramush Haradinaj, or his family, responsible for the loss of the Stojanović family house. Having considered the evidence, the Trial Chamber finds that the conditions under which Dragoslav Stojanović viewed the person he believed to be Ramush Haradinaj were such that it is unable to conclude beyond a reasonable doubt that it was indeed Ramush Haradinaj. The Trial Chamber finds that paragraph 59 under Count 4 of the Indictment charges Ramush Haradinaj with committing cruel treatment and torture against Dragoslav Stojanović alone, at the exclusion of Mijat Stojanović and Veselin Stijović. Furthermore, the Trial Chamber has heard no evidence indicating that Ramush Haradinaj personally ill-treated Mijat Stojanović and Veselin Stijović.

179. Mijat Stojanović testified that he saw Ramush Haradinaj when Dragoslav Stojanović, Mijat Stojanović, and Veselin Stijović were taken from the Stojanović family house towards Glogjan/Gllogjan, as well as in the yard outside Smajl Haradinaj's house once the beatings were over. Both alleged sightings were made under difficult and traumatic circumstances. On the first occasion Mijat Stojanović testified that, while being told to keep his head down, being beaten and verbally abused, and as shots were fired past him, he recognized Ramush Haradinaj from a significant distance. Similarly, the second alleged sighting of Ramush Haradinaj by Mijat Stojanović took

place after he had been ill-treated, during the short time he was present in the yard. In view of the Trial Chamber's findings in relation to the presence of Ramush Haradinaj in the corridor, it cannot consider that alleged sighting by Dragoslav Stojanović as corroboration of these two sightings. Even assuming that Mijat Stojanović did recognize Ramush Haradinaj, the Trial Chamber finds that the evidence presented is not sufficient to conclude that he in any way assisted, encouraged, or lent moral support either prior to or after the ill-treatment of Mijat Stojanović, Veselin Stijović, and Dragoslav Stojanović. Based on these considerations, the Trial Chamber is not convinced beyond a reasonable doubt that Ramush Haradinaj was personally involved in the mistreatment of the three victims on 18 April 1998. In section 3.2.3, above, the Trial Chamber found that an armed conflict existed in Kosovo/Kosova from and including 22 April onwards. For these reasons, the Trial Chamber concludes that all three Accused should be acquitted of all charges in Count 4.

#### 6.4 Cruel treatment and torture of Staniša Radošević and Novak Stijović (Count 6)

180. All three Accused are charged, as participants in a joint criminal enterprise, with cruel treatment and torture of Staniša Radošević and Novak Stijović in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Novak Stijović, Staniša Radošević, Miloica Vlahović, and Marijana Anđelković.

181. Novak Stijović, a Serb,<sup>823</sup> testified that on 21 April 1998, he worked the night shift.<sup>824</sup> In Dečani/Deçan, he met Rosanda Radošević<sup>825</sup> and her son Staniša Radošević, from Dašinovac/Dashinoc, in Dečani/Deçan municipality, and together they travelled homewards.<sup>826</sup> Novak Stijović drove his red Yugo, while Rosanda Radošević and Staniša Radošević drove their grey Lada.<sup>827</sup> When they reached Požar/Pozhare, they were stopped at a checkpoint by KLA soldiers pointing their guns at them.<sup>828</sup> Some of the soldiers were in uniform with KLA insignia, others were in civilian clothing.<sup>829</sup> Novak Stijović remembered seeing among them Kujtim Berisha, an Albanian from

<sup>823</sup> Novak Stijović, T. 7142-7143, 7162.

<sup>824</sup> Novak Stijović, T. 7145-7146.

<sup>825</sup> Based on the evidence, the Trial Chamber understands Rosa and Rosanda Radošević to refer to the same person.

<sup>826</sup> Novak Stijović, T. 7145-7146.

<sup>827</sup> Novak Stijović, T. 7146.

<sup>828</sup> Novak Stijović, T. 7147, 7160.

<sup>829</sup> Novak Stijović, T. 7149, 7168.

Požar/Pozhare and a certain “Jusuf”, whose last name he had forgotten.<sup>830</sup> The KLA soldiers asked them where they were going, and when Novak Stijović and Rosanda and Staniša Radošević told them that they were going home, the soldiers answered that they could not go home and that they had no business there anymore.<sup>831</sup> No one seemed to be in charge, but after at most ten minutes Jusuf ordered that Novak Stijović and Rosanda and Staniša Radošević be taken to Glođane/Gllogjan, in Dečani/Deçan municipality.<sup>832</sup> KLA soldiers guarded and drove them in their cars towards Glođane/Gllogjan.<sup>833</sup>

182. At the entrance to Glođane/Gllogjan, Novak Stijović’s car broke down and they encountered approximately 30-50 KLA soldiers, most of whom were armed.<sup>834</sup> No one seemed to be in charge.<sup>835</sup> When they got out of the car, the soldiers punched, kicked and hit Novak Stijović and Staniša Radošević with rods and rifle-butts for approximately twenty to thirty minutes.<sup>836</sup> Novak Stijović was beaten on his back, but felt no immediate injuries.<sup>837</sup> Novak Stijović had no blood on him, but Staniša Radošević did.<sup>838</sup> Novak Stijović believed that Staniša Radošević bled from a wound on the back of his head inflicted by a hit from a rifle-butt.<sup>839</sup> Rosanda Radošević was present, but not beaten.<sup>840</sup> The soldiers asked them questions in Serbian about the location and number of police forces, and about individual members of the police forces, including the head of the police in Dečani/Deçan and the commander of the police station in Rznić/Irzniq.<sup>841</sup> The soldiers also asked if they had relatives in the police, if any of Novak Stijović’s co-villagers were members of the police, and which police officers were responsible for shooting Albanians on 24 March.<sup>842</sup> Individuals whom Novak Stijović did not identify told them that they should not return home but rather go to Serbia.<sup>843</sup> Novak Stijović did not lose consciousness but he believed that

<sup>830</sup> Novak Stijović, T. 7149, 7169.

<sup>831</sup> Novak Stijović, T. 7150.

<sup>832</sup> Novak Stijović, T. 7172-7173, 7188.

<sup>833</sup> Novak Stijović, T. 7149-7150, 7172, 7188.

<sup>834</sup> Novak Stijović, T. 7151, 7171-7172.

<sup>835</sup> Novak Stijović, T. 7172-7173, 7187-7188.

<sup>836</sup> Novak Stijović, T. 7151, 7189.

<sup>837</sup> Novak Stijović, T. 7161-7162.

<sup>838</sup> Novak Stijović, T. 7153.

<sup>839</sup> Novak Stijović, T. 7153.

<sup>840</sup> Novak Stijović, T. 7153, 7185, 7188.

<sup>841</sup> Novak Stijović, T. 7151-7152, 7157.

<sup>842</sup> Novak Stijović, T. 7173-7274, 7188, 7191-7192.

<sup>843</sup> Novak Stijović, T. 7152-7153.

Staniša Radošević briefly did.<sup>844</sup> The soldiers asked them whether they had any weapons, to which Novak Stijović answered that he had a rifle and Staniša Radošević answered that he also had one.<sup>845</sup> The soldiers asked them which one of them could go get the rifles and as neither of them could make up their minds, the soldiers decided to send Staniša Radošević.<sup>846</sup> Persons whom Novak Stijović did not identify gave Staniša Radošević a KLA emblem, which Novak Stijović believed to serve as a laissez-passer, and Staniša Radošević left in his car.<sup>847</sup>

183. Unidentified persons brought Novak Stijović and Rosanda Radošević from the direction of Rznić/Irnziq to a private two-storey house at the entrance of Glogjan/Gllogjan, which was the nearest house to where Novak Stijović's car had stopped.<sup>848</sup> They entered straight into a small room with a metal door and bars on the window, where they remained locked up for approximately an hour to an hour and a half.<sup>849</sup> There was one soldier in the room.<sup>850</sup> A man came and told Novak Stijović and Rosanda Radošević that they could leave, which they did.<sup>851</sup> They asked the soldiers where they could go and someone answered that they could go anywhere they pleased, except home.<sup>852</sup> Novak Stijović could not start his car.<sup>853</sup> Some KLA soldiers towed the car, with Novak Stijović and Rosanda Radošević inside, about seven or eight kilometres to the village of Prilep/Prelep, in Dečani/Deçan municipality, on the main road between Dečani/Deçan and Đakovica/Gjakovë, where the KLA soldiers left them.<sup>854</sup> Novak Stijović testified that of the six Serbs whom he knew had been stopped at the Požar/Pozhare checkpoint, including his father, only he and Staniša Radošević had been beaten.<sup>855</sup> Approximately three to five months later, Novak Stijović began to have spinal problems, which were occasional at first and not so strong.<sup>856</sup> Marijana

<sup>844</sup> Novak Stijović, T. 7153.

<sup>845</sup> Novak Stijović, T. 7153-7154.

<sup>846</sup> Novak Stijović, T. 7153-7154.

<sup>847</sup> Novak Stijović, T. 7156, 7158.

<sup>848</sup> Novak Stijović, T. 7154, 7161, 7172, 7192-7193.

<sup>849</sup> Novak Stijović, T. 7154, 7193.

<sup>850</sup> Novak Stijović, T. 7191.

<sup>851</sup> Novak Stijović, T. 7154-7155.

<sup>852</sup> Novak Stijović, T. 7155.

<sup>853</sup> Novak Stijović, T. 7156.

<sup>854</sup> Novak Stijović, T. 7155-7157.

<sup>855</sup> Novak Stijović, T. 7160-7161, 7184-7187.

<sup>856</sup> Novak Stijović, T. 7161, 7182-7183.

Anđelković spoke to Novak Stijović on 25 April 1998 in Dečani/Deçan and generally confirmed his account of the events of 22 April 1998.<sup>857</sup>

184. Staniša Radošević, a Serb,<sup>858</sup> testified that on the morning of 22 April 1998, he, his mother Rosa Radošević, and his friend Novak Stijović were driving in two cars from Dečani/Deçan towards the Radošević family home in Dašinovac/Dasinoc.<sup>859</sup> When they reached the intersection of the road between the villages of Požar/Pozhare and Donja Luka/Lluka ē Ultë, in Dečani/Deçan municipality, five armed men approached the cars.<sup>860</sup> Three of the men wore civilian clothes, two wore uniforms.<sup>861</sup> All of the men had KLA insignia, a double-headed black eagle with the letters UÇK, on their sleeves.<sup>862</sup> The men, speaking in Albanian and Serbian, told the witness to get out of his car.<sup>863</sup> They questioned the witness about whether he had any weapons, where he was going, and they told the passengers that they could no longer go to Dašinovac/Dasinoc because “it was theirs now ... Serbs could no longer live there”.<sup>864</sup> Approximately 50 armed men then came out of a concrete trench next to the road.<sup>865</sup> The witness knew most of the men from before as villagers from Donja Luka/Lluka ē Ultë, Požar/Pozhare, and Ljumbarda/Lumbardh.<sup>866</sup> The men were armed and some of them wore uniforms while others wore civilian clothes with the KLA insignia on their sleeves or caps.<sup>867</sup>

185. After about half an hour one of the armed men took Novak Stijović’s car and drove ahead of Staniša Radošević in the direction of Rznić/Irzniq, in Dečani/Deçan municipality.<sup>868</sup> A man with an automatic rifle sat behind the witness.<sup>869</sup> The witness’s mother and Novak Stijović were in the car as well.<sup>870</sup> The witness observed trenches and approximately 100 men, chanting “KLA”, along the roadside.<sup>871</sup> The witness also observed large-calibre weapons and two men in black uniforms near a fortification

<sup>857</sup> Marijana Anđelković, T. 463-464, 466, 514, 516-521; P4 (Anđelković’s notebook, volume 2), pp. 13-14; P5 (Incident Report, Humanitarian Law Center, 27 April 1998).

<sup>858</sup> Staniša Radošević, T. 956; D5 (Staniša Radošević, witness statement, 23 August 2005), p. 1.

<sup>859</sup> Staniša Radošević, T. 957, 960-961, 1011, 1020, 1022; P5 (Incident reports by the Humanitarian Law Center, 5 May 1998), p. 15.

<sup>860</sup> Staniša Radošević, T. 961-962, 965; P11 (Map of the Lake Radonjić/Radoniq area, with markings).

<sup>861</sup> Staniša Radošević, T. 962.

<sup>862</sup> Staniša Radošević, T. 961-962; P9 (KLA insignia).

<sup>863</sup> Staniša Radošević, T. 963.

<sup>864</sup> Staniša Radošević, T. 963.

<sup>865</sup> Staniša Radošević, T. 961, 966, 1036.

<sup>866</sup> Staniša Radošević, T. 966.

<sup>867</sup> Staniša Radošević, T. 962, 966-967, 1036; P9 (KLA insignia).

<sup>868</sup> Staniša Radošević, T. 967, 1036-1037.

<sup>869</sup> Staniša Radošević, T. 967.

<sup>870</sup> Staniša Radošević, T. 967.

<sup>871</sup> Staniša Radošević, T. 967-968, 1040.

between Rznić/Irzniq and Glođane/Gllogjan.<sup>872</sup> Novak Stijović's car broke down about ten metres from this fortification, which was 200 to 300 metres from Glođane/Gllogjan, and the three were told to get out of the vehicles.<sup>873</sup> More men in uniform and some in civilian clothes arrived, at which point three to five men started to beat Novak Stijović.<sup>874</sup> The men hit Novak Stijović on the head, chest, and ribs and continued to kick him after he fell to the ground.<sup>875</sup> When the witness intervened and tried to protect Stijović, the men started to beat and kick him as well.<sup>876</sup> The men beat them with fists and with rifle and pistol butts.<sup>877</sup> During the beating, the men cursed their Serbian mothers and said that this was their land.<sup>878</sup> The men did not beat the witness's mother.<sup>879</sup> The men took the witness's address book and for each name in the book they questioned him about whether the person was a Serb or a Roma.<sup>880</sup> After about an hour, a man who appeared to be in charge took the witness, his mother and Novak Stijović to a small room a few metres down the road and interrogated the witness while beating him.<sup>881</sup> When the witness said that his father had two guns the man ordered him to go and get them or else he would kill the mother and Novak Stijović.<sup>882</sup> The man gave the witness an insignia of the KLA to be used for protection from KLA soldiers on the way.<sup>883</sup> The witness then left his mother and Novak Stijović behind and went to get the two guns from his father at the family home in Dašinovac/Dasinoc (see section 6.7, below).<sup>884</sup> After retrieving one of the guns, the witness left for Dečani/Deçan under the pretext of getting another gun.<sup>885</sup> The witness went to the police station in Dečani/Deçan to report the incident, and a police officer there informed him that his mother and Novak Stijović had been found walking near the village of Prilep/Prelep, in Dečani/Deçan municipality, and that they had been brought to Dečani/Deçan.<sup>886</sup>

<sup>872</sup> Staniša Radošević, T. 969-970; P12 (Map of the Lake Radonjić/Radoniq area, with markings).

<sup>873</sup> Staniša Radošević, T. 970-971, 1041-1042.

<sup>874</sup> Staniša Radošević, T. 971-972.

<sup>875</sup> Staniša Radošević, T. 971-973.

<sup>876</sup> Staniša Radošević, T. 972-974, 1050.

<sup>877</sup> Staniša Radošević, T. 972, 974.

<sup>878</sup> Staniša Radošević, T. 973.

<sup>879</sup> Staniša Radošević, T. 982.

<sup>880</sup> Staniša Radošević, T. 974.

<sup>881</sup> Staniša Radošević, T. 981-983.

<sup>882</sup> Staniša Radošević, T. 983.

<sup>883</sup> Staniša Radošević, T. 984, 987.

<sup>884</sup> Staniša Radošević, T. 984.

<sup>885</sup> Staniša Radošević, T. 985-987, 1043, 1060, 1062, 1070-1071, 1073-1074.

<sup>886</sup> Staniša Radošević, T. 988.

186. Miloica Vlahović, a Serb,<sup>887</sup> testified that on 22 April 1999 he was told by policemen at the Dečani/Deçan police station that Konstantin Stijović, his son Novak Stijović, Staniša Radošević and his daughters-in-law Milka Stijović and Stanislava Popović were arrested by Albanians.<sup>888</sup> Later Novak Stijović told the witness that they had been held in the village of Požar/Pozhare, in Dečani/Deçan municipality and then taken to Glogjan/Gllogjan where he and Staniša Radošević were beaten.<sup>889</sup> The witness did not know whether they were all detained together.<sup>890</sup> Konstantin Stijović told the witness that he had been released after Hilmi Haradinaj, the father of the Accused Ramush Haradinaj, intervened on his behalf.<sup>891</sup>

187. Based on the evidence, the Trial Chamber concludes that on 22 April 1998, Rosa Radošević, Novak Stijović, and Staniša Radošević were stopped by armed KLA soldiers on the road in or near Požar/Pozhare. KLA soldiers subsequently took the three by car in the direction of Glogjan/Gllogjan. At the entrance of Glogjan/Gllogjan, Novak Stijović and Staniša Radošević were kicked and beaten by a group of KLA soldiers with fists and rifle and pistol butts for a considerable amount of time. Novak Stijović fell to the ground and Staniša Radošević was bleeding. The three were then taken inside a room in a nearby house and Staniša Radošević was beaten and interrogated. Staniša Radošević was sent out of the house on the condition that he would go to collect two guns. After some time Rosa Radošević and Novak Stijović were released. Staniša Radošević retrieved one gun and then left for Dečani/Deçan under the pretext of getting the other gun, but instead escaped and went to the local police station.

188. The Trial Chamber is satisfied that the beating caused Novak Stijović and Staniša Radošević serious physical suffering. In light of the severity of the beating and its duration, the Trial Chamber is also satisfied that the perpetrators of this beating intended to cause such suffering. The Trial Chamber is furthermore convinced that this crime was closely related to the armed conflict in Kosovo/Kosova, and that the victims were not taking active part in hostilities at the time the crime was committed and that the perpetrators knew or should have known that this was the case. For these reasons, the Trial Chamber concludes that KLA soldiers committed cruel treatment against Novak Stijović and Staniša Radošević.

<sup>887</sup> Miloica Vlahović, T. 1542-1543.

<sup>888</sup> Miloica Vlahović, T. 1577-1580, 1639-1640.

<sup>889</sup> Miloica Vlahović, T. 1581-1582, 1639-1640.

<sup>890</sup> Miloica Vlahović, T. 1581, 1639.

189. The KLA soldiers repeatedly told Novak Stijović and Staniša Radošević that they, as Serbs, could not return to their homes since that land was not theirs. During the beatings, the KLA soldiers interrogated them about their knowledge of and connections with the Serbian police, asking questions about police force numbers, locations, and individual members. They also questioned Staniša Radošević about the ethnicity of persons named in his address book. One KLA soldier threatened to kill Rosa Radošević and Novak Stijović unless Staniša Radošević went to collect two guns. The Trial Chamber therefore finds that the beatings were aimed at obtaining information and at intimidating and coercing the victims, and at discriminating against Novak Stijović and Staniša Radošević on the basis of their ethnicity. For these reasons, the Trial Chamber concludes that KLA soldiers tortured Novak Stijović and Staniša Radošević.

190. All three Accused are charged with Count 6 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability in section 7, below.

#### 6.5 Murder of Vukosava Marković and Darinka Kovać (Count 8)

191. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Vukosava Marković and Darinka Kovać in violation of the laws or customs of war. In the alternative, Idriz Balaj is charged with the commission of, or aiding and abetting the commission of, the murder. The Trial Chamber has heard relevant evidence from Miloica Vlahović and Vera Kovačević, as well as forensic medical evidence.

192. Miloica Vlahović testified that by 21 April 1998, Darinka and Vukosava Vujosević were among the few Serbs remaining in Gornji Ratiš/Ratishë ë Eperm and Dašinovac/Dashinoc.<sup>891</sup> In September 1998 a man named Muhamet from the village Kodralija/Kodrali, in Dečani/Deçan municipality, told him that in late July 1998 Darinka and Vukosava Vujosević were killed and that their crops were set on fire.<sup>892</sup> The witness does not know whether Muhamet saw the killings.<sup>893</sup>

<sup>891</sup> Miloica Vlahović, T. 1581, 1640.

<sup>892</sup> Miloica Vlahović, T. 1554-1555.

<sup>893</sup> Miloica Vlahović, T. 1572-1573.

<sup>894</sup> Miloica Vlahović, T. 1573.

193. Vera Kovačević, the daughter of Darinka Kovać and niece of Vukosava Marković,<sup>895</sup> learned of her mother's disappearance and was later informed that she went missing on 21 April 1998.<sup>896</sup> On 19 September 1998, Vera Kovačević participated in the process of identification of Darinka Kovać (remains labelled "R-17") and Vukosava Marković (remains labelled "R-10") conducted in the Paštrik Hotel in Đakovica/Gjakovë.<sup>897</sup> She provided the forensic technicians with personal information regarding her mother and aunt, including a description of their physical appearance and a brief medical and dental history.<sup>898</sup> According to the witness, Darinka Kovać had suffered from spinal problems, had a slight hunchback and wore a dental prosthesis on her upper and lower teeth, and Vukosava Marković had suffered injuries to her head and leg from a car accident.<sup>899</sup> Vera Kovačević identified a blue dress with a white floral pattern and a white vest she had knitted herself as belonging to Darinka Kovać.<sup>900</sup> She identified a dark beige skirt and a blue skirt, both of which she had sewed herself, and a dark blue jacket as belonging to Vukosava Marković.<sup>901</sup> On the basis of this information, the technicians were able to make a positive identification.<sup>902</sup> Later that day the remains of Darinka Kovać and Vukosava Marković were buried in the Piskote Cemetery in Đakovica/Gjakovë.<sup>903</sup> Despite two separate attempts in 2005, their remains have not been found.<sup>904</sup>

194. The Trial Chamber has also received forensic medical evidence with regard to remains R-10 and R-17, traditionally identified as Vukosava Marković and Darinka Kovać. Branimir Aleksandrić<sup>905</sup> testified that body R-10 was recovered on 12 September 1998 at the Radonjić/Radoniq canal.<sup>906</sup> Right next to the outer side of the concrete canal wall, careful removal of the gravel revealed body R-10, which had a

<sup>895</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 1

<sup>896</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 3.

<sup>897</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 5. See also P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 304, 306-307, 404-408; Dušan Dunjić, T. 7207-7208, 7350, 11027-11028; P672 (Autopsy report R-10), pp. 7-8; P706 (Autopsy report R-17), pp. 2, 6-7; D66 (Video of Radonjić/Radoniq canal and Hotel Paštrik, 12-19 September 1998), 1:58'07" – 1:59'47".

<sup>898</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 5, 9, 10.

<sup>899</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 1, 9-10.

<sup>900</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 1, 5-6, 14.

<sup>901</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), paras 1, 5, 7, 14.

<sup>902</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 11.

<sup>903</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 13.

<sup>904</sup> P1246 (Vera Kovačević, witness statement, 8 November 2007), para. 15.

<sup>905</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>906</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 128-129, 203-204.

metal wire three millimetres in diameter tied around the waist area.<sup>907</sup> Aleksandrić further testified that body R-17 was recovered on 12 September 1998 at the Radonjić/Radoniq canal.<sup>908</sup> Careful digging revealed body R-17 deep in the earth.<sup>909</sup> A full set of dentures for the upper jaw were found with the head of body R-17.<sup>910</sup> After reviewing the autopsy report, Aleksandrić recalled that the spine of the body was very curved.<sup>911</sup> According to the autopsy report, during the identification of body R-17 at Hotel Paštrik the daughter of Darinka Kovač stated that she believed her mother had no teeth, partial lower dentures, complete upper dentures, and a long term disease which caused ossification of the spinal column.<sup>912</sup>

195. Dušan Dunjić<sup>913</sup> testified that body R-10 was wearing a greenish knit skirt, a black linen skirt and a blue long-sleeved tunic.<sup>914</sup> Body R-10 was a female between 50 and 60 years old and between 156 and 165 centimetres tall.<sup>915</sup> The autopsy revealed a bullet hole through the left side of the pelvis and fractures to the left arm, the spine, and the right leg, above the knee.<sup>916</sup> On 19 September 1998, Vera Kovačević identified the body as Vukosava Marković (born Vujošević), on the basis of several items of clothing and signs of a bone injury from a car accident in the right leg and to the head.<sup>917</sup> Vera Kovačević was able to describe a blouse found with the body, that she knew was a gift from a brother, before it was shown to her.<sup>918</sup> Vera Kovačević spotted the clothes found with the body among all the clothes laid out for identification.<sup>919</sup> Body R-10 was

<sup>907</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 129, 132-133; P418 (Various photographs), p. 2; P452 (Video of body recovery at canal), 0:55'38"- 1:04'39".

<sup>908</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 128-129, 203-204.

<sup>909</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 144; Branimir Aleksandrić, T. 6766-6767; P449 (Various photographs), p. 39; P452 (Video of body recovery at canal), 1:27'24" - 1:31'05".

<sup>910</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 144, 146; P452 (Video of body recovery at canal), 1:29'36" - 1:29'46".

<sup>911</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 150; P706 (Autopsy report R-17), pp. 2, 5.

<sup>912</sup> P706 (Autopsy report R-17), pp. 6-7.

<sup>913</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>914</sup> P672 (Autopsy report R-10), p. 2.

<sup>915</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 298-299; P672 (Autopsy report R-10), p. 7.

<sup>916</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 300; P672 (Autopsy report R-10), p. 2, 7.

<sup>917</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 304, 306-307; Dušan Dunjić, T. 7207, 11027-11028; P672 (Autopsy report R-10), pp. 7-8; D66 (Video of Radonjić/Radoniq canal and Hotel Paštrik, 12-19 September 1998), 1:58'07" – 1:59'47".

<sup>918</sup> Dušan Dunjić, T. 7207.

<sup>919</sup> Dušan Dunjić, T. 7207; D66 (Video of Radonjić/Radoniq canal and Hotel Paštrik, 12-19 September 1998), 1:57'57" – 1:58'38".

handed over to the relatives and the commission issued a death certificate.<sup>920</sup> Body R-17 was wearing a blue dress with purple and white patterns over a hand-knitted vest.<sup>921</sup> Body R-17 was a female between 55 and 65 years old and between 156 and 161 centimetres tall.<sup>922</sup> The autopsy revealed a hand-gun bullet entry and exit wound on the left half of the pelvic bone, which, if inflicted in life, could have caused a haemorrhage and led to death.<sup>923</sup> On 19 September 1998, Vera Kovačević identified the body as Darinka Kovać (born Vujošević), based on clothing, the ossification of the spinal column and signs of a chronic, degenerative bone disease suffered in life, which caused severe ossification of the spinal column.<sup>924</sup> Vera Kovačević told the team that Vukosava Marković and her sister Darinka Kovać went missing on 21 April 1998.<sup>925</sup> Bodies R-10 and R-17 were handed over to the relatives and a death certificate was issued.<sup>926</sup> The witness did not take a DNA sample from R-17, because of the specific nature of the traditional identification.<sup>927</sup>

196. As referred to above, the Trial Chamber has heard hearsay evidence from Vera Kovačević that Vukosava Marković and Darinka Kovać went missing on 21 April 1998. In September 1998, two sets of remains were identified by traditional means as belonging to these two women. Both sets of remains had been found near the concrete wall at the Radonjić/Radoniq canal. In addition to general physical characteristics, the identification of Vukosava Marković was based in part on traces of bone injuries found on the remains that matched injuries sustained in life in a car crash. Likewise, in addition to general physical characteristics, the identification of Darinka Kovać was based in part on the symptoms of a bone disease, present in the remains, that she had suffered in life. The identification further considered a set of upper dentures found with the remains, that Darinka Kovać was known to wear. Also, for both sets of remains, Vera Kovačević identified pieces of clothing as ones that she had made herself. There are some discrepancies between the accounts of Vera Kovačević and Dušan Dunjić, concerning the identification of the clothing of Vukosava Marković. Although the

<sup>920</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 308; P635 (Death certificates), pp. 5-6; P672 (Autopsy report R-10), p. 8.

<sup>921</sup> P706 (Autopsy report R-17), p. 3.

<sup>922</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 399; P706 (Autopsy report R-17), p. 5.

<sup>923</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 401; P706 (Autopsy report R-17), pp. 2, 6.

<sup>924</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 404-408; Dušan Dunjić, T. 7208, 7350; P706 (Autopsy report R-17), pp. 2, 6-7.

<sup>925</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 305; P672 (Autopsy Report R-10), p. 7.

<sup>926</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 308, 409; Dušan Dunjić, T. 7351; P635 (Death certificates), pp. 5-6, 9-10; P672 (Autopsy report R-10), p. 8; P706 (Autopsy report R-17), p. 7.

accounts differ, they are not necessarily contradictory and certain discrepancies concern ambiguous details such as the exact colour of clothing. Therefore, the Trial Chamber does not consider these discrepancies significant and notes that the identification of clothing was only one of the factors considered in the identification of the remains. As the remains could not be retrieved, they could not have been identified by DNA analysis. The Trial Chamber has heard evidence of traditional identification of other sets of remains which was later contradicted by DNA analysis. Nevertheless, considering the strong grounds for the traditional identification and the fact that the two sets of remains were discovered in close proximity to each other, the Trial Chamber finds that the remains labelled R-10 belong to Vukosava Marković, and the remains labelled R-17 belong to Darinka Kovać. The forensic medical evidence suggests that Vukosava Marković and Darinka Kovać were murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The Trial Chamber has not received any evidence about either of the women being in KLA custody. By late April 1998, Vukosava Marković and Darinka Kovać were among the last remaining Serbs in the village of Gornji Ratiš/Ratishë e Eperm, which had fallen under KLA control on or around 21 April 1998. Further, Miloica Vlahović testified that she had heard from a man named Muhamet that Vukosava Marković and Darinka Kovać were killed in July 1998. Miloica Vlahović did not clarify the basis of Muhamet's information. Thus, the evidence is unsourced, and possibly multiple hearsay. Even if the two women went missing in KLA controlled territory and were among the last Serbs remaining in their village in late April 1998, this fact alone could not reasonably exclude the possibility that other forces or persons, unaffiliated with the KLA, committed the killing.

197. For these reasons, even assuming that Vukosava Marković and Darinka Kovać were murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murders of the two women, with which group, if any, the perpetrator was affiliated, or whether the murders occurred in KLA custody. The Trial Chamber has heard no evidence concerning Idriz Balaj's involvement in the death of either of the two women. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

<sup>927</sup> Dušan Dunjić, T. 7350; P706 (Autopsy report R-17), pp. 6-7.

## 6.6 Murder of Milovan and Milka Vlahović (Count 10)

198. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Milovan and Milka Vlahović in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from a number of witnesses, as well as forensic medical evidence.

199. Goran Vlahović, a Serb from the predominantly Albanian village of Gornji Ratiš/Ratishë ë Eperm in Dečani/Deçan municipality,<sup>928</sup> testified that on 21 April 1998, he and his brother Novak Vlahović left their parents' home for work in Dečani/Deçan.<sup>929</sup> According to the witness, this was the last time they saw their parents.<sup>930</sup> After work, the two brothers tried to return to their parents' house but were unable to, as the roads both in Dečani/Deçan and Prilep/Prelep were blocked by the Serbian police who told them that "there were armed men".<sup>931</sup> Goran Vlahović's other brothers Miloica and Rade had also tried to get back to the village, but without success.<sup>932</sup> In the following days, the brothers made further attempts to reach Gornji Ratiš/Ratishë ë Eperm, but they were unsuccessful as the police did not let them through.<sup>933</sup> Not being able to reach Gornji Ratiš/Ratishë ë Eperm, Goran Vlahović's brother Rade sent his Catholic Albanian friend, Nuo Alakaj, to the village to check on their parents.<sup>934</sup> Rade Vlahović told Goran Vlahović that Nuo Alakaj had found that the parents were no longer there.<sup>935</sup> Goran Vlahović did not know when Alakaj went there.<sup>936</sup>

200. Miloica Vlahović, a Serb from Peć/Pejë,<sup>937</sup> last saw his parents on 21 April 1998, in the afternoon, when he left for Đakovica/Gjakovë after staying the night at their home in Gornji Ratiš/Ratishë ë Eperm, in Dečani/Deçan municipality.<sup>938</sup> On that day Miloš Radunović, his wife Milica, and Slobodan Radošević visited the witness's

<sup>928</sup> Goran Vlahović, T. 1730-1731, 1734-1735.

<sup>929</sup> Goran Vlahović, T. 1731, 1735, 1736.

<sup>930</sup> Goran Vlahović, T. 1737, 1748.

<sup>931</sup> Goran Vlahović, T. 1737-1741.

<sup>932</sup> Goran Vlahović, T. 1742.

<sup>933</sup> Goran Vlahović, T. 1741-1742.

<sup>934</sup> Goran Vlahović, T. 1742-1743.

<sup>935</sup> Goran Vlahović, T. 1743, 1762.

<sup>936</sup> Goran Vlahović, T. 1744.

<sup>937</sup> Miloica Vlahović, T. 1542-1543.

<sup>938</sup> Miloica Vlahović, 1544, 1554, 1568, 1574, 1614; P28 (Photograph of Milovan Vlahović), P29 (Photograph of Milka Vlahović).

parents' house.<sup>939</sup> Miloica Vlahović testified that by 21 April 1998, his parents were among the few Serbs remaining in Gornji Ratiš/Ratishë ë Eperm and Dašinovac/Dashinoc.<sup>940</sup> On 22 April 1998, the witness heard from his brother that his parents were still at home that day around 6:00 a.m., when the brother left the house to go to work.<sup>941</sup> When the witness, on that day, wanted to go and get his parents, he was told by a police officer in Dečani/Deçan that it was not safe.<sup>942</sup> The witness asked Tafilj Kuqi, a neighbour from Gornji Ratiš/Ratishë ë Eperm, to check up on his parents.<sup>943</sup> On or about 24 April 1998, Tafilj Kuqi went to Gornji Ratiš/Ratishë ë Eperm.<sup>944</sup> Kuqi later told the witness that he was stopped in Prilep/Prelep and Prekoluka/Prekollukë, in Dečani/Deçan municipality, by armed KLA members in uniform who wanted to take him to Glodane/Gllogjan to join the KLA.<sup>945</sup> Kuqi only got to Prekoluka/Prekollukë and did not see the witness's parents.<sup>946</sup> Later the witness asked Mehmet Goga from Dečani/Deçan, who owned property close to the witness' parents' home, to check up on his parents.<sup>947</sup> The witness met Goga again in Dečani/Deçan three or four days later and heard that Goga had seen his parents.<sup>948</sup> They were guarded by armed men and could not leave their house.<sup>949</sup> Later, Faza Haradinaj, a former neighbour from Gornji Ratiš/Ratishë ë Eperm, also saw the witness's parents in their house.<sup>950</sup> She confirmed to the witness that they were not allowed to leave the house.<sup>951</sup> In the beginning of September 1998, the witness heard from Saban Sadikaj that his parents were in their house for 10 or 15 days after 21 April 1998.<sup>952</sup> A man called Arifaj Madjun, one of the witness's neighbours from Gornji Ratiš/Ratishë ë Eperm, told the witness that when he was on the road between Gornji Ratiš/Ratishë ë Eperm and Rznić/Irzniq, he saw that the witness's parents and Milica Radunović were taken by armed and uniformed men in the direction of Rznić/Irzniq.<sup>953</sup> Madjun also told the witness that a man named Bajram or

<sup>939</sup> Miloica Vlahović, T. 1573.

<sup>940</sup> Miloica Vlahović, T. 1554-1555.

<sup>941</sup> Miloica Vlahović, T. 1575.

<sup>942</sup> Miloica Vlahović, T. 1578.

<sup>943</sup> Miloica Vlahović, T. 1583, 1643.

<sup>944</sup> Miloica Vlahović, T. 1583-1584, 1587, 1643.

<sup>945</sup> Miloica Vlahović, T. 1584, 1643-1644.

<sup>946</sup> Miloica Vlahović, T. 1644.

<sup>947</sup> Miloica Vlahović, T. 1585, 1644.

<sup>948</sup> Miloica Vlahović, T. 1582-1583, 1644-1645.

<sup>949</sup> Miloica Vlahović, T. 1584-1585, 1646-1648.

<sup>950</sup> Miloica Vlahović, T. 1585-1586, 1649-1654. See also Goran Vlahović, T. 1744, 1746, 1748.

<sup>951</sup> Miloica Vlahović, T. 1585-1586, 1649-1654. See also Goran Vlahović, T. 1744.

<sup>952</sup> Miloica Vlahović, T. 1588, 1681-1685.

<sup>953</sup> Miloica Vlahović, T. 1591-1592, 1597-1598, 1698, 1703-1705.

Imer Ademi asked the armed men to release the witness's parents and not to hurt them, whereupon the armed men threatened to kill him.<sup>954</sup>

201. Witness 60 testified that he knew Milka Vlahović (also known as Marković) and Mika Radunović.<sup>955</sup> On 23 April 1998, Xhevdet Sadikaj told the witness that he had seen them on the previous day, that they were fine and that he would try to get them out of the village.<sup>956</sup> The witness understood Sadikaj to be a member of the KLA.<sup>957</sup>

202. According to an HLC Spotlight report, on 21 April 1998 the Serbian inhabitants of Gornji Ratiš/Ratishë ë Eperm, in Dečani/Deçan municipality, fled when the KLA took control of the area, and found refuge at a youth centre in the town of Dečani/Deçan.<sup>958</sup> Vlahović's daughter, who had left the village with her brother on 21 April, told the HLC that they had tried to return the next day to collect their parents but were turned back by KLA members.<sup>959</sup>

203. On 6 September 1998, Rade Vlahović, son of Milovan and Milka Vlahović, filed a report with the Đakovica/Gjakovë MUP, alleging that on 21 April 1998 unidentified Albanians entered his family house and took his two parents.<sup>960</sup>

204. Witness 28, a researcher for a humanitarian organization,<sup>961</sup> gave evidence that Nada Vlahović, daughter of Milovan and Milka Vlahović, informed her that during the night of 20 April 1998 the KLA shot at Serb houses in Gornji Ratiš/Ratishë from Glođane/Gllogjan, in Dečani/Deçan municipality.<sup>962</sup> On 21 April 1998, the KLA and armed civilians entered the village in tractors and trucks, armed with grenade launchers, rifles and mortars, shooting into the air in front of the houses of Serbs.<sup>963</sup> Nada Vlahović stated that some of the armed men were wearing uniforms.<sup>964</sup> She further stated that as a result of these attacks, Serbs left the village and moved to Dečani/Deçan,

<sup>954</sup> Miloica Vlahović, T. 1593, 1598, 1699-1700.

<sup>955</sup> Witness 60, T. 2249, 2251.

<sup>956</sup> Witness 60, T. 2249-2250.

<sup>957</sup> Witness 60, T. 2248-2249, 2288.

<sup>958</sup> Marijana Andelković, T. 598; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.1.

<sup>959</sup> Marijana Andelković, T. 598; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.1.

<sup>960</sup> P1181 (Report of the Đakovica/Gjakovë MUP Crime Police Department), pp. 10-11.

<sup>961</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 2, 9, 11, 14; Witness 28, T. 10172.

<sup>962</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 49, Witness 28, T. 10229, 10232-10236.

<sup>963</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 49, Witness 28, T. 10229, 10232-10236.

<sup>964</sup> Witness 28, T. 10235.

and that she left the village on 21 April 1998 with her brothers.<sup>965</sup> Nada Vlahović added that when her brothers attempted to return to the village on 22 April 1998, they were stopped at a Serbian police checkpoint.<sup>966</sup> Nada Vlahović also said that the Albanian women and children left the village.<sup>967</sup>

205. The Trial Chamber has also received forensic medical evidence with regard to Milka Vlahović (remains labelled “R-35”). Branimir Aleksandrić<sup>968</sup> testified that on 12 September 1998, MUP divers recovered bones and a shoe, later labelled as R-35, at the mouth of the lake and handed them over to the forensic team at Hotel Paštrik.<sup>969</sup> ICMP DNA analysis concluded that the remains labelled R-35 are those of Milka Vlahović.<sup>970</sup> An autopsy conducted on the remains on 8 December 2003 found no traumatic peri-mortem injuries.<sup>971</sup> The cause of death was unascertained.<sup>972</sup>

206. Based on the evidence, the Trial Chamber concludes that on or about 21 April 1998, the KLA took control of Gornji Ratiš/Ratishë ë Eperm, where Milovan and Milka Vlahović were among the last Serbs remaining. The Trial Chamber has heard hearsay evidence that armed men confined the couple to their house. The Trial Chamber has heard other hearsay evidence indicating that the couple was not at home. The chronology of the respective hearsay evidence is not clear. Milka Vlahović’s remains were found in the ravine downstream from the Radonjić/Radoniq canal. The forensic medical evidence does not establish the cause of her death. The remains of Milovan Vlahović have not been recovered. Considering that Milovan Vlahović has not been seen since late April or early May 1998, the Trial Chamber accepts that he is, in all likelihood, dead. However, there is insufficient evidence before the Trial Chamber to make a finding, beyond a reasonable doubt, that either Milovan or Milka Vlahović was murdered. For this reason, the Trial Chamber concludes that all three Accused should be acquitted of Count 10.

<sup>965</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 49-51; Witness 28, T. 10226-10229, 10235.

<sup>966</sup> P1211 (Witness 28, witness statement, 28 October 2007), paras 49-51; Witness 28, T. 10229-10231.

<sup>967</sup> P1211 (Witness 28, witness statement, 28 October 2007), para. 50; Witness 28, T. 10196.

<sup>968</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>969</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 246-247, 251; P773 (Autopsy photographs R35), p. 2-3; P1133 (Photograph R35 bones and a running shoe).

<sup>970</sup> Agreed Facts, 26 November 2007, No. 110.

<sup>971</sup> Agreed Facts, 26 November 2007, Nos 111-112.

<sup>972</sup> Agreed Facts, 26 November 2007, No. 112.

## 6.7 Murder of Slobodan Radošević and Miloš Radunović (Count 12)

207. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Slobodan Radošević and Miloš Radunović in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from a number of witnesses, as well as forensic medical evidence.

208. Staniša Radošević, a Serbian from the village of Dašinovac/Dasinoc in Dečani/Deçan municipality,<sup>973</sup> testified that when he arrived at the family home in Dašinovac/Dasinoc on 22 April 1998, he told his father, Slobodan Radošević, about the abduction of Staniša's mother and his friend, and his father gave him a gun.<sup>974</sup> The witness informed his father that the KLA had set up checkpoints everywhere and that one could not move freely.<sup>975</sup> His father told him that he would try to go to Dečani/Deçan through the woods after nightfall, whereupon the witness left his father in the house (see section 6.4, above).<sup>976</sup> This was the last time that the witness saw his father alive.<sup>977</sup> The next morning, the witness's friend Slaviša Marković told the witness that he had come from Dašinovac/Dasinoc, that he had heard a lot of gunfire around 7:00 the evening before, that there must have been an attack at the witness's family home, and that Slobodan Radošević had probably been captured or killed.<sup>978</sup> Another friend of the witness informed him that he had seen KLA soldiers taking Slobodan Radošević along with Miloš Radunović towards Požar/Pozhare in a car although the witness believed that they were travelling on from there to Glogjan/Gllogjan.<sup>979</sup> The friend could see that they had been beaten up.<sup>980</sup> When the friend tried to stop the soldiers he was beaten.<sup>981</sup> The friend later heard that Slobodan Radošević and Miloš Radunović had been killed, their bodies thrown by the road near what the witness called the "Linkun Put location".<sup>982</sup> Three or four months later the friend went there to put

<sup>973</sup> Staniša Radošević, T. 956; D5 (Staniša Radošević, witness statement, 23 August 2005), p. 1.

<sup>974</sup> Staniša Radošević, T. 984, 1011, 1020, 1022; P5 (Incident reports by the Humanitarian Law Center, 5 May 1998), p. 15.

<sup>975</sup> Staniša Radošević, T. 985.

<sup>976</sup> Staniša Radošević, T. 985.

<sup>977</sup> Staniša Radošević, T. 988.

<sup>978</sup> Staniša Radošević, T. 988-989.

<sup>979</sup> Staniša Radošević, T. 996-997, 1001-1003, 1005-1006, 1082.

<sup>980</sup> Staniša Radošević, T. 1005.

<sup>981</sup> Staniša Radošević, T. 1006.

<sup>982</sup> Staniša Radošević, T. 1006.

earth over the bodies.<sup>983</sup> On 9 September 1998, Zoran Nikić and Vule Mircić, two policemen from Dečani/Deçan, informed the witness that they had found the body of Slobodan Radošević by the side of the road near the village of Dašinovac/Dasinoc on the “Ninka Road”.<sup>984</sup>

209. Witness 60 testified that he last saw Slobodan Radošević alive around 15-16 April 1998 and Miloš Radunović alive close to 4:00 p.m. on 22 April 1998, when he left the witness’s house to bike to Radošević’s house.<sup>985</sup> On 23 April 1998, Xhevdet Sadikaj informed the witness that on the previous day certain men “from Glođane/Gllogjan” had caught Miloš Radunović as he biked past Sadikaj’s house.<sup>986</sup> Sadikaj further informed the witness that they drove to Miloš Radunović’s house, showed him weapons they had found in his house, and headed to Slobodan Radošević’s house to catch him, too.<sup>987</sup> About ten to fifteen minutes after Miloš Radunović left the witness’s house, the witness, who was in the yard outside his house, heard lots of shooting from different weapons from the direction of Slobodan Radošević’s house, which lasted approximately ten to fifteen minutes.<sup>988</sup> Sadikaj informed the witness that ten to fifteen minutes later he was at the juncture between the road to Dečani/Deçan and the road to Glođane/Gllogjan where he saw Miloš Radunović, his arm wounded, and Slobodan Radošević being taken towards Glođane/Gllogjan by the men from Glođane/Gllogjan.<sup>989</sup> The witness understood Sadikaj to be a member of the KLA.<sup>990</sup>

210. Quash Sadikaj, a Kosovar Albanian from the village of Dašinovac/Dasinoc in Dečani/Deçan municipality,<sup>991</sup> testified that all the Serbs in the village were armed in 1998.<sup>992</sup> He also testified that Miloš Radunović and Slobodan Radošević, two Serbs from the village, were members of the reserve police and possessed several weapons.<sup>993</sup> Slobodan Radošević kept his in the bunkers that he had built at the front and back of his

<sup>983</sup> Staniša Radošević, T. 998, 1006.

<sup>984</sup> Staniša Radošević, T. 989-990.

<sup>985</sup> Witness 60, T. 2244-2245, 2247, 2251; P38 (Map on which the witness marked the Serb houses in Dašinovac/Dasinoq).

<sup>986</sup> Witness 60, T. 2232-2233, 2246-2247, 2277; P38 (Map on which the witness marked the Serb houses in Dašinovac/Dasinoq).

<sup>987</sup> Witness 60, T. 2247.

<sup>988</sup> Witness 60, T. 2247-2248, 2267-2268, 2275-2277; P38 (Map on which the witness marked the Serb houses in Dašinovac/Dasinoq).

<sup>989</sup> Witness 60, T. 2246-2247.

<sup>990</sup> Witness 60, T. 2248-2249, 2288.

<sup>991</sup> Quash Sadikaj, T. 2876.

<sup>992</sup> Quash Sadikaj, T. 2878-2879.

<sup>993</sup> Quash Sadikaj, T. 2877-2878, 2907-2908.

house.<sup>994</sup> At some point in time the trees close to the witness's house were burnt down and the witness overheard Miloš Radunović and Slobodan Radošević saying that this was now "clear territory" which the witness understood to mean that there was a clear view for shooting.<sup>995</sup> One day the witness was in his courtyard and saw five or six armed men, three of which were wearing VJ uniforms, next to a white car about 200-300 metres away.<sup>996</sup> The men were talking to Miloš Radunović in Albanian and Serbian.<sup>997</sup> They first walked towards Miloš Radunović's house, then returned and headed for Slobodan Radošević's house which was situated 800 metres from the witness's house.<sup>998</sup> More than half an hour later the witness heard five to six shots, over the course of three or four minutes, from the direction of Slobodan Radošević's house.<sup>999</sup> The witness described what he heard as an exchange of fire.<sup>1000</sup> The witness also heard artillery fire throughout the following night from the direction of Dečani/Deçan.<sup>1001</sup> Two or three days later someone told people in the witness's village, although not the witness himself, that he had seen two corpses about two kilometres away, in the territory of Kodralija/Kodrali, though he did not know who they were.<sup>1002</sup> A few weeks later, the witness heard on television that the bodies were those of Slobodan Radošević and Miloš Radunović.<sup>1003</sup>

211. Miloica Vlahović testified that on 22 April 1998, in Đakovica/Gjakovë, he heard from policemen that Miloš Radunović and Slobodan Radošević were arrested by Albanians, which the witness understood to mean the KLA.<sup>1004</sup>

212. Rrustem Tetaj testified that he heard two different versions about what had happened to two Serbs called Miloš and Slobodan from Dašinovac/Dasinoc in Dečani/Deçan municipality in late April or the beginning of May 1998.<sup>1005</sup> The first one, which the witness heard from Deli Lekaj, the KLA commander of Ljumbarda/Lumbardh, was that Lekaj and his soldiers (Haxh Lekaj, Zimer Ukaj, Sami

<sup>994</sup> Quash Sadikaj, T. 2908.

<sup>995</sup> Quash Sadikaj, T. 2879-2881, 2909.

<sup>996</sup> Quash Sadikaj, T. 2890, 2911.

<sup>997</sup> Quash Sadikaj, T. 2890.

<sup>998</sup> Quash Sadikaj, T. 2890-2891, 2911.

<sup>999</sup> Quash Sadikaj, T. 2891-2892.

<sup>1000</sup> Quash Sadikaj, T. 2909-2912.

<sup>1001</sup> Quash Sadikaj, T. 2904, 2912-2913.

<sup>1002</sup> Quash Sadikaj, T. 2893-2895, 2897, 2904.

<sup>1003</sup> Quash Sadikaj, T. 2893, 2899-2901.

<sup>1004</sup> Miloica Vlahović, T. 1577-1578.

<sup>1005</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 31; Rrustem Tetaj, T. 3696-3698, 3767.

Lekaj, and others), armed and dressed in KLA uniforms, went to the village of Dašinovac/Dasinoc and entered Slobodan's house in order to loot it.<sup>1006</sup> Deli Lekaj was injured when they were shot at upon entering the house, and Slobodan was killed when the KLA soldiers shot back.<sup>1007</sup> The second version had it that Deli Lekaj's group went to the house of Slobodan, who in turn went to get Miloš, who at the time was visiting an Albanian neighbour.<sup>1008</sup> Slobodan and Miloš then went to Slobodan's house where Slobodan shot Deli Lekaj.<sup>1009</sup> As a result, the group apprehended Slobodan and Miloš and brought them to Glodane/Gllogjan.<sup>1010</sup> When Toger heard that Slobodan had shot Lekaj in the leg he pulled out his pistol and shot Slobodan in the leg.<sup>1011</sup> Haradinaj then ordered the two men to be taken to Prilep/Prelep, in Dečani/Deçan municipality, where they could join the Serbian forces.<sup>1012</sup> However, since the KLA in Prilep/Prelep feared that the Serbian MUP and VJ would retaliate when they found that a Serbian had been shot they brought the men back to Dašinovac/Dasinoc, where their bodies were found in front of their houses two days later.<sup>1013</sup> Tetaj did not remember who he had heard the second version from and had no further information that could confirm it.<sup>1014</sup>

213. Ismet Kadrijaj testified that in April 1998 he accompanied Deli Lekaj to the village of Dašinovac/Dashinoc, in Dečani/Deçan municipality.<sup>1015</sup> The witness was wearing civilian clothes and Deli Lekaj was wearing a KLA camouflage uniform; both men were armed with Kalashnikovs.<sup>1016</sup> Upon noticing that the checkpoint at Dašinovac/Dashinoc, on the Požar/Pozhare- Dašinovac/Dashinoc road, was unmanned, Deli Lekaj stopped and exited the vehicle three or four metres from the checkpoint.<sup>1017</sup> At this moment the witness heard gun-fire.<sup>1018</sup> The witness saw that Deli Lekaj had been shot in the rear upper leg.<sup>1019</sup> The witness did not see who had shot Deli Lekaj, nor

<sup>1006</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 31; Rrustem Tetaj, T. 3697-3698, 3767-3769.

<sup>1007</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 32; Rrustem Tetaj, T. 3697-3698, 3767, 3769.

<sup>1008</sup> Rrustem Tetaj, T. 3697-3699.

<sup>1009</sup> Rrustem Tetaj, T. 3697-3699, 3769.

<sup>1010</sup> Rrustem Tetaj, T. 3697-3699.

<sup>1011</sup> Rrustem Tetaj, T. 3698-3699.

<sup>1012</sup> Rrustem Tetaj, T. 3698-3699.

<sup>1013</sup> Rrustem Tetaj, T. 3698-3699.

<sup>1014</sup> Rrustem Tetaj, T. 3699, 3767.

<sup>1015</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 16, 18, Appendix to witness statement, 19 April 2007, para. 8.

<sup>1016</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), para. 17.

<sup>1017</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), para. 18, 19.

<sup>1018</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), para. 19.

<sup>1019</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 19, 21.

from what direction the shot had come.<sup>1020</sup> The witness left immediately, driving Deli Lekaj to Požar/Pozhare, in Dečani/Deçan municipality, where Deli Lekaj received medical attention.<sup>1021</sup>

214. Zvonko Marković testified that in the summer of 1998, he and seven other policemen were led by a young Albanian man to a place called Vidište at the entrance to Dašinovac/Dasinoc, in Dečani/Deçan municipality. There they discovered the bodies of Miloš Radunović and Slobodan Radošević by the road leading to Dašinovac/Dasinoc.<sup>1022</sup> Following this discovery, what the witness believed to be uniformed forensic technicians arrived at the site and conducted an on-site investigation.<sup>1023</sup> The witness had heard that Miloš Radunović and Slobodan Radošević were killed by the “terrorists”.<sup>1024</sup>

215. According to information gathered by a human rights monitor for the HLC, Marijana Andelković, in interviews with Radunović’s daughter-in-law and other villagers, on 22 April 1998 the KLA took control of Dašinovac/Dashinoc village, in Dečani/Deçan municipality; most of the Serbian inhabitants had fled the village the day before.<sup>1025</sup> Slobodan Radošević, Milica and Miloš Radunović, and the Marković family remained.<sup>1026</sup> Rosa and Staniša Radošević tried to return to collect Slobodan Radošević the next day but were stopped by the KLA at a checkpoint in Požar/Pozhare, in Dečani/Deçan municipality; from there they were taken to KLA headquarters in Glogjan/Gllogjan, in Dečani/Deçan municipality, where Staniša Radošević was physically abused by KLA members.<sup>1027</sup> They were released, but they were not allowed to continue to Dašinovac/Dashinoc.<sup>1028</sup>

216. On 6 September 1998, Ljubiša Radunović, son of Miloš and Milica Radunović, filed a report with the Đakovica/Gjakovë MUP alleging that around 3:00 p.m., on 24 April 1998, unidentified Albanians entered his family house and took his parents.<sup>1029</sup>

<sup>1020</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 19, 24.

<sup>1021</sup> P1233 (Ismet Kadrijaj, witness statement, 28 October 2004), paras 20-22, 24.

<sup>1022</sup> Zvonko Marković, T. 2329-2331. See also P39 (Video showing the places where the bodies of Miloš Radunović and Slobodan Rašović were found). See also P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 75; P402 (Map indicating the crime site at Bandera).

<sup>1023</sup> Zvonko Marković, T. 2331.

<sup>1024</sup> Zvonko Marković, T. 2329.

<sup>1025</sup> Marijana Andelković, T. 598-599; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.2.

<sup>1026</sup> Marijana Andelković, T. 598; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.2. See also P1211 (Witness 28, witness statement, 28 October 2007), paras 45, 51.

<sup>1027</sup> Marijana Andelković, T. 598-599; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.2.

<sup>1028</sup> Marijana Andelković, T. 599; P6 (Spotlight Report No. 27, 5 August 1998), part. 2.2.

<sup>1029</sup> P1181 (Report of the Đakovica/Gjakovë MUP Crime Police Department), pp. 8-9.

217. The Trial Chamber has also received forensic medical evidence with regard to Slobodan Radošević (remains labelled “D-2”) and Miloš Radunović (remains labelled “D-1” and certain other remains). Dušan Dunjić<sup>1030</sup> testified that upon the forensic team’s arrival on 11 September 1998, Judge Gojković handed the team a large plastic bag, containing human bones, clothing and other items.<sup>1031</sup> Judge Gojković informed the witness that the MUP had found the remains somewhere in or near the village of Dašinovac/Dashinoc, in Dečani/Deçan municipality.<sup>1032</sup> The investigators removed the remains from Dašinovac/Dashinoc, because the area was too dangerous for the forensic team to work.<sup>1033</sup> The team initially labelled the remains and some of the items from the bag D-1.<sup>1034</sup> The remains consisted of bone fragments belonging to at least three individuals, so the team labelled them D-1a, D-1b and D-1c.<sup>1035</sup> Later, the team relabelled them D-1, D-2 and D-3.<sup>1036</sup> ICMP DNA analysis concluded that the remains labelled D-1 are those of Miloš Radunović.<sup>1037</sup> An autopsy conducted on the remains on 17 October 2005 identified one of the bones found as one fragment of the left side of the frontal bone.<sup>1038</sup> The cause of death was unascertained.<sup>1039</sup> ICMP DNA analysis also concluded that the remains labelled D-2 are those of Slobodan Radošević.<sup>1040</sup> An autopsy conducted on the remains on 8 December 2003 found a completely skeletonized part of the left parietal bone with a gunshot injury.<sup>1041</sup> The autopsy concluded that the cause of death was a gunshot injury to the head.<sup>1042</sup> Later ICMP–DNA analysis concluded that certain other human remains were also likely to belong to Slobodan Radošević.<sup>1043</sup> An autopsy conducted on those remains found a defect in the leg

<sup>1030</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1031</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 63, 126, 180, 683; Dušan Dunjić, T. 6849-6850; P630 (Record of exhumations, 16 September 1998), p. 3. See also P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 252.

<sup>1032</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 63, 126, 180, 683; P636 (Photographs of Dašinovac/Dashinoc site), pp. 1-22. See also P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 252.

<sup>1033</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 70.

<sup>1034</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 64, 66, 685-686.

<sup>1035</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 68, 686, 688; P817 (Autopsy report Dašinovac/Dashinoc remains), pp. 3-4.

<sup>1036</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 69.

<sup>1037</sup> Agreed Facts, 26 November 2007, No. 113.

<sup>1038</sup> Agreed Facts, 26 November 2007, Nos 115-116.

<sup>1039</sup> Agreed Facts, 26 November 2007, No. 116.

<sup>1040</sup> Agreed Facts, 26 November 2007, No. 117.

<sup>1041</sup> Agreed Facts, 26 November 2007, Nos 118-119.

<sup>1042</sup> Agreed Facts, 26 November 2007, No. 120.

<sup>1043</sup> Agreed Facts, 26 November 2007, No. 121.

consistent with a gunshot wound.<sup>1044</sup> Though not immediately fatal, if left untreated the victim could have died from blood loss and other complications.<sup>1045</sup>

218. In evaluating the evidence in relation to Count 12, the Trial Chamber faced considerable problems as a result of the low level of reliability and credibility of some of the testimonies. Similarly, the Trial Chamber has serious doubts concerning the candour of some of these testimonies. This doubt stems from the evasive reactions of some of the witnesses when confronted with their possible involvement in police activities and in the events leading to the death of Slobodan Radošević and Miloš Radunović. Moreover, the evidence contains inconsistencies surrounding the circumstances under which Slobodan Radošević and Miloš Radunović were last seen. As a result, the evidence fails to provide a clear picture as to what happened to Slobodan Radošević and Miloš Radunović.

219. Slobodan Radošević and Miloš Radunović were from Dašinovac/Dashinoc. When most Serbs left the village on 21 April 1998, they were among those who stayed. On 22 April 1998, the KLA took control of the village. Quash Sadikaj testified that on an unspecified day he saw five or six armed men, three in VJ uniforms, talking to Miloš Radunović in the village. The witness saw the men walking towards Slobodan Radošević's house. More than half an hour later he heard five or six shots, in what he described as an exchange of fire coming from the direction of that house. Witness 60 testified that Xhevdet Sadikaj had told him that on 22 April 1998 men "from Glogane/Gllogjan" had taken Miloš Radunović first to his house, confronted him with the weapons they had found in his house, and then headed to Slobodan Radošević's house. Witness 60, who was in Dašinovac/Dashinoc on this day, testified that he heard an exchange of fire lasting approximately 10 to 15 minutes and coming from the direction of Slobodan Radošević's house. Staniša Radošević testified that his friend, Slaviša Marković, had told him that he had heard "a lot of gunfire" in the village on the evening of 22 April 1998. Rrustem Tetaj testified that he had been told by Deli Lekaj, the KLA commander of Ljumbarda/Lumbardh, that Lekaj had been injured in an exchange of fire, and that Slobodan Radošević had been killed. Deli Lekaj had told Rrustem Tetaj that they had gone to Slobodan Radošević's house to loot it. Upon entering the house they were shot at, Deli Lekaj was injured, and Slobodan Radošević

<sup>1044</sup> Agreed Facts, 26 November 2007, No. 123.

<sup>1045</sup> Agreed Facts, 26 November 2007, No. 123.

was killed when the KLA soldiers fired back. Ismet Kadrijaj testified that Deli Lekaj was shot in the leg in Dašinovac/Dashinoc in April 1998, although he does not link this event to the killing of Slobodan Radošević. Rrustem Tetaj also testified that he had heard another version of what happened to the two men, involving both Ramush Haradinaj and Idriz Balaj. Although the forensic medical evidence provided some objective support for this version, in the light of the fact that Tetaj failed to provide a source for it, the Trial Chamber will not rely on the testimony of Rrustem Tetaj in this respect.

220. The Trial Chamber has heard hearsay evidence of the two men being taken from their village. Staniša Radošević testified that a friend had told him that he had seen KLA soldiers taking the two men towards Požar/Pozhare in a car. This friend also told him that the two men had been beaten. Witness 60 testified that Xhevdet Sadikaj had told him that he had seen men from Glođane/Gllogjan taking the two men towards Glođane/Gllogjan and that Miloš Radunović was wounded in the arm. However, none of the witnesses who were present in Dašinovac/Dashinoc on 22 April testified to having seen the two men being taken away.

221. In September 1998, the bodies of the two men were found by a road near Dašinovac/Dashinoc. According to the forensic medical evidence, the cause of death for Slobodan Radošević was a gunshot to the head while the cause of death for Miloš Radunović could not be established. The Trial Chamber concludes that the men seen with Miloš Radunović on 22 April 1998 were KLA soldiers or affiliated with the KLA. However, based on the evidence, the Trial Chamber cannot draw any conclusions about why these men approached Slobodan Radošević and Miloš Radunović on that day or about the circumstances under which the two Serb men were killed. The Trial Chamber can therefore not conclude beyond a reasonable doubt that the two men were murdered, or exclude that the two men took an active part in the hostilities at the time of their death. The Trial Chamber concludes that all three Accused should be acquitted of Count 12.

#### 6.8 Cruel treatment and murder of the relatives of Witness 4 and Witness 19 (Count 14)

222. All three Accused are charged, as participants in a joint criminal enterprise, with cruel treatment and murder of the relatives of Witness 4 and Witness 19 in violation of

the laws or customs of war. In the alternative, Idriz Balaj is charged with the commission of, or planning, instigating, or aiding and abetting the commission of, the crimes. The Trial Chamber has heard relevant evidence from Witness 4 and Witness 19, and a number of other witnesses, as well as forensic medical evidence.

223. Witness 19 testified that on 2 March 1998 on the village road into Donji Ratiš/Ratishë ë Ultë, in Dečani/Deçan municipality, near the Orthodox Church of the Holy Trinity, unidentified persons fired several bullets at a red Lada car carrying Witness 19's mother, Witness 4 and Slobodan Praščević, a Serbian police officer and friend of Witness 19's family; Slobodan Praščević was killed, the mother was injured and Witness 4 escaped unharmed.<sup>1046</sup> From that day, and more regularly beginning approximately one month later, Witness 19 saw armed soldiers wearing black or camouflage clothes and KLA insignia, walking or driving cars in his village.<sup>1047</sup> Certain men wearing "black KLA clothes", some of whom Witness 19 identified by name, began to come to his house.<sup>1048</sup> At first, these small groups of men came approximately two or three times per week during the day-time, although after approximately one month they began to come more often.<sup>1049</sup> The men asked Witness 19's family about his ties with Slobodan Praščević.<sup>1050</sup> They also asked for weapons but the family did not possess any.<sup>1051</sup> After the first two or three visits, the men began to search the house, mostly at night, which frightened Witness 19.<sup>1052</sup> They wore masks, introduced themselves as a special unit of the night, and said that they were looking for weapons.<sup>1053</sup>

224. Witness 19 testified that one morning in the summer of 1998, he learned from his mother that the previous evening around 10:00-11:00 p.m., while Witness 19 was asleep, between three and five masked men had come to the family house.<sup>1054</sup> Witness 19's mother told him that they included a man who wore his mask "on his head", and

<sup>1046</sup> Witness 19, T. 1137, 1139-1145; P22 (Criminal report by the police station in Đakovica/Gjakovë, 4 March 1998).

<sup>1047</sup> Witness 19, T. 1146-1149, 1166, 1291; P9 (KLA insignia); P22 (Criminal report by the police station in Đakovica/Gjakovë, 4 March 1998).

<sup>1048</sup> Witness 19, T. 1149-1150, 1291.

<sup>1049</sup> Witness 19, T. 1151.

<sup>1050</sup> Witness 19, T. 1151.

<sup>1051</sup> Witness 19, T. 1151-1152.

<sup>1052</sup> Witness 19, T. 1152-1154.

<sup>1053</sup> Witness 19, T. 1154.

<sup>1054</sup> Witness 19, T. 1137, 1156-1157, 1163.

presented himself as “Toger”.<sup>1055</sup> When the masked men left, according to the mother, they took Witness 19’s sister “S” with them, stating that she had to join the KLA.<sup>1056</sup> About a week later, Witness 19 saw the man named “Toger” for the first time.<sup>1057</sup> The witness’s mother told Witness 19 that the real name of “Toger” was “Idriz Balaj”.<sup>1058</sup> “Toger” came to the family home in a black vehicle, accompanied by two or three other men wearing black uniforms with KLA insignia and carrying arms.<sup>1059</sup> They brought sister “S” home for a visit that lasted approximately 20-30 minutes.<sup>1060</sup> Sister “S” wore the same black uniform and KLA insignia as the men who brought her.<sup>1061</sup> During the full time of the visit, Witness 19 saw “Toger”, who was not wearing a mask, and heard him speak and introduce himself.<sup>1062</sup> During the entire visit, sister “S” was accompanied by “Toger”, which prevented the family from speaking freely with sister “S”.<sup>1063</sup> Witness 19 testified to being told by his mother that sister “S” had told her not to ask her anything about what she was involved in because she was afraid to answer.<sup>1064</sup> Sister “S” left accompanied by the same men and in the same vehicle in which she had arrived.<sup>1065</sup> Approximately one to two weeks later, Witness 19 saw some armed men and sister “S” arrive at the family home in a white Niva convertible car.<sup>1066</sup> The men dropped her off and drove off immediately, leaving her alone with the family during a visit that lasted between two and four hours.<sup>1067</sup> Sister “S” said that the man named “Toger” had instructed her to return to the base by a certain time.<sup>1068</sup> Sister “S” was not armed but wore a black uniform with KLA insignia, and a pair of thumb cuffs hanging from her belt.<sup>1069</sup> She said that she was a member of the KLA and that she took orders from “Toger”.<sup>1070</sup> Witness 19 was not aware that sister “S” or any other family members had ever wanted to join the KLA.<sup>1071</sup> After the visit, Witness 4 walked with

<sup>1055</sup> Witness 19, T. 1157, 1159-1160.

<sup>1056</sup> Witness 19, T. 1156-1157, 1163.

<sup>1057</sup> Witness 19, T. 1159, 1163.

<sup>1058</sup> Witness 19, T. 1159-1160.

<sup>1059</sup> Witness 19, T. 1158-1159, 1164, 1313.

<sup>1060</sup> Witness 19, T. 1158-1159, 1163-1164, 1313, 1324.

<sup>1061</sup> Witness 19, T. 1166.

<sup>1062</sup> Witness 19, T. 1164-1165.

<sup>1063</sup> Witness 19, T. 1165.

<sup>1064</sup> Witness 19, T. 1166-1167, 1169-1171.

<sup>1065</sup> Witness 19, T. 1167.

<sup>1066</sup> Witness 19, T. 1167-1168, 1172, 1312, 1315-1320.

<sup>1067</sup> Witness 19, T. 1169, 1315.

<sup>1068</sup> Witness 19, T. 1176-1178.

<sup>1069</sup> Witness 19, T. 1172.

<sup>1070</sup> Witness 19, T. 1173.

<sup>1071</sup> Witness 19, T. 1174.

sister “S” on her way back to the base in the village of Rznić/Irzniq.<sup>1072</sup> After their departure, two or three soldiers arrived in a white Niva convertible car and one of them asked Witness 19 and his mother for sister “S”.<sup>1073</sup> These family members answered that sister “S” was being escorted back to the base by Witness 4.<sup>1074</sup> The soldiers then quickly drove away.<sup>1075</sup> According to Witness 19, no one in the family ever saw sister “S” again.<sup>1076</sup>

225. After the second visit of sister “S”, approximately one month passed without further visits by soldiers to the family home of Witness 19.<sup>1077</sup> Then the visits resumed gradually, reaching a frequency of approximately one to four times per week.<sup>1078</sup> The visits were carried out by masked and armed individuals, almost always wearing black uniforms with KLA insignia.<sup>1079</sup> Among them, Witness 19 occasionally recognized the man named “Toger” when he rolled his mask up over his face.<sup>1080</sup> About five to six months after the disappearance of sister “S”, one night between approximately midnight and 1:00 a.m., masked and armed men, wearing uniforms and holding flashlights, knocked on the door of the family house.<sup>1081</sup> Witness 19 was behind his mother, who answered the door.<sup>1082</sup> The men told her that they had been ordered to take her with them because she had to give a statement and sign something.<sup>1083</sup> The witness’s mother left with the men after which Witness 19 and his family never saw her again.<sup>1084</sup> After the departure of the witness’s mother, the visits ceased until one night in the autumn of 1998, around ten armed and masked men wearing black uniforms and holding flashlights entered the family house by breaking down a door.<sup>1085</sup> They told the sleeping family members to get up and then put them against a wall.<sup>1086</sup> Among these men, and by the light of a flashlight, Witness 19 saw and recognized the face of “Toger” when he

<sup>1072</sup> Witness 19, T. 1175-1177, 1315, 1320.

<sup>1073</sup> Witness 19, T. 1178-1179, 1315, 1317, 1320-1323.

<sup>1074</sup> Witness 19, T. 1178-1179, 1317.

<sup>1075</sup> Witness 19, T. 1178-1179, 1317.

<sup>1076</sup> Witness 19, T. 1180.

<sup>1077</sup> Witness 19, T. 1182, 1184-1185.

<sup>1078</sup> Witness 19, T. 1182, 1185.

<sup>1079</sup> Witness 19, T. 1182, 1186-1187.

<sup>1080</sup> Witness 19, T. 1182-1183, 1186-1188.

<sup>1081</sup> Witness 19, T. 1189-1192.

<sup>1082</sup> Witness 19, T. 1191.

<sup>1083</sup> Witness 19, T. 1191.

<sup>1084</sup> Witness 19, T. 1189, 1192.

<sup>1085</sup> Witness 19, T. 1201-1202, 1208.

<sup>1086</sup> Witness 19, T. 1202.

raised his mask.<sup>1087</sup> In particular, Witness 19 noticed a scar on his upper lip.<sup>1088</sup> The scar was a bit longer than one centimetre and between half a centimetre and one centimetre in width.<sup>1089</sup> The visit lasted approximately 15-20 minutes.<sup>1090</sup> Upon leaving, the men took Witness 19's sister "M", who was crying with her hands tied behind her back, with them while "Toger" held her by her right hand.<sup>1091</sup> Approximately one week later a relative of Witness 19 and others brought the dead body of sister "M", found in the woods near Bardonić/Bardhaniq village, to the family home.<sup>1092</sup> Witness 19 saw a wound behind one of her ears and holes in, and blood on, her jacket.<sup>1093</sup> The family buried sister "M" the following day and immediately moved away from the family home out of fear caused by the repeated disappearances or killings of family members.<sup>1094</sup>

226. No official record available to the Trial Chamber indicated that any investigator of the Tribunal had ever shown a photo board to Witness 19 for the purpose of testing whether he could identify the Accused Idriz Balaj.<sup>1095</sup> However, Witness 19 testified that this had happened, at the beginning of an interview conducted in July 2004 in an office in Priština/Prishtinë.<sup>1096</sup> One investigator and one interpreter were present.<sup>1097</sup> The photo board contained approximately ten small photographs, from the shoulders and above, lined up on one piece of paper.<sup>1098</sup> Witness 19 recognized in a photograph one person whom he identified as "Toger" and pointed this out to the investigator.<sup>1099</sup> When the statement of Witness 19 was read back to him, he did not remark upon the absence in it of any reference to the photo board.<sup>1100</sup>

227. Witness 4 testified that sometime in the beginning of 1998 he and his mother were in a private car together with Slobodan Praščević, a Serbian police officer and a friend of the family.<sup>1101</sup> Approximately one hundred metres from the home of Witness

<sup>1087</sup> Witness 19, T. 1213-1214, 1328.

<sup>1088</sup> Witness 19, T. 1214, 1328.

<sup>1089</sup> Witness 19, T. 1328-1330.

<sup>1090</sup> Witness 19, T. 1328.

<sup>1091</sup> Witness 19, T. 1137, 1215.

<sup>1092</sup> Witness 19, T. 1217.

<sup>1093</sup> Witness 19, T. 1217-1218, 1332-1335.

<sup>1094</sup> Witness 19, T. 1219, 1348-1349.

<sup>1095</sup> Witness 19, T. 1226, 1230-1231, 1236, 1238-1239.

<sup>1096</sup> Witness 19, T. 1229-1230, 1235.

<sup>1097</sup> Witness 19, T. 1245-1246.

<sup>1098</sup> Witness 19, T. 1234-1236.

<sup>1099</sup> Witness 19, T. 1229-1230, 1234-1236.

<sup>1100</sup> Witness 19, T. 1236-1237.

<sup>1101</sup> Witness 4, T. 1409-1410, 1415.

4, two men in masks and black clothes opened fire at the vehicle.<sup>1102</sup> The men were approximately seven to ten metres from the car.<sup>1103</sup> The car went off the road and when it stopped the witness managed to escape.<sup>1104</sup> He learned later that Praščević had been killed in this incident and that his mother had been injured and treated in a hospital in Peć/Pejë for about two weeks.<sup>1105</sup> According to a contemporary police report this incident took place on 2 March 1998.<sup>1106</sup> One evening, at approximately 10:30 p.m., in the beginning of April 1998, a group of men came to the family house of Witness 4.<sup>1107</sup> The men, who were speaking Albanian, wore either civilian or military clothes and wore masks or had painted faces.<sup>1108</sup> The witness was told by his mother the next day that the men had searched the house for weapons and demanded money from the family.<sup>1109</sup> One or two weeks later, at approximately 10:00 p.m., some men came to the house.<sup>1110</sup> One man standing guard outside the room where the witness had been sleeping wore army clothes and a mask and was armed.<sup>1111</sup> The witness heard one of the men repeat the name “Toger” over and over again.<sup>1112</sup> His mother told him the next day that one of the men had presented himself as Toger.<sup>1113</sup> She also told him that the men had taken with them one of the witness’s sisters, sister “S”, with the reason given by Toger that every family needed to have a soldier in the army.<sup>1114</sup> The witness did not personally identify Toger.<sup>1115</sup> Four days later, sister “S” came back to the house, in the company of Toger.<sup>1116</sup> Both Toger and the sister were wearing black military clothes and the sister had KLA insignia on her arm.<sup>1117</sup> The sister told the family that she had been brought home to take some clothes and that she was staying at the old school in Rznić/Irzniq where, according to the sister, the KLA was staying.<sup>1118</sup> After this first visit to the family, which lasted 30 to 40 minutes, the witness saw that the sister left

<sup>1102</sup> Witness 4, T. 1411-1412, 1415-1416, 1418, 1420.

<sup>1103</sup> Witness 4, T. 1416.

<sup>1104</sup> Witness 4, T. 1417-1419; P24 (Photographs of a crashed car).

<sup>1105</sup> Witness 4, T. 1419-1421.

<sup>1106</sup> P22 (Criminal report by the police station in Đakovica/Gjakovë, 4 March 1998).

<sup>1107</sup> Witness 4, T. 1422.

<sup>1108</sup> Witness 4, T. 1422-1424.

<sup>1109</sup> Witness 4, T. 1424-1426.

<sup>1110</sup> Witness 4, T. 1427-1428.

<sup>1111</sup> Witness 4, T. 1429-1430, 1501.

<sup>1112</sup> Witness 4, T. 1429-1430, 1501.

<sup>1113</sup> Witness 4, T. 1431.

<sup>1114</sup> Witness 4, T. 1430-1432.

<sup>1115</sup> Witness 4, T. 1503.

<sup>1116</sup> Witness 4, T. 1432-1433, 1504.

<sup>1117</sup> Witness 4, T. 1433-1436; P9 (KLA insignia).

<sup>1118</sup> Witness 4, T. 1435, 1437-1439.

with Toger in his Niva car.<sup>1119</sup> Approximately one or two weeks later, Toger brought sister “S” back to the family home and then he drove away again.<sup>1120</sup> The sister told the family that there was a prison, run by the KLA in the village of Rznić/Irzniq, where she had seen prisoners.<sup>1121</sup> Sister “S” also said that she had received orders from Toger to kill somebody, and if she didn’t kill him, Toger would kill her.<sup>1122</sup> When sister “S” left, Witness 4 accompanied her for around 25 minutes, part of the way towards Rznić/Irzniq and approximately 10-15 minutes after he returned home, Toger and one other person arrived in a car.<sup>1123</sup> Toger asked the witness why his sister was late and the witness responded that the sister had already left.<sup>1124</sup> It was around 4:00 p.m. and the witness could clearly see Toger’s face as they spoke.<sup>1125</sup> The witness never saw sister “S” again after this second visit.<sup>1126</sup>

228. Witness 4 testified that Toger, Aslan Rexhepi, Sokol Zefi, and Arush Islami came to the family house about two or three weeks after the second visit of sister “S”; Rexhepi told the witness’s mother that she could not receive any permission to travel because her husband used to work with the Serbian police, and if she tried to go anywhere she would be killed.<sup>1127</sup> About a week later, Toger and three or four other persons came to the witness’s house.<sup>1128</sup> Toger was dressed in black clothes with KLA insignia and was not wearing a mask.<sup>1129</sup> Toger asked the witness’s mother about the whereabouts of the witness’s brother who at the time was in prison.<sup>1130</sup> The men then took the mother away and the witness has not seen her since.<sup>1131</sup> One night (the witness did not specify the date), Toger and some other soldiers, including Xhevati Islami, came to the witness’s home and broke down the door.<sup>1132</sup> Toger was wearing black clothes and Xhevati Islami was wearing camouflage military clothes of a kind that, according to the witness, the KLA wore.<sup>1133</sup> Both were armed and Islami was wearing a mask.<sup>1134</sup>

<sup>1119</sup> Witness 4, T. 1439-1440, 1504.

<sup>1120</sup> Witness 4, T. 1440-1441, 1505.

<sup>1121</sup> Witness 4, T. 1441.

<sup>1122</sup> Witness 4, T. 1442.

<sup>1123</sup> Witness 4, T. 1442-1443, 1506-1507.

<sup>1124</sup> Witness 4, T. 1443-1440, 1507.

<sup>1125</sup> Witness 4, T. 1443-1444.

<sup>1126</sup> Witness 4, T. 1444.

<sup>1127</sup> Witness 4, T. 1445, 1452-1453, 1498, 1508, 1516.

<sup>1128</sup> Witness 4, T. 1453.

<sup>1129</sup> Witness 4, T. 1453-1454.

<sup>1130</sup> Witness 4, T. 1454.

<sup>1131</sup> Witness 4, T. 1455.

<sup>1132</sup> Witness 4, T. 1463-1464.

<sup>1133</sup> Witness 4, T. 1464-1465.

Islami told the family that he was Ramush Haradinaj but the family did not believe him since they knew who he was.<sup>1135</sup> According to the witness, Toger appeared to be in charge.<sup>1136</sup> Toger went to get one of the witness's sisters, sister "M", who was dressed in black with a leather jacket, and the men brought her with them.<sup>1137</sup> The witness never saw sister "M" alive again.<sup>1138</sup> Four days later a man from Đakovica/Gjakovë municipality came to the witness and told him that he had found the body of the witness's sister.<sup>1139</sup> The witness went with the man to pick up the body of the sister which was lying in the forest, not visible from the road, somewhere between Bardonić/Bardhaniq and Zabelj/Zhabel.<sup>1140</sup> The sister was not wearing shoes and was naked from the waist up, with her jacket lying about one or two metres from her body.<sup>1141</sup> The jacket was bullet ridden and full of knife cuts.<sup>1142</sup> The witness observed knife cuts on the arm and on the throat of sister "M" and a bullet hole in her earlobe.<sup>1143</sup> There was blood around the injuries.<sup>1144</sup> The witness and the man from Bardonić/Bardhaniq carried the sister's body to a cart and brought her home for burial.<sup>1145</sup> Soon thereafter, the witness and the remaining members of his family left their home out of fear.<sup>1146</sup>

229. The witness testified that he saw Toger on television in 2002, in connection with an attack on Toger's house, and that he was being referred to then both as Toger and Idriz Balaj.<sup>1147</sup> During an interview with the Office of the Prosecutor in Priština/Prishtinë in 2004, Witness 4 was shown a photo board.<sup>1148</sup> Witness 4 recognized the Accused Idriz Balaj, drew a circle around his picture and signed his name beneath it.<sup>1149</sup> Witness 19 and Witness 4 gave their statements and were shown

<sup>1134</sup> Witness 4, T. 1465-1466.

<sup>1135</sup> Witness 4, T. 1466, 1531.

<sup>1136</sup> Witness 4, T. 1533-1534.

<sup>1137</sup> Witness 4, T. 1467.

<sup>1138</sup> Witness 4, T. 1468.

<sup>1139</sup> Witness 4, T. 1468-1469.

<sup>1140</sup> Witness 4, T. 1469-1470, 1472-1473; P25 (Photograph of the location where the body of Witness 4's sister was found).

<sup>1141</sup> Witness 4, T. 1473-1475.

<sup>1142</sup> Witness 4, T. 1474.

<sup>1143</sup> Witness 4, T. 1473.

<sup>1144</sup> Witness 4, T. 1475-1476.

<sup>1145</sup> Witness 4, T. 1475-1476.

<sup>1146</sup> Witness 4, T. 1479.

<sup>1147</sup> Witness 4, T. 1518-1520.

<sup>1148</sup> Witness 4, T. 1479.

<sup>1149</sup> Witness 4, T. 1481-1482, 1487; P27 (Photograph identification board shown to Witness 4 during his interview).

the photo boards separately.<sup>1150</sup> Witness 4 said that Witness 19 had told him that he had been shown a photo boards but that he had not been able to recognize anyone.<sup>1151</sup>

230. José Antonio Lorenzo Quiroz, a former investigator for the ICTY,<sup>1152</sup> testified that he showed a photo board to Witness 4 during an interview in October 2004.<sup>1153</sup> At the time Lorenzo Quiroz showed Witness 4 the photo board, he was aware that Idriz Balaj had been a defendant in a trial in Kosovo/Kosova and that his picture had been shown in newspapers and on television.<sup>1154</sup> He also interviewed Witness 19 in October 2004 although on a different date than Witness 4.<sup>1155</sup> The two were always separated during their interviews and when they were shown the photo boards.<sup>1156</sup> Lorenzo Quiroz showed Witness 19 a photo board, including Idriz Balaj, during a July 2004 interview although he did not record this in the statement.<sup>1157</sup> He explained that this was an oversight on his part.<sup>1158</sup> He did not remember whether Witness 19 identified anybody or not.<sup>1159</sup> Witness 19 informed Lorenzo Quiroz that he had seen Idriz Balaj in the news which reported that he had been found guilty of crimes.<sup>1160</sup>

231. Maklen Misha, a language clerk at the Tribunal, served as an interpreter during interviews of Witnesses 4 and 19 conducted by Tribunal investigators.<sup>1161</sup> He stated that they had sometimes come to the interviews together.<sup>1162</sup> He also testified that an investigator of the Tribunal had shown photo boards to each witness separately.<sup>1163</sup> However, Misha repeatedly noted that he was not sure of his memory in this regard.<sup>1164</sup> He stated that he did not recall the reaction of either one of the witnesses to the photo boards.<sup>1165</sup> Misha testified that photo boards are usually in the form of multiple portrait pictures placed on a landscape-oriented A4-size page, although he did not remember if that had been the case with regard to Witnesses 4 and 19.<sup>1166</sup> He stated that he did not

<sup>1150</sup> Witness 4, T. 1481, 1488-1490.

<sup>1151</sup> Witness 4, T. 1491.

<sup>1152</sup> José Antonio Lorenzo Quiroz, T. 5862.

<sup>1153</sup> José Antonio Lorenzo Quiroz, T. 5873-5874, 5919-5920.

<sup>1154</sup> José Antonio Lorenzo Quiroz, T. 5927.

<sup>1155</sup> José Antonio Lorenzo Quiroz, T. 5875, 5917-5920.

<sup>1156</sup> José Antonio Lorenzo Quiroz, T. 5882-5883.

<sup>1157</sup> José Antonio Lorenzo Quiroz, T. 5877-5879, 5912, 5915-5917, 5920.

<sup>1158</sup> José Antonio Lorenzo Quiroz, T. 5878.

<sup>1159</sup> José Antonio Lorenzo Quiroz, T. 5879, 5920.

<sup>1160</sup> José Antonio Lorenzo Quiroz, T. 5928-5929.

<sup>1161</sup> Maklen Misha, T. 1250-1251.

<sup>1162</sup> Maklen Misha, T. 1251.

<sup>1163</sup> Maklen Misha, T. 1252.

<sup>1164</sup> Maklen Misha, T. 1253-1254, 1256.

<sup>1165</sup> Maklen Misha, T. 1256-1257.

<sup>1166</sup> Maklen Misha, T. 1252-1253.

remember ever having reviewed a witness statement that did not contain a reference to the witness having seen a photo board, when the witness had indeed seen one.<sup>1167</sup> Misha testified that usually when an investigator shows a photo board to a witness, it is documented in the witness statement.<sup>1168</sup>

232. Witness 63 stated that one day in the summer of 1998 when he went to collect some wood from his forest, he found the dead body of a young girl.<sup>1169</sup> The body was in a foetal position with a pool of blood underneath her head.<sup>1170</sup> The witness reported it to the local KLA commander and heard from one person from his village that someone from Ratiš/Ratishë was asking about his missing sister.<sup>1171</sup> The witness went to the village with a friend and finally spoke with someone who turned out to be a relative of the dead girl.<sup>1172</sup> They all returned to the body and the relative identified it and transported it away.<sup>1173</sup>

233. According to an RDB report, on 2 March 1998, around 4:00 p.m., Albanian “terrorists” opened fire from automatic weapons on a vehicle of “Lada” type and killed Slobodan Praščević, from Đakovica/Gjakovë, who had previously been employed as the Commander of the Rznić/Irzniq police department.<sup>1174</sup> It is further stated in the report that a number of “terrorists” took part in the ambush on Slobodan Praščević and that one of them, who was masked and had two pistols in his hands, approached the vehicle after the attack and fired towards Slobodan Praščević.<sup>1175</sup> Witness 4 and his mother, who was seriously injured and hospitalized following the incident, were also in the vehicle.<sup>1176</sup> Zoran Stijović, head of the Analytical Section of the Priština/Prishtinë RDB Centre from 1995 until 1999, testified that the RDB had information gained from a police investigation that Slobodan Praščević was killed by the brothers of witness 4’s mother, with whom he had an intimate affair.<sup>1177</sup> According to Stijović, this incident

<sup>1167</sup> Maklen Misha, T. 1255.

<sup>1168</sup> Maklen Misha, T. 1255.

<sup>1169</sup> P339 (Witness 63, witness statement, 26 April 2006), paras 4, 5.

<sup>1170</sup> P339 (Witness 63, witness statement, 26 April 2006), para. 5.

<sup>1171</sup> P339 (Witness 63, witness statement, 26 April 2006), paras 6, 7.

<sup>1172</sup> P339 (Witness 63, witness statement, 26 April 2006), para. 7.

<sup>1173</sup> P339 (Witness 63, witness statement, 26 April 2006), para. 8.

<sup>1174</sup> P967 (RDB official note, 3 March 1998).

<sup>1175</sup> P967 (RDB official note, 3 March 1998).

<sup>1176</sup> P967 (RDB official note, 3 March 1998).

<sup>1177</sup> Zoran Stijović, T. 9062-9064.

was not connected with the KLA although the KLA later tried to portray it as its own doing<sup>1178</sup>

234. The Trial Chamber has also received forensic medical evidence with regards to sister "S" (remains labelled "R-12"), the mother of Witness 4 (remains labelled "R-11"), and sister "M" (remains labelled "ACL02-001B"). Branimir Aleksandrić<sup>1179</sup> testified that bodies R-11 and R-12 were recovered on 12 September 1998.<sup>1180</sup> The bodies were found with their heads next to each other.<sup>1181</sup> A rusty piece of barbed wire of 2.5 metres in length and tied in a sliding noose on one end were found beside these bodies.<sup>1182</sup> It could not be determined to which body the barbed wire belonged or whether it had been wrapped around a body part.<sup>1183</sup> However, since the wire was found closer to body R-12, it was packed in the body bag of R-12.<sup>1184</sup> Long black hair and putrefied soft tissue, which could not be attributed to one of the bodies, were tangled in the thorns of the wire.<sup>1185</sup> Dušan Dunjić<sup>1186</sup> testified that a 313 centimetre long piece of barbed wire was found next to the body, with one end fashioned into a noose.<sup>1187</sup> Dark hairs similar in quality, colour and length to those found alongside the skull of the body were found on the barbed wire.<sup>1188</sup> This similarity was established by macroscopic examination.<sup>1189</sup> According to the witness, the only explanation for the presence of the hairs on the wire, is that the wire had been in contact with a person.<sup>1190</sup> ICMP DNA analysis identified the

<sup>1178</sup> Zoran Stijović, T. 9062-9064.

<sup>1179</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1180</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128-129, 203-204.

<sup>1181</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 72; Branimir Aleksandrić, T. 6759-6761; P414 (Various photographs), p. 4.

<sup>1182</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 72, 83, 86-87; Branimir Aleksandrić, T. 6761, 6764; P452 (Video of the body recovery at canal), 0:27'25" - 0:30'15", 0:32'26" - 0:33'00"; P686 (Autopsy photographs R-12), p. 2, middle photograph, p. 6.

<sup>1183</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 81; Branimir Aleksandrić, T. 6761-6762.

<sup>1184</sup> Branimir Aleksandrić, T. 6761, 6764-6765, 6787-6788; P686 (Autopsy photographs R-12), p. 2, middle photograph.

<sup>1185</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 72, 82; P686 (Autopsy photographs R-12), p. 5.

<sup>1186</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1187</sup> Dušan Dunjić, T. 6832-6833; P630 (Record of exhumations, 16 September 1998), p. 2; P684 (Autopsy report R-12), p. 3; P686 (Photographs R-12), pp. 2, 5.

<sup>1188</sup> Dušan Dunjić, T. 6833-6835, 7274-7275; P630 (Record of exhumations, 16 September 1998), p. 2; P684 (Autopsy report R-12), p. 3.

<sup>1189</sup> Dušan Dunjić, T. 6835, 7274-7275, 7353-7355.

<sup>1190</sup> Dušan Dunjić, T. 6833-6834.

remains labelled R-12 as those of sister “S” of witness 4.<sup>1191</sup> An autopsy conducted on the remains on 8 December 2003 revealed possible gunshot injuries to the chest, fractures in the spine, a gunshot injury to the left arm, the right elbow, the pelvic region, and the right leg.<sup>1192</sup> The cause of death was determined as gunshot injuries to the chest and/or gunshot injuries to the lower abdomen.<sup>1193</sup> Dušan Dunjić<sup>1194</sup> testified that body R-12 was wearing dark blue jeans and a T-shirt.<sup>1195</sup> An autopsy conducted on the remains in September 1998 revealed multiple fractures on the ribs, fractures on both upper arms, the right upper thigh and the right pelvic bone.<sup>1196</sup> The fractures were consistent with having been caused by violent physical blows with a blunt object.<sup>1197</sup> According to Dunjić, there was no indication that these fractures were caused by bullets.<sup>1198</sup>

235. ICMP DNA analysis identified the remains labelled R-11 as those of the mother of Witness 4.<sup>1199</sup> An autopsy conducted on the remains on 8 December 2003 which had sustained multiple fractures consistent with multiple gunshot injuries to the pelvis area.<sup>1200</sup> In addition, the autopsy revealed fractures to the left shoulder blade, arms and the left forearm, also consistent with multiple gunshot wounds.<sup>1201</sup> The cause of death was determined to be a gunshot wound to the pelvis.<sup>1202</sup> Dušan Dunjić testified that body R-11 was wearing a dark blue dress.<sup>1203</sup> An autopsy conducted on the remains in September 1998 revealed a bullet entry wound on the left side of the abdominal region and an exit wound at the left shoulder blade, and parts of the bullet were found near the vertebra.<sup>1204</sup> The autopsy revealed multiple fractures in both arms and the lower left leg.<sup>1205</sup>

<sup>1191</sup> Agreed Facts, 26 November 2007, No. 66.

<sup>1192</sup> Agreed Facts, 26 November 2007, Nos 67-68.

<sup>1193</sup> Agreed Facts, 26 November 2007, No. 69.

<sup>1194</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1195</sup> P684 (Autopsy report R-12), p. 2.

<sup>1196</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 339; P684 (Autopsy report R-12), p. 6.

<sup>1197</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 338.

<sup>1198</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 338.

<sup>1199</sup> Agreed Facts, 26 November 2007, No. 63.

<sup>1200</sup> Agreed Facts, 26 November 2007, No. 64.

<sup>1201</sup> Agreed Facts, 26 November 2007, No. 64.

<sup>1202</sup> Agreed Facts, 26 November 2007, No. 65.

<sup>1203</sup> P680 (Autopsy report R-11), p. 2.

<sup>1204</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 328; P680 (Autopsy report R-11), p. 6.

<sup>1205</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 328; P680 (Autopsy report R-11), p. 6.

236. ICMP DNA analysis identified the remains labelled ACL02-001B as those of sister “M” of witness 4.<sup>1206</sup> An autopsy conducted on the remains on 20 October 2005 revealed extensive damage to the head and jaw including fractures consistent with a gunshot wound through the jawbone.<sup>1207</sup> Fractures to the right arm and the spine, consistent with gunshot wounds, were also found.<sup>1208</sup> The report concluded that death was caused by multiple gunshot wounds.<sup>1209</sup>

237. The Trial Chamber considers both Witness 4 and Witness 19 to be credible witnesses. However, it finds Witness 4 to be more reliable than Witness 19 with regard to the chronology of the events in this count, than Witness 19. Approximately from the beginning of April 1998, armed men repeatedly visited the house of the two witnesses. The men wore civilian, military, or black KLA clothes, and some of them wore masks. They asked about weapons and searched the house. According to Witness 19, they also asked about the family’s ties to the late Serbian police officer Slobodan Praščević.

238. After one late evening visit around mid-April 1998, the mother of the family told Witness 4 and Witness 19 that the armed men had left with their sister “S”, explaining that she had to join the KLA. Approximately four days later, sister “S” came home accompanied by a person that the witnesses came to know as “Toger”. They were both in black uniforms with KLA insignia. According to Witness 19, there were also two or three other armed men in black uniforms with KLA insignia. To the knowledge of Witness 19, sister “S” had never wanted to join the KLA. Approximately one or two weeks later, according to Witness 4, “Toger” dropped off sister “S” at the family house. Witness 19 testified that sister “S” was dropped off by armed men and that she was again wearing a black uniform with KLA insignia. According to Witness 19, sister “S” said that she was a KLA member, and that she took orders from “Toger”, who had instructed her to be back at the base by a certain time. Witness 4 testified that sister “S” said that “Toger” had ordered her to kill somebody, and that he would kill her if she did not comply. According to Witness 19, two or three soldiers arrived by car to check on sister “S” after she had left home again. According to Witness 4, “Toger”, accompanied by another person, arrived by car and asked why sister “S” was late. Approximately three to four weeks later, masked, armed, and uniformed men arrived at the home of

<sup>1206</sup> Agreed Facts, 26 November 2007, No. 124.

<sup>1207</sup> Agreed Facts, 26 November 2007, Nos 125-126.

<sup>1208</sup> Agreed Facts, 26 November 2007, No. 126.

<sup>1209</sup> Agreed Facts, 26 November 2007, No. 127.

Witness 4 and Witness 19 between midnight and 1:00 a.m., saying that they had orders to take the mother with them to sign something. Witness 4 testified that one of them was “Toger”, who was dressed in black with KLA insignia and who asked the mother about the brother of Witness 4. The mother was taken away by the men. On the basis of this evidence, the Trial Chamber is satisfied that the men who took sister “S” and the mother were KLA soldiers.

239. In September 1998, the body of sister “S” (R-12) and the body of the mother (R-11) were found at the Lake Radonjić/Radoniq canal in immediate proximity to each other. The mother was found with multiple fractures consistent with multiple gunshot wounds, one of which could have caused her death. Dušan Dunjić testified that sister “S” was found in dark blue jeans and a T-shirt. An autopsy conducted in September 1998 found multiple fractures on her ribs, her upper arms, right upper thigh, and right pelvic bone. Dušan Dunjić testified that the fractures were consistent with violent blows from a blunt object and that he found no indication that the fractures were caused by bullets. Another autopsy conducted on the same remains on 8 December 2003 found possible gunshot injuries to the chest, fractures in the spine, and a gunshot injury to the left arm, the right elbow, the pelvic region, and the right leg. The autopsy determined the cause of death to be gunshot injuries to the chest and/or the lower abdomen. Considering the forensic medical evidence, the fact that the mother and sister “S” were both taken from their home by the KLA, the considerable interval in time between when each of them were taken away, and the fact that their bodies were nonetheless found at exactly the same spot at the Radonjić/Radoniq canal, the Trial Chamber concludes that KLA soldiers murdered the mother and sister “S”. These circumstances and the clothing in which sister “S” was found indicate that she was not killed in combat. The evidence of Witness 4 establishes that her death occurred no earlier than late April 1998. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that the victims were not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

240. Some time after the KLA soldiers took the mother, several armed and masked men wearing black and camouflage uniforms, one of whom was “Toger”, broke down the door of the family’s house at night and took sister “M” away. Witness 19 testified that she was crying, had her hands tied behind her back, and that “Toger” held one of

her hands. Her body was found approximately four days later in the woods near Bardonić/Bardhaniq village. According to Witness 63, this happened in the summer of 1998. On the basis of this evidence, the Trial Chamber is satisfied that the men coming to the house were KLA soldiers, and that sister "M" died during the indictment period. Considering the coercive manner in which sister "M" was taken from her home, the injuries inflicted on her body, and the short time between when she was taken away by KLA soldiers and when she was found dead, the Trial Chamber concludes that KLA soldiers murdered sister "M". The Trial Chamber is furthermore convinced that this crime was also closely related to the armed conflict in Kosovo/Kosova, and that sister "M" was not taking active part in hostilities at the time the crime was committed and that the perpetrators knew or should have known that this was the case.

241. All three Accused are also charged with cruel treatment under this Count. The Trial Chamber finds that the evidence is insufficient to establish beyond a reasonable doubt that any acts of cruel treatment were committed. The Trial Chamber therefore concludes that the Accused should be acquitted of this charge. All three Accused are charged with Count 14 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability separately in section 7, below. Idriz Balaj is also charged, in the alternative, with having committed, planned, instigated, or aided and abetted the commission of the crimes described in Count 14.

242. There is no evidence before the Trial Chamber that Idriz Balaj committed, planned, or instigated the commission of these three murders. The evidence shows that "Toger", as he introduced himself, accompanied sister "S" on several occasions when, and after, she was recruited into the KLA and that he was also present when her mother and sister "M" were taken away. As mentioned above, sister "S" told Witnesses 4 and 19 that she had received several orders from "Toger". Witness 19 learned from the mother that "Toger" was Idriz Balaj. Several other witnesses in this case also linked "Toger" with Idriz Balaj, and their testimonies are consistent with Idriz Balaj wearing a black uniform and being in a position of some authority within the KLA.<sup>1210</sup> Even if "Toger" means "lieutenant" in Albanian, the Trial Chamber finds, in the absence of any evidence indicating that any other person during the indictment period and in the Dukagjin area used that title or name, or was addressed as such by others, that "Toger"

is Idriz Balaj. His role in accompanying sister “S” when, and after, she was recruited into the KLA, and in taking the mother and sister “M” from their home, was a link in the chain of events which led to the murders of these women. It brought and kept them in the vicinity of the perpetrators. The Trial Chamber cannot speculate on Idriz Balaj's further role, if any, in these events. The Trial Chamber notes that the circumstances surrounding the three murders show not only apparent similarities but also significant differences. The absence of specific evidence on the course of events after the mother and the two sisters ended up in KLA hands leaves the majority of the Trial Chamber, Judge Höpfel dissenting, without a sufficient basis to further assess the relevance and importance of Idriz Balaj's acts. The majority finds that there is no evidence that Idriz Balaj knowingly contributed to or facilitated the commission of any of these murders, especially as there is no evidence that Idriz Balaj was aware at that time that these murders were or would be committed. Therefore the Trial Chamber concludes that Idriz Balaj should be acquitted of committing, planning, and instigating the commission of these three murders. The majority also concludes Idriz Balaj should also be acquitted of aiding and abetting the commission of these murders.

#### 6.9 Cruel treatment and murder of Hajrullah Gashi and Isuf Hoxha (Count 16)

243. All three Accused are charged, as participants in a joint criminal enterprise, with cruel treatment and murder of Hajrullah Gashi and Isuf Hoxha in violation of the laws or customs of war. In the alternative, Ramush Haradinaj is charged with the commission of, planning, or aiding and abetting the commission of, the crimes. As explained in section 2.1, the Trial Chamber has decided not to rely on the testimony of Witness 8, and has heard relevant evidence from Radovan Zlatković, as well as forensic medical evidence.

244. On 6 July 1998, MUP officer Dušan Dragović wrote a report based on an interview with Vendim Hoxha concerning the disappearance of his father Isuf Hoxha on 26 June, on the road between Prizren and Suva Reka/Suharekë.<sup>1210</sup> Radovan Zlatković testified that Isuf Hoxha's son informed him that his father was kidnapped between Prizren/Prizren and Suva Reka/Suharekë sometime in June or July 1998 by “Albanian

<sup>1210</sup> Shemsedin Cekaj, T. 4394; P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 14; Ylber Haskaj, T. 10339; P371 (Bogdan Tomaš, witness statement, 24 May 2007), para. 26; and other evidence as discussed in the findings on this Count and in section 6.19.

“terrorists”, and died in July 1998.<sup>1212</sup> Radovan Zlatković stated that he did not know how Vendim Hoxha gained this information.<sup>1213</sup>

245. The Trial Chamber has also received forensic medical evidence with regard to Hajrullah Gashi and Isuf Hoxha. Branimir Aleksandrić<sup>1214</sup> testified that the remains labelled “R-22” and “R-23” were recovered on 12 September 1998.<sup>1215</sup> R-22 and R-23 were found about 650 metres downstream from the Radonjić/Radoniq canal, close together (within a radius of about 4 metres), on the dry part of the ravine immediately above the water-line.<sup>1216</sup> Dušan Dunjić<sup>1217</sup> testified that body R-22 was a male between 40 and 55 years old and between 166 and 175 centimetres tall.<sup>1218</sup> The autopsy further revealed fractures on the skull and forearm bones.<sup>1219</sup> It is possible, though very unlikely, that these fractures were caused by a fall into the canal.<sup>1220</sup> The autopsy revealed wounds that were probably caused by blows from a blunt object.<sup>1221</sup> Olga Gashi identified the body as Hajrullah Gashi, based on clothes and physical characteristics, including dental information that matched the body: Hajrullah Gashi had lost many teeth during his life.<sup>1222</sup> Olga Gashi told the witness that Hajrullah Gashi was last seen on 24 June 1998 and she had heard that he had been kidnapped by the KLA.<sup>1223</sup> Body R-23 was a male between 50 and 60 years old and between 163 and 170 centimetres tall.<sup>1224</sup> The autopsy revealed fractures on the ribs, the left hip bone and bones of the lower limbs.<sup>1225</sup> Bones of the head, neck, trunk and upper limbs were

<sup>1211</sup> P1181 (Report of the Đakovica/Gjakovë MUP Crime Police Department), p. 60.

<sup>1212</sup> Radovan Zlatković, T. 6882, 6898.

<sup>1213</sup> Radovan Zlatković, T. 6898.

<sup>1214</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1215</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128-129, 203-204.

<sup>1216</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 164, 171-172, 175, 177-178, 184; Branimir Aleksandrić, T. 6807-6808, 6810, 9585; P452 (Video of body recovery at canal), 1:57'46" - 1:57'56", from 1:59'24" to 1:59'33"; P1115 (Annex C to Branimir Aleksandrić, witness statement, 26 June 2007, reports dated 15 and 16 September 1998), pp. 4, 10.

<sup>1217</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1218</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 473; P730 (Autopsy report R-22), p. 4.

<sup>1219</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 475; P730 (Autopsy report R-22), pp. 1-2, 4.

<sup>1220</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 476.

<sup>1221</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 477.

<sup>1222</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 125, 478-483; P730 (Autopsy report R-22), pp. 2, 5.

<sup>1223</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 125; P730 (Autopsy report R-22), p. 5.

<sup>1224</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 490; P734 (Autopsy report R-23), p. 4.

<sup>1225</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 492; P734 (Autopsy report R-23), pp. 2, 4.

missing.<sup>1226</sup> Vendim Hoxha identified the body as Isuf Hoxha, based on clothes, personal effects, including a black digital watch, and physical characteristics.<sup>1227</sup> Vendim Hoxha stated that Isuf had lost almost all of his teeth in life; the autopsy found all teeth were missing in body R-23, almost all of which had been lost during life.<sup>1228</sup> Vendim Hoxha told the forensic team that Isuf Hoxha had disappeared three months ago.<sup>1229</sup> Both sets of remains were handed to the relatives and certificates of death were issued.<sup>1230</sup>

246. As referred to above, the Trial Chamber has been presented with evidence that Isuf Hoxha disappeared on 26 June 1998 on the road between Prizren and Suva Reka/Suharekë, as well as evidence that Hajrullah Gashi was last seen on 24 June 1998. Radovan Zlatković testified that Vendim Hoxha told him that Isuf Hoxha had been abducted, though he did not know how Vendim Hoxha came about this information. Additionally, in the contemporaneous missing persons report compiled by a MUP officer, Vendim Hoxha is recorded as having indicated that his father disappeared without a trace and, as he was a member of the Socialist Party of Serbia, may have been kidnapped. This suggests that Vendim Hoxha had no concrete information as to what had happened to Isuf Hoxha. Similarly, the source of the information of Olga Gashi, who told Dušan Dunjić that she had heard that Hajrullah Gashi had been abducted, is unknown. The Trial Chamber cannot rely on this unsourced and uncorroborated multiple hearsay evidence of Isuf Hoxha's and Hajrullah Gashi's alleged abduction. During the examination-in-chief of Witness 8, the Prosecution intended to show that Hajrullah Gashi and Isuf Hoxha were together at the time of their alleged abduction. However in section 2.1 above, the Trial Chamber has explained why it does not rely on the evidence of Witness 8.

247. The remains allegedly belonging to the two persons, labelled "R-22" and "R-23", were identified by traditional means based on information provided by relatives about Hajrullah Gashi and Isuf Hoxha's physical characteristics, the recognition of clothes found on the bodies, the absence of teeth, and personal effects. The remains have not been identified by DNA analysis. The Trial Chamber has heard evidence of traditional

<sup>1226</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 492; P734 (Autopsy report R-23), p. 4.

<sup>1227</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 494-498; P734 (Autopsy report R-23), pp. 2, 4-5; Dušan Dunjić, T. 7210.

<sup>1228</sup> P734 (Autopsy report R-23), pp. 2, 4; P737 (Identification questionnaire R-23), p. 10.

<sup>1229</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 494.

identification of other sets of remains which was later contradicted by DNA analysis,<sup>1231</sup> which calls for caution. R-22 was identified by the victim's wife based on the clothes found with the body, as well as physical characteristics such as dental information. R-23 was identified by Vendim Hoxha based on the clothes found with the body, physical characteristics and personal belongings which included a black digital watch. Bearing in mind that the traditional identifications have not always been accurate, and having carefully considered the grounds on which the bodies were identified, the Trial Chamber decides, in this case, not to make any determination regarding the identities of bodies R-22 and R-23. Considering the fact that Hajrullah Gashi and Isuf Hoxha have never been seen again, the Trial Chamber accepts that the two men are, in all likelihood, dead. The forensic medical evidence relating to R-22 and R-23 does not allow for a conclusion beyond a reasonable doubt that the deceased were murdered. The Trial Chamber has heard no reliable evidence about the alleged ill-treatment or the alleged involvement of Ramush Haradinaj in this event. For these reasons, the Trial Chamber concludes that all three Accused should be acquitted of this Count.

#### 6.10 Cruel treatment and murder of Ilira and Tush Frrokaj (Count 18)

248. All three Accused are charged, as participants in a joint criminal enterprise, with cruel treatment and murder of Ilira and Tush Frrokaj in violation of the laws or customs of war. In the alternative, Idriz Balaj is charged as having committed, or aided and abetted the commission of, the crimes. The Trial Chamber has heard relevant evidence from Witness 21, as well as forensic medical evidence.

249. Witness 21 saw Tush Frrokaj, a Catholic Albanian, and his wife Ilira Frrokaj for the last time in Pljančor/Plançar, some time in late August 1998.<sup>1232</sup> According to a report by the Kosovo Diplomatic Monitoring Mission, the couple went missing on the 26 August 1998.<sup>1233</sup> The witness was told by Tush Frrokaj's mother that the couple had

<sup>1230</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 484, 499; P635 (Death certificates), pp. 15-18; P730 (Autopsy report R-22), p. 5; P734 (Autopsy report R-23), p. 5.

<sup>1231</sup> See section 6.1, above.

<sup>1232</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 2-9; Witness 21, T. 2736-2739, 2748, 2845; P42 (Witness 21, witness statement, 12 April 2007), Annex A (Photograph of Ilira and Tush Frrokaj).

<sup>1233</sup> D67 (Report by Kosovo Diplomatic Monitoring Mission on the disappearance of Ilira and Tush Frrokaj, 8 September 1998).

left Pljančor/Plançar around 1:30 or 2:00 p.m. in the family car, a dark red Opel Kadett, for Nepolje/Nepolë in Peć/Pejë municipality, where, as the witness was told by Tush Frrokaj's daughter, they intended to visit Ilira Frrokaj's sister, Shqipe Krasniqi.<sup>1234</sup> According to Witness 21, the main road from Đakovica/Gjakovë to Peć/Pejë, through Dečani/Deçan, was under Serbian control and it was therefore considered safer to travel to Nepolje/Nepolë through the area controlled by the KLA.<sup>1235</sup>

250. Late in the night of the same day, Witness 21 was informed by Tush Frrokaj's mother that the couple had not returned.<sup>1236</sup> The next day the family reported their disappearance to the local police in Đakovica/Gjakovë.<sup>1237</sup> Witness 21 heard from Tush Frrokaj's brother-in-law that Ilira and Tush Frrokaj had never arrived in Nepolje/Nepolë.<sup>1238</sup> At a family meeting two days after the disappearance Haxhi Shinari, who had known Tush Frrokaj since childhood, informed the witness that he had seen the couple driving on the road from Pljančor/Plançar in the direction of Dujak/Dujakë at around 2:00 p.m. on the day they went missing.<sup>1239</sup> On the same day, Witness 21 met with two KLA soldiers, one of whom told the witness he was a member of Idriz Balaj's Black Eagles.<sup>1240</sup> Witness 21 did not know Idriz Balaj, whom he referred to as "Toger", before Ilira and Tush Frrokaj's disappearance.<sup>1241</sup> He came across Idriz Balaj twice during his search for Tush and Ilira Frrokaj, but Idriz Balaj refused to speak to him on both occasions.<sup>1242</sup> Pekka Haverinen testified that he showed photo boards to Witness 21 during an interview on 17 June 2004 and that the witness recognized Idriz Balaj.<sup>1243</sup>

251. Two or three days after the disappearance of Ilira and Tush Frrokaj, Witness 21 travelled with two KLA soldiers to the KLA checkpoint south of Gramočelj/Gramaql.<sup>1244</sup> Five soldiers wearing KLA uniforms were on duty.<sup>1245</sup>

<sup>1234</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 9-11; Witness 21, T. 2849.

<sup>1235</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 12-13; Witness 21, T. 2785-2786.

<sup>1236</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 14.

<sup>1237</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 17; Witness 21, T. 2740-2741, 2850.

<sup>1238</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 16.

<sup>1239</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 18-19, 24-27; Witness 21, T. 2740-2741, 2850; P42 (Witness 21, witness statement, 12 April 2007), Annex G (Map marked by Witness 21).

<sup>1240</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 29, 31, 33, 51; Witness 21, T. 2630-2635, 2641, 2740, 2754, 2802-2803, 2862-2863.

<sup>1241</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 32; Witness 21, T. 2720-2722.

<sup>1242</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 32; Witness 21, T. 2719-2720, 2853.

<sup>1243</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 47-52, pp. 68-71; P63 (ICTY photo identification board on which Witness 21 positively identified and marked Idriz Balaj).

<sup>1244</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 34-35; Witness 21, T. 2740-2741, 2754.

Witness 21 knew three of these soldiers by name.<sup>1246</sup> Two of them told the witness that they had been on duty when Ilira and Tush Frrokaj passed their checkpoint.<sup>1247</sup> They informed the witness that when Tush Frrokaj was stopped, two of the three women in the car got out at the checkpoint.<sup>1248</sup> The same two KLA soldiers told the witness that they had advised Tush Frrokaj not to drive through the area because there had been a major Serbian offensive two or three days earlier and it was not yet safe enough to enter the territory.<sup>1249</sup> The two soldiers told Witness 21 that they remembered Tush Frrokaj saying “We’re all Albanian” and insisting on driving through the area of Gramočelj/Gramaqel and Jablanica/Jabllanicë, in Đakovica/Gjakovë municipality, to Napolje/Nepolë, which they allowed him to do.<sup>1250</sup>

252. Over the following days, Witness 21 was told by KLA soldiers at the checkpoint outside Glođane/Gllogjan on the road leading to Gramočelj/Gramaqel that the occupants of a red Opel Kadett, who the soldiers described as a small obese woman and a large man with curly hair, were picked up by Idriz Balaj, interrogated for half an hour and allowed to pass.<sup>1251</sup> Witness 21 learned from the guards at the checkpoint outside Glođane/Gllogjan on the road leading to Rznic/Irzniq that the car had never passed their checkpoint.<sup>1252</sup> Witness 21 did not check whether there was a KLA checkpoint on the road leading to Šaptelj/Shaptej.<sup>1253</sup>

253. On or about the fifth day after the disappearance of Ilira and Tush Frrokaj, a KLA soldier told Witness 21 about two bodies in the Radonjić/Radoniq canal.<sup>1254</sup> Witness 21 and the KLA soldier first went to the KLA headquarters in Glođane/Gllogjan without an appointment.<sup>1255</sup> The witness went inside the compound alone.<sup>1256</sup> Witness 21 asked a KLA soldier for a meeting with Ramush Haradinaj.<sup>1257</sup>

<sup>1245</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 35-37; P42 (Witness 21, witness statement, 12 April 2007), Annex H (KLA insignia).

<sup>1246</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 36, 42; Witness 21, T. 2786-2787.

<sup>1247</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 39; Witness 21, T. 2787.

<sup>1248</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 40; Witness 21, T. 2787.

<sup>1249</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 40; Witness 21, T. 2724, 2763-2766, 2773-2775, 2787-2789.

<sup>1250</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 40.

<sup>1251</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 44-45, 47, 55-56; Witness 21, T. 2742, 2754-2761, 2768-2769; P42 (Witness 21, witness statement, 12 April 2007), Annex I (Map marked by Witness 21); D35 (Aerial photograph of Glodane/Gllogjan village).

<sup>1252</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 47; Witness 21, T. 2761.

<sup>1253</sup> Witness 21, T. 2777-2780; D35 (Aerial photograph of Glodane/Gllogjan village).

<sup>1254</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 49; Witness 21, T. 2742-2744, 2790.

<sup>1255</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 51; Witness 21, T. 2742-2743.

<sup>1256</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 52.

<sup>1257</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 52; Witness 21, T. 2781-2783.

Ramush Haradinaj was not available, so the witness met with Ramush Haradinaj's brother, Shkëlzen Haradinaj, who was wearing a KLA uniform.<sup>1258</sup> Shkëlzen Haradinaj doubted that Idriz Balaj had stopped Ilira and Tush Frrokaj for questioning and reassured the witness that the KLA would look for them and find them if they were in KLA territory.<sup>1259</sup> Shkëlzen Haradinaj asked for a photograph of the two missing persons and, in the presence of the witness, issued a handwritten and signed document which allowed him to move around the Dukagjin zone.<sup>1260</sup> Witness 21 used this document to travel within KLA territory.<sup>1261</sup> Witness 21 and the KLA soldier who had told him about the bodies then went to the Radonjić/Radoniq canal, where the soldier pointed out two bodies in the water to the witness, which were not the bodies of Ilira and Tush Frrokaj.<sup>1262</sup> Witness 21 and the KLA soldier then went to see Tahir Zemaj in Prapačane/Prapaqan in Dečani/Deçan municipality who assured the witness of his help in finding the two persons dead or alive, if they were on KLA territory.<sup>1263</sup>

254. On or about the sixth day after the disappearance, Witness 21 returned with the same soldier to the KLA headquarters in Glogjan/Gllogjan in order to meet with Shkëlzen Haradinaj for a second time.<sup>1264</sup> Witness 21 provided Shkëlzen Haradinaj with a photograph of the missing persons and asked to speak to Idriz Balaj, whom he had recognized on the compound.<sup>1265</sup> Shkëlzen Haradinaj sent for Idriz Balaj, but Idriz Balaj let them know that he was busy.<sup>1266</sup> After the meeting, they decided to return to the Radonjić/Radoniq canal, together with another KLA soldier who the witness had met before.<sup>1267</sup> In Ratiš/Ratishë, they were joined by three KLA soldiers in KLA uniform, one of whom claimed to be a member of Idriz Balaj's unit.<sup>1268</sup> At the canal, these three KLA soldiers remained on a hill to keep guard.<sup>1269</sup> Together with the other two soldiers, Witness 21 went down to the two bodies in the canal he had previously seen.<sup>1270</sup> The witness continued with one of the soldiers and saw more than 30 bodies in the area, but

<sup>1258</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 53; Witness 21, T. 2780-2781.

<sup>1259</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 53; Witness 21, T. 2783-2784.

<sup>1260</sup> P42 (Witness 21, witness statement, 12 April 2007), para. 53; Witness 21, T. 2642, 2747, 2783-2784.

<sup>1261</sup> Witness 21, T. 2641.

<sup>1262</sup> P42 (Witness 21, witness statement, 12 April 2007), paras 54, 57; Witness 21, T. 2616, 2625, 2627, 2745-2646, 2818.

<sup>1263</sup> Witness 21, T. 2629, 2637, 2744, 2718-2719, 2855.

<sup>1264</sup> Witness 21, T. 2641-2642, 2747.

<sup>1265</sup> Witness 21, T. 2643, 2747, 2720-2722, 2747, 2784-2785, 2853-2854.

<sup>1266</sup> Witness 21, T. 2643, 2784-2785.

<sup>1267</sup> Witness 21, T. 2641, 2644, 2802-2803.

<sup>1268</sup> Witness 21, T. 2641, 2644-2648, 2802-2803.

<sup>1269</sup> Witness 21, T. 2647-2648, 2653, 2803-2804.

<sup>1270</sup> Witness 21, T. 2648, 2651, 2804.

did not find Ilira or Tush Frrokaj among the dead.<sup>1271</sup> Witness 21 was prevented from further looking for Ilira and Tush Frrokaj when fighting between the Serbian forces and the KLA broke out in the area.<sup>1272</sup>

255. The Trial Chamber has also heard forensic medical evidence with regard to Ilira Frrokaj (remains labelled “R-18”). Branimir Aleksandrić<sup>1273</sup> testified that body R-18 was recovered on 12 September 1998.<sup>1274</sup> A red Opel Kadett was found under a waterfall at the place where the concrete part of the canal continues into the natural canal; it was upside down, the rear burnt, and a female body was then lying next to it.<sup>1275</sup> All these remains as well as the vehicle were labelled R-18 and the remains were collected in a single body bag.<sup>1276</sup> ICMP DNA analysis concluded that the body labelled R-18 is that of Ilira Frrokaj.<sup>1277</sup> An autopsy conducted on the remains on 20 October 2005 found a keyhole wound in the frontal bone of the head associated with multiple radiating fractures across the frontal bone.<sup>1278</sup> The base of the skull was shattered.<sup>1279</sup> The rear of the skull showed evidence of charring.<sup>1280</sup> Further injuries to the vertebra

<sup>1271</sup> Witness 21, T. 2648-2651, 2658-2660, 2668-2669, 2672-2678, 2696, 2699, 2701-2715, 2717; P45 (Arial photograph of Lake Radonjić/Radoniq canal); P46 (Photograph on which Witness 21 marked the way he took); P47 (Photograph on which Witness 21 marked where he found the bodies); P54 (Photograph of Witness 21 in front of the farm); P55 (Photograph on which Witness 21 marked where he entered and left the cowshed); P56 (Photograph with concrete blocks on which Witness 21 marked the positions where he found the bodies); P57 (Photograph with hazelnut trees); P58 (Photograph with hazelnut trees where Witness 21 found the body of a blond woman); P59 (Photograph with hazelnut trees where Witness 21 found the body in the flower sack); P60 (Photograph with hazelnut trees where Witness 21 found the body of a woman in civilian clothing); P61 (Photograph of the place where Witness 21 found two male bodies); P62 (Photograph on which Witness 21 marked the position where he saw the five to six bodies).

<sup>1272</sup> Witness 21, T. 2750-2751.

<sup>1273</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1274</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128-129, 203-204.

<sup>1275</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 31, 151, 153-157, 212; Branimir Aleksandrić, T. 6803, 9605; P64 (Photograph of a car in a ravine); P414 (Various photographs), pp. 2, 9-10, 13; P416 (Various photographs), p. 6; P418 (Various photographs), pp. 10, 22; P452 (Video of body recovery at canal), 0:15'40" - 0:16'13", 1:22'35" - 1:23'02", 1:24'43"- 1:24'55", 1:31'14"- 1:32'06", 1:32'30"- 1:32'40", 1:34'50"- 1:40'06"; P714 (Various photographs), pp. 5-7, 9. See also P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 411; Dušan Dunjić, T. 7252-7253; P72 (Video of Radonjić/Radoniq canal Ekonomija Farm and the Dašinovac/Dashinoc sites, 8-10 September 1998), 14'35"-15'02", 20'29"-20'54", 28'05"-30'00"; P630 (Record of exhumations, 16 September 1998), p. 4; P710 (Photographs of R-18), pp. 2-3; P714 (Photographs of R-18), pp. 2, 4-11; D66 (Video of Radonjić/Radoniq canal and Hotel Paštrik, 12-19 September 1998), 36'24" – 38'03".

<sup>1276</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 152, 158, 231; Branimir Aleksandrić, T. 6804; P452 (Video of body recovery at canal), 1:37'34"- 1:37'45".

<sup>1277</sup> Agreed Facts, 26 November 2007, No. 86.

<sup>1278</sup> Agreed Facts, 26 November 2007, Nos 87-88.

<sup>1279</sup> Agreed Facts, 26 November 2007, No. 88.

<sup>1280</sup> Agreed Facts, 26 November 2007, No. 88.

were consistent with gunshot wounds.<sup>1281</sup> The cause of death was determined as multiple gunshot wounds to the head and chest.<sup>1282</sup> Dušan Dunjić<sup>1283</sup> testified that the car and body marked R-18 were partly submerged in water due to heavy rain.<sup>1284</sup> The body was wearing an orange blouse, blackish and charred along the edges.<sup>1285</sup> An autopsy conducted on the remains in September 1998 revealed fractures on the skull, the vertebra, the left shoulder blade, left upper arm and the left shin, as well as a shallow entry wound on the right lower leg, with a bullet protruding from the leg.<sup>1286</sup> The bullet did not pass through the soft tissue of the leg, from which the witness concluded that it must have lost its initial momentum.<sup>1287</sup> The witness believed that the bullet may have slowed down as it passed through a solid obstacle, leading the witness to conclude that it is highly likely that the body was in the trunk of or inside a vehicle when the bullet was fired.<sup>1288</sup> There were bullet holes in the car and the rear part of the car had been torched.<sup>1289</sup> The body showed signs of burning and it was charred along its entire backside.<sup>1290</sup>

256. As referred to above, Witness 21 last saw Ilira and Tush Frrokaj in Pljančor/Plançar on or around 26 August 1998. Hearsay evidence suggests that later on the same day, unidentified KLA soldiers saw the couple at a checkpoint south of Gramočelj/Gramaqel and then at another one outside Glodane/Gllogjan, where they were questioned for half an hour by Idriz Balaj and allowed to pass. The couple's car and Ilira Frrokaj's body were found in the Radonjić/Radoniq canal. The forensic medical evidence indicates that Ilira Frrokaj's death was caused by multiple gunshot wounds, and that her body was partially burned. This strongly suggests that she was murdered. The remains of Tush Frrokaj have not been recovered, and so forensic medical evidence suggestive of murder is absent. Considering that there is no evidence that he has been seen since late August 1998, the Trial Chamber accepts that Tush

<sup>1281</sup> Agreed Facts, 26 November 2007, No. 88.

<sup>1282</sup> Agreed Facts, 26 November 2007, No. 89.

<sup>1283</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1284</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 412.

<sup>1285</sup> P711 (Autopsy report R-18), p. 3.

<sup>1286</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 418; Dušan Dunjić, T. 7250-7252; P711 (Autopsy report R-18), pp. 3-5.

<sup>1287</sup> Dušan Dunjić, T. 7250-7251; P711 (Autopsy report R-18), p. 1.

<sup>1288</sup> Dušan Dunjić, T. 7250-7251.

<sup>1289</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 419; P630 (Record of exhumations, 16 September 1998), p. 4.

<sup>1290</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 421; Dušan Dunjić, T. 7294-7295; P711 (Autopsy report R-18), p. 5.

Frrokaj, in all likelihood, is dead. However, although Tush Frrokaj was last seen together with Ilira Frrokaj, the Trial Chamber is not able to conclude beyond a reasonable doubt that he was murdered.

257. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The hearsay evidence on the KLA checkpoints and the interrogation of Ilira and Tush Frrokaj suggests that they were last seen in territory under KLA control, but that they had been released from KLA custody. The assistance of various KLA soldiers and officers with Witness 21's investigation into the fate of the couple raises doubt as to whether they were aware of any crime having been committed against the couple. The Trial Chamber cannot reasonably exclude, on the basis of the evidence, the possibility that forces or persons unaffiliated with the KLA committed the killing of Ilira Frrokaj. For these reasons, and assuming that not only Ilira, but also Tush Frrokaj was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murders, with which group, if any, the perpetrator was affiliated, or whether the murders occurred in KLA custody. The Trial Chamber has heard no evidence on Idriz Balaj's alleged involvement in the deaths of Ilira or Tush Frrokaj, or their alleged cruel treatment. The Trial Chamber therefore concludes that all three Accused should be acquitted of this Count.

#### 6.11 Cruel treatment, torture, and murder of Zenun Gashi, and Misin and Sali Berisha (Count 20)

258. All three Accused are charged, as participants in a joint criminal enterprise, with cruel treatment, torture and murder of Zenun Gashi and Misin and Sali Berisha in violation of the laws or customs of war. In the alternative, Idriz Balaj is charged with the commission of, or aiding and abetting the commission of, these crimes. The Trial Chamber has heard relevant evidence from Witness 52, Vesel Dizdari, Sadri Selca, Avni Krasniqi, Witness 17 as well as forensic medical evidence.

259. Witness 52 testified that Zenun Gashi was a retired police officer from Peć/Pejë municipality in 1998.<sup>1291</sup> In late June or early July 1998, after hearing that the Serbian

<sup>1291</sup> Witness 52, T. 9624-9625.

police from a neighbouring village were leaving, the witness's family and some other families also tried to leave, but returned when realizing that it was only the police and not the villagers that were leaving.<sup>1292</sup> The decision of the witness's family to leave had come out of fear of the KLA.<sup>1293</sup> That same day three unknown men visited Zenun Gashi and asked for his gun and his police uniform.<sup>1294</sup> Two of the men were dressed in black uniforms and one was in camouflage uniform.<sup>1295</sup> Zenun Gashi gave the men his pistol and the police uniform.<sup>1296</sup> On 29 July 1998, two unknown men dressed in black uniforms came to the house and searched it for weapons and uniforms, but did not find any.<sup>1297</sup> On 1 August 1998, around 11:00 a.m., three Albanian-speaking men came to the witness's house by car and said they had received an order from their commander to take Zenun Gashi for some twenty minutes and would then bring him back.<sup>1298</sup> Two of the three men were the same as those who had searched the house three days earlier.<sup>1299</sup> The witness learned from Zenun Gashi that one of the men was Vesel Dizdari and stated that the other was called Commander Cergashi.<sup>1300</sup> Two men were dressed in black clothes and one wore a camouflage uniform.<sup>1301</sup> Two or three days later, some people wearing green camouflage uniforms and bearing KLA insignia on their sleeves and caps, came to collect Zenun Gashi's medicine and a jacket.<sup>1302</sup> They were not from the witness's village.<sup>1303</sup> After 1 August 1998, the witness and the witness's family went to the local KLA headquarters two or three times to inquire about Zenun Gashi, but without success.<sup>1304</sup>

260. Vesel Dizdari, an Albanian from Kosurić/Kosuriq in Peć/Pejë municipality,<sup>1305</sup> testified that some time before 7 September 1998 Metë Krasniqi, who the witness described as a the KLA Military Police Commander, approached him and told him to go to the house of Zenun Gashi in Kosurić/Kosuriq and bring Gashi to the school in

<sup>1292</sup> Witness 52, T. 9625-9634

<sup>1293</sup> Witness 52, T. 9629-9634.

<sup>1294</sup> Witness 52, T. 9636-9638.

<sup>1295</sup> Witness 52, T. 9637.

<sup>1296</sup> Witness 52, T. 9636-9638.

<sup>1297</sup> Witness 52, T. 9639-9641.

<sup>1298</sup> Witness 52, T. 9635, 9640-9643.

<sup>1299</sup> Witness 52, T. 9641.

<sup>1300</sup> Witness 52, T. 9634-9636, 9646-9647.

<sup>1301</sup> Witness 52, T. 9642.

<sup>1302</sup> Witness 52, T. 9644-9645.

<sup>1303</sup> Witness 52, T. 9645.

<sup>1304</sup> Witness 52, T. 9643-9644.

<sup>1305</sup> P366 (Vesel Dizdari, witness statement, 15 April 2007), p.1; Vesel Dizdari, T5954-5955.

Barane/Baran in Peć/Pejë municipality.<sup>1306</sup> Vesel Dizdari followed these instructions and handed Zenun Gashi over to Metë Krasniqi.<sup>1307</sup> The witness was then ordered by Krasniqi to search Zenun Gashi's house for weapons but found only military boots.<sup>1308</sup>

261. Sadri Selca, a FARK intelligence officer stationed in Barane/Baran, in Peć/Pejë municipality,<sup>1309</sup> testified that Zenun Gashi, a Roma, was a former colleague of his in the police and that Zenun Gashi continued to work for the police after 1990, when the witness had stopped.<sup>1310</sup> The last time the witness saw Zenun Gashi was in Barane/Baran, in a car with Albanian men wearing camouflage uniforms.<sup>1311</sup> Zenun Gashi was in a poor state and had been beaten.<sup>1312</sup> Zenun Gashi asked the witness for water and the witness gave him some water.<sup>1313</sup> The witness told the soldiers to release Zenun Gashi.<sup>1314</sup> The soldiers replied "here is your colleague" and that the witness would suffer the same fate, and they left with Zenun Gashi.<sup>1315</sup> Zenun Gashi's wife told the witness that Zenun Gashi had been abducted by a group of soldiers early in the morning on the same day that the witness had seen him in the car in Barane/Baran.<sup>1316</sup>

262. Witness 17 testified that at the end of July or beginning of August 1998, he received information from someone within the third brigade security service that a civilian named Zenun from Barane/Baran in Peć/Pejë municipality had been taken by KLA military police officer Metë Krasniqi.<sup>1317</sup> The witness asked Din Krasniqi, Metë Krasniqi's commander, who told him that Faton Mehmeti, the chief of KLA military police in Glođane/Gllogjan (who, according to the witness's direct observations, reported directly to Ramush Haradinaj), had ordered that Zenun be brought to Glođane/Gllogjan.<sup>1318</sup> After the witness and Din Krasniqi intervened, Zenun, as far as the witness heard, was released.<sup>1319</sup> Later, Witness 17 received information that Zenun

<sup>1306</sup> P366 (Vesel Dizdari, witness statement, 15 April 2007), paras 18-19.

<sup>1307</sup> P366 (Vesel Dizdari, witness statement, 15 April 2007), para. 19.

<sup>1308</sup> P366 (Vesel Dizdari, witness statement, 15 April 2007), para. 21.

<sup>1309</sup> Sadri Selca, T. 10858-10860, 10864.

<sup>1310</sup> Sadri Selca, T. 10872. See also Avni Krasniqi, T. 10754.

<sup>1311</sup> Sadri Selca, T. 10873-10875, 10884.

<sup>1312</sup> Sadri Selca, T. 10874.

<sup>1313</sup> Sadri Selca, T. 10873-10874, 10884.

<sup>1314</sup> Sadri Selca, T. 10875.

<sup>1315</sup> Sadri Selca, T. 10875.

<sup>1316</sup> Sadri Selca, T. 10884.

<sup>1317</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 71; Witness 17, T. 7705.

<sup>1318</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 71; Witness 17, T. 7707.

<sup>1319</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 71; Witness 17, T. 7604.

had been arrested again. He asked Din Krasniqi who implied with a gesture that Zenun had been killed.<sup>1320</sup>

263. Luan Tetaj testified that sometime in June or July 1998, his aunt, Ajmone Berisha, from Glogjan/Gllogjan in Peć/Pejë municipality, came to his house.<sup>1321</sup> She told Luan Tetaj that when she returned home from the market the day before, her husband Misin Berisha and two of their five sons, Xhevati and Salih Berisha, had disappeared.<sup>1322</sup> She had waited all night for their return, and had come to Luan Tetaj because of Serbian paramilitary presence close to her village which prevented her from moving around.<sup>1323</sup> Luan Tetaj went out looking for the three men, but, no further than 300-400 metres from his house, heard military vehicles and returned home.<sup>1324</sup> Luan Tetaj did not search for Xhevati Berisha or his brother and father again.<sup>1325</sup> The witness never saw the three men again.<sup>1326</sup>

264. The Trial Chamber has also heard forensic medical evidence with regard to Zenun Gashi (remains labelled “R-4”), Misin Berisha (remains labelled “R-3”) and Sali Berisha (remains labelled “R-7”). Branimir Aleksandrić<sup>1327</sup> testified that all three bodies were found on 11 September 1998 in a field near the canal, along the external side of the concrete wall where there were bullet markings, together with six other bodies.<sup>1328</sup> Body R-4 was found on the surface close to the concrete wall.<sup>1329</sup> ICMP DNA analysis identified the body labelled R-4 as that of Zenun Gashi.<sup>1330</sup> An autopsy conducted on the remains on 8 December 2003 revealed a gunshot wound to the head indicating a right to left and up to down trajectory.<sup>1331</sup> In addition, there were fractures to the right arm, left forearm, ribs, and the right foot of the victim which may have been caused by

<sup>1320</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 72; Witness 17, T. 7707.

<sup>1321</sup> P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 5, 12-13.

<sup>1322</sup> P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 12-14.

<sup>1323</sup> P1236 (Luan Tetaj, witness statement, 6 June 2007), para. 13.

<sup>1324</sup> P1236 (Luan Tetaj, witness statement, 6 June 2007), para. 14.

<sup>1325</sup> P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 14, 16.

<sup>1326</sup> P1236 (Luan Tetaj, witness statement, 6 June 2007), paras 15-16, 20.

<sup>1327</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1328</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 61-62; P414 (Various photographs), p. 20; P416 (Various photographs), p. 3; P418 (Various photographs), p. 18; P645 (Various photographs), p. 2; P649 (Various photographs), p. 2.

<sup>1329</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 101-102; P418 (Various photographs), pp. 12, 15, number 85, p. 20; P452 (Video of body recovery at canal), 0:04'44", 0:23'08"; P645 (Various photographs), p. 3; P648 (Autopsy photographs R-4), p. 2.

<sup>1330</sup> Agreed Facts, 26 November 2007, No. 36.

<sup>1331</sup> Agreed Facts, 26 November 2007, Nos 37-38.

gunshot injuries.<sup>1332</sup> It was concluded that the cause of death was a shrapnel wound to the head.<sup>1333</sup> Dušan Dunjić<sup>1334</sup> stated that a piece of yellow sticky tape was found around the neck of body R-4.<sup>1335</sup> From the state of the sticky tape, the forensic team concluded that the victim had been bound at the mouth with this tape.<sup>1336</sup> The autopsy revealed a bullet entry wound on the lower left side and exit wound on the top right side of the skull.<sup>1337</sup> Both arms were fractured in the same place on the lower arms.<sup>1338</sup>

265. ICMP DNA analysis identified the remains labelled R-3 as those of Misin Berisha.<sup>1339</sup> An autopsy conducted on the remains on 14 December 2005 revealed at least one gunshot wound to the head and further gunshot wounds to the chest, spine and the left thigh.<sup>1340</sup> The report concluded that the cause of death was multiple gunshot wounds to the head, chest, abdomen and limbs.<sup>1341</sup> Dušan Dunjić<sup>1342</sup> stated that a piece of yellow sticky tape was found next to body R-3, similar to the tape found next to R-4.<sup>1343</sup> From the state of the sticky tape, the forensic team concluded that the victim was bound at the mouth with this tape.<sup>1344</sup> The autopsy revealed multiple fractures to the skull and lower jaw.<sup>1345</sup> According to Dunjić, the skull fractures were caused by a blunt object and could not have been caused by a fall from the top of the embankment.<sup>1346</sup>

266. The OMPF concluded that the body labelled R-7 was that of Sali Berisha.<sup>1347</sup> An autopsy conducted on the remains on 5 December 2005 indicated fractures in the left upper arm, thigh bones, and the left shinbone potentially consistent with gunshot

<sup>1332</sup> Agreed Facts, 26 November 2007, No. 38.

<sup>1333</sup> Agreed Facts, 26 November 2007, No. 39.

<sup>1334</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1335</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 228; Dušan Dunjić, T. 6837; P646 (Autopsy report R-4), p. 2.

<sup>1336</sup> Dušan Dunjić, T. 6837.

<sup>1337</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 233; P646 (Autopsy report R-4), pp. 2, 6; P648 (Photographs R-4), p. 3-4.

<sup>1338</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 233-234; P646 (Autopsy report R-4), pp. 3, 6; Dušan Dunjić, T. 6839.

<sup>1339</sup> Agreed Facts, 26 November 2007, No. 32.

<sup>1340</sup> Agreed Facts, 26 November 2007, Nos 33-35.

<sup>1341</sup> Agreed Facts, 26 November 2007, No. 35.

<sup>1342</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1343</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 212; Dušan Dunjić, T. 6837; P811 (Photograph of sticky-tape), p. 2.

<sup>1344</sup> Dušan Dunjić, T. 6837.

<sup>1345</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 220; P812 (Autopsy report R-3), pp. 2, 5.

<sup>1346</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 220.

<sup>1347</sup> Agreed Facts, 26 November 2007, No. 44.

wounds.<sup>1348</sup> The fractures in the pelvis area were consistent with gunshot wounds.<sup>1349</sup> The autopsy concluded that the cause of death was most probably multiple gunshot wounds to the trunk and extremities.<sup>1350</sup> Dušan Dunjić<sup>1351</sup> testified that an autopsy conducted in September 1998 revealed fractures separating multiple missing bones from the skeleton and, according to Dunjić, these fractures could not have been caused by a fall.<sup>1352</sup>

267. As referred to above, the Trial Chamber has heard evidence that Misin Berisha and his two sons, Sali and Xhevat Berisha, were last seen in the village of Glogane/Gllogjan in Peć/Pejë municipality, in June or July 1998. In September 1998, their bodies were discovered at the Radonjić/Radoniq canal. The alleged murder of Xhevat Berisha is dealt with in section 6.12.10, below. The Trial Chamber has heard evidence from Luan Tetaj who in turn had heard from his aunt Ajmone Berisha that her husband Misin and her two sons, Sali and Xhevat Berisha, had disappeared. The Trial Chamber has, however, not heard any evidence concerning the circumstances of their disappearance. According to Witness 17, Misin Berisha's name was on a list provided to him during a meeting on 12 July 1998 at Din Krasniqi's home in Vranovac/Vranoc. The Trial Chamber discusses the significance of this list in section 7, below. The Trial Chamber cannot draw any conclusions as to the perpetrators of the killings from this evidence. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated.

268. The forensic medical evidence strongly suggests that Misin and Sali Berisha were murdered. Even assuming that this is the case, the Trial Chamber finds that the evidence before it does not allow for a conclusion as to who committed their murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. No evidence about the alleged ill-treatment of Misin and Sali Berisha was admitted. For these reasons, the Trial Chamber concludes that all three Accused should be acquitted of this count as far as Misin and Sali Berisha are concerned.

<sup>1348</sup> Agreed Facts, 26 November 2007, Nos 45-46.

<sup>1349</sup> Agreed Facts, 26 November 2007, No. 46.

<sup>1350</sup> Agreed Facts, 26 November 2007, No. 47.

<sup>1351</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1352</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 256; P655 (Autopsy report R-7), pp. 2, 6.

269. With regard to Zenun Gashi, the Trial Chamber concludes that on 1 August 1998, he was taken away from his house in Kosurić/Kosuriq. Zenun Gashi was a retired police officer of Roma ethnicity. Vesel Dizdari, one of the three men who detained Zenun Gashi, testified that he was ordered by Metë Krasniqi to detain and transfer Zenun Gashi to a school in Barane/Baran. Sadri Selca testified that on the day Zenun Gashi was taken from his home, he saw him with uniformed men in a car in Barane/Baran, and Zenun Gashi appeared to have been beaten. The uniformed men drove off with Zenun Gashi. Two or three days later, people wearing green camouflage uniforms with KLA insignia came to Zenun Gashi's house and collected his medication and jacket. Witness 17 testified that around the time Zenun Gashi was taken from his home, he was told by Din Krasniqi that someone by the name of Zenun from Baran/Barane had been arrested. Zenun was reportedly released. Later, however, Witness 17 learned that Zenun was re-arrested and taken to Glogjane/Glodjane. Upon inquiring about his fate, Din Krasniqi implied to Witness 17 that Zenun had been killed. Contrary to Din Krasniqi's information, Zenun Gashi was from the village of Kosurić/Kosuriq and after having been taken on 1 August 1998, Zenun Gashi never returned home. Furthermore, according to the evidence, the persons who took Zenun Gashi stated that they were taking him to Baran/Barane and not Glogjane/Glodjane. Nevertheless, the Trial Chamber finds that this does not exclude that the individual to whom Din Krasniqi referred in his conversation with Witness 17 was Zenun Gashi. According to Witness 17, Zenun Gashi's name was on a list provided to him during a meeting on 12 July 1998 at Din Krasniqi's home in Vranovac/Vranoc. The Trial Chamber discusses the significance of this list in section 7, below.

270. In September 1998, Zenun Gashi's body was found at the Radonjić/Radoniq canal. The autopsies on the remains of Zenun Gashi were conducted with considerable intervals in time. One autopsy took place some 6 weeks after his disappearance, the other two after 5 to 7 years, respectively. Whereas all the forensic medical experts found one or more gunshot wounds in the head, they were not unanimous in the details of their description of the kind of projectile or object that had caused the injuries to the skull when they considered the cause of death. The Trial Chamber is in a position to place the forensic medical evidence in the context of the whole of the evidence relevant for Zenun Gashi's death, that is: the evidence in respect of the visit to his home, the way in which he was taken from home, and the observation of his condition while in custody. On the

basis of those elements of the forensic medical findings on which the experts agree and despite the lack of unanimity in every detail, the Trial Chamber concludes that Zenun Gashi was subjected to cruel treatment and subsequently murdered in KLA custody. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that Zenin Gashi was not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case. The evidence does not establish that Zenun Gashi was subjected to torture. The Trial Chamber has heard no evidence about the alleged involvement of Idriz Balaj in this event. All three Accused are charged with Count 20 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability separately in section 7, below.

## 6.12 Murders related to the Radonjić/Radoniq canal area (Count 22)

### *6.12.1 Murder of Afrim Sylejmani*

271. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Afrim Sylejmani in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Agim Sylejmani, as well as forensic medical evidence.

272. Agim Sylejmani testified that Serbian forces were present in Đakovica/Gjakovë throughout 1998.<sup>1353</sup> In 1998 the witness did not see any KLA presence in the town.<sup>1354</sup> He stated that the KLA were in the surrounding villages and mountains.<sup>1355</sup> On 26 April 1998 when it was already dark, the witness and Afrim Sylejmani drove to Đakovica/Gjakovë in Afrim's Opel Corsa.<sup>1356</sup> After being stopped at a Serbian checkpoint on the Peć/Pejë-Đakovica/Gjakovë road at the entrance to Đakovica/Gjakovë, Afrim dropped the witness off at his home.<sup>1357</sup> Afrim told the witness that he would go home as well, though the witness did not know where Afrim went after he had dropped him off.<sup>1358</sup> This was the last time the witness saw Afrim.<sup>1359</sup> About one week later the witness's sister told the witness that Afrim's wife and children

<sup>1353</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 5.

<sup>1354</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 5.

<sup>1355</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 5.

<sup>1356</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 3-4, 9, 10.

<sup>1357</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 11-12.

<sup>1358</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 12.

had moved into her house, because Afrim had left them.<sup>1360</sup> The sister did not tell the witness where he had gone.<sup>1361</sup> The witness understood from the fact that Afrim's car was missing that he had left by car.<sup>1362</sup> The witness heard rumours that Afrim had joined the KLA although he had never told the witness that he had any intention of joining the KLA.<sup>1363</sup> Afrim's wife later told the witness that Afrim was in the KLA.<sup>1364</sup>

273. The Trial Chamber has also received forensic medical evidence with regard to Afrim Sylejmani (remains labelled "R-28"). Branimir Aleksandrić<sup>1365</sup> testified that on 15 September 1998 body R-28 was found stuck under a rock in the water about 700 metres downstream from the beginning of the ravine.<sup>1366</sup> ICMP DNA analysis concluded that the body labelled R-28 is that of Afrim Sylejmani.<sup>1367</sup> An autopsy conducted on the remains on 8 December 2003 revealed a gunshot injury to the head and additional gunshot injuries to the left side of the chest and the upper arm.<sup>1368</sup> It was concluded from the autopsy that the cause of death was a gunshot injury to the head.<sup>1369</sup> Dušan Dunjić<sup>1370</sup> testified that the autopsy conducted in September 1998 revealed multiple fractures of the front part of the skull, probably inflicted with a blunt instrument.<sup>1371</sup> Without treatment, this injury could have caused death.<sup>1372</sup>

274. Based on the evidence, the Trial Chamber concludes that on 26 April 1998, Agim Sylejmani saw his brother, Afrim Sylejmani, a Kosovar Albanian, for the last time when Afrim left Agim outside Agim's house in Đakovica/Gjakovë. About a week later he learned that Afrim Sylejmani had disappeared. In September 1998, Afrim Sylejmani's remains were found in the ravine downstream from the Radonjić/Radoniq canal. The forensic medical evidence suggests that Afrim Sylejmani was murdered. In

<sup>1359</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 9, 12.

<sup>1360</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 13.

<sup>1361</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 13.

<sup>1362</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 13.

<sup>1363</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), paras 7, 12, 14.

<sup>1364</sup> P1247 (Agim Sylejmani, witness statement, 13 August 2006), para. 16.

<sup>1365</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1366</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 206-207, 209, 214; P753 (Autopsy photographs R-28), pp. 2-3; P1121 (Photograph of R-28).

<sup>1367</sup> Agreed Facts, 26 November 2007, No. 102.

<sup>1368</sup> Agreed Facts, 26 November 2007, No. 104.

<sup>1369</sup> Agreed Facts, 26 November 2007, No. 105.

<sup>1370</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1371</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 542; P751 (Autopsy report R-28), pp. 2, 4.

<sup>1372</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 551.

section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The Trial Chamber has not received any evidence about Afrim Sylejmani being in KLA custody, or concerning the circumstances or perpetrators of the killing. Moreover, the evidence does not indicate why Afrim Sylejmani, a Kosovar Albanian, who may have joined the KLA would be targeted by the KLA.

275. For these reasons, even assuming that Afrim Sylejmani was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion as to who committed the murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.2 Murder of Rade Popadić*

276. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Rade Popadić in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from a number of witnesses, as well as forensic medical evidence.

277. Rade Repić, a PJP company commander in 1998,<sup>1373</sup> testified that Rade Popadić was a PJP platoon commander and Nikola Jovanović was a MUP corporal.<sup>1374</sup> Around 23 May 1998, Rade Popadić and Nikola Jovanović set off in a confiscated civilian Opel Kadett from the Junik police unit towards the Đakovica/Gjakova MUP secretariat in order to pick up the daily food supplies for the unit.<sup>1375</sup> The two men were armed with a pistol and an automatic rifle, but in civilian clothes and with a civilian car in order to avoid attention.<sup>1376</sup> They picked up the supplies in Đakovica/Gjakova and then reported this by radio to their headquarters in Junik, in Dečani/Deçan municipality.<sup>1377</sup> The two men's orders were first to deliver some supplies to Babaloć/Baballoq, in Dečani/Deçan

<sup>1373</sup> Rade Repić, T. 8487, 8536-8537.

<sup>1374</sup> Rade Repić, T. 8504, 8509, 8517, 8575.

<sup>1375</sup> Rade Repić, T. 8510-8512; P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković ), p. 6.

<sup>1376</sup> Rade Repić, T. 8512-8513, 8565, 8574; P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković), p. 6.

<sup>1377</sup> Rade Repić, T. 8513-8514.

municipality, and then continue back to Junik.<sup>1378</sup> When the two were ready to start the final 10 minute journey from Babaloć/Baballoq back to Junik they radioed their PJP unit in Junik.<sup>1379</sup> The two men had changed vehicles in Babaloć/Baballoq because the Opel Kadett had broken down and they continued their journey to Junik in a gold or yellow metallic coloured Mitsubishi van which, the witness believed, had a blue Ministry of Interior licence plate.<sup>1380</sup> Half an hour later the men had not returned to Junik.<sup>1381</sup> This led Rade Repić to send out two vehicles from Junik to Babaloć/Baballoq in order to search for the men.<sup>1382</sup> They only searched along the road since Rade Repić believed that as an experienced officer, Rade Popadić would not have disobeyed his orders and made any detour on his trip.<sup>1383</sup> A helicopter was then dispatched to search the broader areas of Junik and Babaloć/Baballoq and the roads from Dečani/Deçan to Đakovica/Gjakova as it was not safe to search the area by land without putting together a strong unit and organized method of entry.<sup>1384</sup> A MUP forensic report dated 28 September 1998, stated that the van was found beside the local road in Gornji Streoc/Strelci ē Eperm, in Dečani/Deçan municipality.<sup>1385</sup> The two men were never seen again.<sup>1386</sup> Rade Repić went to inspect the vehicle which had bullet holes in it.<sup>1387</sup> Photographs of the vehicle, contained in the MUP forensic report dated 28 September 1998, show the windscreen riddled with bullet holes both on the driver and passenger side.<sup>1388</sup> The next day, a police squad commander, Miladin Novaković, was attacked and wounded in the legs by, according to Novaković, the KLA in the same area where Rade Popadić and Nikola Jovanović had gone missing.<sup>1389</sup> This occurred at the Rastavica/Rastavicë intersection, around 500-600 metres from the Babaloć/Baballoq PJP base in Dečani/Deçan municipality.<sup>1390</sup> As a result of these two incidents, on 25 May 2007, a “sweep” operation aimed at locating the two missing policemen and their

<sup>1378</sup> Rade Repić, T. 8513-8514; P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković ), p. 6.

<sup>1379</sup> Rade Repić, T. 8514, 8516.

<sup>1380</sup> Rade Repić, T. 8514-8515.

<sup>1381</sup> Rade Repić, T. 8516-8517.

<sup>1382</sup> Rade Repić, T. 8516-8517.

<sup>1383</sup> Rade Repić, T. 8517.

<sup>1384</sup> Rade Repić, T. 8518.

<sup>1385</sup> P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković - photographs of the bullet ridden vehicle), p. 21.

<sup>1386</sup> Rade Repić, T. 8520-8521.

<sup>1387</sup> Rade Repić, T. 8521-8522, 8529-8530; P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković - photographs of the bullet ridden vehicle).

<sup>1388</sup> P919 (Criminal Reports on the attack against Rade Popadić and Miladin Novaković - photographs of the bullet ridden vehicle), p, 19, photographs 3, 4, 5.

<sup>1389</sup> Rade Repić, T. 8518-8519.

vehicle was organized and carried out on both sides of the road from Junik and Rastavica/Rastavicë towards Dečani/Deçan.<sup>1391</sup>

278. According to four interviews carried out by the RDB, Rade Popadić and Nikola Jovanović were arrested by KLA under the command of Ramush Haradinaj, Nazim Haradinaj, and Idriz Balaj.<sup>1392</sup> According to the four suspects interviewed, they were taken to the Glodjane/Gllogjan KLA headquarters where they were interrogated and tortured.<sup>1393</sup> After this they were taken to the Radonjić/Radoniq canal where they were executed.<sup>1394</sup>

279. A Priština/Prishtinë corps command combat report dated 25 May 1998, stated that at approximately 2:30 p.m. on 24 May 1998, Rade Popadić and Nikola Radović were abducted on the Đakovica/Gjakovë–Junik road, while driving food to the checkpoint in Junik.<sup>1395</sup>

280. Radovan Zlatković testified that he investigated the disappearance of Rade Popadić, and compiled an incident report in which he concluded that Rade Popadić and Nikola Jovanović were kidnapped by an Albanian “terrorist” group at the Rastavica/Rastavicë junction, in Dečani/Deçan municipality.<sup>1396</sup> Radovan Zlatković gained this information from interviewing Albanians.<sup>1397</sup> He further stated that this incident was also officially recorded during an interview with an Albanian, Nedzat Dervisaj.<sup>1398</sup> According to the incident report, dated 26 May 1998, Rade Popadić and Nikola Jovanović, who were armed and in civilian clothes, left the police department in Junik at 7:30 a.m. on 24 May 1998 and drove in a civilian Opel Kadett Caravan to Đakovica/Gjakovë to get food and then to Babaloć/Baballoq.<sup>1399</sup> The report further alleged that they left the police department in Babaloć/Baballoq at 10:30 a.m. in a

<sup>1390</sup> Rade Repić, T. 8518-8519.

<sup>1391</sup> Rade Repić, T. 8518, 8527, 8557-8558, 8560-8561.

<sup>1392</sup> Rade Repić, T.8531-8533; P921 (Statements relating to the disappearance of Rade Popadić and Miladin Novaković).

<sup>1393</sup> Rade Repić, T.8531-8533; P921 (Statements relating to the disappearance of Rade Popadić and Miladin Novaković).

<sup>1394</sup> Rade Repić, T.8531-8533; P921 (Statements relating to the disappearance of Rade Popadić and Miladin Novaković).

<sup>1395</sup> P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

<sup>1396</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 13; Radovan Zlatković, T. 6885-6888; P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

<sup>1397</sup> Radovan Zlatković, T. 6885-6888; P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

<sup>1398</sup> P854 (Radovan Zlatković, witness statement, 25 June 2007), para. 13.

<sup>1399</sup> P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

Mitsubishi vehicle without registration plates and that, close to the turning for Junik, unidentified Albanians attacked, kidnapped, and took them in an unknown direction.<sup>1400</sup>

281. A MUP report dated 4 June 1998 stated that there was a court of honour, where persons suspected of being Serbian spies were subject to court martial and sometimes executed, in the house of Ismailj and Nasim Haradinaj in Glogane/Gllogjan, in Dečani/Deçan municipality.<sup>1401</sup> According to this report, two captured police officers were sentenced and executed by firing squad.<sup>1402</sup> Zoran Stijović testified that a 6 August MUP report which referred to two policemen captured in Dečani/Deçan and being held in Jablanica/Jabllanicë were Rade Popadić and Nikola Jovanović.<sup>1403</sup>

282. Witness 69, a Serbian police officer stationed during the indictment period in Đakovica/Gjakovë MUP,<sup>1404</sup> testified that two of his colleagues, Rade Popadić and Nikola Jovanović, were kidnapped on the road between Đakovica/Gjakovë and Dečani/Deçan by unknown persons.<sup>1405</sup>

283. The HLC, referring to the disappearance of Rade Popadić and Nikola Jovanović reported that on 29 May 1998, the Belgrade daily *Danas* quoted police sources in Kosovo/Kosova as saying that two police officers had been taken prisoner by the KLA and there had been contacts between the KLA and police concerning their return in exchange for food supplies.<sup>1406</sup>

284. Witness 74 testified that on 14 May 1998, Rade Popadić was sent with several colleagues of the MUP of Šabac in Serbia to Kosovo/Kosova as part of his regular duties.<sup>1407</sup> On 23 May 1998, Witness 74 spoke with Rade Popadić for the last time and he stated that he was in Junik.<sup>1408</sup> On 25 May 1998, MUP authorities of Šabac informed Witness 74 that on 24 May 1998 Rade Popadić and his colleague Nikola Jovanović had gone missing while transporting food in a grey van from Babaloć/Baballoq to Junik.<sup>1409</sup> Witness 74 was further informed that the MUP had been unable to find any trace of

<sup>1400</sup> P858 (Crime report into the disappearance of Rade Podadić and Nikola Jovanović, 26 May 1998).

<sup>1401</sup> P981 (Crime report, 4 June 1998), page 4.

<sup>1402</sup> P981 (Crime report, 4 June 1998), page 4.

<sup>1403</sup> P931 (Statement of Zoran Stijović, 27 September 2007), para. 55; P1003 (Crime report, 6 August 1998), page 1.

<sup>1404</sup> P1231 (Witness 69, witness statement, 20 June 2007), paras 1-2; Witness 69, T. 9832-9833, 9846, 9848, 9892.

<sup>1405</sup> P1231 (Witness 69, witness statement, 20 June 2007), para. 29; Witness 69, T. 9846.

<sup>1406</sup> P6 (Spotlight Report No. 27, 5 August 1998), page 31.

<sup>1407</sup> P1243 (Witness 74, witness statement, 14 November 2007), para. 2.

<sup>1408</sup> P1243 (Witness 74, witness statement, 14 November 2007), para. 4.

<sup>1409</sup> P1243 (Witness 74, witness statement, 14 November 2007), para. 5.

either the van or the two men.<sup>1410</sup> In late September or early October 1998, a MUP official from Dečani/Deçan told Witness 74 that the grey van had been found in a ditch along a dirt road in Streoc/Strelci in Dečani/Deçan municipality.<sup>1411</sup>

285. The Trial Chamber has also received forensic medical evidence with regard to Rade Popadić (remains labelled “R-31”). Branimir Aleksandrić<sup>1412</sup> testified that body R-31 was recovered on 15 September 1998.<sup>1413</sup> R-31 was found about 800 metres downstream from the falls, in the water and stuck under a rock.<sup>1414</sup> ICMP DNA analysis identified the body labelled R-31 as that of Rade Popadić.<sup>1415</sup> An autopsy conducted on the remains on 8 December 2003 revealed a gunshot injury to the chest, with a possible entry wound on the right lateral side.<sup>1416</sup> There was also a gunshot injury to the shoulder region.<sup>1417</sup> In addition, fractures at the right side of the face and extensive fractures and loss of the back of the skull were consistent with a possible fatal gunshot injury to the head.<sup>1418</sup> The cause of death was determined to be a gunshot injury to the chest.<sup>1419</sup> Dušan Dunjić<sup>1420</sup> testified that an autopsy conducted on the remains in 1998 revealed fractures on the right thigh bone, the skull and the ribs on the right side.<sup>1421</sup> The fractures on the ribs were serial and probably inflicted with a blunt instrument.<sup>1422</sup>

286. As referred to above, the Trial Chamber has heard evidence that on either 23 or 24 May 1998, Rade Popadić, a PJP commander, and Nikola Jovanović, a MUP corporal, went missing on the road between Babaloć/Baballoq and Junik while on PJP/MUP duty. In September 1998, Rade Popadić’s body was found in the ravine downstream from the Radonjić/Radoniq canal. The forensic medical evidence

<sup>1410</sup> P1243 (Witness 74, witness statement, 14 November 2007), para. 5.

<sup>1411</sup> P1243 (Witness 74, witness statement, 14 November 2007), para. 11.

<sup>1412</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1413</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 206-207, 240, 242; P762 (Autopsy photographs R31), pp. 2-3.

<sup>1414</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 225, 228, 267; P449 (Various photographs), pp. 59-60; P1115 (Annex C to Branimir Aleksandrić, witness statement, 26 June 2007, reports dated 15 and 16 September 1998), pp. 5, 12.

<sup>1415</sup> Agreed Facts, 26 November 2007, No. 106.

<sup>1416</sup> Agreed Facts, 26 November 2007, No. 108.

<sup>1417</sup> Agreed Facts, 26 November 2007, No. 108.

<sup>1418</sup> Agreed Facts, 26 November 2007, No. 108.

<sup>1419</sup> Agreed Facts, 26 November 2007, No. 109.

<sup>1420</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1421</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 568; P760 (Autopsy report R-31), pp. 2, 4.

<sup>1422</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 568; Autopsy report p. 4.

concluded that Rade Popadić sustained gunshot injuries to the chest and fractures to the face and skull consistent with a gun shot injury to the head. While Dušan Dunjić stated that the fractures on the right side of the ribs were caused by a blunt object, an autopsy conducted in 2005 referred to gunshot injuries to the chest with an entry wound on the right side. The cause of death was determined as a gunshot injury to the chest. The van which Rade Popadić was travelling in was eventually located in Gornji Streoc/Strelci ē Eperm. The photographs of the vehicle in which the two men were travelling show the windshield riddled with bullet holes both on the driver and passenger side. There are three MUP documents pointing to Rade Popadić having been abducted. The first is the contemporaneous criminal report compiled by Radovan Zlatković, dated 26 May 1998. However, the origin and reliability of the information in this document regarding the abduction cannot be verified. Radovan Zlatković testified that this information came from interviewing “Albanians”, specifically mentioning Nedzat Dervisaj. No record of this interview is in evidence. The two other MUP reports, which are unsourced, contradict each other. The report dated 4 June 1998 indicated that Rade Popadić was detained and then executed in Glodjane/Gllogjan, while the other report, dated 6 August 1998, stated that two policemen were being held in Jablanica/Jabllanicē. Zoran Stijović testified that this referred to Rade Popadić and Nikola Jovanović. For these reasons, the Trial Chamber will not rely on these documents for any findings of fact. The Trial Chamber has heard evidence that the KLA regularly staged ambushes along the main roads against the MUP around the time Rade Popadić disappeared.<sup>1423</sup> Rade Popadić was a Serbian policeman, armed, and on duty. The lack of any evidence conclusively pointing to an abduction and killing *hors de combat*, coupled with the projectile damage to the van’s windshield and the forensic reports on the injuries sustained, do not allow the Trial Chamber to conclude beyond a reasonable doubt that Rade Popadić was murdered, or exclude him having taken an active part in the hostilities at the time of his death. For these reasons the Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.3 Murder of Ilija Antić*

287. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Ilija Antić in violation of the laws or customs of war. The Trial Chamber

<sup>1423</sup> See sections 3.2 and 4.2, above.

has heard relevant evidence from Momčilo and Jovanka Antić, as well as forensic medical evidence.

288. Momčilo Antić, son of Ilija Antić, testified that he was living in Ločane/Lloçan, in Dečani/Deçan municipality, and was working full-time as a policeman for the Dečani/Deçan MUP in early 1998.<sup>1424</sup> In April 1998, on the day after Orthodox Easter, following sounds of gunfire and the sighting of tracer bullets somewhere in the direction of Prilep/Prelep, the witness and several members of his family moved from Ločane/Lloçan to Peć/Pejë, leaving the witness's father, Ilija, behind.<sup>1425</sup> The witness clarified that they were not told by anyone to leave.<sup>1426</sup> Other Serbian families from the village also moved out during those days, leaving some of the elderly behind.<sup>1427</sup> Antić would visit his father periodically to deliver supplies.<sup>1428</sup> He was informed by his brother about his father's disappearance in late July 1998.<sup>1429</sup> The witness explained that his brother told him that "Albanians" (the witness later described them as "neighbours" of Ilija Antić) had taken him from the front of his house on the night of 28 May 1998.<sup>1430</sup> His brother had received this information from his sister, who in turn had heard the story from another relative, who had heard it from the witness's uncle and aunt in Ločane/Lloçan, Đordje and Milosava Antić.<sup>1431</sup> None of these people had witnessed the incident.<sup>1432</sup> The witness added that elements of this account, such as who detained his father, could be assumed to be true, in light of the circumstances at the time.<sup>1433</sup> Antić was presented with documentary evidence that on the day of his father's disappearance, an order was given to VJ forces to attack Ločane/Lloçan and the surrounding areas early in the morning of 29 May.<sup>1434</sup> The witness denied that such an attack took place, however, at the time the witness was in hospital in Belgrade.<sup>1435</sup>

289. Jovanka Antić testified that a relative, Milosava Antić, had told her that she had last seen Ilija Antić on the evening of 28 May 1998 when he left her home in

<sup>1424</sup> Momčilo Antić, T. 2402-2404, 2432.

<sup>1425</sup> Momčilo Antić, T. 2409-2415, 2417.

<sup>1426</sup> Momčilo Antić, T. 2435.

<sup>1427</sup> Momčilo Antić, T. 2412-2417.

<sup>1428</sup> Momčilo Antić, T. 2411.

<sup>1429</sup> Momčilo Antić, T. 2424-2425, 2440-2441.

<sup>1430</sup> Momčilo Antić, T. 2424-2425, 2428, 2443-2444.

<sup>1431</sup> Momčilo Antić, T. 2425-2428, 2440-2443.

<sup>1432</sup> Momčilo Antić, T. 2428.

<sup>1433</sup> Momčilo Antić, T. 2428-2429.

<sup>1434</sup> Momčilo Antić, T. 2473-2475; D34 (Decision on Engagement, mentioning Ločane/Lloçan among other targets, signed by General Nebojša Pavković, 28 May 1998).

<sup>1435</sup> Momčilo Antić, T. 2475.

Ločane/Lloçan after a visit.<sup>1436</sup> Milosava also told the witness that there was a lot of shooting in the village that night.<sup>1437</sup> The following day, Milosava went to Ilija's house but found it empty, locked, and with the lights and television on.<sup>1438</sup>

290. The Trial Chamber has also received forensic medical evidence with regard to Ilija Antić (remains labelled "R-20"). Branimir Aleksandrić<sup>1439</sup> testified that body R-20 was located at the Radonjić/Radoniq canal, 500 metres downstream from the beginning of the natural part of the ravine, behind a small lake, on the dry part of the ravine, one metre above the water-line.<sup>1440</sup> R-20 was partly covered by mud and partly by large pieces of clay rock.<sup>1441</sup> ICMP DNA analysis concluded that the body labelled R-20 is that of Ilija Antić.<sup>1442</sup> From an autopsy conducted on 20 October 2005 it was concluded that the victim had died from multiple gunshot wounds.<sup>1443</sup> Dušan Dunjić<sup>1444</sup> testified that an autopsy conducted on the remains in September 1998 revealed fractures on the skull, the lower jaw, the ribs on the left side, the neck, both shin bones, and the left hand.<sup>1445</sup> These fractures could not have been caused by a fall or the body floating down the river.<sup>1446</sup>

291. Based on the evidence, the Trial Chamber concludes that Ilija Antić was last seen in Ločane/Lloçan on 28 May 1998. In September 1998, his body was found in the ravine downstream from the Radonjić/Radoniq canal. The forensic medical evidence suggests that Ilija Antić was murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The Trial Chamber has heard evidence from Momčilo Antić about who were responsible for Ilija Antić's death. However, Momčilo Antić's

<sup>1436</sup> P337 (Jovanka Antić, witness statement, 17 July 2004), p. 1, paras 2, 4.

<sup>1437</sup> P337 (Jovanka Antić, witness statement, 17 July 2004), para. 5.

<sup>1438</sup> P337 (Jovanka Antić, witness statement, 17 July 2004), para. 4.

<sup>1439</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1440</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 164-165; Branimir Aleksandrić, T. 6790-6791; P452 (Video of body recovery at canal), 1:46'17" - 1:46'19".

<sup>1441</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 164, 166-167, 170; Branimir Aleksandrić, T. 6789-6790; P452 (Video of body recovery at canal), 1:45'22"- 1:46'04", from 1:46'28" to 1:53'30"; P724 (Various photographs), pp. 2-3.

<sup>1442</sup> Agreed Facts, 26 November 2007, No. 90.

<sup>1443</sup> Agreed Facts, 26 November 2007, No. 93.

<sup>1444</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1445</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 449; P722 (Autopsy report R-20), p. 5.

<sup>1446</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 449.

testimony that “Albanians” or “neighbours” of Ilija Antić abducted him is vague and insufficient to identify the perpetrators or their affiliation. Moreover, the evidence is multiple hearsay and the original source, Đordje and Milosava Antić, did not witness the alleged abduction. Milosava Antić confirmed this when telling Jovanka Antić about the incident. The Trial Chamber can therefore not rely on the evidence from Momčilo Antić as to who is responsible for the killing or whether Ilija Antić was in KLA custody at the time of his death. The evidence from Jovanka Antić does not help to identify the perpetrators. The fact that Ilija Antić was one of the few Serbs left in Ločane/Lloçan at the time and that his son was a policeman in Dečani/Deçan suggests, according to the Prosecution, a motive for him becoming a target for the KLA.<sup>1447</sup> However, such a motive cannot compensate for the lack of evidence as to what happened to Ilija Antić. Moreover, the Trial Chamber has received documentary evidence about VJ forces being ordered to attack the village around the time when he was last seen alive and evidence from Jovanka Antić that a lot of shooting was heard in the village on the night between 28 and 29 May 1998.

292. For these reasons, and assuming that Ilija Antić was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.4 Murder of Idriz Hoti*

293. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Idriz Hoti in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Hajdar Hoti, as well as forensic medical evidence.

294. Hajdar Hoti, from Dejne/Danjane in Orahovac/Rahovec municipality, testified that he joined the KLA in May 1998.<sup>1448</sup> In June or July 1998, the witness’s uncle, Idriz Hoti, came to visit the witness in Dejne/Danjane.<sup>1449</sup> Idriz Hoti was about 63 years old in the spring of 1998.<sup>1450</sup> Idriz Hoti was married to a Bosnian Muslim and supported

<sup>1447</sup> Prosecution’s Final Trial Brief, paras 492, 496.

<sup>1448</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 1-2.

<sup>1449</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 3, 6.

<sup>1450</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 3.

both the LDK and the KLA in 1998.<sup>1451</sup> Idriz Hoti said that he had just been beaten and robbed by Serbian military police at a checkpoint.<sup>1452</sup> The military police accused him of bringing money and cigarettes to the KLA and threatened to kill his family if he would not come back the day after.<sup>1453</sup> The witness also heard Idriz Hoti tell the witness's father that he wanted to join the KLA.<sup>1454</sup> Idriz Hoti spent the night at the witness's house and the next day, around noon, left on his bike.<sup>1455</sup> Idriz Hoti told the witness that he was going to "Ramush Haradinaj's zone" to join the KLA.<sup>1456</sup> Idriz Hoti then left, in the direction of Jablanica/Jabllanicë.<sup>1457</sup> According to the witness, the area between Crmljane/Cermjan, in Đakovica/Gjakovë municipality, and Jablanica/Jabllanicë was under KLA control and under the command of Ramush Haradinaj at the time.<sup>1458</sup> On the day Idriz Hoti left, the witness saw fighting between Serbian forces and KLA soldiers somewhere between Suka Crmljane/Cermjan and Suka e Bektesh.<sup>1459</sup> In 1999, after the war, Ali Hoti, a close relative of the witness, told the witness that he last saw Idriz Hoti in July 1998 in Crmljane/Cermjan heading towards Jablanica/Jabllanicë.<sup>1460</sup>

295. The Trial Chamber has also received forensic medical evidence with regard to Idriz Hoti (remains labelled "R-13"). Branimir Aleksandrić<sup>1461</sup> testified that on 12 September 1998, body R-13 was discovered at the Radonjić/Radoniq canal, only after body R-3 was removed along the wall.<sup>1462</sup> Cables with black plastic isolation, similar to those found at Ekonomija farm, were found alongside body R-13 along with a twisted mountain climbing rope, about one centimetre thick, tied into a sliding noose at one end.<sup>1463</sup> ICMP DNA analysis identified the remains labelled R-13 as those of Idriz

<sup>1451</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 3, 5.

<sup>1452</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 7-8.

<sup>1453</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 8.

<sup>1454</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 9.

<sup>1455</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), paras 9-10.

<sup>1456</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 11.

<sup>1457</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 11.

<sup>1458</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 12.

<sup>1459</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2004), para. 12.

<sup>1460</sup> P1232 (Hajdar Hoti, witness statement, 24 October 2007), para. 14.

<sup>1461</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1462</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 94, 97, 100, 128-129, 203-204; Branimir Aleksandrić, T. 6766-6767; P452 (Video of body recovery at canal), 0:39'12"-0:40'58".

<sup>1463</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 97-98, 100; Branimir Aleksandrić, T. 6743-6744, 6749-6750, 6769; P418 (Various photographs), p. 32; P449 (Various

Hoti.<sup>1464</sup> From an autopsy conducted on the remains on 8 December 2003 it was concluded that the cause of death was a gunshot injury to the head/face.<sup>1465</sup> Dušan Dunjić<sup>1466</sup> testified that an autopsy conducted in September 1998 revealed that some ribs were missing and some ribs were fractured, which suggested a traumatic impact around the chest area, and there were two large fractures and holes, probably bullet holes, in the skull.<sup>1467</sup>

296. As referred to above, the Trial Chamber has heard direct and hearsay evidence that Idriz Hoti was last seen in June or July 1998, in the area between Dejne/Danjane and Crmljane/Cermjan, reportedly heading to Jablanica/Jabllanicë (which the Trial Chamber understands to be Jablanica/Jabllanicë in Đakovica/Gjakovë municipality). In September 1998, Idriz Hoti's body was found at the Radonjić/Radoniq canal. The forensic medical evidence strongly suggests that he was murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The Trial Chamber has not received any evidence about Idriz Hoti being in KLA custody or concerning the circumstances or perpetrators of the killing. Idriz Hoti was married to a Bosnian Muslim and supported the LDK. However, he also supported the KLA and, prior to when he was last seen, had declared his intention to join the KLA. The Trial Chamber has heard evidence that, around the time Idriz Hoti was last seen, Crmljane/Cermjan was under KLA control and there was fighting between KLA and Serbian forces in the Crmljane/Cermjan area.<sup>1468</sup> Not long before he was last seen, Serbian military police had threatened and beaten him. Even if Idriz Hoti was last seen in KLA controlled territory, on the basis of the evidence, the Trial Chamber cannot reasonably exclude the possibility that other forces or persons, unaffiliated with the KLA, committed the killing.

photographs), p. 33; P690 (Autopsy photographs R-13), p. 7. See also P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 352; P630 (Record of exhumations, 16 September 1998), p. 2.

<sup>1464</sup> Agreed Facts, 26 November 2007, No. 70.

<sup>1465</sup> Agreed Facts, 26 November 2007, No. 73.

<sup>1466</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1467</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 349; P688 (Autopsy report R-13), pp. 2, 6; P690 (Photographs R-13), pp. 4-5.

<sup>1468</sup> P1138 (Branko Gajić, witness statement, 2 October 2007), para. 13; P1142 (549th Motorised Brigade Command Report on the Đakovica/Gjakovë municipality in early 1998, 23 February 1998), p. 1.

297. For these reasons, even assuming Idriz Hoti was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. The Trial Chamber therefore concludes that all three Accused should be acquitted of this charge.

#### *6.12.5 Murder of Kujtim Imeraj*

298. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Kujtim Imeraj in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Witness 65, as well as forensic medical evidence.

299. Witness 65 testified that in the spring of 1998 a man called Binak told him that some Albanians from Glogjan/Gllogjan, in Dečani/Deçan municipality, had come to Paljabora/Palabardhe in Đakovica/Gjakovë municipality.<sup>1469</sup> They were dressed as civilians and inquired of Binak why he did not tell Witness 65 and Kujtim Imeraj, a Roma, to join the KLA.<sup>1470</sup> Binak replied that he could not do so.<sup>1471</sup> At around 1 or 2 p.m. on the same day, the witness, Binak, and Kujtim Imeraj travelled from Paljabora/Palabardhe to Lower Novo Selo/Novo Sello, in Đakovica/Gjakovë municipality.<sup>1472</sup> The reason they left Paljabora/Palabardhe was that Serbian forces were approaching from the direction of Đakovica/Gjakovë.<sup>1473</sup> As they were leaving, the witness saw soldiers on four or five tanks moving towards Paljabora/Palabardhe.<sup>1474</sup> He testified that two weeks later, as Binak told the witness around noon on 4 July 1998, he saw a group of people in approximately seven or eight cars approaching lower Novo Selo/Novo Sello from the direction of Dujak/Dujakë and Glogjan/Gllogjan.<sup>1475</sup> One person in this group was wearing black clothes and a black hood over his face, while the rest were dressed in civilian clothes.<sup>1476</sup> They were armed with automatic rifles and spoke Albanian.<sup>1477</sup> At the time of their arrival, Witness 65

<sup>1469</sup> Witness 65, T. 8239-8240, 8242-8243, 8245.

<sup>1470</sup> Witness 65, T. 8240, 8243-8245.

<sup>1471</sup> Witness 65, T. 8244.

<sup>1472</sup> Witness 65, T. 8242-8243, 8246-8247, 8302-8303.

<sup>1473</sup> Witness 65, T. 8305.

<sup>1474</sup> Witness 65, T. 8305-8307.

<sup>1475</sup> Witness 65, T. 8247, 8249, 8251, 8296.

<sup>1476</sup> Witness 65, T. 8251-8252, 8296-8297.

<sup>1477</sup> Witness 65, T. 8297.

and Binak were in a yard, while Kujtim had gone out to the street to buy cigarettes.<sup>1478</sup> People in the group asked the witness where a man called Bashkim was.<sup>1479</sup> The witness replied that he did not know, upon which the soldiers beat him.<sup>1480</sup> They surrounded him and shouted, “Why are you here? You are siding with the Serbs. You are Maxhupis, gypsies”.<sup>1481</sup> They took Kujtim from the street.<sup>1482</sup> The witness saw them hitting Kujtim with a rifle butt and putting him into a car.<sup>1483</sup> The witness told them not to take Kujtim but the witness was beaten until he became unconscious.<sup>1484</sup> According to the witness, the group then drove off with Kujtim in the direction they had come from.<sup>1485</sup> Later on that day, Binak told the witness that he had heard them saying, “When you find Bashkim and bring him to us, then we will release Kujtim”.<sup>1486</sup> The witness has not heard from Kujtim since that day.<sup>1487</sup>

300. The Trial Chamber has also received forensic medical evidence with regard to Kujtim Imeraj (remains labelled “R-26” and “R-27A”). Branimir Aleksandrić<sup>1488</sup> testified that on 12 September 1998, about 660 metres downstream from the Radonjić/Radoniq canal, a pair of trousers with leg bones inside and a black jacket were found and marked as R-26.<sup>1489</sup> On 12 September 1998, about fifty metres downstream from R-26, a black jacket, two shin bones, a left shoulder blade and a fragment of spine probably with part of the ribs that run along the spinal column were found and marked as R-27.<sup>1490</sup> ICMP DNA analysis identified the remains labelled R-26 and R-27A (part of the R-27 remains) as those of Kujtim Imeraj.<sup>1491</sup> An autopsy conducted on the

<sup>1478</sup> Witness 65, T. 8249-8251, 8300.

<sup>1479</sup> Witness 65, T. 8249, 8251-8252, 8298.

<sup>1480</sup> Witness 65, T. 8249, 8298.

<sup>1481</sup> Witness 65, T. 8299.

<sup>1482</sup> Witness 65, T. 8248-8251.

<sup>1483</sup> Witness 65, T. 8299-8300.

<sup>1484</sup> Witness 65, T. 8248, 8251, 8298.

<sup>1485</sup> Witness 65, T. 8248, 8299-8300, 8303-8305.

<sup>1486</sup> Witness 65, T. 8300-8301.

<sup>1487</sup> Witness 65, T. 8301.

<sup>1488</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1489</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 128, 164, 171, 197-198, 203-204; Branimir Aleksandrić, T. 9602; P415 (Various photographs), p. 6; P744 (Autopsy photographs R-26), pp. 2-3.

<sup>1490</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128, 200, 201-204; Branimir Aleksandrić, T. 9602-9603, 9613-9614; P449 (Various photographs), p. 52, lower photograph, p. 53; P747 (Autopsy report R-27), pp. 1-2; P749 (Autopsy photographs R-27), pp. 2-3; P1115 (Annex C to Branimir Aleksandrić, witness statement, 26 June 2007, reports dated 15 and 16 September 1998), pp. 5, 11.

<sup>1491</sup> Agreed Facts, 26 November 2007, No. 98.

remains on 20 October 2005 did not reveal clear ante-mortem injuries.<sup>1492</sup> As such, the cause of death was unascertained.<sup>1493</sup> Dušan Dunjić<sup>1494</sup> testified that the autopsy conducted in September 1998 revealed a fracture on the bones of the skull.<sup>1495</sup>

301. As referred to above, the Trial Chamber has heard credible evidence from Witness 65 that on 4 July 1998 Kujtim Imeraj was taken from a street in Novo Selo/Novo Sello, beaten, forced into a car, and then driven off by a group of armed men. Kujtim Imeraj did not return to his family and was never seen by anyone until the discovery of his mortal remains in the ravine downstream from the Radonjić/Radoniq canal. According to the forensic medical evidence, the cause of death for Kujtim Imeraj could not be established. In light of the evidence on his abduction, it is likely that he was killed, and, further, that he was killed by the men who abducted him, or while in their custody. Witness 65 did not identify the armed men as belonging to a certain group or organization. Furthermore, he testified that none of them wore military uniform or had any KLA insignia. Although Witness 65 testified that the group of armed men came from the direction of Dujak/Dujakë and Glođane/Gllogjan, this is insufficient to prove that the abductors were based in Glođane/Gllogjan. Moreover, the fact that the perpetrators spoke Albanian and were armed with automatic rifles is not sufficient for identifying their membership or affiliation with the KLA or any other group for that matter. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. Witness 65 testified about an incident in the spring of 1998, during which some Albanians approached a man called Binak and inquired why he had not told Witness 65 and Kujtim Imeraj to join the KLA. Witness 65 heard about this incident from Binak. However, the evidence is insufficient to link these Albanians with the armed men who abducted Kujtim Imeraj.

302. For these reasons, and assuming that Kujtim Imeraj was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion as to who committed the murder, with which group, if any, the perpetrator was affiliated, or

<sup>1492</sup> Agreed Facts, 26 November 2007, Nos 99-100.

<sup>1493</sup> Agreed Facts, 26 November 2007, No. 101.

<sup>1494</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1495</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 518; P742 (Autopsy report R-26), pp. 2, 4.

whether the murder occurred in KLA custody. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.6 Murder of Nurije and Istref Krasniqi*

303. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Nurije and Istref Krasniqi in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Witness 62, Sadri Selca, Rrustem Tetaj, and Cufë Krasniqi, as well as forensic medical evidence.

304. Witness 62 testified that on 9 or 10 July 1998, Rrustem Tetaj, a KLA commander who introduced himself as the deputy of Ramush Haradinaj, and Hazir Gjoci, a distant relative of Muharrem Gjoci (see below), accompanied by seven or eight armed soldiers in black uniform, visited the family house of Istref and Nurije Krasniqi in Turjak/Turjakë in Peć/Pejë municipality to visit the wounded Muhamet Krasniqi and to act as “mediators of blood” to end the feud that the Krasniqi family was involved in.<sup>1496</sup> According to Witness 62, the family was feuding with the family of Muharrem, Xhevdet, and Rexhep Gjoci and with the family of Brahim and Avdi Krasniqi, the uncles of the Gjoci brothers.<sup>1497</sup> The witness testified about four incidents related to this family feud, the first one being the killing of Muharrem Gjoci on 27 August 1981.<sup>1498</sup> The second incident occurred in 1990.<sup>1499</sup> In 1992 or 1993, Muhamet Krasniqi, the son of Istref and Nurije Krasniqi, injured Avdi Krasniqi with an axe.<sup>1500</sup> About six months after this incident, Skender Krasniqi, also a son of Istref and Nurije Krasniqi, shot and wounded Brahim Krasniqi with a hunting rifle.<sup>1501</sup> The last incident occurred on 26 June 1998, one day after the KLA took control of the area around Turjak/Turjakë and Brahim and Avdi Krasniqi became KLA commanders there, when Muhamet Krasniqi was shot in his neck close to his family house.<sup>1502</sup> The witness was told by Muhamet Krasniqi that he had seen Brahim Krasniqi nearby, behind some bushes, at the time of the

<sup>1496</sup> P345 (Witness 62, witness statement, 12 June 2007), paras 4, 19-22; Witness 62, T. 5528, 5534-5535, 5604-5605, 5610-5611, 5617.

<sup>1497</sup> P345 (Witness 62, witness statement, 12 June 2007), paras 7-14; Witness 62, T. 5555, 5559-5560, 5562-5563, 5591-5598.

<sup>1498</sup> P345 (Witness 62, witness statement, 12 June 2007), paras 7-11; Witness 62, T. 5591-5593.

<sup>1499</sup> Witness 62, T. 5592, 5596.

<sup>1500</sup> P345 (Witness 62, witness statement, 12 June 2007), para. 11; Witness 62, T. 5595-5596.

<sup>1501</sup> P345 (Witness 62, witness statement, 12 June 2007), para. 12; Witness 62, T. 5596.

<sup>1502</sup> P345 (Witness 62, witness statement, 12 June 2007), para. 14; Witness 62, T. 5597-5598, 5635.

shooting.<sup>1503</sup> Muhamet Krasniqi died on 27 July 1998.<sup>1504</sup> Witness 62 testified that since 1992 and through to 1998, two or three families, including Avdi and Brahim Krasniqi, spread rumours in the village of Turjak/Turjakë, motivated by an ongoing family blood feud, that the family of Nurije and Istref Krasniqi were Serbian collaborators.<sup>1505</sup>

305. At midnight on 12 July 1998, Smajl Gashi and a group of four soldiers in black uniforms with KLA insignia, at least three of them armed, came to the house of Istref and Nurije Krasniqi, explaining that they had been sent by Rrustem Tetaj.<sup>1506</sup> They stated that they had been ordered to take Istref and Nurije Krasniqi to the headquarters in Glogjan/Gllogjan, in Dečani/Deçan municipality, and that they would return them the next morning.<sup>1507</sup> The witness recognized their black uniforms as being those of Toger's unit.<sup>1508</sup> Istref and Nurije Krasniqi were taken away in a black four-wheel-drive vehicle that night and the witness never saw them again.<sup>1509</sup>

306. On 14 July 1998, Witness 62 met Rrustem Tetaj in Luka/Lluka, in Dečani/Deçan municipality, in order to inquire about the abduction of Istref and Nurije Krasniqi.<sup>1510</sup> Rrustem Tetaj told the witness that he did not know anything about the abduction, but Witness 62 did not believe him.<sup>1511</sup> On the same day, Witness 62 asked Din Krasniqi, KLA commander of the Vranovac/Vranoc area, in Peć/Pejë municipality, about the whereabouts of Istref and Nurije Krasniqi.<sup>1512</sup> Din Krasniqi was surprised to hear about the abduction and said that he could not believe that it had happened, and promised to make inquiries with people at the headquarters in Glogjan/Gllogjan, as well as from commanders elsewhere.<sup>1513</sup> On 15 July 1998, the witness went to see Din Krasniqi for a second time and was told that there were two different versions relating to the whereabouts of Istref and Nurije Krasniqi.<sup>1514</sup> According to the first version, the couple had been interrogated at the headquarters in Glogjan/Gllogjan and afterwards released in Rznić/Irzniq, in Dečani/Deçan municipality.<sup>1515</sup> The second version was that they had

<sup>1503</sup> P345 (Witness 62, witness statement, 12 June 2007), para. 14; Witness 62, T. 5597, 5614.

<sup>1504</sup> P345 (Witness 62, witness statement, 12 June 2007), para. 18; Witness 62, T. 5597.

<sup>1505</sup> Witness 62, T. 5563-5565, 5567-5569, 5573-5574, 5576-5577, 5621-5622, 5634-5635, 5637-5638.

<sup>1506</sup> Witness 62, T. 5531-5533, 5535-5537, 5540, 5622-5624.

<sup>1507</sup> Witness 62, T. 5533-5534, 5536-5537, 5540, 5545.

<sup>1508</sup> P345 (Witness 62, witness statement, 12 June 2007), para. 19; Witness 62, T. 5563.

<sup>1509</sup> Witness 62, T. 5538.

<sup>1510</sup> Witness 62, T. 5540-5542, 5587, 5625-5626.

<sup>1511</sup> Witness 62, T. 5545, 5617, 5626-5627.

<sup>1512</sup> Witness 62, T. 5547-5548, 5631.

<sup>1513</sup> Witness 62, T. 5548, 5554, 5631, 5633.

<sup>1514</sup> Witness 62, T. 5549.

<sup>1515</sup> Witness 62, T. 5549.

been taken to the headquarters in Glogjan/Gllogjan but that somebody had taken them away from there, due to the ongoing family feud, without the headquarters knowing about it, and that there was no further information about their whereabouts.<sup>1516</sup> The witness believed the second version to be true.<sup>1517</sup>

307. Rrustem Tetaj testified that there were two blood feuds going on in Turjak/Turjakë, one between two families who were both called Krasniqi and another one between the family of a man called Smajl Gashi and another family.<sup>1518</sup> Sometime in the summer of 1998, Tetaj went to the village to try to persuade the families to put their differences aside.<sup>1519</sup> He stated that he had learned from a book written by Tahir Zemaj that he was accused of the abduction of Istref Krasniqi.<sup>1520</sup>

308. Sadri Selca, a FARK intelligence officer,<sup>1521</sup> testified that Naser Kuqi, the witness's courier, from Junik, in Dečani/Deçan municipality, told the witness that the elderly people, called Nurije and Istref Krasniqi, were taken away by Rrustem Tetaj in a vehicle.<sup>1522</sup> Naser Kuqi had heard this from villagers from Turjak/Turjakë in Peć/Pejë municipality.<sup>1523</sup> Although the witness's official notes state that Imer Krasniqi from Turjak/Turjakë was taken for an interview regarding his collaboration with Serbian police, Sadri Selca did not believe that Nurije and Istref Krasniqi were collaborating with the Serbian police.<sup>1524</sup>

309. Cufë Krasniqi, a KLA commander,<sup>1525</sup> testified that sometime before September 1998, Tahir Zemaj asked him if he knew what had happened to Nurije and Istref Krasniqi.<sup>1526</sup> Zemaj told Cufë Krasniqi that the commander of the KLA military police, Fadil Nimoni, was appointed to deal with the case.<sup>1527</sup> Cufë Krasniqi told Zemaj to ask the military police officers who were patrolling the villages.<sup>1528</sup>

310. The Trial Chamber has also received forensic medical evidence with regard to Nurije (remains labelled "R-14") and Istref Krasniqi (remains labelled "R-15").

<sup>1516</sup> Witness 62, T. 5549, 5555, 5590, 5630-5631, 5633.

<sup>1517</sup> Witness 62, T. 5552, 5590.

<sup>1518</sup> Rrustem Tetaj, T. 3784-3785.

<sup>1519</sup> Rrustem Tetaj, T. 3783-3784.

<sup>1520</sup> Rrustem Tetaj, T. 3785.

<sup>1521</sup> Sadri Selca, T. 10858-10860, 10864.

<sup>1522</sup> Sadri Selca, T. 10867-10869, 10883; P1229 (Official note compiled by Sadri Selca, 25 August 1998).

<sup>1523</sup> Sadri Selca, T. 10883.

<sup>1524</sup> Sadri Selca, T. 10870-10872, 10884-10885; P896 (Official notes of Sadri Selca, undated), p. 8.

<sup>1525</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), p. 1, para. 1.

<sup>1526</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 88; Cufë Krasniqi, T. 5726-5727.

<sup>1527</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 88.

Branimir Aleksandrić<sup>1529</sup> testified that Bodies R-14 and R-15 were recovered on 12 September 1998.<sup>1530</sup> At the end of the concrete wall of the canal, there was a pile of gravel on the outer side of the wall.<sup>1531</sup> Removal of the gravel revealed bodies R-14 and R-15.<sup>1532</sup> Body R-14 was on the left side of the bullet markings on the concrete wall, body R-15 on the right side of the bullet markings.<sup>1533</sup> ICMP DNA analysis identified the body labelled R-14 as that of Nuriye Krasniqi.<sup>1534</sup> An autopsy conducted on the remains on 5 December 2003, found fractures to the skull consistent with gunshot wounds with the entrance to the back of the head.<sup>1535</sup> There were other fractures which suggested gunshot wounds to the left shoulder and arm.<sup>1536</sup> The autopsy determined that death was caused by a gunshot wound to the head.<sup>1537</sup> ICMP DNA analysis also identified the body labelled R-15 as that of Istref Krasniqi.<sup>1538</sup> An autopsy conducted on the remains on 12 October 2005 showed multiple fractures including a compression fracture, and damages to the spine, ribs, forearm and the elbow, some of which were consistent with gunshot wounds.<sup>1539</sup> It was concluded that the cause of death was multiple gunshot wounds to the chest.<sup>1540</sup> Dušan Dunjić<sup>1541</sup> testified that an autopsy conducted on R-15 in September 1998 revealed fractures on both forearm bones; these could not have been caused by a fall down the slope to the canal.<sup>1542</sup> According to the witness, these fractures were more likely to have been caused by a blow.<sup>1543</sup>

311. As referred to above, Witness 62 testified that, around midnight on 12 July 1998, a group of soldiers in black uniforms with KLA insignia came to Nuriye and Istref

<sup>1528</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 88.

<sup>1529</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1530</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128, 203-204.

<sup>1531</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 134; Branimir Aleksandrić, T. 9553.

<sup>1532</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 134-135; Branimir Aleksandrić, T. 6772-6773, 9553; P449 (Various photographs), pp. 34-35; P452 (Video of body recovery at canal), 1:05'03"- 1:12'05"; P694 (Autopsy photographs R-14), pp. 3-5.

<sup>1533</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 136.

<sup>1534</sup> Agreed Facts, 26 November 2007, No. 74.

<sup>1535</sup> Agreed Facts, 26 November 2007, Nos 75-76.

<sup>1536</sup> Agreed Facts, 26 November 2007, No. 76.

<sup>1537</sup> Agreed Facts, 26 November 2007, No. 77.

<sup>1538</sup> Agreed Facts, 26 November 2007, No. 78.

<sup>1539</sup> Agreed Facts, 26 November 2007, Nos 79-80.

<sup>1540</sup> Agreed Facts, 26 November 2007, No. 81.

<sup>1541</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1542</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 374; P697 (Autopsy report R-15), p. 6.

<sup>1543</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 374.

Krasniqi's house in Turjak/Turjakë and took them away. Witness 62 further testified that the soldiers stated that they had been sent by Rrustem Tetaj, that they had been ordered to take the couple to the headquarters in Glogjan/Gllogjan, and that they would return Nurije and Istref Krasniqi the next morning. Nurije and Istref Krasniqi never returned home. Sadri Selca provided multiple hearsay evidence from unidentified sources also implicating Rrustem Tetaj in taking away Nurije and Istref Krasniqi. However, Witness 62 testified that Rrustem Tetaj denied having given such an order, and Rrustem Tetaj himself testified that he had later learned from a book that he was accused of the abduction of Istref Krasniqi. According to Witness 62, Din Krasniqi, KLA commander of the Vranovac/Vranoc area, promised to make some inquiries and later told Witness 62 that there were two different stories about what happened to the couple. According to the first story, the couple was interrogated at the headquarters in Glogjan/Gllogjan and then released in Rznić/Irzniq. According to the second story, the couple was interrogated at the headquarters in Glogjan/Gllogjan and then taken away by someone for reasons connected to a blood feud. Both stories are consistent with the evidence indicating that Nurije and Istref Krasniqi were taken to the headquarters in Glogjan/Gllogjan. The stories contradict each other as to what happened thereafter. Cufë Krasniqi gave hearsay evidence of a KLA investigation by Fadil Nimoni, commander of the KLA military police, into the fate of Nurije and Istref Krasniqi. In September 1998, their remains were found close to each other at the Radonjić/Radoniq canal. The forensic medical evidence strongly suggests that Nurije and Istref Krasniqi were murdered. On the basis of this evidence, the Trial Chamber is satisfied that KLA soldiers took Nurije and Istref Krasniqi away from their home and brought them to the KLA headquarters in Glogjan/Gllogjan. The Trial Chamber is also convinced beyond a reasonable doubt that Nurije and Istref Krasniqi were murdered in KLA custody. The Trial Chamber is furthermore convinced that this crime was closely related to the armed conflict in Kosovo/Kosova, and that the victims were not taking active part in hostilities at the time the crime was committed and that the perpetrators knew or should have known that this was the case.

312. Witness 62 testified that there was a blood feud between the family of Nurije and Istref Krasniqi and the family of KLA members Avdi and Brahim Krasniqi, who were spreading rumours that Nurije and Istref Krasniqi were collaborators. On 26 June 1998, according to Witness 62, Muhamet Krasniqi, a son of Nurije and Istref Krasniqi, was

shot in the neck, an incident which Witness 62 linked to the blood feud. The evidence shows that Rrustem Tetaj was involved in trying to settle the blood feud on 9 or 10 July 1998. As noted in section 7, below, Witness 17 testified that during a meeting at Din Krasniqi's home in Vranovac/Vranoc on 12 July 1998, he received a list mentioning "Two women collaborators Turjakë – Kosturiq". The evidence does not establish that this refers to Nurije and Istref Krasniqi. The Trial Chamber finds that the evidence does not allow it to draw any conclusion as to the reasons for the murders of Nurije and Istref Krasniqi.

313. All three Accused are charged with the murders of Nurije and Istref Krasniqi as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability in section 7, below.

#### *6.12.7 Murder of Zdravko Radunović*

314. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Zdravko Radunović in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Witness 68, as well as forensic medical evidence. The Trial Chamber has not admitted statements of the alleged kidnappers made to the MUP, due to strong doubts as to their reliability. For a further discussion of these non-admitted statements, the Trial Chamber refers to section 2.1, above.

315. Witness 68 testified that she last saw Zdravko Radunović, a Montenegrin, on the morning of 16 July 1998 at around 7:00 a.m.<sup>1544</sup> He told her then that he was on his way to work and to visit some relatives in Đakovica/Gjakovë and Dobrić/Dobriq, in Đakovica/Gjakovë municipality, who had been attacked by the KLA a few days earlier.<sup>1545</sup> At around 1:30 p.m., the witness heard from Zdravko Radunović for the last time when he told her on the telephone that he was leaving Đakovica/Gjakovë for the village of Dobrić/Dobriq.<sup>1546</sup> The witness called the MUP in Peć/Pejë at around 9:00 p.m., when Zdravko Radunović had not returned to his village, and was informed that they had received information from MUP in Đakovica/Gjakovë at 6:00 p.m. that uniformed KLA members had abducted Zdravko Radunović in the village of Dujak/Dujakë, in

<sup>1544</sup> P1016 (Witness 68, witness statement, 9 October 2007), paras 4, 6; Witness 68, T. 9273.

<sup>1545</sup> P1016 (Witness 68, witness statement, 9 October 2007), paras 6-7.

<sup>1546</sup> P1016 (Witness 68, witness statement, 9 October 2007), para. 8.

Đakovica/Gjakovë municipality.<sup>1547</sup> In September 1998, officials at the MUP in Đakovica/Gjakovë told the witness that they had arrested Lëk and Krist Pervorfi, two KLA members from Dujak/Dujakë who had abducted Zdravko Radunović in Dujak/Dujakë.<sup>1548</sup> The officials further informed the witness that the two men had handed Zdravko Radunović over to their commander named “Vuk”, and that Zdravko Radunović had subsequently been taken to Glodane/Gllogjan, in Dečani/Deçan municipality, where Ramush Haradinaj was in charge.<sup>1549</sup> In January 1999, the MUP in Peć/Pejë told the witness that Lëk and Krist Pervorfi had stated that Zdravko Radunović had been killed and that his remains had had been disposed of at Lake Radonjić/Radoniq.<sup>1550</sup>

316. The Trial Chamber has also received forensic medical evidence with regard to Zdravko Radunović (remains labelled “R-8/1”). ICMP DNA analysis identified the remains labelled R-8/1 as those of Zdravko Radunović.<sup>1551</sup> An autopsy conducted on 5 December 2003 described totally skeletonized, disarticulated and largely incomplete human remains.<sup>1552</sup> The cause of death could not be ascertained.<sup>1553</sup> Dušan Dunjić<sup>1554</sup> testified that remains R-8/1 were incomplete, with many bones missing.<sup>1555</sup> The remains had mistakenly been placed in the same body bag as body R-8.<sup>1556</sup> The part of the skull that was found showed a trace of a bullet exit wound.<sup>1557</sup>

317. As referred to above, the Trial Chamber received direct evidence that Zdravko Radunović was last seen on the morning of 16 July 1998 when he left for work, and last heard from during a telephone conversation at 1:30 p.m. on the same day, when he indicated that he was leaving Đakovica/Gjakovë for Dobrić/Dobriq. The MUP subsequently informed Witness 68 that Zdravko Radunović was abducted by KLA soldiers in Dujak/Dujakë, transferred to Glodane/Gllogjan, killed, and disposed of at

<sup>1547</sup> P1016 (Witness 68, witness statement, 9 October 2007), paras 10-11.

<sup>1548</sup> P1016 (Witness 68, witness statement, 9 October 2007), paras 12, 14-16; Witness 68, T. 9265-9268, 9273-9274.

<sup>1549</sup> Witness 68, T. 9267-9268.

<sup>1550</sup> Witness 68, T. 9266-9267, 9269, 9271-9272.

<sup>1551</sup> Agreed Facts, 26 November 2007, No. 52.

<sup>1552</sup> Agreed Facts, 26 November 2007, Nos 53-54.

<sup>1553</sup> Agreed Facts, 26 November 2007, No. 55.

<sup>1554</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1555</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 278; P665 (Photographs of R-8 and R-8/1).

<sup>1556</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 276; P659 (Autopsy report R-8), p. 1; P662 (Photographs of R-8 and R-8/1); P663 (Autopsy report R-8/1), p. 1.

Lake Radonjić/Radoniq. This hearsay account of Witness 68 is the only evidence before the Trial Chamber about the alleged abduction and subsequent events. It does not spell out the circumstances under which the MUP learned about the abduction. Moreover, it is multiple hearsay and Witness 68 does not specify her source. For these reasons the Trial Chamber will not rely on Witness 68's hearsay account of the alleged abduction and subsequent events. In September 1998, Zdravko Radunović's body was found at the Radonjić/Radoniq canal.

318. While at one autopsy, conducted on 5 December 2003, the cause of death of Zdravko Radunović could not be ascertained, Dunjić's autopsy report in 1998 noticed a trace of a bullet exit wound on the part of the skull that was found. Even assuming that Zdravko Radunović was murdered, KLA involvement has to be ascertained to prove the charges of this Count. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The fact that Zdravko Radunović went to visit relatives in Dobrić/Dobriq, because they were under KLA attack a few days before, cannot establish a sufficient link between his disappearance and the KLA. As explained above, the Trial Chamber will not rely on Witness 68's hearsay account on the alleged abduction and subsequent events. For these reasons, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. The Trial Chamber therefore concludes that all three Accused should be acquitted of this charge.

#### *6.12.8 Murder of Velizar Stošić*

319. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Velizar Stošić in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Miomir Stošić, as well as forensic medical evidence.

<sup>1557</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 281; P663 (Autopsy report R-8/1), pp. 1-2, 4; P666 (Photographs of R-8/1).

320. Miomir Stošić, a Serbian from Belo Polje/Bellopojë in Peć/Pejë municipality,<sup>1558</sup> testified that his father Velizar Stošić disappeared on or about 17 July 1998 during a bicycle trip to the family's land which was close to Lođa/Loxhë, in Peć/Pejë municipality.<sup>1559</sup> Apart from the fact that there had been a tense situation in this area in July 1998, the witness could not provide details or facts relating to the disappearance of his father.<sup>1560</sup> The witness, who reported his father missing to the Red Cross in Peć/Pejë and to the MUP, was informed by the local police about one month after the disappearance that his father's bike had been found on the family's land close to Lođa/Loxhë.<sup>1561</sup>

321. The Trial Chamber has also received forensic medical evidence with regard to Velizar Stošić (remains labelled "R-8"). Branimir Aleksandrić<sup>1562</sup> testified that body R-8 was found on 11 September 1998 near the Radonjić/Radoniq canal, along the external side of the concrete wall where there were bullet markings, together with eight other bodies.<sup>1563</sup> A climbing rope, about one centimetre thick and tied into a tight noose was found surrounding the neck area of body R-8, with a circumference of an average neck of an adult.<sup>1564</sup> ICMP DNA analysis identified the body labelled R-8 as Velizar Stošić.<sup>1565</sup> An autopsy conducted on the remains on 11 October 2005 found extensive damage to the head by a combination of blunt force trauma and gunshot injuries.<sup>1566</sup> The left shoulder blade and the right thighbone also revealed defects and fractures which were consistent with gunshot injuries.<sup>1567</sup> From the autopsy it was concluded that the cause of death was multiple gunshot wounds inflicted to the victim's head and legs.<sup>1568</sup> Dušan Dunjić<sup>1569</sup> testified that an autopsy conducted in September 1998

<sup>1558</sup> Miomir Stošić, T. 5493-5494.

<sup>1559</sup> Miomir Stošić, T. 5495-5498, 5655-5658; P341 (Photograph of Velizar Stošić).

<sup>1560</sup> Miomir Stošić, T. 5498-5499.

<sup>1561</sup> Miomir Stošić, T. 5500-5501.

<sup>1562</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1563</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 61-62; P414 (Various photographs), p. 20; P416 (Various photographs), p. 3; P418 (Various photographs), p. 18; P645 (Various photographs), p. 2; P649 (Various photographs), p. 2.

<sup>1564</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 111, 113, 118-119; Branimir Aleksandrić, T. 6769-6770; P415 (Various photographs), p. 16; P452 (Video of body recovery at canal), 0:52'49"-0:53'12", 0:53'28"-0:54'24".

<sup>1565</sup> Agreed Facts, 26 November 2007, No. 48.

<sup>1566</sup> Agreed Facts, 26 November 2007, Nos 49-50.

<sup>1567</sup> Agreed Facts, 26 November 2007, No. 50.

<sup>1568</sup> Agreed Facts, 26 November 2007, No. 51.

<sup>1569</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

revealed that there were bullet holes on both sides of the head, the right thigh bone, and a bullet was found in the left kneecap.<sup>1570</sup>

322. Based on the evidence, the Trial Chamber concludes that Velizar Stošić went missing on or about 17 July 1998, in the area between Belo Polje/Bellopojë and Loda/Loxhë. Velizar Stošić's body was found at the Radonjić/Radoniq canal. The forensic medical evidence established multiple fractures consistent with gunshot injuries and, therefore, strongly suggests that Velizar Stošić was murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The Trial Chamber has not received any evidence about Velizar Stošić being in KLA custody or concerning the circumstances or perpetrators of the killing. The bicycle Velizar Stošić was riding on the day of his disappearance was found in a field near Loda/Loxhë. The Trial Chamber has heard evidence that the village of Loda/Loxhë was under KLA control at the time.<sup>1571</sup> Even if Velizar Stošić disappeared in KLA controlled territory, this would not reasonably exclude the possibility that other forces or persons, unaffiliated with the KLA, committed the killing.

323. For these reasons, and assuming that Velizar Stošić was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion as to who committed the murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.9 Murder of Malush Shefki Meha*

324. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Malush Shefki Meha in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Hasime Racaj, as well as forensic medical evidence.

<sup>1570</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 266-267; P659 (Autopsy report R-8), pp. 2-3; P661 (Photographs R-8), pp. 2-3, 9.

<sup>1571</sup> Rrustem Tetaj, T. 3691-3692, 3807-3809, 3810-3811; P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 77; Cufë Krasniqi, T. 5805, 5816, 5818-5819; P885 (Witness 17, witness statement, 14 August 2007), para. 35; P165 (Analysis of the battle of Loda/Loxhë in: Minutes of meeting on 5 July 1998).

325. Hasime Racaj, from Peć/Pejë,<sup>1572</sup> stated that on 27 July 1998, around 8 a.m., her husband left their house to buy some medicine and this was the last time she saw him alive.<sup>1573</sup> According to the witness, her husband, Malush Meha, suffered from a mental illness.<sup>1574</sup> After three days the witness reported the disappearance to the “Humanitarian Organization” in Peć/Pejë.<sup>1575</sup>

326. The Trial Chamber has also received forensic medical evidence with regard to Malush Shefki Meha (remains labelled “R-16”). Branimir Aleksandrić<sup>1576</sup> testified that body R-16 was recovered on 12 September 1998 at the Radonjić/Radoniq canal.<sup>1577</sup> The body was found at the outer side of the concrete canal, at a depth of about 30 centimetres.<sup>1578</sup> ICMP DNA analysis concluded that the body labelled R-16 is that of Malush Meha.<sup>1579</sup> An autopsy conducted on the remains on 5 December 2003 revealed a large fracture to the left of the hip which was consistent with gunshot injury.<sup>1580</sup> Three bullets were also recovered from the remains.<sup>1581</sup> It was concluded that the cause of death was a gunshot to the trunk.<sup>1582</sup> Dušan Dunjić<sup>1583</sup> testified that an autopsy conducted in September 1998 revealed fractures on the right shoulder blade and the left half of the pelvic bone, that could not have been caused by a fall.<sup>1584</sup>

327. Based on the evidence, the Trial Chamber concludes that Malush Shefki Meha went missing on 27 July 1998 in Peć/Pejë. His remains were found at the Radonjić/Radoniq canal. The forensic medical evidence suggests that Malush Shefki Meha was murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was

<sup>1572</sup> P1235 (Hasime Racaj, witness statement, 16 April 2007), p. 1.

<sup>1573</sup> P1235 (Hasime Racaj, witness statement, 16 April 2007), para. 9.

<sup>1574</sup> P1235 (Hasime Racaj, witness statement, 16 April 2007), paras 7, 17.

<sup>1575</sup> P1235 (Hasime Racaj, witness statement, 16 April 2007), para. 11.

<sup>1576</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1577</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 128, 141.

<sup>1578</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 141, 143; Branimir Aleksandrić, T. 6766-6767; P449 (Various photographs), p. 36; P452 (Video of body recovery at canal), 0:52'35", 1:12'46"- 1:21'11".

<sup>1579</sup> Agreed Facts, 26 November 2007, No. 82.

<sup>1580</sup> Agreed Facts, 26 November 2007, Nos 83-84.

<sup>1581</sup> Agreed Facts, 26 November 2007, No. 84.

<sup>1582</sup> Agreed Facts, 26 November 2007, No. 85.

<sup>1583</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1584</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 391; P702 (Autopsy report R-16), pp. 1-2, 6.

affiliated. The Trial Chamber has not received any evidence about Malush Shefki Meha being in KLA custody or concerning the circumstances or perpetrators of the killing. The Trial Chamber has heard evidence that Malush Shefki Meha suffered from a mental illness.

328. For these reasons, and assuming that Malush Shefki Meha was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion as to who committed the murder, with which group, if any, the perpetrator was affiliated, or whether the murder occurred in KLA custody. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.10 Murder of Xhevat Berisha*

329. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Xhevat Berisha in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Luan Tetaj, as well as forensic medical evidence. The Trial Chamber has reviewed the evidence of Luan Tetaj in section 6.11, above.

330. The Trial Chamber has also received forensic medical evidence with regard to Xhevat Berisha (remains labelled “R-5”). Branimir Aleksandrić<sup>1585</sup> testified that body R-5 was found on 11 September 1998 near the Radonjić/Radoniq canal, along the external side of the concrete wall where there were bullet markings, together with eight other bodies.<sup>1586</sup> The OMPF concluded that the remains labelled R-5 are those of Xhevat Berisha.<sup>1587</sup> An autopsy conducted on the remains on 8 December 2003 revealed that the victim had sustained a gunshot wound to the head.<sup>1588</sup> There were additional gunshot injuries to the right arm, chest, and spine.<sup>1589</sup> It was concluded that death had

<sup>1585</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1586</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 4, 6, 61-62; P414 (Various photographs), p. 20; P416 (Various photographs), p. 3; P418 (Various photographs), p. 18; P645 (Various photographs), p. 2; P649 (Various photographs), p. 2.

<sup>1587</sup> Agreed Facts, 26 November 2007, No. 40.

<sup>1588</sup> Agreed Facts, 26 November 2007, No. 42. See also P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 245; P650 (Autopsy report R-5), p. 4; P652 (Photographs of R-5).

<sup>1589</sup> Agreed Facts, 26 November 2007, No. 42. See also P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 244-245; P650 (Autopsy report R-5), pp. 1-2, 4; P652 (Photographs of R-5).

been caused by the gunshot injury to the head; the gunshot injuries to the chest could also have been fatal.<sup>1590</sup>

331. As referred to in section 6.11, the Trial Chamber has heard evidence that Xhevat Berisha and his father, Misin Berisha, and brother, Sali Berisha, were last seen in the village of Glodane/Gllogjan, in Peć/Pejë municipality in June or July 1998. In September 1998, Xhevat Berisha's body was discovered at the Radonjić/Radoniq canal. The forensic medical evidence strongly suggests that Xhevat Berisha was murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The Trial Chamber has considered the killing of Sali and Misin Berisha in section 6.11, above, and its conclusion concerning the possible perpetrators of those killings is relevant to the killing of Xhevat Berisha. With the exception of the evidence considered in that section, the Trial Chamber has not heard any evidence about Xhevat Berisha being abducted or being in KLA custody, or concerning the circumstances or perpetrators of the killing.

332. For these reasons, and assuming that Xhevat Berisha was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murder, which group, if any, the perpetrator was affiliated with, or whether the murder occurred in KLA custody. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.11 Murder of Kemajl Gashi*

333. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Kemajl Gashi in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Medin Gashi, as well as forensic medical evidence. There is no need to reproduce the contents of the testimony Medin Gashi has given.<sup>1591</sup> For the reasons explained below, the Trial Chamber cannot rely on almost any of its content.

<sup>1590</sup> Agreed Facts, 26 November 2007, Nos 42-43.

<sup>1591</sup> Medin Gashi, T. 4840-4899, 4910-4936.

334. The Trial Chamber has received forensic medical evidence with regard to Kemajl Gashi (remains labelled “R-2”). Branimir Aleksandrić<sup>1592</sup> testified that body R-2 was found on 11 September 1998 near the Radonjić/Radoniq canal, along the external side of the concrete wall where there were bullet markings, together with eight other bodies.<sup>1593</sup> ICMP DNA analysis identified the body labelled R-2 as that of Kemajl Gashi.<sup>1594</sup> An autopsy conducted on the remains on 8 December 2003 revealed fractures to the skull, left shoulder blade, left arm, ribs, and the higher spinal column which suggested infliction of gunshot wounds.<sup>1595</sup> Other fractures to both sides of the hip bone and the base of the spine were consistent with at least two different gunshot impacts to the pelvis.<sup>1596</sup> The autopsy concluded that the cause of death was gunshot wounds to the pelvis.<sup>1597</sup> Dušan Dunjić<sup>1598</sup> testified that body R-2 was wearing blue jeans and a red-and-green striped T-shirt.<sup>1599</sup> An autopsy conducted on the remains in September 1998 revealed a bullet entry wound on the right side, exit wound on the left side of the pelvic bone and multiple fractures on the ribs, left arm, left shoulder blade, and right lower jaw.<sup>1600</sup> The non-pelvic fractures were consistent with having been caused by blows from a blunt object and could not have been caused by a fall.<sup>1601</sup> These non-pelvic fractures were most probably caused ante-mortem and, if left untreated, would probably lead to the person bleeding to death.<sup>1602</sup>

335. The Trial Chamber finds Medin Gashi’s testimony in relation to this count confusing, inconsistent, and contradictory in relation to his previous statements given to the parties and the statement his sister gave to the Prosecution. The only fact that the Trial Chamber finds reliable from his evidence is that Kemajl Gashi was at the

<sup>1592</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1593</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 61-62; P414 (Various photographs), p. 20; P416 (Various photographs), p. 3; P418 (Various photographs), p. 18; P645 (Various photographs), p. 2; P649 (Various photographs), p. 2.

<sup>1594</sup> Agreed Facts, 26 November 2007, No. 28.

<sup>1595</sup> Agreed Facts, 26 November 2007, Nos 29-30.

<sup>1596</sup> Agreed Facts, 26 November 2007, No. 30.

<sup>1597</sup> Agreed Facts, 26 November 2007, No. 31.

<sup>1598</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1599</sup> P807 (Autopsy report R-2), p. 3; P809 (Photographs of R-2), pp. 5-6.

<sup>1600</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 207-208; P807 (Autopsy report R-2), p. 6; P809 (Photographs of R-2), pp. 2-3.

<sup>1601</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 208-209.

<sup>1602</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 209.

KLA headquarters at the school building in Barane/Baran sometime in the summer of 1998. However, it is unclear why Kemajl Gashi was there, whether he was a victim or provided services to the KLA, what happened to him there, whether he ever left Barane/Baran, and if so, where he then went. In September 1998, Kemajl Gashi's body was discovered at the Radonjić/Radoniq canal. The forensic medical evidence strongly suggests that Kemajl Gashi was murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. For these reasons, even assuming that Kemajl Gashi was murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed the murder, which group, if any, the perpetrator was affiliated with, or whether the murder occurred in KLA custody. The Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.12 Murder of Sanije Balaj*

336. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Sanije Balaj in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from a number of witnesses, as well as forensic medical evidence.

337. Shaban Balaj, a Kosovar Albanian from Donji Streoc/Strellci i Ultë in Dečani/Deçan municipality, was a KLA soldier from the end of March 1998 until he resigned in August 1998.<sup>1603</sup> Shaban Balaj lived with his sister, Sanije Balaj, in Donji Streoc/Strellci i Ultë in 1998.<sup>1604</sup> Shaban Balaj testified that Sanije Balaj was not a member of the KLA.<sup>1605</sup> However, Sanije Balaj had on one occasion worn Shaban Balaj's KLA uniform and carried his gun, when shopping for food-stuffs in Mališovo/Malishevë, for people in her village.<sup>1606</sup> The witness testified that on 12 August 1998, at 8:30 am, Sanije Balaj left Donji Streoc/Strellci i Ultë, by car, with the witness's relatives.<sup>1607</sup> Sanije Balaj was wearing civilian clothes.<sup>1608</sup> She intended to go

<sup>1603</sup> P922 (Shaban Balaj, witness statement, 2 June 2007), paras 4, 17; Shaban Balaj, T. 8649, 8703.

<sup>1604</sup> Shaban Balaj, T. 8649, 8680.

<sup>1605</sup> Shaban Balaj, T. 8652, 8702, 8704.

<sup>1606</sup> P922 (Shaban Balaj, witness statement, 2 June 2007), para. 15; Shaban Balaj, T. 8652, 8702-8704.

<sup>1607</sup> Shaban Balaj, T. 8649-8650, 8653, 8686.

to Peć/Pejë to buy a mobile phone and Shaban Balaj had given her DEM 2,700 for this purpose.<sup>1609</sup> The day before the trip, Shaban Balaj had received a KLA authorisation card from the local KLA commander for her to travel to Rosulje/Rosuje in Peć/Pejë municipality.<sup>1610</sup> Following her departure, Shaban Balaj never saw Sanije Balaj alive again.<sup>1611</sup> On 12 August 1998, between 2:00 and 4:00 p.m., the witness's relatives returned.<sup>1612</sup> They told him that they had travelled with Sanije Balaj to Barane/Baran in Peć/Pejë municipality, where they were stopped at a KLA checkpoint.<sup>1613</sup> The witness's relatives said they were stopped by Metë Krasniqi, Avni Krasniqi, Iber Krasniqi, Vesel Dizdari, and another person who the witness did not know at the time.<sup>1614</sup> Later the witness found out that his name was Idriz Gashi, a.k.a. "Galani".<sup>1615</sup> The witness's relatives were later told that she had been interrogated by Cufë Krasniqi, but that she had already gone back to Donji Streoc/Strellci i Ultë.<sup>1616</sup> The witness refers to Metë, Avni, Iber, and Cufë Krasniqi and "Galani" as "self-styled KLA [...] under the command of nobody".<sup>1617</sup> Shaban Balaj and his relatives then went to look for the men who had stopped Sanije Balaj.<sup>1618</sup> Near Vranovac/Vranoc in Peć/Pejë municipality the witness encountered Metë Krasniqi.<sup>1619</sup> Metë Krasniqi told the witness that he had stopped Sanije Balaj and that she was taken to Glođane/Gllogjan in Dečani/Deçan municipality.<sup>1620</sup> The witness did not believe Metë Krasniqi.<sup>1621</sup> The witness then went to Zlopek/Qellopek in Peć/Pejë municipality, where he spoke to Vesel Dizdari.<sup>1622</sup> Vesel Dizdari told the witness that Metë Krasniqi had stopped Sanije Balaj.<sup>1623</sup> Vesel Dizdari advised the witness to search for Sanije Balaj since, according to Dizdari, Metë, Avni, and Iber Krasniqi as well as Galani were dangerous people.<sup>1624</sup> The witness later

<sup>1608</sup> Shaban Balaj, T. 8652-8653.

<sup>1609</sup> Shaban Balaj, T. 8650, 8682.

<sup>1610</sup> Shaban Balaj, T. 8655.

<sup>1611</sup> Shaban Balaj, T. 8653.

<sup>1612</sup> Shaban Balaj, T. 8653, 8686.

<sup>1613</sup> Shaban Balaj, T. 8651, 8653-8654, 8656, 8660, 8686.

<sup>1614</sup> Shaban Balaj, T. 8653-8654, 8660, 8686.

<sup>1615</sup> Shaban Balaj, T. 8654, 8657-8658, 8697-8698.

<sup>1616</sup> Shaban Balaj, T. 8653, 8686-8687.

<sup>1617</sup> Shaban Balaj, T. 8651, 8653, 8688, 8693.

<sup>1618</sup> Shaban Balaj, T. 8654-8655.

<sup>1619</sup> Shaban Balaj, T. 8655-8656.

<sup>1620</sup> Shaban Balaj, T. 8656-8657, 8701. See also P1238 (Witness 72, witness statement, 13 June 2007), para. 15.

<sup>1621</sup> Shaban Balaj, T. 8657.

<sup>1622</sup> Shaban Balaj, T. 8657-8659.

<sup>1623</sup> Shaban Balaj, T. 8659-8660.

<sup>1624</sup> Shaban Balaj, T. 8657, 8660. See also P1238 (Witness 72, witness statement, 13 June 2007), para. 16.

learned from Vesel Dizdari that Cufë Krasniqi had interrogated Sanije Balaj.<sup>1625</sup> On 13 or 14 August 1998, Shaban Balaj met Cufë Krasniqi.<sup>1626</sup> Cufë Krasniqi told the witness that Avni and Iber Krasniqi had brought Sanije Balaj in for interrogation as a Serbian collaborator.<sup>1627</sup> Cufë Krasniqi had questioned Sanije Balaj and then released her and “Galani” had been present during the interrogation and had seen the money Sanije Balaj carried with her.<sup>1628</sup> Cufë Krasniqi added that after he had released her, Iber and Avni Krasniqi had taken Sanije Balaj away in a friendly manner.<sup>1629</sup>

338. On 13 August 1998, Shaban Balaj met the FARK commander Tahir Zemaj in Papračane/Prapacan in Dečani/Deçan municipality, and told him of Sanije Balaj’s disappearance.<sup>1630</sup> Tahir Zemaj said he would take measures, and, according to Shaban Balaj, subsequently questioned the men who had stopped Sanije Balaj.<sup>1631</sup> When Shaban Balaj later returned to Barane/Baran, Tahir Zemaj introduced him to Fadil Nimani and Hysen Gashi.<sup>1632</sup> Over the next four or five days, Fadil Nimani and Hysen Gashi asked the witness questions about Sanije Balaj’s disappearance and took notes on his answers.<sup>1633</sup> On the fourth or fifth day, Fadil Nimani told Shaban Balaj that Sanije Balaj was dead.<sup>1634</sup>

339. Two or three days after the disappearance, Shaban Balaj’s wife told him that Ramush Haradinaj and Gani Gjukaj had visited his home to offer their condolences.<sup>1635</sup> The witness believed that Ramush Haradinaj was not involved in the disappearance and death of Sanije Balaj.<sup>1636</sup> On one of the following days, Shaban Balaj went to the house of Metë Krasniqi to resolve the issue of Sanije Balaj’s disappearance.<sup>1637</sup> In accordance with the Kanun of the area, Shaban Balaj was accompanied by 20 people, including village elders.<sup>1638</sup> The group told Din Krasniqi to inform Metë Krasniqi that they wanted the body of Sanije Balaj to be returned to her home village of Donji

<sup>1625</sup> Shaban Balaj, T. 8658-8659.

<sup>1626</sup> Shaban Balaj, T. 8664, 8666-8667.

<sup>1627</sup> Shaban Balaj, T. 8668.

<sup>1628</sup> Shaban Balaj, T. 8668-8669, 8689.

<sup>1629</sup> Shaban Balaj, T. 8696.

<sup>1630</sup> Shaban Balaj, T. 8663-8664. See P885 (Witness 17, witness statement, 14 August 2007), para. 10.

<sup>1631</sup> Shaban Balaj, T. 8663-8664.

<sup>1632</sup> Shaban Balaj, T. 8664-8665.

<sup>1633</sup> Shaban Balaj, T. 8665-8666.

<sup>1634</sup> Shaban Balaj, T. 8666.

<sup>1635</sup> Shaban Balaj, T. 8670.

<sup>1636</sup> Shaban Balaj, T. 8670-8671, 8705.

<sup>1637</sup> Shaban Balaj, T. 8671-8672, 8689-8690.

<sup>1638</sup> Shaban Balaj, T. 8671-8672, 8690. The Kanun is a set of customary rules used in northern Albania and in Kosovo.

Streoc/Strellci i Ultë, as was dictated by the Kanun.<sup>1639</sup> Three or four days later, Metë Krasniqi attended a meeting of 50-60 people and admitted that he had stopped Sanije Balaj, but swore that he was not responsible for her death.<sup>1640</sup> Metë Krasniqi said that Avni Krasniqi and a person called “Colonel Galani” were responsible for Sanije Balaj’s death.<sup>1641</sup> Metë Krasniqi also said that the body had been buried in a place called Lugu i Isufit, near Vranovac/Vranoc in Peć/Pejë municipality, but was later removed by Avni and Iber Krasniqi and a man called Togeri.<sup>1642</sup> Avni and Iber Krasniqi had been forced to remove the body by one Galani.<sup>1643</sup> Metë Krasniqi added that Togeri had transported the body in his jeep.<sup>1644</sup> Zymer Hasanaj had told them to remove the body.<sup>1645</sup> The witness found out in 2002 that “Togeri” was in fact Idriz Balaj, but did not believe Idriz Balaj was involved in the death of Sanije Balaj or the removal of the body.<sup>1646</sup> Shaban Balaj went to Lugu i Isufit to search for Sanije Balaj’s body.<sup>1647</sup> In a ravine, near a well, the witness found a place where the soil had been freshly dug and he “found her ... blood there”.<sup>1648</sup> Although the witness does not clarify how he knew it was her blood, he believed that Sanije Balaj was buried there and that the place had then been covered.<sup>1649</sup> The witness believed Sanije Balaj was killed for the money she had with her on the day of her disappearance.<sup>1650</sup>

340. Witness 72 stated that on 12 August 1998, Sanije Balaj was travelling in a car from the village of Donji Streoc/Strellci i Ultë, in Dečani/Deçan municipality, to Rosulje/Rosuje in Peć/Pejë municipality.<sup>1651</sup> The car passed through the village of Barane/Baran, Peć/Pejë municipality, where there were between one and three hundred soldiers.<sup>1652</sup> Amongst the soldiers were Metë Krasniqi, Avni Krasniqi, and Vesel Dizdari.<sup>1653</sup> At a checkpoint, Metë Krasniqi, accompanied by two or three soldiers,

<sup>1639</sup> Shaban Balaj, T. 8672, 8690-8691.

<sup>1640</sup> Shaban Balaj, T. 8672-8673, 8691-8693.

<sup>1641</sup> Shaban Balaj, T. 8673, 8692-8693.

<sup>1642</sup> Shaban Balaj, T. 8673-8674, 8677, 8688, 8693.

<sup>1643</sup> Shaban Balaj, T. 8673-8675, 8693.

<sup>1644</sup> Shaban Balaj, T. 8674.

<sup>1645</sup> Shaban Balaj, T. 8673.

<sup>1646</sup> Shaban Balaj, T. 8674-8675.

<sup>1647</sup> Shaban Balaj, T. 8677-8678.

<sup>1648</sup> Shaban Balaj, T. 8678.

<sup>1649</sup> Shaban Balaj, T. 8678.

<sup>1650</sup> Shaban Balaj, T. 8650, 8679, 8682, 8689.

<sup>1651</sup> P1238 (Witness 72, witness statement, 13 June 2007), para. 6.

<sup>1652</sup> P1238 (Witness 72, witness statement, 13 June 2007), para. 8.

<sup>1653</sup> P1238 (Witness 72, witness statement, 13 June 2007), para. 8.

signalled the car to stop.<sup>1654</sup> Avni Krasniqi produced a notebook with Sanije Balaj's name in it, as a person to be interrogated.<sup>1655</sup> Sanije Balaj was taken to the school building, which served as the KLA barracks.<sup>1656</sup> A relative of the witness was later told that Sanije Balaj had been sent to Gani Gjukaj, in Streoc/Strellci, in Dečani/Deçan municipality.<sup>1657</sup> However, KLA soldiers in that village said that they had not seen her.<sup>1658</sup>

341. Cufë Krasniqi, a KLA commander from Vranovac/Vranoc in Peć/Pejë municipality,<sup>1659</sup> testified that some day in August 1998 he was at the elementary school in Barane/Baran in Peć/Pejë municipality, where the KLA occupied three buildings.<sup>1660</sup> The witness was with Nazif Ramabaja when Avni and Iber Krasniqi, two members of the military police and relatives of the witness, came to see them.<sup>1661</sup> They reported that the military police had detained a woman who was suspected of being a Serbian collaborator and brought her to the old school building, in which the KLA military police unit was stationed.<sup>1662</sup> The commander of the military police unit, Hasan Gashi,<sup>1663</sup> was not present on that day.<sup>1664</sup> Avni and Iber Krasniqi informed Cufë Krasniqi and Ramabaja that when she had been stopped by the military police, she said she was on her way from Streoc/Strellc in Dečani/Deçan municipality to Peć/Pejë, but the route she took aroused their suspicion.<sup>1665</sup> Moreover, Avni and Iber Krasniqi told them that they suspected she was working for a Serbian called Dragan Corović, whose name was in a notebook they had found on her.<sup>1666</sup> Ramabaja told Cufë Krasniqi to interrogate the woman.<sup>1667</sup> The witness found her in a room in the old school building, dressed in civilian clothes and under the custody of an armed KLA soldier whose

<sup>1654</sup> P1238 (Witness 72, witness statement, 13 June 2007), para. 9.

<sup>1655</sup> P1238 (Witness 72, witness statement, 13 June 2007), para. 9.

<sup>1656</sup> P1238 (Witness 72, witness statement, 13 June 2007), paras 9-10.

<sup>1657</sup> P1238 (Witness 72, witness statement, 13 June 2007), paras 12-13.

<sup>1658</sup> P1238 (Witness 72, witness statement, 13 June 2007), para. 13.

<sup>1659</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), p. 1, paras 1-2.

<sup>1660</sup> Cufë Krasniqi, T. 5771, 5777, 5818.

<sup>1661</sup> Cufë Krasniqi, T. 5771, 5782, 5818, 5832.

<sup>1662</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), para. 24; Cufë Krasniqi, T. 5771-5773, 5775, 5777.

<sup>1663</sup> Based on the evidence, the Trial Chamber understands Hasan and Hysen Gashi to refer to the same person.

<sup>1664</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), paras 24, 72; Cufë Krasniqi, T. 5714-5715, 5777.

<sup>1665</sup> Cufë Krasniqi, T. 5771-5772.

<sup>1666</sup> Cufë Krasniqi, T. 5772, 5778.

<sup>1667</sup> Cufë Krasniqi, T. 5771-5773, 5832.

nickname was “Galanj”.<sup>1668</sup> Only after 2002 did the witness learn that “Galanj’s” real name was Idriz Gashi.<sup>1669</sup> Cufë Krasniqi recognized the suspect by her face, since he had earlier seen her in a video-clip of a group of girls singing a song devoted to the KLA.<sup>1670</sup> She told the witness that her name was Sanije Balaj and explained that she wanted to buy a telephone in Peć/Pejë and had taken a longer route there because it was safer and in order to see her aunt in Klinčina/Kliqinë, Peć/Pejë municipality, on the way.<sup>1671</sup> Avni and Iber Krasniqi intervened saying that Sanije Balaj was lying and Cufë Krasniqi ordered them to leave the room, which they did.<sup>1672</sup> The witness saw that Sanije Balaj was in possession of a certain amount of money, which satisfied the witness that she really intended to buy a telephone.<sup>1673</sup> After about five minutes of interrogation, Cufë Krasniqi decided to release her.<sup>1674</sup> The witness told her that she would need permission by the KLA staff of her village, Streoc/Strelc, to go to Peć/Pejë.<sup>1675</sup> She agreed to be given a lift home by Avni and Iber Krasniqi in a red Volkswagen Golf.<sup>1676</sup> Cufë Krasniqi last saw her leaving in the car with Avni and Iber Krasniqi.<sup>1677</sup> He reported the events to Nazif Ramabaja.<sup>1678</sup> Approximately two or three days after the interrogation, Sanije Balaj’s brother, Shaban Balaj, came to see the witness at the school and made inquiries about the whereabouts of his sister.<sup>1679</sup> He told Cufë Krasniqi that his sister had not come home on the day of the interrogation.<sup>1680</sup> Later, Nazif Ramabaja told Cufë Krasniqi that there was an investigation carried out in Prapačane/Prapacan in Dečani/Deçan municipality and that the witness should go there to give a statement about Sanije Balaj.<sup>1681</sup> In Prapačane/Prapacan, Cufë Krasniqi described to Fadil Nimoni, the local military police commander who led the investigation, what had happened.<sup>1682</sup> The witness stated that both Avni and Iber Krasniqi, as well as Metë Krasniqi, Avni’s brother were present in Prapačane/Prapacan

<sup>1668</sup> Cufë Krasniqi, T. 5773-5774, 5779, 5824, 5832.

<sup>1669</sup> Cufë Krasniqi, T. 5779, 5788.

<sup>1670</sup> Cufë Krasniqi, T. 5774, 5824-5825, 5833, 5856-5857.

<sup>1671</sup> Cufë Krasniqi, T. 5774-5775.

<sup>1672</sup> Cufë Krasniqi, T. 5775-5776.

<sup>1673</sup> Cufë Krasniqi, T. 5778.

<sup>1674</sup> Cufë Krasniqi, T. 5777-5778, 5833.

<sup>1675</sup> Cufë Krasniqi, T. 5776-5777.

<sup>1676</sup> Cufë Krasniqi, T. 5779-5780, 5823.

<sup>1677</sup> Cufë Krasniqi, T. 5780, 5823-5824.

<sup>1678</sup> Cufë Krasniqi, T. 5833-5834.

<sup>1679</sup> Cufë Krasniqi, T. 5780-5782, 5789.

<sup>1680</sup> Cufë Krasniqi, T. 5790.

<sup>1681</sup> Cufë Krasniqi, T. 5783-5785, 5825-5826.

<sup>1682</sup> Cufë Krasniqi, T. 5784, 5786, 5834.

on that day, but not Idriz Gashi.<sup>1683</sup> According to Cufë Krasniqi, Tahir Zemaj knew about the investigation.<sup>1684</sup>

342. Avni Krasniqi from Vranovac/Vranoc in Peć/Pejë municipality,<sup>1685</sup> testified that he joined the FARK military police in Barane/Baran in Peć/Pejë municipality, in July 1998 and that Hasan Gashi was the military police commander.<sup>1686</sup> Gashi was under the command of Nazif Ramabaja.<sup>1687</sup> Avni Krasniqi testified that one afternoon in August 1998 he and some other military policemen, including Ahmet Ukaj, saw two soldiers who the witness could not identify bringing Sanije Balaj to the Red School in Barane/Baran where the military barracks were.<sup>1688</sup> Avni Krasniqi saw through the window that Cufë Krasniqi interrogated Sanije Balaj inside the school building.<sup>1689</sup> The witness then heard that Sanije Balaj was allowed to return home, although he did not know who had released her, but stated that she waited inside the school building for her relatives to come and take her home.<sup>1690</sup> After one or one and a half hour, the witness saw Idriz Gashi, a.k.a. Galani, enter the school, speak to Cufë Krasniqi, and then leave with Sanije Balaj.<sup>1691</sup> Galani was wearing a black uniform and cap with a KLA patch and he was armed.<sup>1692</sup> Galani told the witness that he was the commander of Lugu i Drinit and that he had been appointed by, and reported to, Ramush Haradinaj and Sali Veseli.<sup>1693</sup> The witness acknowledged that many people called themselves commanders at this time.<sup>1694</sup> A KLA transfer order, signed by Ramush Haradinaj and dated 7 July 1998, indicates that “the fighter” Idriz Gashi was transferred, at his own request, from the Dukagjin area to another area.<sup>1695</sup> Exiting the school building, Galani had a little white notebook in his hand and was swearing at the witness and the other soldiers standing there, asking them how they could have released her and telling them that she had names of Serb criminals in her notebook.<sup>1696</sup> He also read out the names to the

<sup>1683</sup> Cufë Krasniqi, T. 5787-5788.

<sup>1684</sup> Cufë Krasniqi, T. 5786.

<sup>1685</sup> Avni Krasniqi, T. 10709, 10712.

<sup>1686</sup> Avni Krasniqi, T. 10720-10722, 10780.

<sup>1687</sup> Avni Krasniqi, T. 10722, 10781.

<sup>1688</sup> Avni Krasniqi, T. 10721, 10723-10725, 10806-10807.

<sup>1689</sup> Avni Krasniqi, T. 10724, 10726, 10729, 10808.

<sup>1690</sup> Avni Krasniqi, T. 10729-10730, 10816.

<sup>1691</sup> Avni Krasniqi, T. 10726-10727, 10729-10730, 10808-10809, 10816.

<sup>1692</sup> Avni Krasniqi, T. 10728, 10736.

<sup>1693</sup> Avni Krasniqi, T. 10728, 10732, 10784, 10787.

<sup>1694</sup> Avni Krasniqi, T. 10787.

<sup>1695</sup> P172 (KLA Transfer Order signed by Ramush Haradinaj, 7 July 1998).

<sup>1696</sup> Avni Krasniqi, T. 10727, 10731, 10816.

witness and the other soldiers.<sup>1697</sup> The witness knew some of the names as policemen in Peć/Pejë.<sup>1698</sup>

343. Galani then ordered the witness to take him and Sanije Balaj to the headquarters in Glođane/Gllogjan in Dečani/Deçan municipality.<sup>1699</sup> The three got in a car, with Avni Krasniqi driving, Galani in the front seat and Sanije Balaj in the back seat, and set off in the direction of Glođane/Gllogjan.<sup>1700</sup> After about 20 minutes drive, at Lugu i Isufit, Sanije Balaj asked Galani if they could have a private conversation whereupon Galani told Avni Krasniqi to stop the car.<sup>1701</sup> Galani and Sanije Balaj got out and walked away.<sup>1702</sup> Sanije Balaj had a handbag or “accessories” that she left in the car.<sup>1703</sup> Avni Krasniqi stayed in the car.<sup>1704</sup> After about 40 seconds he heard pistol shots.<sup>1705</sup> When Galani came back, Avni Krasniqi asked him what he had done whereupon Galani told him not to say anything or he would suffer the same fate.<sup>1706</sup> The witness also remembered that Galani at some point yelled at some children tending livestock nearby, to go away.<sup>1707</sup> Avni Krasniqi then took Galani back to Barane/Baran in Peć/Pejë municipality, left the car and took his own car and went home.<sup>1708</sup> The witness’s brother, Metë Krasniqi, told the witness that he had quarrelled with Galani later that same day about what had happened and Galani had told him that he had killed Sanije Balaj.<sup>1709</sup> The witness also heard that Galani told others that he had killed Sanije Balaj upon the order of Sali Veseli.<sup>1710</sup>

344. That same evening Iber Krasniqi and Galani came and picked up Avni Krasniqi to go and bury Sanije Balaj.<sup>1711</sup> Galani showed Avni Krasniqi the place where she had been killed, at which point Ahmet Ukaj and other men who had been told by a child about the killing, also arrived.<sup>1712</sup> Galani was armed and pointed his gun at the arriving

<sup>1697</sup> Avni Krasniqi, T. 10730.

<sup>1698</sup> Avni Krasniqi, T. 10727.

<sup>1699</sup> Avni Krasniqi, T. 10731-10732, 10809.

<sup>1700</sup> Avni Krasniqi, T. 10732-10733.

<sup>1701</sup> Avni Krasniqi, T. 10734-10735, 10817.

<sup>1702</sup> Avni Krasniqi, T. 10735, 10806, 10817.

<sup>1703</sup> Avni Krasniqi, T. 10737.

<sup>1704</sup> Avni Krasniqi, T. 10735, 10806.

<sup>1705</sup> Avni Krasniqi, T. 10735, 10817.

<sup>1706</sup> Avni Krasniqi, T. 10735-10736, 10818.

<sup>1707</sup> Avni Krasniqi, T. 10736-10737, 10818.

<sup>1708</sup> Avni Krasniqi, T. 10736, 10738.

<sup>1709</sup> Avni Krasniqi, T. 10738-10741, 10818.

<sup>1710</sup> Avni Krasniqi, T. 10741.

<sup>1711</sup> Avni Krasniqi, T. 10742-10743, 10826.

<sup>1712</sup> Avni Krasniqi, T. 10742.

men and told them to stop.<sup>1713</sup> In the meantime Avni Krasniqi was burying Sanije Balaj and Galani ordered Ahmet Ukaj to help with this.<sup>1714</sup> Avni Krasniqi and Ahmet Ukaj buried Sanije Balaj in a shallow hole which was not deeper than 30 to 40 centimetres.<sup>1715</sup> Three days later Galani, Toger, and two other persons came to the Red School in Barane/Baran in a black jeep and picked up Avni Krasniqi to go and unearth the body of Sanije Balaj and rebury it in another place.<sup>1716</sup> Galani ordered them to do so and told them that they would be putting the body in a safer place.<sup>1717</sup> Galani stayed behind in Barane/Baran while the others went.<sup>1718</sup> The witness testified that he had seen Toger many times before.<sup>1719</sup> The witness took Iber Krasniqi with him for help and out of security concerns.<sup>1720</sup> Avni Krasniqi, Iber Krasniqi, and the two other persons dug up the body, put it in a blanket and then in the trunk of the jeep.<sup>1721</sup> Avni Krasniqi and Iber Krasniqi were then driven to Bistrica/Bistrice where they were dropped off and the witness did not know where Toger and the others went afterwards.<sup>1722</sup>

345. Avni Krasniqi testified that there was an investigation into the death of Sanije Balaj and that he was called in for an interview by a man called Fadil Nimonaj.<sup>1723</sup> According to the witness, at that time Galani had fled the area.<sup>1724</sup> Metë Krasniqi told the witness that Ramush Haradinaj and Gjane Gjukaj inquired into what had happened to Sanije Balaj and that he had told them that she had been killed and who had killed her.<sup>1725</sup>

346. Zymer Hasanaj, a KLA soldier in Mali Vranovac/Vranoc I Vogël in Peć/Pejë,<sup>1726</sup> testified that on the day of the killing of Sanije Balaj, in August 1998, he returned home at around 6 p.m., where his son Durim told him about an incident he had witnessed.<sup>1727</sup> Durim told his father that he had been minding cattle together with other boys at a place called Lugu i Isufit, and that sometime between 12 noon and 2 p.m. they saw two men

<sup>1713</sup> Avni Krasniqi, T. 10742-10743.

<sup>1714</sup> Avni Krasniqi, T. 10743.

<sup>1715</sup> Avni Krasniqi, T. 10744.

<sup>1716</sup> Avni Krasniqi, T. 10744-10745, 10750, 10842, 10847.

<sup>1717</sup> Avni Krasniqi, T. 10747, 10749-10750.

<sup>1718</sup> Avni Krasniqi, T. 10746-10748, 10842.

<sup>1719</sup> Avni Krasniqi, T. 10841, 10847-10848.

<sup>1720</sup> Avni Krasniqi, T. 10745-10746, 10752-10754.

<sup>1721</sup> Avni Krasniqi, T. 10746-10747, 10844.

<sup>1722</sup> Avni Krasniqi, T. 10747-10748.

<sup>1723</sup> Avni Krasniqi, T. 10781.

<sup>1724</sup> Avni Krasniqi, T. 10781.

<sup>1725</sup> Avni Krasniqi, T. 10781-10783.

<sup>1726</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 1-2; Zymer Hasanaj, T. 8720.

<sup>1727</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 16; Zymer Hasanaj, T. 8738.

forcing a woman out of a vehicle.<sup>1728</sup> One of the men called out to the boys to leave.<sup>1729</sup> They obeyed, whereupon Durim heard three gunshots.<sup>1730</sup> Zymer Hasanaj decided to go with Durim to the scene of the incident described by his son, which was about ten minutes' walk from Mali Vranovac/Vranoc i Vogël.<sup>1731</sup> They went there with other people from the village, including Ahmet Ukaj.<sup>1732</sup> At Lugu i Isufit, they were ordered to stop by a man who, according to Hasanaj, was probably an armed KLA fighter.<sup>1733</sup> Ahmet Ukaj remained at Lugu i Isufit for about an hour after Hasanaj had returned home with Durim, and then visited Hasanaj to relate to him what had happened in his absence.<sup>1734</sup> Ukaj told Hasanaj that he had seen two people at Lugu i Isufit, namely Idriz Gashi and Avni Krasniqi.<sup>1735</sup> Ukaj also told Hasanaj that he had been threatened by Gashi not to speak to anyone about the fact that Gashi had killed a woman named Sanije Balaj.<sup>1736</sup> That same night, Hasanaj went with Ukaj to inform the KLA commander of Mali Vranovac/Vranoc i Vogël, Din Krasniqi, about the incident.<sup>1737</sup> Hasanaj asked Din Krasniqi to report the incident to Nazif Ramabaja, the commander in Barane/Baran, in Peć/Pejë municipality.<sup>1738</sup> Din Krasniqi said that he would follow up the matter and that the person responsible would be punished.<sup>1739</sup>

347. Ahmet Ukaj, a KLA soldier from Mali Vranovac/Vranoci i Vogël in Peć/Pejë municipality,<sup>1740</sup> testified that one morning on a day in August 1998 he saw a young woman, who he later found out was Sanije Balaj, being brought to the Red School building in Barane/Baran in Peć/Pejë municipality.<sup>1741</sup> Sanije Balaj was with a group of people whom the witness did not recognize.<sup>1742</sup> About fifteen minutes later, the witness

<sup>1728</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 16; Zymer Hasanaj, T. 8738. See also P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 12; Ahmet Ukaj, T. 10665-10660.

<sup>1729</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 16.

<sup>1730</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 16. See also P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 12; Ahmet Ukaj, T. 10665-10660.

<sup>1731</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 16-17; P925 (Photographs of area of Lugu i Isufit).

<sup>1732</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 17.

<sup>1733</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 18.

<sup>1734</sup> Zymer Hasanaj, T. 8731.

<sup>1735</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 18.

<sup>1736</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 20.

<sup>1737</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), paras 20-21.

<sup>1738</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 21.

<sup>1739</sup> P923 (Zymer Hasanaj, witness statement, 1 October 2007), para. 21.

<sup>1740</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 1; Ahmet Ukaj, T. 10656.

<sup>1741</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), paras 8-10; Ahmet Ukaj, T. 10660, 10668.

<sup>1742</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 9; Ahmet Ukaj, T. 10668.

saw her leave with four or five men who the witness also did not recognize.<sup>1743</sup> That same evening, when Ahmet Ukaj came back to his home village of Vranovac/Vranoc he met Zymer Hasanaj.<sup>1744</sup> The latter told him that someone had been killed at Lugu i Isufit.<sup>1745</sup> The witness, Zymer Hasanaj, Hysen Ukaj, and others then went to Lugu i Isufit in order to find out what had happened.<sup>1746</sup> In the forest the witness met Idriz Gashi, a.k.a. Galani, who the witness had heard was a commander of Lugu i Drinit, in Klina/Klinë municipality.<sup>1747</sup> Galani pointed a Kalashnikov at the group and once they had told him why they had come, Galani admitted that he had killed the woman.<sup>1748</sup> Galani told the group that he had killed her because he had found her with a notebook.<sup>1749</sup> Galani read out some Serbian names from the notebook and said that the notebook also contained the phone numbers of Serbians.<sup>1750</sup> The witness recognized the names as those of Serbian police officers who he had heard were working in Dečani/Deçan municipality.<sup>1751</sup> Galani then ordered Hysen Ukaj and the witness to stay and the others to leave, at which point Avni Krasniqi came out from behind some bushes.<sup>1752</sup> Galani ordered the witness to help Avni Krasniqi bury the woman.<sup>1753</sup> When the witness saw the body he recognized it as the same woman who had been brought to Barane/Baran that morning.<sup>1754</sup> She had been shot in the chest.<sup>1755</sup> After the witness had helped Avni Krasniqi put the body in a hole that had been dug he returned to Galani who again told him that he had killed the woman.<sup>1756</sup> Galani then told the witness and Hysen Ukaj to leave and they went back to Vranovac/Vranoci where the witness told the whole story to Zymer Hasanaj.<sup>1757</sup> A few days later, after having been called for an interview as part of an investigation, the witness reported to Fadil Nimoni what had happened.<sup>1758</sup>

<sup>1743</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 10.

<sup>1744</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 12.

<sup>1745</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 12.

<sup>1746</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 13.

<sup>1747</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), paras 11, 15, 17.

<sup>1748</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15.

<sup>1749</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15.

<sup>1750</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15.

<sup>1751</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 15; Ahmet Ukaj, T. 10663.

<sup>1752</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 16.

<sup>1753</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 18.

<sup>1754</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 19.

<sup>1755</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 19.

<sup>1756</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 20.

<sup>1757</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 21.

<sup>1758</sup> P1226 (Ahmet Ukaj, witness statement, 11 November 2007), para. 22; Ahmet Ukaj, T. 10660-10661.

348. Witness 17 testified that a military police unit in the Barane/Baran in Peć/Pejë municipality was set up on 13 July 1998 and that Hasan Gashi was elected chief of police.<sup>1759</sup> According to Witness 17, Avni and Iber Krasniqi were not military policemen within the framework of the third brigade but acknowledged that Avni Krasniqi might have performed the functions of military police even without the authorization from the third brigade.<sup>1760</sup> The witness also testified that Metë Krasniqi was not part of the structure of the third brigade.<sup>1761</sup> He did however function as a de facto military policeman in Barane/Baran and had an office there.<sup>1762</sup> According to Witness 17, Metë Krasniqi stopped Sanije Balaj.<sup>1763</sup> Some of Sanije Balaj's relatives reported her disappearance to Tahir Zemaj in August 1998.<sup>1764</sup> Tahir Zemaj instructed two KLA military policemen, Hysen Gashi and Fadil Nimani to investigate the disappearance.<sup>1765</sup> At the same time, Sadri Selca, who was responsible for brigade security in the third brigade was also instructed to investigate the disappearance.<sup>1766</sup> According to an Official Note of 26 August 1998, signed by Sadri Selca, Sanije Balaj was taken by Metë Krasniqi to "the commander" who authorized "Cufa" to talk to her.<sup>1767</sup> After "Cufa" had released her, she was taken by a person called Galan to an unknown place and killed.<sup>1768</sup> According to the Note, "in all probability Togeri then took her to Lake Radoniq".<sup>1769</sup> The Note also states that Sanije Balaj was killed because she admitted to working for the Serbian police.<sup>1770</sup> Witness 17 asked Metë Krasniqi some time after Sanije Balaj's disappearance what had happened to her and he admitted that he had arrested her but then handed her over to two other persons, Idriz Gashi and Avni Krasniqi.<sup>1771</sup> Witness 17 had previously met Idriz Gashi who had told him that he was Ramush Haradinaj's soldier but that he wanted to join a FARK brigade.<sup>1772</sup>

<sup>1759</sup> Witness 17, T. 7666-7667, 7695, 7698-7699.

<sup>1760</sup> Witness 17, T. 7669-7671, 7736.

<sup>1761</sup> Witness 17, T. 7668-7669, 7671, 7703-7704, 7723, 7725.

<sup>1762</sup> Witness 17, T. 7671, 7704, 7726, 7729, 7733, 7738, 7803.

<sup>1763</sup> Witness 17, T. 7733.

<sup>1764</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 75.

<sup>1765</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 76; Witness 17, T. 7805-7806.

<sup>1766</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 76; Witness 17, T. 7654, 7673, 7792, 7805.

<sup>1767</sup> P897 (Official Note, signed by Sadri Selca, 26 August 1998).

<sup>1768</sup> P897 (Official Note, signed by Sadri Selca, 26 August 1998).

<sup>1769</sup> P897 (Official Note, signed by Sadri Selca, 26 August 1998).

<sup>1770</sup> P897 (Official Note, signed by Sadri Selca, 26 August 1998).

<sup>1771</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 79; Witness 17, T. 7805.

<sup>1772</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 80.

349. Rrustem Tetaj, a former JNA officer,<sup>1773</sup> testified that he heard about the detention and killing of an Albanian woman called Sanije Balaj from the village of Streoc/Strellci in Dečani/Deçan municipality sometime in June 1998.<sup>1774</sup> Tetaj was told by Metë Krasniqi and Faton Mehmetaj, a KLA soldier from Vranovac/Vranoc in Peć/Pejë municipality, that Metë Krasniqi had detained and executed the woman on the orders of Mehmetaj.<sup>1775</sup> The latter told Tetaj that Sanije Balaj was arrested and executed because she was suspected of giving information to the Serbian MUP and the Secret Police.<sup>1776</sup> According to the witness, Ramush Haradinaj, Tahir Zemaj, and Gani Gjukaj all insisted that the circumstances of Sanije Balaj's death should be investigated.<sup>1777</sup>

350. Sadri Selca, a FARK intelligence officer stationed in Barane/Baran, in Peć/Pejë municipality,<sup>1778</sup> testified that Shaban Balaj had come to the barracks in Barane/Baran and told the witness that his sister, Sanije Balaj, was missing.<sup>1779</sup> Shaban Balaj told the witness that Sanije had had about DEM 2,000 with her on the day she disappeared.<sup>1780</sup> The witness then investigated the disappearance of Sanije Balaj.<sup>1781</sup> In a statement made to and signed by the witness on 28 August 1998, Hysen and Ahmet Ukaj stated that Metë Krasniqi took Sanije Balaj to the military police post.<sup>1782</sup> According to the statement, Cufë Krasniqi talked to Sanije Balaj, who was then taken by Galan and Avni Krasniqi in a red Golf car to a place known as Isuf's valley.<sup>1783</sup> In the statement, Hysen and Ahmet Ukaj said that they went to Isuf's valley with Zymer Hasanaj and others, where they saw the dead body and Ahmet was ordered by Galan to help Avni Krasniqi bury the body in Isuf's valley near a spring.<sup>1784</sup> The witness stated that Metë Krasniqi was not in the third FARK brigade, but cooperated with both FARK and KLA and was a self-employed policeman.<sup>1785</sup>

<sup>1773</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 1; Rrustem Tetaj, T. 3604-3605.

<sup>1774</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 26.

<sup>1775</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 26-27; Rrustem Tetaj, T. 3776.

<sup>1776</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 26-27.

<sup>1777</sup> Rrustem Tetaj, T. 3775-3778.

<sup>1778</sup> Sadri Selca, T. 10858-10860, 10864.

<sup>1779</sup> Sadri Selca, T. 10865-10866, 10880-10882, 10887.

<sup>1780</sup> Sadri Selca, T. 10886-10887.

<sup>1781</sup> Sadri Selca, T. 10865.

<sup>1782</sup> Sadri Selca, T. 10867; P898 (Statement of Hysen and Ahmet Ukaj, 28 August 1998).

<sup>1783</sup> Sadri Selca, T. 10867; P898 (Statement of Hysen and Ahmet Ukaj, 28 August 1998).

<sup>1784</sup> Sadri Selca, T. 10867; P898 (Statement of Hysen and Ahmet Ukaj, 28 August 1998).

<sup>1785</sup> Sadri Selca, T. 10862, 10864.

351. The Trial Chamber has also received forensic medical evidence with regard to Sanije Balaj (remains labelled “R-1”). Branimir Aleksandrić<sup>1786</sup> testified that body R-1 was found on 11 September 1998 in a field near the canal, along the external side of the concrete wall where there were bullet markings, together with eight other bodies.<sup>1787</sup> More precisely, body R-1 was found next to the wall, near the bushes.<sup>1788</sup> Body R-1 was found on the ground with a plastic sack pulled over the upper half and a jute sack pulled over the lower half of the body.<sup>1789</sup> According to Dušan Dunjić, though, the top half of the body was in a rough cotton bag and the lower half was in a nylon bag.<sup>1790</sup> ICMP DNA analysis identified the body labelled R-1 as that of Sanije Balaj.<sup>1791</sup> An autopsy conducted on the remains on 8 December 2003 revealed several gunshot injuries: one to the back of the head, with an entrance hole at the back of the skull and one to the pelvis, as well as possible gunshot injuries to the chest and the right arm.<sup>1792</sup> The autopsy concluded that the cause of death was a gunshot injury to the head, whereas the gunshot injury to the pelvis region may also have been fatal.<sup>1793</sup> Dušan Dunjić<sup>1794</sup> surmised that the individual was not killed on the spot, but that the body was moved there post-mortem.<sup>1795</sup> The body was wearing a long dress with dark-blue and white vertical stripes and white buttons.<sup>1796</sup> An autopsy conducted on the remains in September 1998 revealed a bullet hole in the head from a hand-held fire-arm.<sup>1797</sup> The entry wound was at the left base of the skull; the exit wound on the back of the skull, slightly below the

<sup>1786</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1787</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 61-62; P414 (Various photographs), p. 20; P416 (Various photographs), p. 3; P418 (Various photographs), p. 18; P645 (Various photographs), p. 2; P649 (Various photographs), p. 2.

<sup>1788</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 65; P415 (Various photographs), p. 14; P418 (Various photographs), p. 16, number 89, p. 19; P452 (Video of body recovery at canal), 0:22'10".

<sup>1789</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 64; Branimir Aleksandrić, T. 6758; P418 (Various photographs), p. 19, number 102; P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 188; P801 (Photographs of R-1).

<sup>1790</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 188.

<sup>1791</sup> Agreed Facts, 26 November 2007, No. 24.

<sup>1792</sup> Agreed Facts, 26 November 2007, No. 26.

<sup>1793</sup> Agreed Facts, 26 November 2007, No. 27.

<sup>1794</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1795</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 188, 710; Dušan Dunjić, T. 7306-7307.

<sup>1796</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 198; Dušan Dunjić, T. 6847; P802 (Autopsy report R-1), pp. 1-2; P804 (Photographs R-1), p. 5.

<sup>1797</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 194.

middle.<sup>1798</sup> According to the witness, it is realistic to assume that the gunshot wound to the head was caused ante-mortem and could be the cause of death.<sup>1799</sup>

352. As the Trial Chamber has received extensive evidence on the alleged killing of Sanije Balaj, it will deal with the evidence in great detail. On 12 August 1998, Sanije Balaj was stopped at a checkpoint near Barane/Baran by a group of KLA soldiers, among whom was Metë Krasniqi. Sanije Balaj was then taken to a building in Barane/Baran. Witness 72 testified that Avni Krasniqi was among the soldiers at the checkpoint and that he produced a notebook containing Sanije Balaj's name as a person to be interrogated. However, Avni Krasniqi denies having been present at the checkpoint. Instead, he testified that he saw two soldiers, whom he could not identify, take Sanije Balaj to the building in Barane/Baran. In contrast, Cufë Krasniqi testified that Avni and Iber Krasniqi came to him and informed him that Sanije Balaj had been detained on suspicion of collaboration with the Serbs. Following her detention, Cufë Krasniqi briefly interrogated her on the matter of collaboration. He saw that she had in her possession a notebook containing Serbian names, as well as a substantial sum of money. Cufë Krasniqi testified that Avni Krasniqi was initially present during the interrogation, that he was then sent away, but stayed in close proximity for the remainder of the interview. Avni Krasniqi denied having been present at the interrogation at all, but stated that he could see the interview through a window. Following the brief questioning, Cufë Krasniqi decided to release Sanije Balaj from KLA custody. Upon her release, according to Avni Krasniqi, Idriz Gashi, also known as Galani, read out the Serb names from Sanije Balaj's notebook. Avni Krasniqi recognized some of them as Serbian policemen. Idriz Gashi then ordered that she be taken to Glogjan/Gllogjan. Thereafter, Sanije Balaj entered a vehicle with a number of KLA soldiers, including at least Idriz Gashi and Avni Krasniqi. Other than the order issued by Idriz Gashi, the Trial Chamber has heard no evidence of a KLA order for Sanije Balaj to be taken to Glogjan/Gllogjan, nor that anybody other than Idriz Gashi and Avni Krasniqi were aware of this proposition. Instead, the evidence indicates that Cufë Krasniqi believed that Sanije Balaj had agreed to be given a lift home by Avni Krasniqi.

<sup>1798</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 194; P802 (Autopsy report R-1), pp. 1-2, 6; P805 (Photographs of R-1).

<sup>1799</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 196.

353. The soldiers travelled south from Barane/Baran and stopped at a place called Lugu i Isufit. Avni Krasniqi claims that Sanije Balaj requested a private conversation with Idriz Gashi there, and exited the vehicle with Idriz Gashi of her own accord. Avni Krasniqi remained in the car and soon after heard several gunshots. However, the Trial Chamber has also heard hearsay evidence that it was two men who forced a woman out of a car, soon after which several shots were heard. Considering the situation she was in, the Trial Chamber cannot conceive of a reason for Sanije Balaj to request a private conversation, as suggested by the testimony of Avni Krasniqi. The Trial Chamber finds that Idriz Gashi, acting alone or with Avni Krasniqi, exited the car with Sanije Balaj, walked some way into the woods, and shot her multiple times and thereby killed her.

354. Later that day, 12 August 1998, KLA soldiers from the nearby village of Mali Vranovac/Vranoci i Vogël encountered Idriz Gashi near Sanije Balaj's remains, at Lugu i Isufit. Idriz Gashi told them that he had killed Sanije Balaj, and read out the Serbian names from her notebook. Ahmet Ukaj testified that he recognized some of the names as Serbian police officers. Avni Krasniqi and some of the local KLA soldiers buried Sanije Balaj's body at the site, on the orders of Idriz Gashi. Avni Krasniqi testified that on 15 August 1998, also on the orders of Idriz Gashi, he, Iber Krasniqi, and Idriz Balaj returned to the site, exhumed the body and wrapped it in a blanket. Idriz Balaj then transported the body from Lugu i Isufit and took it to a different location. In September 1998, her body was found at the Radonjić/Radoniq canal. The body was wrapped in a plastic and a jute bag. Although Dušan Dunjić only described a gunshot injury to the head, a later autopsy on the remains found several gunshot injuries. The forensic medical evidence establishes a gunshot injury to the head or to the pelvis as the cause of death.

355. On the basis of the evidence, and although Idriz Gashi has not had an opportunity to present his version of events, in the context of the case before it and in order to establish whether the perpetrators of the murder were affiliated with the KLA, the Trial Chamber concludes that Idriz Gashi murdered Sanije Balaj. The Trial Chamber has heard evidence that Idriz Gashi claimed to be a KLA commander. The evidence also indicates that a number of individuals claimed the title of commander in the area at the time. Moreover a KLA order, signed by Ramush Haradinaj, refers to Idriz Gashi as a "fighter" and transfers him away from the Dukagjin area in July 1998. Considering a number of inconsistencies between Avni Krasniqi's testimony and that of several other

witnesses, and noting his role in the events, the Trial Chamber finds that it cannot rely fully on the testimony of Avni Krasniqi as to his own involvement in the murder.

356. The Trial Chamber is convinced that the crime was closely related to the armed conflict in Kosovo/Kosova, and that Sanje Balaj was not taking active part in hostilities at the time the crime was committed and that the perpetrator knew or should have known that this was the case.

357. Idriz Balaj is not charged with the murder under any form of liability, other than as a participant in the joint criminal enterprise. The Trial Chamber considers his involvement only in this context. Considering the inconsistencies between Avni Krasniqi's testimony and that of other witnesses, as noted above, the Trial Chamber finds that his testimony on Idriz Balaj's involvement is insufficiently corroborated. Shaban Balaj could only provide hearsay evidence, with Metë Krasniqi as his source, that Idriz Balaj was involved in the reburial. The source of Metë Krasniqi's information is unknown. Furthermore, Avni Krasniqi testified that the body was transported wrapped in a blanket, whereas the forensic medical evidence indicates it was found wrapped in two bags. Due to this inconsistency, and considering Avni Krasniqi's evidence, the Trial Chamber cannot establish that the body was taken from Lugu i Isufit directly to the Radonjić/Radoniq canal. For these reasons, the Trial Chamber cannot conclude whether Idriz Balaj was involved in taking the body of Sanje Balaj to the Radonjić/Radoniq canal.

358. The Trial Chamber has heard evidence from a number of witnesses about a KLA investigation into Sanje Balaj's death. Ramush Haradinaj, Tahir Zemaj, and Gani Gjukaj insisted on such an investigation. Fadil Nimani and Hysen Gashi, both KLA military police, conducted the investigation and questioned, at least, Shaban Balaj, Avni Krasniqi, Cufë Krasniqi, and Ahmet Ukaj. Sadri Selca also investigated the matter, and Zymer Hasanaj reported the matter to Din Krasniqi who said that those responsible should be punished. In addition, Ramush Haradinaj and Gani Gjukaj visited the relatives of Sanje Balaj to offer their condolences.

359. The Trial Chamber has heard evidence that Sanje Balaj was suspected of collaboration with the Serbs. However, the Trial Chamber cannot conclude that this was the reason for the murder of Sanje Balaj, as the evidence provides for reasonable alternatives. All three Accused are charged with the murder of Sanje Balaj as

participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability separately in section 7, below.

#### *6.12.13 Murder of Sejd Noci*

360. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of Sejd Noci in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Avdullah Avdija, Witness 64, and Witness 71, as well as forensic medical evidence.

361. Avdullah Avdija, a KLA member,<sup>1800</sup> testified that one day at the beginning of July 1998 the witness was informed by Besim Alija Rama, his superior in the KLA, that Sejd Noci was wanted by the KLA.<sup>1801</sup> The witness heard from other villagers that Deli Delija, Sejd Noci's cousin, had promised Besim Alija Rama that he would bring Sejd Noci to the KLA.<sup>1802</sup> According to the witness, Deli Delija was not a member of the KLA.<sup>1803</sup> The witness was told by people whose name he could not recall that, the same night, Besim Alija Rama, armed and in KLA uniform, went to the house in Košare/Koshare, in Đakovica/Gjakovë municipality, where Sejd Noci and Deli Delija were then residing and called for Deli Delija.<sup>1804</sup> When Sejd Noci realized that it was Besim Alija Rama calling, he told Deli Delija that the KLA were looking for him.<sup>1805</sup> After a brief discussion with Deli Delija, Besim Alija Rama left.<sup>1806</sup> The following day, the witness saw Deli Delija and Besim Alija Rama talking in Junik, in Dečani/Deçan municipality.<sup>1807</sup> The witness spent that night in the house in Košare/Koshare where both Deli Delija and Sejd Noci were staying.<sup>1808</sup> The following day, Sejd Noci asked the witness if he could help him escape to Albania as he was very afraid because the KLA were looking for him.<sup>1809</sup> The witness said that because he was a member of the

<sup>1800</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), p. 2, paras 1, 11, 15; Avdullah Avdija, T. 10568-10569.

<sup>1801</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 8; Avdullah Avdija, T. 10580-10581.

<sup>1802</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 8.

<sup>1803</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 8.

<sup>1804</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 9.

<sup>1805</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 9.

<sup>1806</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 9.

<sup>1807</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 10.

<sup>1808</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 10.

<sup>1809</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 11.

KLA, he could not help Sejd Noci.<sup>1810</sup> Sejd Noci finally resolved to travel to Junik to surrender to the KLA and discover why they were looking for him.<sup>1811</sup> Sejd Noci, Deli Delija, and the witness went to Junik that day and were stopped at a position just outside the town by 3 or 4 KLA soldiers.<sup>1812</sup> As the witness was wearing a KLA uniform, he could pass the position and continue on into the town.<sup>1813</sup> Deli Delija and Sejd Noci stayed behind at the position and this was the last time that the witness saw the two men.<sup>1814</sup> The witness later heard from people in Tropoje in Albania that Sejd Noci was taken by the KLA.<sup>1815</sup>

362. Witness 64, a MUP officer, was in charge of collecting photo and video evidence of the investigation at the Lake Radonjić/Radoniq canal area between 11 September 1998 and 26 September 1998.<sup>1816</sup> On 18 and 19 September 1998, Witness 64 videotaped the identification process that took place in Hotel Paštrik.<sup>1817</sup> He testified that at one point, Witness 71, who was visibly nervous about being videotaped by Witness 64, told Judge Radomir Gojković that he and Sejd Noci were kidnapped and taken to Ramush Haradinaj's house.<sup>1818</sup> According to Witness 64, who had reviewed the videotape, Witness 71 said that he was later released but Sejd Noci was killed.<sup>1819</sup> When the relevant portion of Witness 64's videotape was played before the Trial Chamber, the audio quality of the recording was unclear, and the video did not corroborate Witness 64's account of the conversation.<sup>1820</sup> Witness 71 testified that he had been taken to the KLA headquarters in Glogane/Glodjane by KLA soldiers, that he was asked about a young man and then released.<sup>1821</sup>

<sup>1810</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 11.

<sup>1811</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), paras 11-12.

<sup>1812</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 13; Avdullah Avdija, T. 10575-10577.

<sup>1813</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 13.

<sup>1814</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 13; Avdullah Avdija, T. 10578, 10580-10581; P1224 (Map marked by Avdullah Avdija).

<sup>1815</sup> P1223 (Avdullah Avdija, witness statement, 11 November 2007), para. 14.

<sup>1816</sup> P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), paras 6, 9-13.

<sup>1817</sup> P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), para. 106-109.

<sup>1818</sup> P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), para. 108.

<sup>1819</sup> P907 (Witness 64, witness statement, 23, 24, and 27 August 2007), para. 108.

<sup>1820</sup> Witness 71, T. 10034-10037; D66 (Video of Radonjić/Radoniq canal and Hotel Paštrik, 12-19 September 1998), 1:48'00" – 1:49'50"; P1024 (Enhanced copy of a part of D66).

<sup>1821</sup> Witness 71, T. 10022-10028, 10046-10049.

363. The Trial Chamber has also received forensic medical evidence with regard to Sejd Noci (remains labelled “R-21”, “R-24” and “R-27B”). Branimir Aleksandrić<sup>1822</sup> testified that remains R-21 and R-24 were found about 650 metres downstream from the Lake Radonjić/Radoniq canal, close together (within about 4 metres), on the dry part of the ravine immediately above the water-line.<sup>1823</sup> On 12 September 1998, about 60 metres downstream from R-21 and R-24, a black jacket, two shin bones, a left shoulder blade and a fragment of spine, along with some rib bones, were found and marked as R-27.<sup>1824</sup> ICMP DNA results concluded that the remains labelled R-21, R-24 and R-27B are those of Sejd Noci.<sup>1825</sup> Autopsies conducted on the remains in December 2003 concluded that fractures to the left shoulder blade and the left arm suggested gunshot wounds.<sup>1826</sup> The cause of death was not determined.<sup>1827</sup> Dušan Dunjić<sup>1828</sup> testified that the autopsy conducted in September 1998 revealed fractures on the skull, the left shoulder, the left arm and the right leg all of which could have been caused by a fall into the canal.<sup>1829</sup>

364. As referred to above, the Trial Chamber has heard evidence from Avdullah Avdija that he learned, in the beginning of July 1998, that Sejd Noci was wanted by the KLA. Around that time he was last seen at a position with 3 or 4 KLA soldiers just outside Junik where he had gone to surrender to the KLA. The Trial Chamber is not convinced by the testimony of Witness 64 that Witness 71 and Sejd Noci were taken together since the recording that Witness 64 relies upon in his statement does not corroborate his evidence on this matter. Furthermore, in his testimony before the Trial Chamber, Witness 71 did not mention that Sejd Noci was taken to Glodjane/Glodjane

<sup>1822</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>1823</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 164, 171-172, 175, 177-178; Branimir Aleksandrić, T. 6807-6808, 6810, 9585; P452 (Video of body recovery at canal), 1:57'46"-1:57'56", 1:59'24"- 1:59'33"; P1115 (Annex C to Branimir Aleksandrić, witness statement, 26 June 2007, reports dated 15 and 16 September 1998), pp. 4, 10.

<sup>1824</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 128, 164, 171, 197, 200, 201-204; Branimir Aleksandrić, T. 9602-9603, 9613-9614; P449 (Various photographs), p. 52, lower photograph, p. 53; P747 (Autopsy report R-27), pp. 1-2; P749 (Autopsy photographs R-27), pp. 2-3; P1115 (Annex C to Branimir Aleksandrić, witness statement, 26 June 2007, reports dated 15 and 16 September 1998), pp. 5, 11.

<sup>1825</sup> Agreed Facts, 26 November 2007, No. 95.

<sup>1826</sup> Agreed Facts, 26 November 2007, No. 97.

<sup>1827</sup> Agreed Facts, 26 November 2007, No. 97.

<sup>1828</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1829</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 464; P727 (Autopsy report R-21), p. 2; P739 (Autopsy report R-24), p. 2.

with him. Sejd Noci's remains were found in the ravine downstream from the Radonjić/Radoniq canal. The forensic medical evidence does not establish a cause of death. Whereas the ICMP evidence suggests that the fractures found on Sejd Noci's remains were caused by gunshots, Dušan Dunjić allows for the possibility that those fractures may have occurred during the fall of the body into the canal. The Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt that Sejd Noci was murdered. For this reason, the Trial Chamber concludes that all three Accused should be acquitted of this charge.

#### *6.12.14 Murder of five unidentified people*

365. All three Accused are charged, as participants in a joint criminal enterprise, with the murder of five people in violation of the laws or customs of war. The Trial Chamber has heard forensic medical evidence with regard to these five people (remains labelled "R-10/1", "R-29", "R-30", "R-32" and "R-18/1", and "R-33").

366. Branimir Aleksandrić testified that remains R-10/1, R-29, R-30, R-32 and R-18/1, and R-33 were found on 15 September 1998 in various places at the Radonjić/Radoniq canal and in the ravine downstream from the canal.<sup>1830</sup> ICMP DNA analysis identified the remains labelled R-10/1 as those of a member of the Misin Berisha family.<sup>1831</sup> An autopsy conducted on the remains on 8 December 2003 revealed completely skeletonized remains of an individual of between 10 and 17 years of age.<sup>1832</sup> The autopsy found multiple fractures to the right arm, but did not determine a cause of death.<sup>1833</sup> Dušan Dunjić<sup>1834</sup> testified that remains R-10/1 had been placed in the same body bag as body R-10, but did not belong to body R-10.<sup>1835</sup> An autopsy conducted on

<sup>1830</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 206-207, 215-216, 219-221, 224, 229-230, 232, 235-236, 240, 242, 267; Branimir Aleksandrić, T. 9583-9584; P449 (Various photographs), pp. 55, 57, lower photograph, 61; P459 (Various photographs), p. 59, upper photograph, 61; P756 (Autopsy photographs R-29), pp. 2-3; P757 (Autopsy report R-30), p. 1; P759 (Autopsy photographs R-30), pp. 2-3; P769 (Autopsy photographs R-33), p. 2; P1115 (Annex C to Branimir Aleksandrić, witness statement, 26 June 2007, reports dated 15 and 16 September 1998), p. 12; P1122 (Photograph of R-29); P1123 (Photograph of R-29); P1127 (Photograph of R-30); P1131 (Photograph of skull R-33).

<sup>1831</sup> Agreed Facts, 26 November 2007, No. 60.

<sup>1832</sup> Agreed Facts, 26 November 2007, Nos 61-62.

<sup>1833</sup> Agreed Facts, 26 November 2007, No. 62.

<sup>1834</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1835</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 311; P677 (Autopsy report R-10/1), p. 1.

the remains in September 1998 found that the right lower arm had been fractured in a way that could not have been caused by a fall.<sup>1836</sup>

367. On 5 December 2003, an autopsy on the remains labelled R-29 revealed that the body was of a male between the ages 33 and 45, with an injury to the forehead consistent with a blunt force trauma.<sup>1837</sup> The cause of death was determined to be a gunshot to the chest and blunt force trauma to the head.<sup>1838</sup> On 8 December 2003, an autopsy on the remains labelled R-30 found only parts of the legs with no evident injuries.<sup>1839</sup> The cause of death was not ascertained.<sup>1840</sup>

368. On 8 December 2003, an autopsy on the body labelled R-32 and R-18/1 found that the body was that of a male between 17 and 22 years old.<sup>1841</sup> The autopsy established multiple fractures to the skull consistent with a gunshot entry wound.<sup>1842</sup> Fractures to the left shoulder blade and hip, consistent with gunshot wounds, were also observed.<sup>1843</sup> The cause of death was determined to be gunshot wounds to the chest, head and pelvis.<sup>1844</sup> Dušan Dunjić<sup>1845</sup> testified that an autopsy conducted on the remains in September 1998 revealed bullet entry wounds on the right shoulder and right thigh bone, which, if inflicted ante-mortem, suggest death caused by gunshots to the chest and pelvis.<sup>1846</sup> It also revealed fractures of the skull, torso and extremities, probably inflicted by blunt force.<sup>1847</sup> On 5 December 2003, an autopsy on a completely skeletonized skull labelled R-33 revealed that the skull was that of a male under the age of 30.<sup>1848</sup> There were fractures on the frontal parts of the skull.<sup>1849</sup> The cause of death was not determined.<sup>1850</sup>

369. Based on the evidence, the Trial Chamber concludes that in September 1998, sets of remains belonging to five people were found at the Radonjić/Radoniq canal and in

<sup>1836</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 313; P677 (Autopsy report R-10/1), p. 2.

<sup>1837</sup> Agreed Facts, 26 November 2007, No. 128.

<sup>1838</sup> Agreed Facts, 26 November 2007, No. 129.

<sup>1839</sup> Agreed Facts, 26 November 2007, No. 131.

<sup>1840</sup> Agreed Facts, 26 November 2007, No. 131.

<sup>1841</sup> Agreed Facts, 26 November 2007, No. 133.

<sup>1842</sup> Agreed Facts, 26 November 2007, No. 133.

<sup>1843</sup> Agreed Facts, 26 November 2007, No. 133.

<sup>1844</sup> Agreed Facts, 26 November 2007, No. 134.

<sup>1845</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), paras 2-3, 23, 40, 151; P620 (CV of Dušan Dunjić), p. 2.

<sup>1846</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 580; P764 (Autopsy report R-32), p. 4.

<sup>1847</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 581; P718 (Autopsy report R-18/1), p. 1; P764 (Autopsy report R-32), pp. 2-4.

<sup>1848</sup> Agreed Facts, 26 November 2007, No. 136.

<sup>1849</sup> Agreed Facts, 26 November 2007, No. 136.

the ravine downstream from the canal. These unidentified sets of remains were labelled R-10/1, R-29, R-30, R-32 together with R-18/1, and R-33. There is no evidence before the Trial Chamber relating to last sightings or further circumstances of events that led to the death of the five unidentified persons. Furthermore, the Trial Chamber has received no evidence about who the persons were, their ethnicity, affiliation with a political group, if any, or their civilian or military status. The only exception is for the remains labelled R-10/1 which belonged to a member of the Misin Berisha family (the Trial Chamber dealt with the alleged murder of Misin Berisha in section 6.11, above). The forensic medical evidence as set out above relating to R-29 and R-32 together with R-18/1 strongly suggests that these persons were murdered. In section 6.1, above, the Trial Chamber has explained that the fact that a body was found in the Radonjić/Radoniq canal area is not in itself conclusive as to who committed the killing or with which group, if any, the perpetrator was affiliated. The fractures of the remains R-10/1 and R-33 cannot shed any light on how they were inflicted, other than that the fractures of R-10/1 could not have been caused by a fall. Therefore, these injuries cannot support a finding of murder. Remains R-30, which merely consist of leg bones, did not contain any injuries which could support a conclusion of murder.

370. The Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt that those individuals whose remains had been labelled R-10/1, R-30, and R-33 were murdered. Even assuming that R-29 and R-32 together with R-18/1 were murdered, the Trial Chamber finds that the evidence before it does not allow for a conclusion beyond a reasonable doubt as to who committed these murders, or with which group, if any, the perpetrator was affiliated. For these reasons, the Trial Chamber finds that all three Accused should be acquitted of this charge.

#### 6.13 Cruel treatment, torture, and murder of Ivan Zarić and others (Count 24)

371. All three Accused are charged, as participants in a joint criminal enterprise, with cruel treatment, torture and murder of Ivan Zarić and others in violation of the laws or customs of war. In the alternative, Ramush Haradinaj and Idriz Balaj are charged as having committed, or aided and abetted the commission of the crimes. Lahi Brahimaj is alternatively charged for having ordered, instigated, or aided and abetted the

<sup>1850</sup> Agreed Facts, 26 November 2007, No. 136.

commission of the crimes. The Trial Chamber has heard relevant evidence from Witness 3, Witness 66, and Witness 31.

372. Witness 3 testified that there was a functioning mill in Grabanica/Grabanicë village, in Klina/Klinë municipality at least until 19 May 1998.<sup>1851</sup> A few days before 19 May 1998, he was in the village when he saw a Serbian and two Roma youths on a horse-drawn cart loaded with grain.<sup>1852</sup> Witness 3 asked them where they were going, and they answered that they were going to Grabanica/Grabanicë.<sup>1853</sup> According to Witness 3, they never left the village.<sup>1854</sup>

373. Witness 66 testified that he last saw Burim Bejta, Agron Berisha, both Roma, and Ivan Zarić, a Serb, on 19 May 1998 at 9:30 a.m.<sup>1855</sup> These three persons were leaving Dolac/Dollc in Klina/Klinë municipality on Burim Bejta's horse-cart.<sup>1856</sup> They were transporting corn to the mill in Grabanica/Grabanicë in Klina/Klinë municipality to have it ground there.<sup>1857</sup> The witness did not remember the exact date himself, but learned this from his sister.<sup>1858</sup> When the three persons did not return from their trip to the mill, two relatives of the witness went to Grabanica/Grabanicë around 2:00 or 3:00 p.m. the same day to inquire after them.<sup>1859</sup> The relatives told the witness after their return that they had been stopped in Grabanica/Grabanicë by three or four Albanians who were armed with semi-automatic weapons, who had asked them for their IDs, and who had registered their names.<sup>1860</sup> As to the enquiry of the relatives, the Albanians said that they had never seen those for whom the relatives were looking.<sup>1861</sup>

374. On the following day, 20 May 1998, some of the witness's relatives left their village around noon for Grabanica/Grabanicë to again look for the missing persons.<sup>1862</sup> There they encountered 40 to 50 people, about half of whom were in uniform, and three or four of whom threatened the witness's relatives at gunpoint, saying that the missing persons had never been to their village and urging the relatives to go away.<sup>1863</sup> The

<sup>1851</sup> Witness 3, T. 7898, 7905, 7912-7914, 7916, 7985.

<sup>1852</sup> Witness 3, T. 7915, 8029-8030.

<sup>1853</sup> Witness 3, T. 7916, 8030-8031.

<sup>1854</sup> Witness 3, T. 7915-7916.

<sup>1855</sup> Witness 66, T. 8413-8415, 8417-8419, 8422-8423, 8431.

<sup>1856</sup> Witness 66, T. 8422-8423, 8431.

<sup>1857</sup> Witness 66, T. 8419, 8422-8423, 8431.

<sup>1858</sup> Witness 66, T. 8423.

<sup>1859</sup> Witness 66, T. 8424, 8427.

<sup>1860</sup> Witness 66, T. 8424-8425, 8427-8428.

<sup>1861</sup> Witness 66, T. 8424-8425.

<sup>1862</sup> Witness 66, T. 8426, 8428.

<sup>1863</sup> Witness 66, T. 8426-8429.

witness learned about these events from his relatives when they returned.<sup>1864</sup> Three or four days after Burim Bejta, Agron Berisha, and Ivan Zarić went missing, the witness saw the horse-cart of Burim Bejta, when it was driven past the witness's house by three Albanian boys from Zajmovo/Zajm village in Klina/Klinë municipality.<sup>1865</sup> The witness and his mother recognized the horse, and the witness also recognized a white sack of corn.<sup>1866</sup> The police, to whom the witness had handed over the children and explained the situation of the missing persons, later told the witness that the children were from Prlina/Përlinë in Klina/Klinë municipality, and had found the cart in front of their house.<sup>1867</sup>

375. Witness 31 was well acquainted with Burim Bejta, Ivan Zarić, and Agron Berisha.<sup>1868</sup> The witness testified that she last saw these three young men around 10:00 one morning.<sup>1869</sup> The witness could not remember the month or year in which this occurred, but thought it was in 1998 or 1999.<sup>1870</sup> The three were riding together in a horse-drawn cart.<sup>1871</sup> They were taking a sack of corn to a mill in Grabanica/Grabanicë, in Klina/Klinë municipality.<sup>1872</sup> In the evening of the same day, having waited for Bejta and his two companions to return, Witness 31 and Burim Bejta's mother set out to find them.<sup>1873</sup> In Grabanica/Grabanicë the witness encountered a large number of armed men ("perhaps 100") wearing KLA uniforms.<sup>1874</sup> At the mill, a man who answered the bell told Bejta's mother that he had not seen Burim Bejta that day.<sup>1875</sup>

376. Based on the evidence, the Trial Chamber concludes that on or just before 19 May 1998, Ivan Zarić, Agron Berisha, and Burim Bejta, a Serbian and two Romas, left Dolac/Dollc on a horse-drawn cart, heading for Grabanica/Grabanicë. They were last seen in Grabanica/Grabanicë. Within days of their disappearance, relatives recovered the horse and cart in the possession of some children who had found the cart in Prlina/Përlinë. Their remains have not been found. Considering the fact that the men have never been seen again, the Trial Chamber accepts that they are, in all likelihood,

<sup>1864</sup> Witness 66, T. 8428-8429.

<sup>1865</sup> Witness 66, T. 8429-8430. See also Witness 31, T. 9520-9521.

<sup>1866</sup> Witness 66, T. 8429-8430.

<sup>1867</sup> Witness 66, T. 8429-8431.

<sup>1868</sup> Witness 31, T. 9513-9514.

<sup>1869</sup> Witness 31, T. 9515-9517.

<sup>1870</sup> Witness 31, T. 9515.

<sup>1871</sup> Witness 31, T. 9516-9517, 9521.

<sup>1872</sup> Witness 31, T. 9516.

<sup>1873</sup> Witness 31, T. 9517.

<sup>1874</sup> Witness 31, T. 9518-9519.

dead. The Trial Chamber has not received any evidence about the young men being in KLA custody, or concerning the circumstances under which they died, or concerning perpetrators of the killing. The Trial Chamber has heard evidence that Grabanica/Grabanicë was under KLA control when the three young men entered the village, though it is not able to conclude whether or not they left the village again, and if so, how and when. There was ongoing military activity in the area during the time period when Ivan Zarić, Agron Berisha, and Burim Bejta allegedly disappeared. The Chamber has heard evidence of a KLA attack on Dolac/Dollc in the evening of 12 May 1998 and how Serbian forces began to shell Grabanica/Grabanicë on 19 May 1998 and eventually entered the village on 21 May 1998.<sup>1876</sup> Therefore, in view of the intense combat activities in the area and the lack of bodily remains, and thus a cause of death, the Trial Chamber cannot reasonably exclude the possibility that either the young men were caught up in combat activities, or that other forces or persons, unaffiliated with the KLA, were responsible for their disappearance. The Trial Chamber has heard no evidence about the alleged acts of the Accused in relation to this event, as alternatively charged. For these reasons, the Trial Chamber concludes that all three Accused should be acquitted of this count.

#### 6.14 Cruel treatment and murder of Ukë Rexhepaj and Nesret Alijaj (Count 26)

377. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment and murder of Ukë Rexhepaj and Nesret Alijah in violation of the laws or customs of war. In the alternative, Lahi Brahimaj is charged with instigating or aiding and abetting the commission of the crimes. The Trial Chamber has heard relevant evidence from Witness 54.

378. Witness 54 testified that on 20 May, a date that his mother later told the witness, Ukë Rexhepaj, an Ashkali from Klina/Klinë municipality, and Nesret Alijaj fetched him from Iber Januzaj's house in Grabanica/Grabanicë, in Klina/Klinë municipality.<sup>1877</sup> Together they went to Dolovo/Dollove, in Klina/Klinë municipality, to feed their livestock.<sup>1878</sup> Halfway to their destination, they were stopped by two men who

<sup>1875</sup> Witness 31, T. 9520.

<sup>1876</sup> Cufë Krasniqi, T. 5815; P355 (Map on which the witness marked the so-called free-area in blue); P1166 (Combat report, dated 13 May 1998), p.1.

<sup>1877</sup> Witness 54, T. 8271, 8273-8275, 8277-8278.

<sup>1878</sup> Witness 54, T. 8275, 8277.

threatened to shoot them.<sup>1879</sup> The men were wearing dark green camouflage uniforms and carrying light machine-guns.<sup>1880</sup> They spoke Albanian.<sup>1881</sup> The men searched them and took away their bicycles and all items from their pockets.<sup>1882</sup> The men then blindfolded and tied the hands of Ukë Rexhepaj and Nesret Alijaj.<sup>1883</sup> They forced both of them into a car and said they would bring them back.<sup>1884</sup> They waved and shouted to a man named Ismet, who was in the woods, to come and get Witness 54.<sup>1885</sup> Ismet and Witness 54 walked for five minutes before arriving at a house.<sup>1886</sup> Then, without seeking any directions from the witness, Ismet took him back to Iber Januzaj's house.<sup>1887</sup> The witness never saw Ukë Rexhepaj and Nesret Alijaj again.<sup>1888</sup>

379. The Trial Chamber concludes that, on or about 20 May 1998, Ukë Rexhepaj and Nesret Alijah were taken by two armed and uniformed men, who spoke Albanian, somewhere between Grabanica/Grabanicë and Dolovo/Dollove. Ukë Rexhepaj and Nesret Alijah were never seen after this event, nor have their remains been recovered. The Trial Chamber finds that the evidence before it is insufficient to conclude that the persons who took Ukë Rexhepaj and Nesret Alijah were members of, or affiliated with, the KLA. Considering the fact that the two men have not been seen since that day, the Trial Chamber accepts that Ukë Rexhepaj and Nesret Alijah are, in all likelihood, dead. As their remains have not been recovered, expert evidence on their cause of death is absent. The Trial Chamber finds that the evidence does not allow for a conclusion beyond a reasonable doubt that Ukë Rexhepaj and Nesret Alijah have been murdered. The Trial Chamber has heard no evidence about the alleged ill-treatment and no evidence about the alleged acts of Lahi Brahimaj in relation to this event, as alternatively charged. For these reasons, the Trial Chamber concludes that all three Accused should be acquitted of this count.

<sup>1879</sup> Witness 54, T. 8275, 8277.

<sup>1880</sup> Witness 54, T. 8276.

<sup>1881</sup> Witness 54, T. 8276.

<sup>1882</sup> Witness 54, T. 8275.

<sup>1883</sup> Witness 54, T. 8276.

<sup>1884</sup> Witness 54, T. 8275-8276.

<sup>1885</sup> Witness 54, T. 8275, 8277-8278.

<sup>1886</sup> Witness 54, T. 8275, 8280.

<sup>1887</sup> Witness 54, T. 8275, 8280-8281.

<sup>1888</sup> Witness 54, T. 8277.

### 6.15 Cruel treatment and torture of Witness 6 (Count 28)

380. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment and torture of Witness 6 in violation of the laws or customs of war. In the alternative, Lahi Brahimaj is charged with the commission of, or aiding and abetting the commission of, the crimes. The Trial Chamber has heard relevant evidence from Witness 6, as well as a number of other witnesses.

381. Witness 6, a Catholic Albanian,<sup>1889</sup> testified that around noon on 13 June 1998 he and his family were driving north on the road between Đakovica/Gjakovë and Klina/Klinë.<sup>1890</sup> At the entrance to Dolovo/Dollove, in Klina/Klinë municipality, they were stopped by the VJ who told them not to continue.<sup>1891</sup> They turned back towards Đakovica/Gjakovë, and at approximately 1 p.m., on the main road, near Volujak/Volljakë, in Klina/Klinë municipality, they were stopped by more than ten KLA soldiers.<sup>1892</sup> They were all armed; some of them wore civilian clothes and others camouflage uniforms, though none of them had insignia.<sup>1893</sup> The men checked Witness 6's documents and searched him and the car, finding a police-issued pistol and a photo of Witness 6 together with a retired Albanian police officer in uniform.<sup>1894</sup> They seized Witness 6's pistol and documents, including his gun licence.<sup>1895</sup> Witness 6 and his family waited in their car away from the road for about two hours.<sup>1896</sup> Then the witness heard a car coming from the main road, as well as some shooting.<sup>1897</sup> The soldiers brought a light blue Opel Kadett with Đakovica/Gjakovë licence plates close to where Witness 6 was parked.<sup>1898</sup> One of the soldiers asked Witness 6 whether he recognized the car, and he answered that he did not.<sup>1899</sup> About twenty minutes later, at approximately 3 or 4 p.m., two soldiers drove off in Witness 6's car and the Opel Kadett, with Witness 6 and his family split up between the two cars.<sup>1900</sup> Witness 6 was in the Opel Kadett where he found a photo album, in which he recognized "Nenad", a

<sup>1889</sup> Witness 6, T. 5166-5167, 5238-5239, 5263-5264, 5305, 5399.

<sup>1890</sup> Witness 6, T. 5168-5171, 5293, 5386; P331 (Map on which the witness marked his journey).

<sup>1891</sup> Witness 6, T. 5171, 5173, 5179, 5188-5190, 5352; P331 (Map on which the witness marked his journey).

<sup>1892</sup> Witness 6, T. 5171, 5173-5174, 5190-5191, 5193, 5293-5294; P331 (Map on which the witness marked his journey).

<sup>1893</sup> Witness 6, T. 5193-5194.

<sup>1894</sup> Witness 6, T. 5194, 5352-5355, 5399.

<sup>1895</sup> Witness 6, T. 5194, 5352-5353.

<sup>1896</sup> Witness 6, T. 5194-5195.

<sup>1897</sup> Witness 6, T. 5195.

<sup>1898</sup> Witness 6, T. 5195-5196.

<sup>1899</sup> Witness 6, T. 5195.

Serbian or Montenegrin policeman who worked in Đakovica/Gjakovë.<sup>1901</sup> At one point, the soldiers told the witness's wife and children to get out, which they did.<sup>1902</sup> The cars arrived in Jablanica/Jabllanicë in Đakovica/Gjakovë municipality.<sup>1903</sup>

382. Before 6 p.m. on 13 June 1998, while it was still daylight, the soldiers took Witness 6 through a gate, into a yard, and to a room immediately to the left of the entrance to the yard.<sup>1904</sup> In this room, soldiers took turns kicking and beating him with a baseball bat and other items, injuring him and causing him to lose consciousness.<sup>1905</sup> One of the participants in this beating was Nazmi Brahimaj.<sup>1906</sup> Witness 6 testified that they asked him questions but that nobody explained why he was beaten.<sup>1907</sup> Witness 6 did not remember seeing Lahi Brahimaj that evening.<sup>1908</sup> Certain persons whom Witness 6 did not identify tied Nenad, whose photo Witness 6 had seen in the Opel Kadett, and him up and left them in the room overnight.<sup>1909</sup> In the afternoon of the next day, 14 June 1998, while it was still daylight, persons whom Witness 6 did not identify moved him to a one-storey red-brick house with four rooms in the middle of a yard.<sup>1910</sup> Witness 6 remained in a room of that house for the rest of his stay in Jablanica/Jabllanicë.<sup>1911</sup> The room had a window which was boarded up with wooden planks that let through very little light.<sup>1912</sup> There was no light-bulb in the room.<sup>1913</sup> For the first four weeks, he was locked up in that room and saw soldiers only when they came to beat him.<sup>1914</sup> Lahi and Nazmi Brahimaj would come, usually staying for about five to ten minutes, and beat Witness 6 with their fists and baseball bats.<sup>1915</sup> Also, Nazmi and Lahi Brahimaj were sometimes present while other soldiers beat Witness 6.<sup>1916</sup> On occasion, Lahi, Nazmi, and Hamza Brahimaj came to the room where he was

<sup>1900</sup> Witness 6, T. 5196, 5203-5204, 5316.

<sup>1901</sup> Witness 6, T. 5196-5197, 5354.

<sup>1902</sup> Witness 6, T. 5200.

<sup>1903</sup> Witness 6, T. 5197-5201, 5203; P331 (Map on which the witness marked his journey).

<sup>1904</sup> Witness 6, T. 5204-5205, 5213-5215, 5316, 5322; P333 (Photo of Jablanica/Jabllanicë compound on which the witness marked where he and Nenad were beaten).

<sup>1905</sup> Witness 6, T. 5207-5211, 5214-5215, 5324, 5350-5351.

<sup>1906</sup> Witness 6, T. 5209.

<sup>1907</sup> Witness 6, T. 5210, 5400.

<sup>1908</sup> Witness 6, T. 5372.

<sup>1909</sup> Witness 6, T. 5210, 5213, 5215-5216, 5304, 5316; P333 (Photo of Jablanica/Jabllanicë compound on which the witness marked where he and Nenad were beaten).

<sup>1910</sup> Witness 6, T. 5204-5205, 5216, 5316, 5324; P332 (Photo of Jablanica/Jabllanicë compound).

<sup>1911</sup> Witness 6, T. 5205, 5213, 5216, 5316-5317, 5325, 5347.

<sup>1912</sup> Witness 6, T. 5216, 5325-5326.

<sup>1913</sup> Witness 6, T. 5401

<sup>1914</sup> Witness 6, T. 5217-5218, 5220.

<sup>1915</sup> Witness 6, T. 5208-5209, 5219-5220, 5372-5373.

<sup>1916</sup> Witness 6, T. 5220-5221, 5373.

kept but they did not beat him.<sup>1917</sup> KLA soldiers including Lahi and Nazmi Brahimaj accused Witness 6 of associating with or spying for the Serbs.<sup>1918</sup> Witness 6 was swollen from the beatings he received.<sup>1919</sup> He was sick and often unconscious.<sup>1920</sup> Gani Brahimaj, who worked there as a cook, brought him a piece of bread, marmalade, and some water every day.<sup>1921</sup>

383. For the first four weeks of his detention, Witness 6 did not know the names of the people detaining him.<sup>1922</sup> He learned the names of Lahi, Nazmi, and Hamza Brahimaj when they addressed each other in the yard.<sup>1923</sup> He saw Nazmi Brahimaj there almost every day.<sup>1924</sup> Gani Brahimaj told Nazmi Brahimaj's name to Witness 6.<sup>1925</sup> He heard others address Nazmi as "deputy commander".<sup>1926</sup> Witness 6 also saw Hamza almost every day at Jablanica/Jabllanicë.<sup>1927</sup> He heard others address him by that name.<sup>1928</sup> Much later, he learned that Hamza's surname was Brahimaj.<sup>1929</sup> Witness 6 also saw Lahi Brahimaj at Jablanica/Jabllanicë, and heard others address him as "Lahi" or "Maxhup".<sup>1930</sup> Gani Brahimaj told Witness 6 that Lahi Brahimaj's nickname was "Maxhup".<sup>1931</sup> Witness 6 testified that during his time at Jablanica/Jabllanicë two days would not go by without him seeing Lahi Brahimaj.<sup>1932</sup> Lahi Brahimaj wore either a camouflage or a black uniform.<sup>1933</sup> Witness 6 testified that Lahi Brahimaj was a member of the KLA.<sup>1934</sup> During the last week and a half or so of his stay at Jablanica/Jabllanicë, Witness 6 spent his nights in the same room but could move around in the house and the yard during daytime.<sup>1935</sup> He was no longer beaten.<sup>1936</sup> He ate food, including bread and beans.<sup>1937</sup> He washed dishes in an open meadow.<sup>1938</sup>

<sup>1917</sup> Witness 6, T. 5220.

<sup>1918</sup> Witness 6, T. 5351-5352, 5398-5400.

<sup>1919</sup> Witness 6, T. 5220.

<sup>1920</sup> Witness 6, T. 5326.

<sup>1921</sup> Witness 6, T. 5218-5219, 5240, 5244, 5326-5329, 5341.

<sup>1922</sup> Witness 6, T. 5208, 5218, 5232, 5295-5297, 5347.

<sup>1923</sup> Witness 6, T. 5208-5209, 5245.

<sup>1924</sup> Witness 6, T. 5219.

<sup>1925</sup> Witness 6, T. 5378.

<sup>1926</sup> Witness 6, T. 5245.

<sup>1927</sup> Witness 6, T. 5219.

<sup>1928</sup> Witness 6, T. 5246.

<sup>1929</sup> Witness 6, T. 5209.

<sup>1930</sup> Witness 6, T. 5245.

<sup>1931</sup> Witness 6, T. 5218-5219.

<sup>1932</sup> Witness 6, T. 5218, 5372.

<sup>1933</sup> Witness 6, T. 5245.

<sup>1934</sup> Witness 6, T. 5246.

<sup>1935</sup> Witness 6, T. 5217, 5231-5232, 5241-5243, 5332-5334, 5386, 5391.

<sup>1936</sup> Witness 6, T. 5243, 5259.

<sup>1937</sup> Witness 6, T. 5329.

Witness 6 testified that he felt he had the opportunity to escape but he “didn’t want to take that chance”.<sup>1939</sup> Witness 6 was visited by his wife, father, and one of his sons.<sup>1940</sup> Someone whom Witness 6 did not identify gave them a paper indicating that he would be released after one week.<sup>1941</sup> Witness 6 saw as many as 100 to 200 soldiers at a time at Jablanica/Jabllanicë, on their way to get weapons from Albania.<sup>1942</sup> Most of them did not wear a uniform or were only partially uniformed.<sup>1943</sup> Witness 6 also saw civilians other than detainees at Jablanica/Jabllanicë.<sup>1944</sup>

384. On 25 July 1998, Witness 6 received from Nazmi Brahimaj two decisions bearing his signature as deputy commander of the KLA in Jablanica/Jabllanicë in the Dukagjin sub-zone, one releasing Witness 6 and the other confiscating his car and gun.<sup>1945</sup> The release decision stated that Witness 6’s release was conditional and “[if] he repeats his mistakes, [the witness] will be prosecuted”.<sup>1946</sup> Witness 6 was released the same day.<sup>1947</sup> Witness 6 asked for the return of his car, gun, driver’s licence, ID and wallet, but did not receive them.<sup>1948</sup> Witness 6 was never told why he was detained.<sup>1949</sup> After his release, his father told him that the people of their village had come to plead for his release.<sup>1950</sup> Witness 6 testified that he left the place with bruises on his back, a fracture on his lower left forearm near the wrist, and an open wound on the back of his right arm or shoulder.<sup>1951</sup> Witness 6 complained of lasting pains all over his body.<sup>1952</sup> He also testified that he had become unable to perform physical work or lift weights above five kilograms.<sup>1953</sup> He testified that his health problems were caused by the beatings he received at Jablanica/Jabllanicë, and that prior to his stay there he had been in good health.<sup>1954</sup> On 30 July 1998, Witness 6 went to see a doctor in

<sup>1938</sup> Witness 6, T. 5244, 5333-5334, 5341, 5361, 5395.

<sup>1939</sup> Witness 6, T. 5243, 5349.

<sup>1940</sup> Witness 6, T. 5252.

<sup>1941</sup> Witness 6, T. 5252.

<sup>1942</sup> Witness 6, T. 5246, 5360-5361.

<sup>1943</sup> Witness 6, T. 5246.

<sup>1944</sup> Witness 6, T. 5246.

<sup>1945</sup> Witness 6, T. 5253-5256, 5379; P335 (Decisions signed by Nazmi Brahimaj).

<sup>1946</sup> Witness 6, T. 5255-5256; P335 (Decisions signed by Nazmi Brahimaj).

<sup>1947</sup> Witness 6, T. 5206, 5252-5255, 5297-5298.

<sup>1948</sup> Witness 6, T. 5254, 5256, 5304, 5342, 5361, 5378-5380, 5398, 5403.

<sup>1949</sup> Witness 6, T. 5252-5253.

<sup>1950</sup> Witness 6, T. 5252.

<sup>1951</sup> Witness 6, T. 5210, 5243, 5259, 5265-5268, 5373-5375.

<sup>1952</sup> Witness 6, T. 5268, 5373-5374, 5401.

<sup>1953</sup> Witness 6, T. 5243, 5268.

<sup>1954</sup> Witness 6, T. 5259, 5401.

Đakovica/Gjakovë, who X-rayed him and prescribed some medicine.<sup>1955</sup> The X-ray revealed a fractured left ulna.<sup>1956</sup> The doctor did not treat his left forearm.<sup>1957</sup> Witness 6 also went to see another doctor, who prescribed him painkillers.<sup>1958</sup> At the time of his testimony, Witness 6 still took medication for the injuries he received during his detention.<sup>1959</sup>

385. Witness 6 met Nazmi Brahimaj again about a year after his incarceration and recognized him.<sup>1960</sup> Also, on 24 February 2004, Witness 6 recognized him on a photo spread.<sup>1961</sup> During the same photo spread session, he recognized Lahi Brahimaj.<sup>1962</sup>

386. Pekka Haverinen, a Finnish police officer who worked as an ICTY investigator from June 2002 to March 2005,<sup>1963</sup> testified that he showed seven photo boards to Witness 6 during an interview on 25 February 2004.<sup>1964</sup> Witness 6 recognized Ramush Haradinaj and Lahi Brahimaj on the photo boards.<sup>1965</sup> Witness 6 told Haverinen that he could recognize Haradinaj because he knew his face from newspapers and television.<sup>1966</sup> He did not know Ramush Haradinaj from the time of the war, or remember seeing him in the KLA prison in Jablanica/Jabllanicë.<sup>1967</sup> Witness 6 signed the photo boards, but there are no markings indicating the relevant numbers.<sup>1968</sup>

387. Witness 23 testified that on 12 June 1998, around 1:00 p.m., she and Witness 6 and the rest of their family travelled from Bardosan/Bardhasa in Đakovica/Gjakovë municipality to Napolje/Nepolë, in Peć/Pejë municipality.<sup>1969</sup> While they were driving on the Peć/Pejë-Priština/Prishtinë road, they were stopped by Serbian police at the

<sup>1955</sup> Witness 6, T. 5259, 5261-5262, 5298-5299, 5312-5313; P336 (Medical report of examination of Witness 6).

<sup>1956</sup> P336 (Medical report of examination of Witness 6).

<sup>1957</sup> Witness 6, T. 5265-5268.

<sup>1958</sup> Witness 6, T. 5267-5268.

<sup>1959</sup> Witness 6, T. 5269, 5401.

<sup>1960</sup> Witness 6, T. 5269-5271.

<sup>1961</sup> P375/P376 (Pekka Haverinen, witness statement, 26 June 2007), paras 10, 14, annex 4. See also Witness 6, T. 5371-5372.

<sup>1962</sup> Witness 6, T. 5371-5372; P375/P376 (Pekka Haverinen, witness statement, 26 June 2007), paras 10, 15, annex 5.

<sup>1963</sup> P375/P376 (Pekka Haverinen, witness statement, 26 June 2007), para. 1; Pekka Haverinen, T. 6299-6300.

<sup>1964</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 8, 10; Pekka Haverinen, T. 6339-6340.

<sup>1965</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 11, 15, Annex 2, Annex 5.

<sup>1966</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 12.

<sup>1967</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 12.

<sup>1968</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007, paras 12, 15; Pekka Haverinen, T. 6348-6350.

<sup>1969</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 2.

checkpoint on the bridge in Dolovo/Dollove, in Klina/Klinë municipality.<sup>1970</sup> The police told them that it was dangerous to travel to Nopolje/Nepolë, because of the KLA.<sup>1971</sup> The family decided to turn around, but on the way back they were stopped by approximately 10-15 armed men near a place called “Black Stone” on the Klina/Klinë-Đakovica/Gjakovë road.<sup>1972</sup> Some men were wearing camouflage uniforms.<sup>1973</sup> The men questioned the family for approximately two hours.<sup>1974</sup> Witness 6 was questioned about a gun he carried and about a photograph depicting him and an Albanian policeman which he had in the car.<sup>1975</sup> Witness 6 had to give the men his gun.<sup>1976</sup> After about two hours, the witness heard a car coming from the direction of Đakovica/Gjakovë, followed by the sound of shooting.<sup>1977</sup> The witness did not see what happened, nor could she remember any details about the car.<sup>1978</sup> The witness was ordered to board this other car together with Witness 6 and one other family member.<sup>1979</sup> The rest of the family boarded the family’s own car.<sup>1980</sup> Each car was driven by a KLA soldier.<sup>1981</sup> They all drove to a location in Nopolje/Nepolë where Witness 23 and the rest of the family, except Witness 6, were let off; the KLA soldiers left with the two cars and Witness 6.<sup>1982</sup> After the incident, the witness told her brother and a cousin that Witness 6 had been taken by the KLA.<sup>1983</sup> They started making inquiries, learning that Witness 6 was detained in the village of Jablanica/Jabllanicë.<sup>1984</sup> The witness remained in Nopolje/Nepolë for three or four days and saw someone driving her car in the village every day.<sup>1985</sup> After five weeks Witness 7 received a letter from the KLA stating that he, the witness, and some other family members could visit Witness 6 in Jablanica/Jabllanicë, which they did.<sup>1986</sup> Witness 23 observed that Witness 6 had lost a lot of weight and looked like he was in bad shape.<sup>1987</sup> The witness saw

<sup>1970</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 2; Witness 23, T. 10539.

<sup>1971</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 2.

<sup>1972</sup> P1221 (Witness 23, witness statement, 18 January 2003), pp. 2-3; Witness 23, T. 10528.

<sup>1973</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10539-10540.

<sup>1974</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10528.

<sup>1975</sup> Witness 23, T. 10540.

<sup>1976</sup> Witness 23, T. 10540-10541.

<sup>1977</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529-10531.

<sup>1978</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529.

<sup>1979</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529-10534.

<sup>1980</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10529-10534.

<sup>1981</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10532-10537.

<sup>1982</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3; Witness 23, T. 10532-10533.

<sup>1983</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 3.

<sup>1984</sup> P1221 (Witness 23, witness statement, 18 January 2003), pp. 3-4.

<sup>1985</sup> Witness 23, T. 10535, 10547-10548.

<sup>1986</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 4.

<sup>1987</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 4; Witness 23, T. 10550-10551.

Witness 6 for about an hour in the yard of the compound and they were only allowed to talk about how they were doing.<sup>1988</sup> Witness 6 was wearing a jacket over a short-sleeved shirt and the witness could not see visible injuries on his body.<sup>1989</sup> Someone the witness believed to be a KLA commander told them that they could come and bring Witness 6 home in one week.<sup>1990</sup> A week later, on 25 July 1998, Witness 6's brother went to Jablanica/Jabllanicë and brought Witness 6 home.<sup>1991</sup> Witness 23 then saw that Witness 6 had lots of bruises on his body but not on his face.<sup>1992</sup> Witness 6 went to see a doctor and X-rays showed that his arm was broken.<sup>1993</sup> Witness 6 told her that he had been beaten all the time and that his arm was already broken when she visited him, but that he had been told to remove the bandages at the time of the visit.<sup>1994</sup>

388. Witness 16 testified that fellow villagers had told him that Witness 6 had been taken to, and was being held at, Jablanica/Jabllanicë in Đakovica/Gjakovë municipality by individuals whom Witness 16 did not identify.<sup>1995</sup> A group of villagers, including Witness 16 and Witness 7, drove to Jablanica/Jabllanicë to demand his release.<sup>1996</sup> Between Žabelj/Zhabel, in Đakovica/Gjakovë municipality, and Jablanica/Jabllanicë they encountered a checkpoint manned by KLA soldiers.<sup>1997</sup> Witness 16 told the soldiers that they had come to ask about the fate of Witness 6.<sup>1998</sup> One of the soldiers told them that they could continue towards Jablanica/Jabllanicë but that they should not enter the village.<sup>1999</sup> The villagers stopped the car on the outskirts of Jablanica/Jabllanicë.<sup>2000</sup> Two soldiers, one in a KLA uniform, the other in a black uniform, approached them and saluted them with a clenched fist.<sup>2001</sup> Witness 16 told them that the villagers had come to ask the commander about the fate of Witness 6.<sup>2002</sup> One of the soldiers confirmed that Witness 6 was being held there and said that the

<sup>1988</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 4; Witness 23 T. 10538; D118 (Photograph showing the Jablanica/Jabllanicë compound).

<sup>1989</sup> Witness 23, T. 10550, 10558-10559.

<sup>1990</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 4.

<sup>1991</sup> P1221 (Witness 23, witness statement, 18 January 2003), pp. 2, 4.

<sup>1992</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 4; Witness 23, T. 10538-10539, 10559.

<sup>1993</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 4; Witness 23, T. 10538-10539, 10551-10552.

<sup>1994</sup> P1221 (Witness 23, witness statement, 18 January 2003), p. 4.

<sup>1995</sup> P1237 (Witness 16, witness statement, 6 May 2004), paras 3-4.

<sup>1996</sup> P1237 (Witness 16, witness statement, 6 May 2004), paras 4-5, 14.

<sup>1997</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 5.

<sup>1998</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 6.

<sup>1999</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 6.

<sup>2000</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 7.

<sup>2001</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 7.

<sup>2002</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 8.

commander would come to see them.<sup>2003</sup> The villagers waited opposite the KLA compound, which was the first construction in Jablanica/Jabllanicë on the left-hand side of the road when coming from Žabelj/Zhabel, and consisted of one long building that looked like a stable and one two-story building.<sup>2004</sup> An armed man arrived in a jeep, cocked his machine-gun, saluted the villagers with a clenched fist, and identified himself as the commander.<sup>2005</sup> He stated that Witness 6 had been arrested and sentenced, but would be released.<sup>2006</sup> He refused to let anyone from the group visit Witness 6.<sup>2007</sup> When the villagers remarked that they all belonged to the same Albanian nation and had the same president, Rugova, the commander answered that they were not the same because the villagers were not fighting and that he did not recognize Rugova.<sup>2008</sup> The commander then went to the KLA compound, and the villagers returned home.<sup>2009</sup> Witness 16 could not describe the commander and would not be able to recognize him.<sup>2010</sup>

389. Witness 7 testified that he heard from a friend in late June 1998 that Witness 6 had been arrested and taken to the KLA headquarters in Jablanica/Jabllanicë in Đakovica/Gjakovë municipality.<sup>2011</sup> The friend had heard this from a relative of Witness 7, who had seen the KLA driving Witness 6 to Jablanica/Jabllanicë.<sup>2012</sup> Witness 7 then drove to Jablanica/Jabllanicë with the village elders to demand Witness 6's release.<sup>2013</sup> Witness 7 described the KLA headquarters there as being the first compound on the left hand side when one entered the village from the direction of Žabelj/Zhabel in Đakovica/Gjakovë municipality.<sup>2014</sup> It was a big house within a fenced compound with many KLA soldiers present.<sup>2015</sup> When they arrived at the KLA headquarters, Witness 7 and the village elders explained to the guard at the front gate why they had come; the guard responded that they would have to speak to the commander, "Maxhupi".<sup>2016</sup> After some time two men in black uniforms with KLA

<sup>2003</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 9.

<sup>2004</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 10.

<sup>2005</sup> P1237 (Witness 16, witness statement, 6 May 2004), paras 11-13.

<sup>2006</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 13.

<sup>2007</sup> P1237 (Witness 16, witness statement, 6 May 2004), paras 14, 18.

<sup>2008</sup> P1237 (Witness 16, witness statement, 6 May 2004), paras 15-17.

<sup>2009</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 18.

<sup>2010</sup> P1237 (Witness 16, witness statement, 6 May 2004), para. 19.

<sup>2011</sup> P1248 (Witness 7, witness statement, 28 April 2004), para. 3.

<sup>2012</sup> P1248 (Witness 7, witness statement, 28 April), para. 4.

<sup>2013</sup> P1248 (Witness 7, witness statement, 28 April), para. 5.

<sup>2014</sup> P1248 (Witness 7, witness statement, 28 April), para. 6.

<sup>2015</sup> P1248 (Witness 7, witness statement, 28 April), para. 6.

<sup>2016</sup> P1248 (Witness 7, witness statement, 28 April), para. 7.

patches and armed with side pistols came to the front gate and one of them introduced himself as “Commander Maxhupi”.<sup>2017</sup> Witness 16 demanded to know the real name of “Maxhupi” without success.<sup>2018</sup> Witness 16 then explained that they had come to seek the release of Witness 6.<sup>2019</sup> “Maxhupi” replied that he had convicted Witness 6, without saying of what, and that he would have to serve his time with the KLA.<sup>2020</sup> “Maxhupi” did not allow the visitors to see Witness 6, but promised Witness 7 that he would be able to see him in two weeks time.<sup>2021</sup> “Maxhupi” then asked the group why they were not fighting at the front line, to which someone said that they had expected Rugova to be their leader in the war.<sup>2022</sup> “Maxhupi” responded very angrily to this, saying that he considered Rugova a traitor and a supporter of the Serbian authorities.<sup>2023</sup>

390. Witness 7 visited Jablanica/Jabllanicë daily for the next two weeks but was never allowed into the compound.<sup>2024</sup> Thirteen days after the abduction of Witness 6, Witness 7 informed the guard at the gate of the Jablanica/Jabllanicë compound that “Maxhupi” had said that he could visit Witness 6 after two weeks.<sup>2025</sup> The guard said that he would inform Commander “Maxhupi” that the witness was there and let him into the compound.<sup>2026</sup> After a while the man who called himself “Maxhupi” drove into the compound in a military jeep.<sup>2027</sup> The witness explained to him that Witness 6 had been imprisoned two weeks earlier and that “Maxhupi” had said that the witness would be allowed to see Witness 6 only after two weeks.<sup>2028</sup> “Maxhupi” told the witness that he would not let him see Witness 6, and then ordered Witness 7 out of the compound.<sup>2029</sup> Although Witness 7 returned to Jablanica/Jabllanicë during the following days (but never entered the compound), he did not met “Maxhupi” again.<sup>2030</sup> During these visits, Witness 7 gained the trust of one of the KLA soldiers, who told Witness 7 that Witness 6 was alive and was working in the kitchen as well as serving food.<sup>2031</sup> One day

<sup>2017</sup> P1248 (Witness 7, witness statement, 28 April), para. 8.

<sup>2018</sup> P1248 (Witness 7, witness statement, 28 April), paras 9-10.

<sup>2019</sup> P1248 (Witness 7, witness statement, 28 April), paras 10-12.

<sup>2020</sup> P1248 (Witness 7, witness statement, 28 April), para. 13.

<sup>2021</sup> P1248 (Witness 7, witness statement, 28 April), paras 14, 16.

<sup>2022</sup> P1248 (Witness 7, witness statement, 28 April), para. 15.

<sup>2023</sup> P1248 (Witness 7, witness statement, 28 April), para. 15.

<sup>2024</sup> P1248 (Witness 7, witness statement, 28 April), para. 18.

<sup>2025</sup> P1248 (Witness 7, witness statement, 28 April), para. 19.

<sup>2026</sup> P1248 (Witness 7, witness statement, 28 April), para. 20.

<sup>2027</sup> P1248 (Witness 7, witness statement, 28 April), para. 21.

<sup>2028</sup> P1248 (Witness 7, witness statement, 28 April), paras 21-22.

<sup>2029</sup> P1248 (Witness 7, witness statement, 28 April), paras 23-25.

<sup>2030</sup> P1248 (Witness 7, witness statement, 28 April), paras 26-27.

<sup>2031</sup> P1248 (Witness 7, witness statement, 28 April), paras 27-28.

Witness 7 was allowed into the compound and taken to a commander who he had never met before.<sup>2032</sup> The commander told Witness 7 to leave as Witness 6 had already been convicted.<sup>2033</sup> However, after speaking with this man, Witness 7 went looking for the KLA soldier he had befriended and told him about the meeting with the commander.<sup>2034</sup> The soldier expressed doubt that Witness 7 had spoken to a commander, and then went inside the compound and informed Witness 6 that Witness 7 was outside and sent his regards.<sup>2035</sup> The soldier thus became a courier passing on messages between Witness 6 and Witness 7.<sup>2036</sup> A week later a KLA soldier told Witness 7 that he would be allowed to visit Witness 6.<sup>2037</sup> Witness 7 then went home and returned with two others, one of which was Witness 23 and all three visited Witness 6 for two hours.<sup>2038</sup> Witness 7 later learned from Witness 6 that the man who had allowed the visit was Nazmi Brahimaj who, Witness 7 testified, is the brother of “Maxhupi”.<sup>2039</sup> Nazmi Brahimaj told Witness 7 that he would have released Witness 6 that day but he did not have the paper-work, by which he meant Witness 6’s weapons permit and driving licence as well as receipts for the gun and vehicle that were seized from Witness 6, but that this would be taken care of in about a week.<sup>2040</sup> A week after this meeting Witness 6 was released.<sup>2041</sup> Witness 7 stated that the village Witness 6 came from consisted mainly of LDK supporters but that he did not know why Witness 6 had been abducted.<sup>2042</sup>

391. As referred to above, Witness 6 testified that, on or about 13 June 1998, KLA soldiers severely beat him at a compound in Jablanica/Jabllanicë. Witness 6 further testified that during the next four weeks or so, he was in a room at the compound and regularly beaten by KLA soldiers. According to Witness 6, he was in a poor physical condition and suffered lasting physical consequences from the beatings. The Trial Chamber considers Witness 6 to be a credible witness, and is satisfied that the beatings caused him serious physical suffering and injury. In light of the severity of the beatings and their repetition over time, the Trial Chamber is also satisfied that the perpetrators of these beatings must have intended to cause such suffering and injury. For these reasons,

<sup>2032</sup> P1248 (Witness 7, witness statement, 28 April), paras 29-30.

<sup>2033</sup> P1248 (Witness 7, witness statement, 28 April), paras 29-30.

<sup>2034</sup> P1248 (Witness 7, witness statement, 28 April), para. 31.

<sup>2035</sup> P1248 (Witness 7, witness statement, 28 April), paras 31-32.

<sup>2036</sup> P1248 (Witness 7, witness statement, 28 April), para. 32.

<sup>2037</sup> P1248 (Witness 7, witness statement, 28 April), para. 34.

<sup>2038</sup> P1248 (Witness 7, witness statement, 28 April), paras 35-36.

<sup>2039</sup> P1248 (Witness 7, witness statement, 28 April), para. 36.

<sup>2040</sup> P1248 (Witness 7, witness statement, 28 April), paras 37-38.

<sup>2041</sup> P1248 (Witness 7, witness statement, 28 April), para. 39.

the Trial Chamber concludes that KLA soldiers committed cruel treatment against Witness 6.

392. Witness 6 and Witness 23 testified that, on or about 13 June 1998, KLA soldiers searched Witness 6 and his car, finding a police-issued pistol and a photograph of Witness 6 together with an Albanian policeman. Witness 23 testified that the soldiers questioned Witness 6 about these items. Witness 6 testified that those who beat him on his first day at the Jablanica/Jabllanicë compound did not give him a reason why they were beating him. However, he also testified that during his time at the Jablanica/Jabllanicë compound some KLA soldiers accused him of associating with and spying for the Serbs. Witness 7 and Witness 16 testified that a commander at the Jablanica/Jabllanicë compound told them that Witness 6 had been convicted or sentenced, and spoke angrily against President Rugova and those who did not fight. When Witness 6 was released, he received a decision from Nazmi Brahimaj stating that, “[if] he repeats his mistakes, [Witness 6] will be prosecuted”. On the basis of this evidence, the Trial Chamber concludes that KLA soldiers mistreated Witness 6 to punish him for this perceived collaboration with Serbs, and to discriminate against him on political grounds. For this reason, the Trial Chamber concludes that KLA soldiers tortured Witness 6.

393. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that Witness 6 was not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

394. All three Accused are charged with Count 28 as participants in a joint criminal enterprise. The Trial Chamber will deal with the alleged joint criminal enterprise in section 7, below. Lahi Brahimaj is also charged, in the alternative, with committing or aiding and abetting the crimes charged in this count.

395. Witness 6 testified that Lahi Brahimaj participated in some of his beatings, and was sometimes present while others beat him. Witness 6 also testified that Lahi Brahimaj was among those who accused him of associating with and spying for the Serbs. Witness 6 had ample opportunity to observe Lahi Brahimaj during the approximately four weeks during which he was beaten. Furthermore, Witness 6 testified

<sup>2042</sup> P1248 (Witness 7, witness statement, 28 April), paras 40-41.

that during the following couple of weeks he repeatedly observed Lahi Brahimaj at the Jablanica/Jabllanicë compound. According to Witness 6, he heard others address him as “Lahi” or “Maxhup”, and heard from Gani Brahimaj that “Maxhup” was Lahi Brahimaj’s nickname. Witness 6 later recognized Lahi Brahimaj on a photo board. See in this regard section 2.3, above. The Trial Chamber is therefore convinced beyond a reasonable doubt that Lahi Brahimaj personally participated in the cruel treatment and torture of Witness 6, and concludes that he should be convicted for committing these crimes. Consequently, the Trial Chamber does not need to address whether he aided and abetted their commission.

#### 6.16 Cruel treatment, torture, and murder of Nenad Remištar and four unidentified people (Count 30)

396. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment, torture and murder of Nenad Remištar and of four unknown men in violation of the laws or customs of war. The Trial Chamber has heard relevant evidence from Witness 73, Nebojša Avramović, Zoran Stijović and Witness 6.

397. Witness 73 stated that on 13 June 1998 Nenad Remištar, who worked as a traffic police officer in Đakovica/Gjakova, had left from Biča/Binxhë in Klina/Klinë municipality to go to Đakovica/Gjakova in his blue Opel Kadett, with Đakovica/Gjakova licence plates.<sup>2043</sup> He was dressed in civilian clothes.<sup>2044</sup> After 10 days, Dragiša Šimigić, a work colleague, and the MUP officer on duty in Đakovica/Gjakova, informed the witness that Nenad Remištar had been absent from work for that time.<sup>2045</sup> Aleksandar Remištar, Nenad’s father, learned from an unidentified Albanian that his son and a Catholic Albanian man had been kidnapped near the village of Rakovina/Rakovinë, in the municipality of Đakovica/Gjakovë and were being imprisoned in Jablanica/Jabllanicë in the same municipality.<sup>2046</sup> The unidentified Albanian said that Nenad Remištar was still alive and was being protected

<sup>2043</sup> P1242 (Witness 73, witness statement, 13 November 2007), para. 4.

<sup>2044</sup> P1242 (Witness 73, witness statement, 13 November 2007), para. 5.

<sup>2045</sup> P1242 (Witness 73, witness statement, 13 November 2007), para. 8.

<sup>2046</sup> P1242 (Witness 73, witness statement, 13 November 2007), paras 10-11.

by a KLA soldier, who knew him.<sup>2047</sup> The unidentified Albanian man had received this information from the Catholic Albanian man.<sup>2048</sup>

398. Nebojša Avramović testified that the MUP employees Rade Popović (sic), Nikola Jovanović, and Nenad Remištar disappeared at the end of April or the beginning of May 1998 in the area around the Đakovica/Gjakovë – Peć/Pejë road.<sup>2049</sup> From the reports that he read at the time, Avramović concluded that Rade Popović (sic) and Nikola Jovanović were on duty.<sup>2050</sup> Their superior officer reported them as missing.<sup>2051</sup> Avramović testified that a report filed by Nenad Remištar's relatives and his superior officers stated that Nenad Remištar was kidnapped while he was going from his home in Glina to work, when he was travelling along the Đakovica/Gjakovë-Priština/Prishtinë road.<sup>2052</sup> The Trial Chamber considers that the witness's testimony referring to Rade Popović was actually referring to Rade Popadić, as evidenced by the connection with Nikola Jovanović noted above in section 6.12.2, above.

399. Zoran Stijović, head of the Analytical Section of the Priština/Prishtinë RDB Centre from 1995 until 1999, testified that the RDB had information that Nenad Remištar, a Serbian policeman, was detained in Jablanica/Jabllanicë.<sup>2053</sup>

400. Witness 6, a Catholic Albanian,<sup>2054</sup> testified that before 6 p.m. on 13 June 1998 he and "Nenad" were in a room adjacent to the entrance of the Jablanica/Jabllanicë compound.<sup>2055</sup> Witness 6 knew Nenad as a Serbian or Montenegrin policeman who worked in Đakovica/Gjakovë.<sup>2056</sup> Witness 6 had heard from Zokan Kuqi that Nenad was from Biča/Binxhë village, in Klina/Klinë municipality.<sup>2057</sup> Witness 6 saw Nazmi Brahimaj and a group of soldiers kick and beat Nenad with a baseball bat and other items, leaving him unconscious, bruised and unable to walk.<sup>2058</sup> The soldiers did not

<sup>2047</sup> P1242 (Witness 73, witness statement, 13 November 2007), para. 11.

<sup>2048</sup> P1242 (Witness 73, witness statement, 13 November 2007), para. 10.

<sup>2049</sup> P380 (Nebojša Avramović, witness statement, 4 June 2007), para. 13; Nebojša Avramović, T. 6600-6602. See also P385 (Map of unsafe area for Serbs according to Witness Avramović).

<sup>2050</sup> Nebojša Avramović, T. 6604.

<sup>2051</sup> Nebojša Avramović, T. 6604.

<sup>2052</sup> Nebojša Avramović, T. 6605.

<sup>2053</sup> P931 (Zoran Stijović, witness statement, 27 September 2007), paras 2, 55.

<sup>2054</sup> Witness 6, T. 5166-5167, 5238-5239, 5263-5264, 5305, 5399.

<sup>2055</sup> Witness 6, T. 5204, 5213-5215, 5293, 5316; P333 (Photo of Jablanica/Jabllanicë compound on which the witness marked where he and Nenad were beaten).

<sup>2056</sup> Witness 6, T. 5196-5197, 5354.

<sup>2057</sup> Witness 6, T. 5197, 5354.

<sup>2058</sup> Witness 6, T. 5208-5211, 5324.

give any explanation why they were beating Nenad.<sup>2059</sup> Witness 6 did not remember seeing Lahi Brahimaj that evening.<sup>2060</sup> Witness 6 and Nenad were tied up and left in the room overnight.<sup>2061</sup> In the afternoon of the next day, 14 June 1998, two soldiers took Nenad away.<sup>2062</sup> Witness 6 never saw Nenad again.<sup>2063</sup> He later heard from Pavle Zuvić, a police officer, that Nenad had been killed at Jablanica/Jabllanicë and his body may have been dumped somewhere in the mountains near Peć/Pejë or Kлина/Klinë.<sup>2064</sup>

401. Approximately two weeks after 13 June, when Witness 6 had arrived, a group of four other detainees, one Bosnian and three Montenegrins, came to Witness 6's room.<sup>2065</sup> Witness 6 testified that the Bosnian was a Muslim, and that he heard soldiers say while beating the man that he had worked for the Elektrokosova company in Dečani/Deçan, had interrupted the power supply, and worked for Serbia.<sup>2066</sup> Individuals whom Witness 6 did not know, and could not describe, took turns kicking, slapping, and beating the four newcomers with baseball bats; one person also used a knife to superficially stab them, in particular the Bosnian.<sup>2067</sup> They bled from their wounds, and spat blood.<sup>2068</sup> There was also blood on the floor.<sup>2069</sup> The four persons stayed in the room for three or four days.<sup>2070</sup> During this time Witness 6 would see Nazmi and Hamza Brahimaj in the room.<sup>2071</sup> One evening around 10 p.m., individuals whom Witness 6 did not identify took away the four detainees.<sup>2072</sup> Witness 6 never saw them again.<sup>2073</sup>

402. The evidence of Witness 73 is consistent with the testimony of Witness 6 and Witness 23 (see section 6.15, above) and the Trial Chamber is convinced that the Nenad referred to by Witness 6 was Nenad Remištar. The Trial Chamber is also satisfied that the beatings caused Nenad Remištar serious physical suffering. In light of the severity of the beatings, the Trial Chamber is furthermore convinced that the perpetrators must

<sup>2059</sup> Witness 6, T. 5211.

<sup>2060</sup> Witness 6, T. 5372.

<sup>2061</sup> Witness 6, T. 5210, 5213, 5215-5216, 5304, 5316; P333 (Photo of Jablanica/Jabllanicë compound on which the witness marked where he and Nenad were beaten).

<sup>2062</sup> Witness 6, T. 5211, 5213, 5216, 5316-5317, 5324.

<sup>2063</sup> Witness 6, T. 5317-5318, 5324.

<sup>2064</sup> Witness 6, T. 5279, 5313-5314, 5323-5324.

<sup>2065</sup> Witness 6, T. 5217, 5226-5227, 5329, 5387.

<sup>2066</sup> Witness 6, T. 5227, 5329-5330, 5397.

<sup>2067</sup> Witness 6, T. 5228, 5330-5331.

<sup>2068</sup> Witness 6, T. 5228.

<sup>2069</sup> Witness 6, T. 5230.

<sup>2070</sup> Witness 6, T. 5227, 5330, 5387.

<sup>2071</sup> Witness 6, T. 5228.

<sup>2072</sup> Witness 6, T. 5230.

have intended to cause such suffering. For these reasons, the Trial Chamber is convinced that KLA soldiers committed cruel treatment against Nenad Remištar. On the basis of the ethnicity of the victim, his job as a policeman, and the absence of any reasonable alternative explanation for his detention and ill treatment, the Trial Chamber concludes that KLA soldiers mistreated Nenad Remištar to punish, intimidate and/or discriminate against him. For this reason, the Trial Chamber concludes that KLA soldiers tortured Nenad Remištar.

403. Witness 6 testified that in the afternoon of 14 June 1998, two KLA soldiers took Nenad Remištar from the room where he and Witness 6 had spent the night. Witness 6 further testified that he never saw Nenad Remištar again. The Trial Chamber has heard multiple hearsay evidence from Witness 73 that Nenad Remištar was in Jablanica/Jabllanicë, alive and under the protection of a KLA soldier. This multiple hearsay evidence suggests that the original source was Witness 6 himself. The Trial Chamber considers the direct evidence of Witness 6 to be more reliable than the multiple hearsay evidence. As to Nenad Remištar's death, Witness 6 could provide only hearsay evidence that he was killed in Jablanica/Jabllanicë, which Witness 6 learned from a Serbian police officer. The Trial Chamber did not receive evidence that corroborates this hearsay evidence. Considering that Nenad Remištar has never been seen again, the Trial Chamber accepts that he is, in all likelihood, dead. As his remains have not been recovered, there is no expert evidence as to the cause of his death. The Trial Chamber concludes that the evidence does not allow for a conclusion beyond a reasonable doubt that Nenad Remištar was murdered.

404. The Trial Chamber is convinced that the cruel treatment and torture were closely related to the armed conflict in Kosovo/Kosova, and that Nenad Remištar was not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

405. Witness 6 testified that around the end of June 1998 one Bosnian and three Montenegrins came to his room at the Jablanica/Jabllanicë compound. According to Witness 6, he saw some individuals taking turns kicking, slapping and beating them with baseball bats, and one person also superficially stabbed them with a knife. Witness 6 testified that they bled from their wounds, and spat blood. He testified that they spent three or four days in the room before being taken away. Witness 6 did not provide any

<sup>2073</sup> Witness 6, T. 5230.

information about the perpetrators. Based on the evidence adduced under Counts 27-32 and the ability of the perpetrators to gain access at that time to that room at the Jablanica/Jabllanicë compound, the Trial Chamber is satisfied that they were KLA soldiers or persons affiliated with the KLA. The Trial Chamber is also satisfied that the beatings and stabbings caused these four men serious physical suffering and injury. In light of the severity of the ill-treatment, the Trial Chamber is furthermore convinced that the perpetrators must have intended to cause such suffering and injury. For these reasons, the Trial Chamber concludes that KLA soldiers or persons affiliated with the KLA committed cruel treatment against the four men.

406. Witness 6 testified that he heard the perpetrators say while beating the Bosnian man that he had worked for the Elektrokosova company in Dečani/Deçan, had interrupted the power supply, and had worked for Serbia. The Trial Chamber is satisfied that the purpose of his beatings was to punish him for his alleged activities. The Trial Chamber has received no evidence as to why the three Montenegrins were ill-treated. For these reasons, the Trial Chamber is convinced beyond a reasonable doubt that KLA soldiers or persons affiliated with the KLA tortured the Bosnian, but not that they tortured the three Montenegrins. It is not factually alleged in the Indictment that the Bosnian and the three Montenegrins were murdered. The Trial Chamber therefore finds that the charge of murder is restricted to Nenad Remištar.

407. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that the victims were not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

408. All three Accused are charged with Count 30 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability in section 7, below.

#### 6.17 Jablanica/Jabllanicë KLA headquarters (Count 32)

##### *6.17.1 Cruel treatment, torture, and murder of Pal Krasniqi*

409. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment, torture and murder of Pal Krasniqi in violation of the laws or customs of war.

410. Count 32 of the Indictment charges the Accused with war crimes allegedly committed against three victims. Paragraphs 99-100 concern Pal Krasniqi, paragraphs 101-102 concern Skender Kuqi, and paragraphs 103-106 concern Witness 3. Paragraphs 99-100 do not specify any acts or omissions of any of the Accused. Paragraphs 101-102 do not specify any acts or omissions of Lahi Brahimaj and Idriz Balaj. Nor are any acts or omissions of these Accused for the specific facts alleged in paragraphs 99-102 to be found anywhere else in the Indictment. Nevertheless, Count 32 appears to charge all three Accused with all alleged crimes against all three victims, based on one or more alternative modes of liability.

411. Apart from Count 32 (and Count 31 which concerns the same alleged facts), all Counts in the Indictment, in which an Accused is charged with any mode of liability other than participation in a joint criminal enterprise, describe the alleged acts or omissions of that Accused. In addition, Count 32 alleges, in paragraph 102, that Ramush Haradinaj instructed the exhumation of Skender Kuqi's remains and their return to his family. Haradinaj is charged in the alternative with aiding and abetting the commission of the crimes described in Count 32. The Trial Chamber understands the Indictment to plead that Haradinaj's instructions amounted to aiding and abetting the cruel treatment, torture, and murder of Skender Kuqi. In light of this, the absence of any mention of the two other Accused in the factual allegations concerning Skender Kuqi suggests that the Prosecution did not intend to charge them with any alternative mode of liability for the alleged crimes against this victim. Likewise, it suggests that the Prosecution did not intend to charge any of the Accused with any alternative mode of liability for the alleged crimes against Pal Krasniqi.

412. The Trial Chamber therefore finds that the alternative modes of liability charged in Count 32 *in fine* should be properly limited to those of the Accused, if any, who are named in connection with the facts alleged for each of the three victims. Hence, none of the Accused are charged in the alternative with the crimes allegedly committed against Pal Krasniqi. Only Haradinaj is charged in the alternative with the crimes allegedly committed against Skender Kuqi (See Section 6.17.2). As for Witness 3, all of the Accused are charged in the alternative (See Section 6.17.3).

413. The Trial Chamber has heard relevant evidence on the alleged crimes against Pal Krasniqi from a number of witnesses, as well as forensic medical evidence.

414. Mahir Demaj, a Kosovar Albanian,<sup>2074</sup> stated that he and Pal Krasniqi, who both wanted to join the KLA, were travelling by bus in 1998, although he cannot recall the exact date.<sup>2075</sup> They were stopped by a group of armed Serbian civilians on the road between Trstenik/Trëstenik, in Peć/Pejë municipality, and Klina/Klinë.<sup>2076</sup> The civilians called uniformed police, who immediately started to beat and kick them.<sup>2077</sup> They were then taken to Klina/Klinë police station, where they were interrogated while the beating continued with fists, boots and a metal tool.<sup>2078</sup> At around midnight, Mahir Demaj and Pal Krasniqi were allowed to leave the police station.<sup>2079</sup> They went into hiding, however, the police soon found them and returned them to Klina/Klinë, where they were once again released.<sup>2080</sup> The two men did not intend to report to the police station, as they had been ordered, and instead continued to Grabanica/Grabanicë, in Klina/Klinë municipality, where they met some members of the KLA; one of the members of the KLA showed them the way to Jablanica/Jabllanicë, in Đakovica/Gjakovë municipality.<sup>2081</sup> Upon arrival in Jablanica/Jabllanicë, Pal Krasniqi and Mahir Demaj were taken to an improvised hospital where Mahir Demaj was treated for his injuries.<sup>2082</sup> Mahir Demaj recalls at least ten persons being treated in the hospital, one of whom was a KLA member wounded by a bullet.<sup>2083</sup> Mahir Demaj stated that he discharged himself the following day and that he and some of his relatives joined a group heading towards Junik, in Dečani/Deçan municipality, to collect weapons from Albania.<sup>2084</sup> Pal Krasniqi remained in Jablanica/Jabllanicë.<sup>2085</sup> The last time that Mahir Demaj saw Pal Krasniqi, he was wearing civilian clothing, including a pair of blue jeans.<sup>2086</sup> Pal Krasniqi stated that he was going to remain with friends in Jablanica/Jabllanicë.<sup>2087</sup>

<sup>2074</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 3.

<sup>2075</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), paras 3, 4, 5, Addendum, para. 2.

<sup>2076</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 5.

<sup>2077</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 5.

<sup>2078</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 5.

<sup>2079</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 6.

<sup>2080</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 6.

<sup>2081</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), paras 7, 8, 9.

<sup>2082</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), paras 10, 11.

<sup>2083</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 12.

<sup>2084</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 13.

<sup>2085</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 13.

<sup>2086</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 14.

<sup>2087</sup> P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 14.

415. Ded Krasniqi, an Albanian,<sup>2088</sup> testified that on 10 July 1998 his son Pal Krasniqi together with a friend, Mahir Demaj, left for Jablanica/Jabllanicë to join the KLA.<sup>2089</sup> Pal Krasniqi was wearing a striped T-shirt with a red-striped collar, light blue to white sport shoes and blue sports trousers with a white stripe.<sup>2090</sup> On the way they were apprehended at the Velika Krusa/Krusha ë Madhe police checkpoint.<sup>2091</sup> They were beaten by Serbian police and taken to Klina/Klinë.<sup>2092</sup> On 11 July 1998, around 6 a.m., Pal Krasniqi called Ded Krasniqi from Klina/Klinë and told him what had happened.<sup>2093</sup> The witness advised his son to go to Jablanica/Jabllanicë as planned.<sup>2094</sup> Dede Deda, the witness's nephew and a friend of Pal Krasniqi, told the witness that in the middle of August 1998, Pal Krasniqi briefly phoned him from Jablanica/Jabllanicë.<sup>2095</sup> According to Dede Deda, Pal Krasniqi said that he had a lot of money on him and wanted to meet.<sup>2096</sup> Dede Deda said that they arranged a meeting on the same day in Dakovica/Gjakovë, but Pal Krasniqi did not show up.<sup>2097</sup> At an unspecified date after the war, the witness met with Mahir Demaj in Peć/Pejë and asked him about his son.<sup>2098</sup> Demaj was scared and told the witness not to look for his son, saying "that nobody will dare to tell anything about it".<sup>2099</sup> Demaj also told the witness that he and Pal Krasniqi went to Jablanica/Jabllanicë, that Demaj was taken to hospital there because of the injuries he had suffered from the beatings, and that Pal joined the KLA.<sup>2100</sup> According to what Demaj told the witness, about five days after they left for Jablanica/Jabllanicë, Pal Krasniqi visited Demaj in the hospital.<sup>2101</sup> He was accompanied by two soldiers.<sup>2102</sup> That was the last time Demaj saw the witness's son.<sup>2103</sup>

<sup>2088</sup> Ded Krasniqi, T. 4767-4768.

<sup>2089</sup> Ded Krasniqi, T. 4768-4770, 4774, 4805.

<sup>2090</sup> Ded Krasniqi, T. 4787-4789.

<sup>2091</sup> Ded Krasniqi, T. 4770, 4807.

<sup>2092</sup> Ded Krasniqi, T. 4770, 4773-4774, 4807, 4833.

<sup>2093</sup> Ded Krasniqi, T. 4770, 4807, 4829. See also P1240 (Mahir Demaj, witness statement, 26 April 2007), para. 8.

<sup>2094</sup> Ded Krasniqi, T. 4771.

<sup>2095</sup> Ded Krasniqi, T. 4818-4821, 4835-4837.

<sup>2096</sup> Ded Krasniqi, T. 4820-4821, 4835.

<sup>2097</sup> Ded Krasniqi, T. 4820-4821, 4835-4837.

<sup>2098</sup> Ded Krasniqi, T. 4771-4772, 4809.

<sup>2099</sup> Ded Krasniqi, T. 4772, 4809.

<sup>2100</sup> Ded Krasniqi, T. 4772-4773, 4810.

<sup>2101</sup> Ded Krasniqi, T. 4773-4774, 4810.

<sup>2102</sup> Ded Krasniqi, T. 4810.

<sup>2103</sup> Ded Krasniqi, T. 4773-4774.

416. Ded Krasniqi testified that in 1998, his brother together with some villagers went to Jablanica/Jabllanicë to inquire about the witness's son.<sup>2104</sup> The witness's brother was told that Pal Krasniqi "went to Pejë", meaning that he disappeared and would never return.<sup>2105</sup> In 2000, the witness started looking for his son.<sup>2106</sup> He first went to Jablanica/Jabllanicë and spoke with a KLA member named Hamez Ukshini, who told the witness that Pal Krasniqi was not registered on the list of KLA members who had arrived in and departed from Jablanica/Jabllanicë.<sup>2107</sup> After this the witness went to Klina/Klinë to see Alush Agushi, a KLA commander.<sup>2108</sup> Agushi told the witness that his son had been with him until "the first offensive in September".<sup>2109</sup> Alush Agushi took some notes and told Ded Krasniqi that he would get back to him in two weeks, but the witness did not hear from Agushi again.<sup>2110</sup>

417. In October or November 2000, Witness 6 visited Ded Krasniqi.<sup>2111</sup> He told Ded Krasniqi that he had been in prison in Jablanica/Jabllanicë together with Ded Krasniqi's son, who was mistreated.<sup>2112</sup> Ded's son was accused of being a spy for the Serbian police.<sup>2113</sup>

418. Witness 6 testified that one day around the middle of July 1998, the day after the arrival at Jablanica/Jabllanicë of a man from Zahać/Zahaq, in Peć/Pejë municipality, Pal Krasniqi arrived there.<sup>2114</sup> Witness 6 brought food and water to the room where these men were kept.<sup>2115</sup> Witness 6 learned from Pal Krasniqi that he was from Meca/Meqe, in Đakovica/Gjakovë municipality, and that he was Catholic.<sup>2116</sup> He wore sports clothes – a track suit with a white stripe on the side.<sup>2117</sup> Witness 6 saw soldiers beat Pal Krasniqi with a baseball bat.<sup>2118</sup> Pal Krasniqi was in a poor condition as a result.<sup>2119</sup> On the same day at around 1:00 p.m., Witness 6 saw Pal Krasniqi try to escape through a

<sup>2104</sup> Ded Krasniqi, T. 4817-4818, 4822.

<sup>2105</sup> Ded Krasniqi, T. 4817-4818, 4822-4825.

<sup>2106</sup> Ded Krasniqi, T. 4775-4776.

<sup>2107</sup> Ded Krasniqi, T. 4775-4778.

<sup>2108</sup> Ded Krasniqi, T. 4775, 4779, 4810.

<sup>2109</sup> Ded Krasniqi, T. 4783-4784, 4810-4812.

<sup>2110</sup> Ded Krasniqi, T. 4780-4781.

<sup>2111</sup> Ded Krasniqi, T. 4790, 4793, 4795.

<sup>2112</sup> Ded Krasniqi, T. 4794.

<sup>2113</sup> Ded Krasniqi, T. 4794.

<sup>2114</sup> Witness 6, T. 5206, 5231-5233, 5247-5249, 5252-5255, 5293, 5297-5298, 5334, 5386, 5388-5389, 5391; P334 (Photo of Pal Ded Krasniqi with crutches and one other person).

<sup>2115</sup> Witness 6, T. 5204-5205, 5332-5333, 5335-5337; P332 (Photo of Jablanica/Jabllanicë compound).

<sup>2116</sup> Witness 6, T. 5238, 5335, 5358.

<sup>2117</sup> Witness 6, T. 5247.

<sup>2118</sup> Witness 6, T. 5235, 5335.

<sup>2119</sup> Witness 6, T. 5235, 5237.

window together with the man from Zahać/Zahaq and a man from Grabanica/Grabanicë, in Klina/Klinë municipality.<sup>2120</sup> Hamza Brahimaj and other soldiers caught Pal Krasniqi, beat him in front of Witness 6, and brought him back to his room.<sup>2121</sup> Pal Krasniqi was swollen, bloody, spitting blood, and lying on the floor, unable to eat or drink.<sup>2122</sup> Towards the end of Witness 6's stay at Jablanica/Jabllanicë, Pal Krasniqi's health had improved and he was walking around in the yard.<sup>2123</sup> On 25 July 1998, Witness 6 left Jablanica/Jabllanicë.<sup>2124</sup> At that time, Pal Krasniqi was the only person detained there.<sup>2125</sup> Witness 6 never saw him again.<sup>2126</sup>

419. Witness 3 testified that around early-to-mid-July 1998, he came to a room in the KLA staff building in Jablanica/Jabllanicë, where he remained for the next two nights and three days.<sup>2127</sup> There were two other persons detained in the room.<sup>2128</sup> One of them was Skender Kuqi; the other man wore a sports tracksuit with some yellow and white buttons on the side, but Witness 3 testified that someone changed his clothes after a while because he smelled.<sup>2129</sup> This man was badly injured, his body swollen, and he could not move.<sup>2130</sup> He relieved himself in the room.<sup>2131</sup> At night, all three detainees had their hands tied.<sup>2132</sup> Witness 3 once saw Nazmi Brahimaj and Miftar Brahimaj when they came to the room.<sup>2133</sup> He also saw Naser "Rusi" Brahimaj, whom he had known for a long time, enter the room repeatedly to beat the other two detainees.<sup>2134</sup> The witness decided to escape and told his two co-detainees that they should follow him if they wished.<sup>2135</sup> Around mid-day, Witness 3 escaped through the window.<sup>2136</sup> Witness 3 saw Skender Kuqi trying to follow him, but did not see whether the other

<sup>2120</sup> Witness 6, T. 5236-5238, 5338-5339, 5389-5390.

<sup>2121</sup> Witness 6, T. 5237, 5239-5240, 5338, 5390.

<sup>2122</sup> Witness 6, T. 5240-5241.

<sup>2123</sup> Witness 6, T. 5341, 5359-5360.

<sup>2124</sup> Witness 6, T. 5206, 5255, 5297-5298; P335 (Decisions signed by Nazmi Brahimaj).

<sup>2125</sup> Witness 6, T. 5239, 5251, 5359-5360.

<sup>2126</sup> Witness 6, T. 5241, 5250-5251.

<sup>2127</sup> Witness 3, T. 7937-7938, 7942-7943, 7945, 7948, 8008-8010; D118 (Photograph of a shack in Jablanica/Jabllanicë that allegedly was used as a prison (view with meadow)).

<sup>2128</sup> Witness 3, T. 7946.

<sup>2129</sup> Witness 3, T. 7947.

<sup>2130</sup> Witness 3, T. 7950, 8028.

<sup>2131</sup> Witness 3, T. 7951, 8028.

<sup>2132</sup> Witness 3, T. 7951, 8010.

<sup>2133</sup> Witness 3, T. 7949, 8017.

<sup>2134</sup> Witness 3, T. 7949-7950, 8018.

<sup>2135</sup> Witness 3, T. 7955, 7957.

<sup>2136</sup> Witness 3, T. 7957-7959, 8019-8020; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj's room).

man tried to follow.<sup>2137</sup> At least ten days later, he returned with Lahi Brahimaj to the KLA staff headquarters in Jablanica/Jabllanicë, and there went to see the man, whose identity he did not know, who was in the same condition as Witness 3 had last seen him.<sup>2138</sup> Brahimaj asked this man whether it was Witness 3 to whom Skender Kuqi had promised DEM 10,000 to help him escape.<sup>2139</sup> The man answered in the negative, while crossing himself.<sup>2140</sup>

420. Branimir Aleksandrić<sup>2141</sup> testified that a body labelled “R-9” was found on 11 September 1998 near the canal, along the external side of the concrete wall where there were bullet markings, together with eight other bodies.<sup>2142</sup> The outer concrete wall showed bullet marking just above body R-9.<sup>2143</sup> ICMP DNA analysis identified the remains labelled R-9 as those of Pal Krasniqi.<sup>2144</sup> An autopsy conducted on the remains on 5 December 2003 found gunshot injuries to the head, trunk and upper limbs.<sup>2145</sup> These multiple gunshot injuries were determined to be the cause of death.<sup>2146</sup> An autopsy conducted on the remains in September 1998 revealed a side-arm bullet entry wound on the left lower jaw; exit wound on the right side of the skull.<sup>2147</sup> The autopsy revealed fractures on both upper arms, the right lower arm and the right thigh; these could not have been caused by a fall.<sup>2148</sup> The degree of decomposition was consistent with a time of death between April and August 1998.<sup>2149</sup> Dominique Lecomte<sup>2150</sup>, concluded that R-9 had been dead for approximately 2-3 months.<sup>2151</sup>

<sup>2137</sup> Witness 3, T. 7957.

<sup>2138</sup> Witness 3, T. 7946, 7962, 8026-8028.

<sup>2139</sup> Witness 3, T. 7962.

<sup>2140</sup> Witness 3, T. 7947-7948, 7962.

<sup>2141</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), p. 1, paras 1, 4, 6, 9, 11-12, 245; Branimir Aleksandrić, T. 6732-6733, 6737; P1113 (Annex A to Branimir Aleksandrić, witness statement, 26 June 2007), p.1; P1114 (Annex B to Branimir Aleksandrić, witness statement, 26 June 2007).

<sup>2142</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), paras 61-62; P414 (Various photographs), p. 20; P416 (Various photographs), p. 3; P418 (Various photographs), p. 18; P645 (Various photographs), p. 2; P649 (Various photographs), p. 2.

<sup>2143</sup> P1260 (Branimir Aleksandrić, witness statement, 26 June 2007), para. 102; P418 (Various photographs), pp. 12, 15; P645 (Various photographs), p. 3.

<sup>2144</sup> Agreed Facts, 26 November 2007, No. 56.

<sup>2145</sup> Agreed Facts, 26 November 2007, Nos 57-58.

<sup>2146</sup> Agreed Facts, 26 November 2007, No. 59.

<sup>2147</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 291; Dušan Dunjić, T. 6844; P668 (Autopsy report R-9), pp. 1-2, 5-6; P670 (Photographs R-9), p. 4.

<sup>2148</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 291; P668 (Autopsy report R-9), pp. 2, 6.

<sup>2149</sup> P618 (Dušan Dunjić, witness statement, 8 June 2007), para. 292.

<sup>2150</sup> P926 (CV of Dominique Lecomte); Dominique Lecomte, T. 8758.

<sup>2151</sup> D166 (Second Expert Report by Lecomte and Vorhauer, 15 June 2007), p. 20; Dominique Lecomte, T. 8769-8782.

421. As referred to above, Witness 6 testified that, around the middle of July 1998, he saw KLA soldiers at the Jablanica/Jabllanicë compound beat Pal Krasniqi with a baseball bat, leaving him in a poor physical state. He further testified that after Pal Krasniqi attempted to escape, KLA soldiers beat him again, leaving him swollen, bloody, spitting blood, and lying on the floor, unable to eat or drink. Witness 3 testified that around early to mid-July 1998, he came to the Jablanica/Jabllanicë compound, where he spent two nights and three days in a room with two other persons, one of whom he did not know. This man, according to Witness 3, was swollen, badly injured, could not move, and relieved himself in the room. Witness 3 further testified that he saw a KLA soldier enter the room several times and beat the man. According to Witness 3, when he returned to the Jablanica/Jabllanicë compound at least 10 days later, he again saw the same man in the same poor condition. Witness 3 stated that he saw the man cross himself. Witness 6 testified that Pal Krasniqi said that he was Catholic. The descriptions of his clothes provided by Witness 3 and Witness 6 are broadly consistent. The Trial Chamber is satisfied that the man about whom Witness 3 testified, and whom he did not know, was Pal Krasniqi. The forensic medical evidence confirms that Pal Krasniqi had suffered serious physical injuries. The Trial Chamber is satisfied that KLA soldiers caused Pal Krasniqi serious physical suffering and injury. In light of the severity of the beatings, which continued despite Pal Krasniqi's poor physical state, the Trial Chamber is also satisfied that the perpetrators must have intended to cause such suffering and injury. For these reasons, the Trial Chamber concludes that KLA soldiers committed cruel treatment against Pal Krasniqi. Ded Krasniqi testified that Witness 6 had informed him that Pal Krasniqi, while at the Jablanica/Jabllanicë compound, had been beaten and accused of spying for the Serbs. Since this hearsay evidence was not confirmed in Witness 6's own evidence, the Trial Chamber cannot draw a conclusion beyond a reasonable doubt as to the purpose of the beatings. For this reason, the Trial Chamber finds that the alleged crime of torture against Pal Krasniqi has not been proven beyond a reasonable doubt.

422. According to the evidence, Pal Krasniqi was last seen alive, in an improved state of health, on 25 July 1998. Ded Krasniqi testified that sometime in 1998, his brother went to Jablanica/Jabllanicë to inquire about Pal Krasniqi and later told Ded Krasniqi that he had been told by an unidentified person that Pal Krasniqi "went to Pejë". The Trial Chamber has received multiple hearsay evidence from Ded Krasniqi that one day

in mid-August 1998 Dede Deda Krasniqi heard from Pal Krasniqi over the phone that he was in Jablanica/Jabllanicë with a large sum of money. The Trial Chamber has also received hearsay evidence that he failed to show up at a meeting with Dede Deda Krasniqi in Đakovica/Gjakovë on the same day. Ded Krasniqi also testified that KLA commander Alush Agushi told him that Pal Krasniqi had been with Agushi until the first offensive in September 1998. The Trial Chamber does not accept this uncorroborated hearsay evidence, which is contradicted by the evidence of the forensic experts, none of whom considered it possible that Pal Krasniqi died so shortly before his body was found at the Radonjić/Radoniq canal. The evidence does not establish that Pal Krasniqi ever left KLA custody. Witness 6's description of Pal Krasniqi's clothes while he was at the Jablanica/Jabllanicë compound matches those found on his remains. Considering also the severe mistreatment of Pal Krasniqi by KLA men, in whose hands he was last seen, the Trial Chamber is convinced beyond a reasonable doubt that Pal Krasniqi was murdered in KLA custody.

423. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that Pal Krasniqi was not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

424. All three Accused are charged with Count 32 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability in section 7, below.

#### *6.17.2 Cruel treatment, torture, and murder of Skender Kuqi*

425. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment, torture and murder of Skender Kuqi in violation of the laws or customs of war. Ramush Haradinaj is charged, in the alternative, with aiding and abetting the commission of the crimes committed against Skender Kuqi. The Trial Chamber has heard relevant evidence from a number of witnesses.

426. Qerim Kuqi, an Albanian, testified that his cousin, Skender Kuqi, lived in Ljutoglava/Ljutoglava in 1998.<sup>2152</sup> Skender Kuqi owned a shop in nearby Zahać/Zahaq.<sup>2153</sup> In July 1998, the witness visited Skender Kuqi at his shop.<sup>2154</sup> Ten

<sup>2152</sup> Qerim Kuqi, T. 9988-9990.

<sup>2153</sup> Qerim Kuqi, T. 9990; D32 (Map of Locations Relevant to Indictment).

minutes after the witness's arrival, two men arrived at the shop by car.<sup>2155</sup> The men were wearing military-style camouflage jackets without insignia.<sup>2156</sup> They wore red and black masks and were armed with automatic weapons.<sup>2157</sup> The men entered the shop, shouting in Serbian.<sup>2158</sup> The men pointed their guns at the witness and searched his pockets.<sup>2159</sup> The men took Skender Kuqi out of the shop to the garage, where Skender Kuqi's car, a Mercedes, was.<sup>2160</sup> Three minutes after they had come, the men left with Skender Kuqi, in Skender Kuqi's car and the car they had arrived in.<sup>2161</sup> Skender Kuqi was driving his own car, accompanied by one of the men.<sup>2162</sup> The witness saw the two cars travelling together, in the direction of Klina/Klinë, one after the other.<sup>2163</sup> The witness never saw Skender Kuqi again.<sup>2164</sup> The witness later told Adem Kuqi, Skender Kuqi's brother, what had happened.<sup>2165</sup> In 1998, Adem Kuqi was an unemployed police officer, dismissed by the Serbian police.<sup>2166</sup> Some weeks after these events, Adem Kuqi told the witness that Skender Kuqi had died, although he mentioned nothing about the circumstances of his death.<sup>2167</sup>

427. Witness 6, testified that one day around the middle of July 1998 he was in the yard of the place in Jablanica/Jabllanicë where he was being detained when he saw a Mercedes 190 of metallic colour arrive, and he also saw individuals whom he did not identify take an obese man out of the boot of the car.<sup>2168</sup> Witness 6 heard from Pal Krasniqi that the man was a Muslim Albanian from Zahać/Zahaq, in Peć/Pejë municipality.<sup>2169</sup> Witness 6 testified that he saw KLA soldiers beat the man.<sup>2170</sup> Witness 6 brought food and water to the room in which the man unknown to him was held.<sup>2171</sup> The man was in a bad physical condition, lying on the floor, his body swollen, and his

<sup>2154</sup> Qerim Kuqi, T. 9991.

<sup>2155</sup> Qerim Kuqi, T. 9991, 9997.

<sup>2156</sup> Qerim Kuqi, T. 9997, 10003.

<sup>2157</sup> Qerim Kuqi, T. 9998-9999.

<sup>2158</sup> Qerim Kuqi, T. 9998-9999.

<sup>2159</sup> Qerim Kuqi, T. 9999-10000.

<sup>2160</sup> Qerim Kuqi, T. 9999-10001, 10005.

<sup>2161</sup> Qerim Kuqi, T. 10000-10001.

<sup>2162</sup> Qerim Kuqi, T. 10001.

<sup>2163</sup> Qerim Kuqi, T. 10002.

<sup>2164</sup> Qerim Kuqi, T. 9990, 10005.

<sup>2165</sup> Qerim Kuqi, T. 9990, 10004.

<sup>2166</sup> Qerim Kuqi, T. 9990.

<sup>2167</sup> Qerim Kuqi, T. 10004-10005.

<sup>2168</sup> Witness 6, T. 5206, 5231-5232, 5252-5255, 5293, 5297-5298, 5331-5332, 5337, 5386, 5388-5389, 5391.

<sup>2169</sup> Witness 6, T. 5231, 5331-5333, 5340-5341.

<sup>2170</sup> Witness 6, T. 5231-5232, 5335, 5337-5338.

<sup>2171</sup> Witness 6, T. 5204-5205, 5332-5333, 5335-5337; P332 (Photo of Jablanica/Jabllanicë compound).

eyes closed.<sup>2172</sup> On the same day at around 1 p.m., Witness 6 saw the same man try to escape through a window together with Pal Krasniqi and another man from Grabanica/Grabanicë, in Klina/Klinë municipality.<sup>2173</sup> Hamza Brahimaj and other soldiers caught the man from Zahać/Zahaq and beat him in front of Witness 6.<sup>2174</sup> Witness 6 learned from Gani Brahimaj, who worked at the Jablanica/Jabllanicë facility as a cook, that on the next day individuals whom Witness 6 did not identify sent the man from Zahać/Zahaq for treatment to Glodane/Gllogjan, in Dečani/Deçan municipality, and that he died there.<sup>2175</sup> Witness 6 testified that he did not know a person named Skender Kuqi.<sup>2176</sup>

428. Witness 3<sup>2177</sup> testified that around early-to-mid-July 1998, he came to a room in the KLA staff building in Jablanica/Jabllanicë, where he remained for the next two nights and three days.<sup>2178</sup> There were two other persons detained in the room.<sup>2179</sup> Witness 3 knew one of them as his former teacher Skender Kuqi.<sup>2180</sup> Kuqi had multiple injuries, the right side of his head was blackened, and he was moaning and crying in pain.<sup>2181</sup> He spoke a little with Witness 3 but otherwise had trouble speaking.<sup>2182</sup> Kuqi relieved himself in the room.<sup>2183</sup> At night, all three detainees had their hands tied.<sup>2184</sup> On the second night, a doctor came to check on Kuqi.<sup>2185</sup> Witness 3 once saw Nazmi Brahimaj and Miftar Brahimaj came to the room.<sup>2186</sup> He also saw Naser “Rusi” Brahimaj, a strong and blond man whom he had known for a long time, enter the room repeatedly to beat the other two detainees.<sup>2187</sup> The witness decided to escape and told his two co-detainees that they should follow him if they wished.<sup>2188</sup> Around mid-day, Witness 3 escaped through the window, heard shots being fired, and managed to reach a

<sup>2172</sup> Witness 6, T. 5235, 5332-5333, 5337.

<sup>2173</sup> Witness 6, T. 5236-5238, 5338-5339, 5389-5390.

<sup>2174</sup> Witness 6, T. 5237, 5239-5240, 5338, 5390, 5395.

<sup>2175</sup> Witness 6, T. 5218-5219, 5231, 5233, 5239-5240, 5332, 5341, 5388-5391.

<sup>2176</sup> Witness 6, T. 5368.

<sup>2177</sup> Witness 3, T. 7891-7892, 7894, 7912, 7981-7982, 7985.

<sup>2178</sup> Witness 3, T. 7937-7938, 7942-7943, 7945, 7948, 8008-8010; D118 (Photograph of a shack in Jablanica/Jabllanicë that allegedly was used as a prison (view with meadow)).

<sup>2179</sup> Witness 3, T. 7946.

<sup>2180</sup> Witness 3, T. 7946.

<sup>2181</sup> Witness 3, T. 7946, 7950-7951, 8016-8017.

<sup>2182</sup> Witness 3, T. 7956-7957.

<sup>2183</sup> Witness 3, T. 7951.

<sup>2184</sup> Witness 3, T. 7951, 8010.

<sup>2185</sup> Witness 3, T. 8016-8017.

<sup>2186</sup> Witness 3, T. 7949, 8017.

<sup>2187</sup> Witness 3, T. 7949-7950, 8018.

<sup>2188</sup> Witness 3, T. 7955, 7957.

forest.<sup>2189</sup> He saw Kuqi trying to follow.<sup>2190</sup> After this incident, he never saw Kuqi again.<sup>2191</sup> At least ten days later, Witness 3 returned with Lahi Brahimaj to the KLA staff headquarters in Jablanica/Jabllanicë.<sup>2192</sup> Brahimaj asked the unidentified man whether it was Witness 3 to whom Skender Kuqi had promised DEM 10,000, to help him escape.<sup>2193</sup> The man answered in the negative.<sup>2194</sup>

429. Rrustem Tetaj testified that in July 1998, Imer Jusaj told him that Skender Kuqi had been abducted by the KLA and was being held in Jablanica/Jabllanicë in Đakovica/Gjakovë municipality.<sup>2195</sup> Tetaj contacted Faton Mehmetaj who told him that he needed to get in contact with Ramush Haradinaj.<sup>2196</sup> He then met with Haradinaj, who was unaware of the abduction, and together they went to the local staff of the KLA in Jablanica/Jabllanicë where they met with Nazmi Brahimaj.<sup>2197</sup> Haradinaj told Brahimaj that Skender Kuqi should be released immediately since this was “damaging our cause”.<sup>2198</sup> Brahimaj informed the two that Skender Kuqi had tried to escape and as a result soldiers had injured him slightly, though he would be released as soon as he had recovered.<sup>2199</sup> After three or four days, the witness went back to Jablanica/Jabllanicë, together with a relative of Skender Kuqi, and this time Nazmi Brahimaj told them that Skender Kuqi had been sent to the make-shift hospital in Rznić/Irzniq in Dečani/Deçan municipality.<sup>2200</sup> He added that due to the lack of medical facilities they had not succeeded in saving his life and he had been buried near a forest in Jablanica/Jabllanicë.<sup>2201</sup> Tetaj then assisted in uncovering the grave, at night, in order to take the body back to the family.<sup>2202</sup> The body had been buried without a coffin.<sup>2203</sup>

<sup>2189</sup> Witness 3, T. 7957-7959, 8019-8020; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj’s room).

<sup>2190</sup> Witness 3, T. 7957-7958; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj’s room).

<sup>2191</sup> Witness 3, T. 7962.

<sup>2192</sup> Witness 3, T. 7962, 8015, 8026-8028.

<sup>2193</sup> Witness 3, T. 7962.

<sup>2194</sup> Witness 3, T. 7947-7948, 7962.

<sup>2195</sup> Rrustem Tetaj, T. 3680, 3852-3853.

<sup>2196</sup> Rrustem Tetaj, T. 3680.

<sup>2197</sup> Rrustem Tetaj, T. 3680-3681, 3686, 3778, 3852; P267 (Photo of Jablanica/Jabllanicë, marked by Rrustem Tetaj).

<sup>2198</sup> Rrustem Tetaj, T. 3681-3682, 3778, 3852.

<sup>2199</sup> Rrustem Tetaj, T. 3682.

<sup>2200</sup> Rrustem Tetaj, T. 3682-3683, 3779-3780.

<sup>2201</sup> Rrustem Tetaj, T. 3683, 3686-3688, 3779-3782, 3853; P267 (Photo of Jablanica/Jabllanicë, marked by Rrustem Tetaj).

<sup>2202</sup> Rrustem Tetaj, T. 3684, 3853.

<sup>2203</sup> Rrustem Tetaj, T. 3836-3837.

Tetaj saw that the body was bruised but had no open wounds.<sup>2204</sup> At a later meeting, Nazmi Brahimaj returned a ring and some money that had belonged to Skender Kuqi to the witness, to be given to Kuqi's wife.<sup>2205</sup> Skender Kuqi's car was not returned as it had been damaged.<sup>2206</sup>

430. Sometime in June-August 1998, Haki Shehu, who worked as a doctor in a military hospital in Rznić/Irzniq in Dečani/Deçan municipality, treated Skender Kuqi as a patient.<sup>2207</sup> Persons in military uniform who did not talk to anyone had left him at the door of the hospital.<sup>2208</sup> Haki Shehu noticed that Skender Kuqi was bruised and that his face was a bit swollen.<sup>2209</sup> Skender Kuqi died from total blockage of the kidneys.<sup>2210</sup>

431. Harjit Sandhu, an investigator for the Prosecution,<sup>2211</sup> testified that on 9 March 2004 Genc Kuqi led him and an OMPF team to a grave located in Dubovik cemetery, Dečani/Deçan municipality, which Genc Kuqi indicated was the grave of his father Skender Kuqi.<sup>2212</sup> Harjit Sandhu observed the OMPF team mark the grave "SSA 01", photograph it and its surroundings, and exhume the mortal remains.<sup>2213</sup> They placed the remains in a body bag labelled "SSA 01 01" and brought it with them when they left.<sup>2214</sup> The Prosecution later received from OMPF two autopsy reports marked with the case number "SSA/001B" dated 12 April 2004 and December 2004, and various photos of the cemetery, grave and exhumation.<sup>2215</sup> The OMPF autopsy reports concluded that the mortal remains were those of an adult male between 40 and 60 years old, around 176 centimetres tall, having suffered multiple fractures before or after death, and that the cause of death could not be established.<sup>2216</sup>

<sup>2204</sup> Rrustem Tetaj, T. 3782, 3845-3846.

<sup>2205</sup> Rrustem Tetaj, T. 3854.

<sup>2206</sup> Rrustem Tetaj, T. 3854.

<sup>2207</sup> D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

<sup>2208</sup> D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

<sup>2209</sup> D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

<sup>2210</sup> D59 (Sworn and signed statement by Haki Shehu to UNMIK police, dated 14 October 2002).

<sup>2211</sup> P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 2-4; Harjit Sandhu, T. 10357.

<sup>2212</sup> P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 5-9, 11-12; Harjit Sandhu, T. 10360-10361; 10364.

<sup>2213</sup> P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 11, 13, 17; Harjit Sandhu, T. 10362-10363, 10369; P1219 (OMP Photography and Photo Log for SSA 01).

<sup>2214</sup> P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 13-14; Harjit Sandhu, T. 10363, 10369.

<sup>2215</sup> P1220 (Harjit Sandhu, witness statement, 5 November 2007), paras 15, 17; Harjit Sandhu, T. 10363; P1218 (Autopsy reports for the remains labelled SSA01-001B); P1219 (OMP Photography and Photo Log for SSA 01).

<sup>2216</sup> Harjit Sandhu, T. 10371-10373; P1218 (Autopsy reports for the remains labelled SSA01-001B).

432. Cufë Krasniqi, a KLA commander,<sup>2217</sup> testified that on a certain day he spoke to Skender Kuqi's brother, Adem Kuqi.<sup>2218</sup> Adem Kuqi told the witness that he was looking for his brother, who had been captured by the KLA and who he believed to be in that area.<sup>2219</sup> Cufë Krasniqi told Adem Kuqi that he had no information about his brother, but that he could ask two of his soldiers to help him look for him.<sup>2220</sup> After two weeks, somebody in Čelopek/Qallapek in Peć/Pejë municipality told Cufë Krasniqi that Adem Kuqi had found his brother Skender, but that he was dead.<sup>2221</sup>

433. As referred to above, Qerim Kuqi testified that he last saw Skender Kuqi in July 1998, when armed men took him from his shop in Zahać/Zahaq and drove away with him in his Mercedes car. Witness 6 testified that sometime around the middle of July 1998, he saw a man arrive in the trunk of a Mercedes car at the Jablanica/Jabllanicë compound, and KLA soldiers beat him upon arrival. According to Witness 6, Pal Krasniqi told him that this man was from Zahać/Zahaq. Witness 6 further testified that he later saw the man in a room at the compound in a bad physical condition, lying on the floor, his body swollen, and his eyes closed. Witness 3 testified that around early to mid-July 1998, he came to the Jablanica/Jabllanicë compound where he spent a couple of days in a room with his former teacher Skender Kuqi and another man. Witness 3 testified that Skender Kuqi had multiple injuries, was moaning and crying in pain, had trouble speaking, and relieved himself in the room. Witness 3 further testified that he saw a KLA soldier enter the room several times and beat Skender Kuqi, and that a doctor eventually came to check on him. Witness 6 stated that he saw the man trying to escape, getting caught and then being beaten by KLA soldiers. Witness 6 gave hearsay evidence that the man from Zahać/Zahaq was sent for treatment to Glodane/Gllogjan, where he died. Rrustem Tetaj gave hearsay evidence that Skender Kuqi was sent from the Jablanica/Jabllanicë compound to a hospital in Rznić/Irzniq, where he died. The Trial Chamber is satisfied that the evidence of Witness 6 refers to Skender Kuqi. The Trial Chamber is also satisfied that KLA soldiers caused Skender Kuqi serious physical suffering and injury. In light of the severity of the beatings, which continued despite Skender Kuqi's poor physical state, the Trial Chamber is furthermore satisfied that the perpetrators must have intended to cause such suffering and injury. For these reasons,

<sup>2217</sup> P351 (Cufë Krasniqi, witness statement, 14 June 2007), p. 1, paras 1-2.

<sup>2218</sup> Cufë Krasniqi, T. 5722.

<sup>2219</sup> Cufë Krasniqi, T. 5722-5723.

<sup>2220</sup> Cufë Krasniqi, T. 5723-5724.

<sup>2221</sup> Cufë Krasniqi, T. 5724, 5726.

the Trial Chamber concludes that KLA soldiers committed cruel treatment against Skender Kuqi.

434. According to Witness 17, Skender Kuqi's name was on a list provided to him during a meeting on 12 July 1998 at Din Krasniqi's home in Vranovac/Vranoc. The Trial Chamber discusses the significance of this list in section 7, below. The Trial Chamber cannot draw from this evidence any conclusions as to the purpose of the beatings, and finds that the alleged crime of torture against Skender Kuqi has not been proven beyond a reasonable doubt.

435. The above-mentioned hearsay evidence that Skender Kuqi was sent to a hospital in Rznić/Irzniq and died there is consistent with Dr Haki Shehu's statement to the UNMIK police. That statement suggests that Skender Kuqi was dumped at the entrance of the hospital by military men who did not pause to talk to anyone at the hospital. The doctor found bruises on Skender Kuqi's body and stated that he died from a total blockage of the kidneys. There is no evidence before the Trial Chamber indicating that Skender Kuqi had a prior history of kidney problems. Rrustem Tetaj testified that he was present at an exhumation of Skender Kuqi's body, on which he too observed bruises. Harjit Sandhu testified that in 2004 Genc Kuqi pointed out the grave of his father Skender Kuqi. The OMPF autopsy reports concluded that the body had suffered multiple fractures. On the basis of this evidence, the Trial Chamber is convinced that the conditions to which Skender Kuqi was exposed while in KLA custody, including the severe beatings and the lack of timely care for a man in a visibly poor condition, caused his death. Finally, it is convinced that these acts and omissions were committed with the intent to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death. The Trial Chamber therefore concludes that Skender Kuqi was murdered in KLA custody.

436. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that Skender Kuqi was not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

437. All three Accused are charged with Count 32 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability in section 7, below. Ramush Haradinaj is charged, in the alternative, with aiding and abetting the commission of the murder, cruel treatment, and torture of Skender Kuqi. The Trial

Chamber has received evidence that Ramush Haradinaj was unaware that Skender Kuqi was at the Jablanica/Jabllanicë compound until learning it from Rrustem Tetaj, after which he requested that Skender Kuqi be released. Based on the evidence, the Trial Chamber cannot conclude that Ramush Haradinaj aided and abetted the above-mentioned crimes, and finds that he should be acquitted of aiding and abetting the cruel treatment, torture and murder of Skender Kuqi.

#### *6.17.3 Cruel treatment and torture of Witness 3 and two other men*

438. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment, torture and murder of Witness 3 and two other men in violation of the laws or customs of war. In the alternative, Idriz Balaj and Lahi Brahimaj are charged with the commission of, or planning, instigating, or aiding and abetting the commission of, the crimes against Witness 3. Ramush Haradinaj is charged, in the alternative, with aiding and abetting the commission of the crimes against Witness 3. The Trial Chamber has heard relevant evidence from a number of witnesses.

439. Witness 3 testified that on 21 May 1998 he withdrew with four or five other persons from Grabanica/Grabanicë in Klina/Klinë municipality, after their failed attempt to defend the village against Serbian forces.<sup>2222</sup> Somewhere between Bokšić/Bokshiq and Glogjan/Gllogjan, both in Peć/Pejë municipality, they encountered Lahi Brahimaj and Alush Agushi, a.k.a. “Mal” or “Pip”, the latter from Drenovac/Drenoc in Klina/Klinë municipality.<sup>2223</sup> Witness 3 had met Lahi Brahimaj many times before and knew him well.<sup>2224</sup> Brahimaj and Agushi angrily accused the group of being traitors for leaving their positions.<sup>2225</sup> Witness 3 continued to Glogjan/Gllogjan, where villagers told him that they were under orders from Lahi Brahimaj not to give any help to those retreating from Grabanica/Grabanicë.<sup>2226</sup> Witness 3 then went to Jablanica/Jabllanicë, in Đakovica/Gjakovë municipality.<sup>2227</sup> After approximately one week, Witness 3 left Jablanica/Jabllanicë because he had heard from the villagers at whose house he had been staying that the local KLA staff were

<sup>2222</sup> Witness 3, T. 7916, 7922, 7993.

<sup>2223</sup> Witness 3, T. 7922-7924, 7991-7992.

<sup>2224</sup> Witness 3, T. 7895, 7924, 7976-7977.

<sup>2225</sup> Witness 3, T. 7923-7924, 7989, 7991.

<sup>2226</sup> Witness 3, T. 7924-7925, 7928, 7989, 7992-7993.

<sup>2227</sup> Witness 3, T. 7928, 7993, 8006.

looking for those who had abandoned Grabanica/Grabanicë in order to return them there, and that they required those who sheltered them to hand them over to the staff.<sup>2228</sup>

440. Around early-to-mid-July 1998, Witness 3 was in the house of Tal Zeka in Zabelj/Zhabel, in Đakovica/Gjakovë municipality, when Lahi Brahimaj came looking for him.<sup>2229</sup> Brahimaj told Witness 3 that he had to go with him, and drove away with the witness in a Mercedes car.<sup>2230</sup> The car had “KLA” written on it and an eagle painted on it; villagers of Jablanica/Jabllanicë told Witness 3 that it belonged to Skender Kuqi.<sup>2231</sup> Brahimaj took Witness 3 to a room in the KLA staff building in Jablanica/Jabllanicë, and then left.<sup>2232</sup> A few minutes later, several persons entered the room and beat Witness 3 with baseball bats until he lost consciousness.<sup>2233</sup> Witness 3 was able to see only one of them, who wore a uniform.<sup>2234</sup> Witness 3 remained detained in that room for the next two nights and three days.<sup>2235</sup> There were two other persons detained in the room.<sup>2236</sup> At night, all three detainees had their hands tied.<sup>2237</sup>

441. Witness 3 once saw Nazmi Brahimaj and Miftar Brahimaj when they came to the room where he was detained.<sup>2238</sup> He also saw Naser “Rusi” Brahimaj, whom he had known for a long time, enter the room repeatedly to beat the other two detainees.<sup>2239</sup> At one point, Lahi Brahimaj led Witness 3 to the room next door, which was Brahimaj’s room.<sup>2240</sup> Apart from Brahimaj, there was another man and two women present in the room, all four of them in black uniform.<sup>2241</sup> The two men had “PU” (military police) insignia on their sleeves.<sup>2242</sup> Brahimaj interrogated Witness 3 and accused him of supporting the Serbian police and withholding an automatic weapon.<sup>2243</sup> Brahimaj told the women to “practice” on Witness 3, and they beat him on his hands for 5 to 10

<sup>2228</sup> Witness 3, T. 7929-7930, 7933-7937, 7993, 8006.

<sup>2229</sup> Witness 3, T. 7937-7938, 7942-7943, 8008.

<sup>2230</sup> Witness 3, T. 7943-7944.

<sup>2231</sup> Witness 3, T. 7944, 8029.

<sup>2232</sup> Witness 3, T. 7943, 7945; D118 (Photograph of a shack in Jablanica/Jabllanicë that allegedly was used as a prison (view with meadow)).

<sup>2233</sup> Witness 3, T. 7943, 7945-7946, 7948, 8009.

<sup>2234</sup> Witness 3, T. 7946.

<sup>2235</sup> Witness 3, T. 7945, 7948, 8009-8010.

<sup>2236</sup> Witness 3, T. 7946.

<sup>2237</sup> Witness 3, T. 7951, 8010.

<sup>2238</sup> Witness 3, T. 7949, 8017.

<sup>2239</sup> Witness 3, T. 7949-7950, 8018.

<sup>2240</sup> Witness 3, T. 7951, 7958; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj’s room).

<sup>2241</sup> Witness 3, T. 7952.

<sup>2242</sup> Witness 3, T. 8020.

<sup>2243</sup> Witness 3, T. 7952-7953.

minutes with a telescope.<sup>2244</sup> Brahimaj handed his revolver to Witness 3 and told him to kill himself.<sup>2245</sup> Witness 3 took the revolver and laughed, after which one of the women took it off him and returned it to Brahimaj.<sup>2246</sup> The other man in the room accused Witness 3 of collaborating with the Serbs and threatened to cut his throat.<sup>2247</sup> Someone brought Witness 3 back to his room.<sup>2248</sup> The witness decided to escape and told his two co-detainees that they should follow him if they wished.<sup>2249</sup> Around mid-day, Witness 3 escaped through the window, heard shots being fired, and managed to reach a forest.<sup>2250</sup>

442. Witness 3 wandered from village to village, though people were afraid to help him because they had heard that he was a wanted fugitive.<sup>2251</sup> He returned to Jablanica/Jabllanicë, where he stayed for approximately 10 to 12 days.<sup>2252</sup> He thought it was safe to return to Jablanica/Jabllanicë because a Kalashnikov rifle he had taken from a badly wounded fellow fighter during the battle of Grabanica/Grabanicë, was returned to the rightful owner, so he felt he was no longer in danger.<sup>2253</sup> He thought that the unreturned rifle might have been the reason for his earlier treatment.<sup>2254</sup> He encountered Lahi Brahimaj, who led him at gunpoint to his house, where a woman joined them, and then to a Mercedes car.<sup>2255</sup> Both Lahi Brahimaj and the woman slapped Witness 3 in the face a few times.<sup>2256</sup> They drove to the KLA staff headquarters, and again saw the man unknown to him who had been held in the same room as the witness.<sup>2257</sup> Brahimaj asked this man whether it was Witness 3 that Skender Kuqi had promised DEM 10,000 to help him escape.<sup>2258</sup> The man answered in the negative.<sup>2259</sup> Brahimaj, Witness 3, and the woman then returned to the car, which Brahimaj drove, with Witness 3 sitting next to him and the woman holding a gun to the back of the witness's head.<sup>2260</sup> At one point,

<sup>2244</sup> Witness 3, T. 7953-7954.

<sup>2245</sup> Witness 3, T. 7954.

<sup>2246</sup> Witness 3, T. 7954-7955.

<sup>2247</sup> Witness 3, T. 7955-7956.

<sup>2248</sup> Witness 3, T. 7955.

<sup>2249</sup> Witness 3, T. 7955, 7957.

<sup>2250</sup> Witness 3, T. 7957-7959, 8019-8020; P914 (Photograph on which Witness 3 marked his escape route and Lahi Brahimaj's room).

<sup>2251</sup> Witness 3, T. 7957, 7959-7960, 8010-8011, 8016.

<sup>2252</sup> Witness 3, T. 7960, 7968, 8012, 8015-8016, 8026.

<sup>2253</sup> Witness 3, T. 8003-8005, 8012.

<sup>2254</sup> Witness 3, T. 8012.

<sup>2255</sup> Witness 3, T. 7944-7945, 7961-7962, 8027.

<sup>2256</sup> Witness 3, T. 7962.

<sup>2257</sup> Witness 3, T. 7962, 8026-8028.

<sup>2258</sup> Witness 3, T. 7962.

<sup>2259</sup> Witness 3, T. 7947-7948, 7962.

<sup>2260</sup> Witness 3, T. 7962.

Brahimaj stopped the car and put Witness 3 in the trunk.<sup>2261</sup> Later, he stopped the car again, opened the trunk, pulled out his gun and asked Witness 3 if he should pull the trigger. Witness 3 answered yes, Lahi fired, and Witness 3 saw a flame coming out of the gun, heard a click and felt pain, but then realized that he had not been shot.<sup>2262</sup> Brahimaj shut the boot and drove on.<sup>2263</sup> At around 6 or 7 p.m. they arrived in Glogjan/Gllogjan, in Dečani/Deçan municipality.<sup>2264</sup> Brahimaj took Witness 3 to a house and left.<sup>2265</sup> A man offered food to Witness 3, asked whether he had any relatives in Glogjan/Gllogjan to spend the night with, and then offered him a place to sleep in the house.<sup>2266</sup> At approximately 11 p.m., the man told him that he was free to go, after which Miftar and Naser Brahimaj came and took Witness 3 back to Jablanica/Jabllanicë.<sup>2267</sup> Witness 3 heard a soldier refer to the man at the house in Glogjan/Gllogjan as a commander.<sup>2268</sup>

443. Witness 6 testified that one day around the middle of July 1998, the day after the arrival at Jablanica/Jabllanicë of a man from Zahać/Zahaq, and only two to three hours after the arrival of Pal Krasniqi (see section 6.17.1, above), a third man, from Grabanica/Grabanicë in Klina/Klinë municipality, arrived as well.<sup>2269</sup> Witness 6 took food and water to his room.<sup>2270</sup> Witness 6 testified that the man from Grabanica/Grabanicë was not beaten.<sup>2271</sup> On the same day at around 1 p.m., the man from Grabanica/Grabanicë managed to escape through the window in his room, while the man from Zahać/Zahaq and Pal Krasniqi were caught trying to do the same.<sup>2272</sup>

444. Pekka Haverinen, a Finnish police officer who worked as an ICTY investigator from June 2002 to March 2005,<sup>2273</sup> testified that he showed seven photo boards to Witness 3 during an interview in May 2004.<sup>2274</sup> Witness 3 recognized Lahi Brahimaj

<sup>2261</sup> Witness 3, T. 7962-7963.

<sup>2262</sup> Witness 3, T. 7963, 8029.

<sup>2263</sup> Witness 3, T. 7963.

<sup>2264</sup> Witness 3, T. 7963-7964.

<sup>2265</sup> Witness 3, T. 7964.

<sup>2266</sup> Witness 3, T. 7964-7965.

<sup>2267</sup> Witness 3, T. 7964, 7966-7967.

<sup>2268</sup> Witness 3, T. 7966-7967.

<sup>2269</sup> Witness 6, T. 5206, 5233, 5247-5249, 5252-5255, 5293, 5297-5298, 5331-5332, 5334-5335, 5386, 5388-5389, 5391.

<sup>2270</sup> Witness 6, T. 5204-5205, 5332-5333, 5335-5337; P332 (Photo of Jablanica/Jabllanicë compound).

<sup>2271</sup> Witness 6, T. 5235, 5237, 5336.

<sup>2272</sup> Witness 6, T. 5236-5238, 5338-5339, 5389-5390.

<sup>2273</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 1; Pekka Haverinen, T. 6299-6300.

<sup>2274</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), para. 28, 31.

and Ramush Haradinaj in the photo boards.<sup>2275</sup> Witness 3 marked the numbers indicating Haradinaj's and Brahimaj's pictures and signed the photo boards.<sup>2276</sup>

445. As referred to above, Witness 3 testified that, around early to mid-July 1998, Lahi Brahimaj brought him to a room in the Jablanica/Jabllanicë compound, and then left. Witness 3 further testified that a few minutes later several persons, of whom at least one wore a uniform, entered the room and beat Witness 3 with baseball bats until he lost consciousness. Based on the evidence adduced under Counts 27-32 and the ability of these persons to gain access at that time to that room at the Jablanica/Jabllanicë compound, the Trial Chamber is satisfied that they were KLA soldiers or persons affiliated with the KLA. Witness 6, who was at the same compound at the same time, testified that a man from Grabanica/Grabanicë arrived, and that he was the only person out of three to escape. This evidence is consistent with Witness 3's account of what happened to him. The Trial Chamber is therefore satisfied that Witness 6's evidence refers to Witness 3. However, Witness 6 also testified that Witness 3 was not beaten, which appears to contradict the evidence of Witness 3. The Trial Chamber considers both Witness 3 and Witness 6 to be credible witnesses. Witness 6 appears to have had little, if any, direct contact with Witness 3. The evidence does not indicate that Witness 6 saw the initial beating of Witness 3, or that he entered his room when bringing food and water. It is furthermore not clear that Witness 6 saw Witness 3 as he escaped from his room. The Trial Chamber therefore considers that Witness 6 was not in a position to ascertain whether or not Witness 3 was beaten, and interprets his evidence to mean that he was not aware of Witness 3 being beaten. Consequently, the Trial Chamber adopts the evidence of Witness 3 on this matter.

446. Witness 3 testified that he spent the next two nights and three days in the same room. He further testified that on one occasion Lahi Brahimaj led him to another room in which there were two women and a man, all in black uniform. According to Witness 3, Lahi Brahimaj interrogated him and accused him of supporting the Serbian police and withholding an automatic weapon. Witness 3 further testified that Lahi Brahimaj told the women to "practice" on Witness 3, after which they beat Witness 3 on his hands for

<sup>2275</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 34, 38, Annex 16; Pekka Haverinen, T. 6301.

<sup>2276</sup> P375 (Pekka Haverinen, witness statement, 26 June 2007), paras 34, 38, Annex 21; Pekka Haverinen, T. 6301.

5 to 10 minutes with instruments. Finally, Witness 3 testified that the other man in the room accused him of collaborating with the Serbs and threatened to cut his throat.

447. On the basis of this evidence, the Trial Chamber is satisfied that the beatings caused Witness 3 serious physical suffering, and that the perpetrators intended to cause such suffering. The Trial Chamber is also convinced that the beatings of Witness 3 were aimed at punishing him for withholding a weapon, and discriminating against him on the basis of his perceived ties to Serbs. For these reasons, the Trial Chamber concludes that KLA soldiers or persons affiliated with the KLA committed cruel treatment and torture against Witness 3.

448. The Trial Chamber is furthermore convinced that these crimes were closely related to the armed conflict in Kosovo/Kosova, and that Witness 3 was not taking active part in hostilities at the time the crimes were committed and that the perpetrators knew or should have known that this was the case.

449. Witness 3 testified that, at least ten days after he escaped from the Jablanica/Jabllanicë compound, Lahi Brahimaj found him again and, together with a woman, drove him at gun-point back to the compound, and then to Glodane/Gllogjan. According to Witness 3, sometime after they left Jablanica/Jabllanicë Lahi Brahimaj put him in the trunk of the car, drove on, stopped the car, took him out of the trunk, and fired his gun, giving Witness 3 the impression that he was being executed. The Trial Chamber is satisfied that Witness 3 recognized Lahi Brahimaj, whom he knew well. On the basis of this evidence, the Trial Chamber is also satisfied that Lahi Brahimaj caused serious mental suffering to Witness 3, and intended to do so. Consequently, the Trial Chamber finds that the alleged crime of cruel treatment has been proven beyond a reasonable doubt. On the basis of the evidence the Trial Chamber is not able to identify any purpose relevant to establish that this cruel treatment amounted to torture. Consequently, the Trial Chamber finds that the alleged crime of torture has not been proven beyond a reasonable doubt.

450. All three Accused are charged with Count 32 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability in section 7, below. All three Accused are also charged, in the alternative, with other modes of liability for the crimes against Witness 3. The Trial Chamber has heard no evidence about the alleged involvement of Idriz Balaj in the crimes committed against Witness 3. The Trial Chamber therefore concludes that he should be acquitted of this charge. Ramush

Haradinaj is charged, in the alternative, with aiding and abetting the crimes against Witness 3 alleged in this Count. Even assuming that the commander in Glogjan/Gllogjan about whom Witness 3 testified was Ramush Haradinaj, Witness 3 testified that Ramush Haradinaj treated him well and allowed him to leave after a few hours. Based on the evidence, the Trial Chamber cannot conclude that Ramush Haradinaj aided and abetted the commission of the above-mentioned crimes, and finds that he should be acquitted of aiding and abetting the commission of the cruel treatment and torture of Witness 3.

451. Lahi Brahimaj is charged, in the alternative, with committing, planning, instigating, or aiding and abetting the commission of the crimes against Witness 3 charged in Count 32. The evidence on the beatings and the interrogation establishes, as recalled above, that Lahi Brahimaj brought Witness 3 to a room in the Jablanica/Jabllanicë compound. KLA soldiers or persons affiliated with the KLA shortly afterwards arrived in that room with baseball bats and beat Witness 3. The evidence also establishes that Witness 3 was held in the same room until Lahi Brahimaj took him to another room and interrogated Witness 3 while others beat him. The Trial Chamber finds that Lahi Brahimaj's role in the interrogation establishes his intent, upon Witness 3's arrival at the Jablanica/Jabllanicë compound, to inflict serious physical suffering on Witness 3 for the purposes of punishing him for withholding a weapon and discriminating against him on the basis of his perceived ties to Serbs. For these reasons, the Trial Chamber is convinced beyond a reasonable doubt that Lahi Brahimaj committed the above-mentioned cruel treatment and torture under Count 32. Consequently, the Trial Chamber does not need to address whether Lahi Brahimaj planned, instigated, or aided and abetted the commission of these crimes. In addition, the Trial Chamber has found that Lahi Brahimaj personally placed Witness 3 in the trunk of a car and carried out his mock execution, and concludes that Lahi Brahimaj should be convicted for committing this cruel treatment of Witness 3. Consequently, the Trial Chamber does not need to address whether Lahi Brahimaj planned, instigated, or aided and abetted the commission of this crime.

452. Paragraph 104 of the Indictment alleges that KLA soldiers beat "two unknown prisoners". In light of the evidence adduced under Count 32, this could be an obscure reference to Pal Krasniqi and Skender Kuqi, who have been dealt with above in sections 6.17.1 and 6.17.2, respectively. If instead the "two unknown prisoners" are persons

other than Pal Krasniqi and Skender Kuqi, the Trial Chamber finds that no evidence has been adduced to support the allegation that they were present or beaten, and that consequently all three Accused should be acquitted of all charges concerning these two alleged prisoners.

#### 6.18 Cruel treatment and torture of Naser Lika and others (Count 34)

453. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment and torture of Naser Lika and others with regard to instances in May and July 1998, in violation of the laws or customs of war. In the alternative, Idriz Balaj and Lahi Brahimaj are charged with the commission, planning, or aiding and abetting of the commission of the crimes. Ramush Haradinaj is charged with the ordering, instigating, or aiding and abetting of the commission of the crimes. The Trial Chamber has heard relevant evidence from Fadil Fazliu, Witness 3, and Witness 6. As explained in section 2.2, above, the Trial Chamber has not heard the testimony of Naser Lika.

454. Fadil Fazliu from Grabanica/Grabanicë in Klina/Klinë municipality,<sup>2277</sup> testified that he fled the village with fellow villager Naser Lika in the evening of 20 May 1998 after the end of a Serbian attack that had begun the previous evening.<sup>2278</sup> Fadil Fazliu and Naser Lika arrived at the house of Tal Zeka in Žabelj/Zabel in Đakovica/Gjakovë municipality around 10 or 11 p.m.<sup>2279</sup> On the evening of 22 May 1998, a group of 7-8 KLA soldiers arrived at Tal Zeka's house.<sup>2280</sup> According to Fadil Fazliu these men, including Nazmi Brahimaj and a person referred to as Tahir (the commander of Žabelj/Zabel) first came to speak to those present and sound out their readiness to return to Grabanica/Grabanicë and fight against the Serbs.<sup>2281</sup> A man called Ujku or 'the wolf' was also present and he was the only KLA soldier who was offensive to Fadil Fazliu and Naser Lika.<sup>2282</sup> The next day, 23 May 1998, Ujku returned with Arbnor Zeneli, and again began to insult those present.<sup>2283</sup> Tahir and Arbnor Zeneli rebuked

<sup>2277</sup> Fadil Fazliu, T. 7397; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 1.

<sup>2278</sup> Fadil Fazliu, T. 7413-7415, 7460-7461; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 3-4.

<sup>2279</sup> Fadil Fazliu, T. 7417-7418, 7423; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 4.

<sup>2280</sup> Fadil Fazliu, T. 7423; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 4.

<sup>2281</sup> Fadil Fazliu, T. 7423-7425, 7427-7430; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 4-5.

<sup>2282</sup> Fadil Fazliu, T. 7429, 7464-7465; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 4-6.

<sup>2283</sup> Fadil Fazliu, T. 7430-7431; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 5-6.

Ujku for his conduct towards the men.<sup>2284</sup> Arbnor Zeneli then told those present that they should all go to Jablanica/Jabllanicë in Đakovica/Gjakovë municipality to discuss mobilisation.<sup>2285</sup> After this, Fadil Fazliu and Naser Lika, along with two other persons from their village, Fadil Selmani and Ali Berisha, set off for Jablanica/Jabllanicë with Tahir and some other soldiers.<sup>2286</sup> Fadil Fazliu testified that he went of his own free will and was not forced.<sup>2287</sup> They arrived in Jablanica/Jabllanicë on the afternoon of what may have been 24 May 1998.<sup>2288</sup> The men went into the courtyard of the KLA headquarters in Jablanica/Jabllanicë.<sup>2289</sup> After being offered food, Fadil Fazliu, Naser Lika, and between ten and fifteen others discussed with Lahi and Nazmi Brahimaj the issue of mobilisation and preparations to Counter the Serbian forces.<sup>2290</sup> It was finally concluded that not enough weapons could be obtained, after which Fadil Fazliu, Naser Lika, and the others left the courtyard and found Arbnor Zeneli outside the gates of the headquarters waiting to take them wherever they wanted to go.<sup>2291</sup> Arbnor Zeneli drove Fadil Fazliu and Naser Lika to the house of Haxhi Bajrami, where Fadil Fazliu and Naser Lika parted company.<sup>2292</sup> Fadil Fazliu testified that he had been in the company of Naser Lika from the moment they fled Grabanica/Grabanicë until their arrival at Haxhi Bajrami's house.<sup>2293</sup> Fadil Fazliu stated that he never saw anyone being ill-treated at the Jablanica/Jabllanicë headquarters.<sup>2294</sup> Fadil Fazliu testified that he was certain that Ramush Haradinaj was not present at the Jablanica/Jabllanicë headquarters although he added he would not have recognized him since he did not know him at the time.<sup>2295</sup>

455. Witness 3 testified that he knew Naser Lika and Fadil Fazliu.<sup>2296</sup> At the end of May 1998, Witness 3 was with them in the house of Tal Zeka in Žabelj/Zabel, in Đakovica/Gjakovë municipality.<sup>2297</sup> He testified that "Ujku", Tahir Qorri, and a third

<sup>2284</sup> Fadil Fazliu, T. 7431, 7464-7465; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 5.

<sup>2285</sup> Fadil Fazliu, T. 7430-7432; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 5-6.

<sup>2286</sup> Fadil Fazliu, T. 7431-7432; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

<sup>2287</sup> Fadil Fazliu, T. 7435, 7466-7467; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

<sup>2288</sup> Fadil Fazliu, T. 7439; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

<sup>2289</sup> Fadil Fazliu, T. 7439-7440; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 6.

<sup>2290</sup> Fadil Fazliu, T. 7439-7443; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 6-7.

<sup>2291</sup> Fadil Fazliu, T. 7440, 7442-7443, 7469; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), pp. 7-8.

<sup>2292</sup> Fadil Fazliu, T. 7443, 7470-7471; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 8.

<sup>2293</sup> Fadil Fazliu, T. 7471-7472; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 7.

<sup>2294</sup> Fadil Fazliu, T. 7472-7475; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 8.

<sup>2295</sup> Fadil Fazliu, T. 7476; D155 (Fadil Fazliu, defence witness statement, 15 June 2006), p. 7.

<sup>2296</sup> Witness 3, T. 7930-7931, 7978-7981.

<sup>2297</sup> Witness 3, T. 7931, 7933-7934, 7937-7938, 7993, 8033.

person who might have been Sadri Berisha, came to the house.<sup>2298</sup> Witness 3 saw the three men leading Naser Lika and Fadil Fazliu down the stairs by force, kicking and beating them, while Ujku called them traitors.<sup>2299</sup> All three men were armed and wore uniforms; Ujku wore a black uniform and the two others wore camouflage uniforms.<sup>2300</sup> Witness 3 believed them to be members of the KLA.<sup>2301</sup> Witness 3 testified that he had seen Ujku several times before, that he had heard villagers of Jablanica/Jabllanicë call him by that name, and that he had heard from them that Ujku was a member of the KLA military police.<sup>2302</sup> A few weeks later, Witness 3 met Naser Lika again, who told him that the men had taken him to Jablanica/Jabllanicë and beat him.<sup>2303</sup>

456. Witness 6 testified that he was detained at Jablanica/Jabllanicë between 13 June and 25 July 1998.<sup>2304</sup> He testified that he did not know a person named Naser Lika, did not recognize him when shown a photograph of him by an investigator of the Tribunal, and had never seen the man at Jablanica/Jabllanicë or elsewhere.<sup>2305</sup>

457. As referred to above, the Trial Chamber has heard evidence that in May 1998, Naser Lika and Fadil Fazliu left the house of Tal Zeka in Žabelj/Zhabel along with some KLA soldiers and went to Jablanica/Jabllanicë. Witness 3 testified that he saw the two men being forced down the stairs in Tal Zeka's house while being kicked, beaten, and called traitors by men he believed to be in the KLA. He also testified that a few weeks later, Naser Lika told him that the men had taken him to Jablanica/Jabllanicë where they beat him. The totality of the evidence points to Naser Lika and Fadil Fazliu being present both at Tal Zeka's house in Žabelj/Zhabel, and in Jablanica/Jabllanicë. However, Fadil Fazliu's evidence contradicts Witness 3's to the extent that while Fadil Fazliu confirms that the two men did go to Jablanica/Jabllanicë in the company of KLA soldiers, he states that they went voluntarily and were at no point ill-treated or detained. Therefore, the evidence before the Trial Chamber does not allow for a conclusion beyond a reasonable doubt that in May 1998, Naser Lika and Fadil Fazliu were subjected to cruel treatment and torture.

<sup>2298</sup> Witness 3, T. 7935, 7938-7939, 8007-8008.

<sup>2299</sup> Witness 3, T. 7935, 7938, 7940, 8007, 8032-8033.

<sup>2300</sup> Witness 3, T. 7940.

<sup>2301</sup> Witness 3, T. 7939-7940.

<sup>2302</sup> Witness 3, T. 7938-7939.

<sup>2303</sup> Witness 3, T. 7940-7942.

<sup>2304</sup> Witness 6, T. 5206, 5252-5255, 5293, 5297-5298, 5386.

<sup>2305</sup> Witness 6, T. 5368, 5381-5382, 5392-5394.

458. The Chamber has heard no evidence about the incidents of July 1998, alleged in paragraph 108 under Counts 33 and 34 of the Indictment, and no evidence about the alleged acts of the Accused in relation to these events, as alternatively charged. For these reasons, the Trial Chamber concludes that all three Accused should be acquitted of this count.

**6.19 Rape of Witness 61 and cruel treatment and torture of Witness 1 and Witness 61**  
**(Counts 36 and 37)**

459. All three Accused are charged, as participants in a joint criminal enterprise, with the rape, cruel treatment, and torture of Witness 61 and the cruel treatment and torture of Witness 1 in violation of the laws or customs of war. In the alternative, Idriz Balaj is charged with the commission, or planning of the commission of the crimes. The Trial Chamber has heard relevant evidence from Witness 61, Witness 1, Witness 56, and Roel Versonnen.

460. Witness 61, a Roma woman from Deçan/Dečani municipality,<sup>2306</sup> testified that one day in the summer of 1998, around midnight, a man whom the witness called “Toger” and four other men, all armed and in black uniforms with insignia on their upper arms, came to the witness’s house.<sup>2307</sup> She could not describe the soldiers, because it was dark.<sup>2308</sup> The men asked the witness’s father-in-law where his son was, saying that they needed to ask him about something.<sup>2309</sup> The men then tied the hands of the witness’s husband behind his back and took him and the witness on foot to a one-storey house in Rznić/Irzniq, in Deçan/Dečani municipality.<sup>2310</sup> The house was commonly referred to as the “KLA headquarters” and was located near the road leading to Glogjan/Glođane.<sup>2311</sup> Witness 1 was taken to a well near the house by two men.<sup>2312</sup> Two other persons took Witness 61 to the house.<sup>2313</sup> The witness was directly taken to a room with a table, some chairs, a TV, and a bed.<sup>2314</sup> There was no one in the room

<sup>2306</sup> Witness 61, T. 3970-3972, 4028-4029.

<sup>2307</sup> Witness 61, T. 3977-3985, 3987-3988, 4014-4015, 4032.

<sup>2308</sup> Witness 61, 4043.

<sup>2309</sup> Witness 61, T. 3982, 3984.

<sup>2310</sup> Witness 61, T. 3988, 3990-3991, 4016-4017, 4032-4033.

<sup>2311</sup> Witness 61, T. 3988, 4003, 4016-4022; P269 (Photograph of Rznić/Irzniq marked by Witness 61).

<sup>2312</sup> Witness 61, T. 3991, 4005-4007.

<sup>2313</sup> Witness 61, T. 4006

<sup>2314</sup> Witness 61, T. 3991-3992, 4034.

except “Toger” and the witness.<sup>2315</sup> One of the soldiers that had taken Witness 61 from her home stayed at the door but “Toger” told the soldier to leave, adding that he would call him back if he needed him.<sup>2316</sup> The lights were on and the witness could clearly see the face of “Toger”.<sup>2317</sup> “Toger” had a knife and a pistol which he put on the table.<sup>2318</sup> He asked a guard to bring him a wooden stick, which was also put on the table.<sup>2319</sup> At the table, “Toger” interrogated the witness for approximately half an hour, asking her whether her husband had collaborated with the Serbian police.<sup>2320</sup> Following the interrogation, “Toger” told the witness to go to the bed and undress herself.<sup>2321</sup> He switched off the lights, but the television remained lit; he came to the bed and took off his clothes.<sup>2322</sup> “Toger” then raped the witness several times over the course of approximately one-and-a-half hours.<sup>2323</sup> The witness was afraid that he would kill her.<sup>2324</sup> “Toger” told the witness not to tell her husband what had happened.<sup>2325</sup> After the witness got dressed, “Toger” told her to leave.<sup>2326</sup> Around 3 a.m. the witness went home with her husband.<sup>2327</sup> The husband told the witness that he had been put in a well, with water up to his waist and the lid closed, and kept there until they were both released.<sup>2328</sup> Witness 61 did not see Witness 1 in the well herself.<sup>2329</sup> Witness 61 testified that Witness 1’s clothes were wet from the waist down and that he changed clothes when they arrived home.<sup>2330</sup> When the witness came home, she told her husband and her relatives, who were present, what had happened.<sup>2331</sup> At approximately 5 a.m. the witness’s husband and father-in-law went to the KLA headquarters and reported the incident.<sup>2332</sup> Later, three persons came to the witness’s house and asked her what had happened.<sup>2333</sup> One of them was in KLA uniform, the others in plain clothes.<sup>2334</sup> The

<sup>2315</sup> Witness 61, T. 3991.

<sup>2316</sup> Witness 61, T. 3991, 4041.

<sup>2317</sup> Witness 61, T. 3991, 3993, 4034, 4036-4037.

<sup>2318</sup> Witness 61, T. 3992-3993.

<sup>2319</sup> Witness 61, T. 3993.

<sup>2320</sup> Witness 61, T. 3991-3992, 4034.

<sup>2321</sup> Witness 61, T. 3993.

<sup>2322</sup> Witness 61, T. 3993-3994, 4044-4045, 4047.

<sup>2323</sup> Witness 61, T. 3994-3996.

<sup>2324</sup> Witness 61, T. 3993-3996.

<sup>2325</sup> Witness 61, T. 3996.

<sup>2326</sup> Witness 61, T. 3996.

<sup>2327</sup> Witness 61, T. 3996, 4008, 4045.

<sup>2328</sup> Witness 61, T. 4005-4007.

<sup>2329</sup> Witness 61, T. 4005-4007.

<sup>2330</sup> Witness 61, T. 4007.

<sup>2331</sup> Witness 61, T. 3996, 4046.

<sup>2332</sup> Witness 61, T. 3997, 4007-4008.

<sup>2333</sup> Witness 61, T. 3997-3998.

<sup>2334</sup> Witness 61, T. 3998.

witness stated that one of them was named Shemsedin Ceku.<sup>2335</sup> The witness told them what had happened to her; they left, and then returned and told the witness that they had spoken with Toger who first denied the accusation, but later admitted to them what he had done to her.<sup>2336</sup> About two weeks after this incident, the witness and her family left their village, because of heavy fighting between KLA and Serbian forces.<sup>2337</sup> The witness did not have prior knowledge of the man she called “Toger”, or his real name.<sup>2338</sup> The witness’s husband told her after the incident that he had recognized the man who had come to their house and taken them away, and that his name was “Toger”.<sup>2339</sup> He was also referred to as “Toger” by the four men accompanying him to the house of the witness.<sup>2340</sup> The witness described him as an Albanian-speaking man in his early twenties, with black hair, slightly taller than the witness, who measured 1.58 metres.<sup>2341</sup> Idriz Balaj measured 1.78 metres.<sup>2342</sup> Witness 61 testified that “Toger” had some small bumps or pimples on his cheeks and chin, possibly due to shaving, but the witness did not note anything special on his throat or neck.<sup>2343</sup> Witness 61 saw “Toger” at least once after the incidence.<sup>2344</sup> He was driving a black jeep.<sup>2345</sup> The witness was shown a photo board containing eight photographs including a photograph of the Idriz Balaj, but she did not recognize him.<sup>2346</sup> When the witness saw the Accused Idriz Balaj on television after he had been arrested and brought to The Hague, she thought that he did not look like “Toger” and that Idriz Balaj looked older.<sup>2347</sup> The witness also stated that she would not be able to recognize “Toger” today.<sup>2348</sup>

461. Witness 1 from Dečani/Deçan municipality stated that one day in early August 1998, around midnight, “Toger” and four other men forcibly entered the witness’s house.<sup>2349</sup> The men were armed and all wore black uniforms bearing KLA insignia on

<sup>2335</sup> Witness 61, T. 4050.

<sup>2336</sup> Witness 61, T. 3997-3999.

<sup>2337</sup> Witness 61, T. 3999, 4006.

<sup>2338</sup> Witness 61, T. 3981-3982, 4000-4001, 4005.

<sup>2339</sup> Witness 61, T. 3981-3982, 4003, 4005.

<sup>2340</sup> Witness 61, T. 4001.

<sup>2341</sup> Witness 61, T. 4000, 4061, 4063.

<sup>2342</sup> T. 10519-10520.

<sup>2343</sup> Witness 61, T. 4002-4003, 4044, 4047.

<sup>2344</sup> Witness 61, T. 3999, 4050.

<sup>2345</sup> Witness 61, T. 3999, 4050.

<sup>2346</sup> Witness 61, T. 4048-4049.

<sup>2347</sup> Witness 61, T. 4050-4051.

<sup>2348</sup> Witness 61, T. 4000.

<sup>2349</sup> P1250 (Witness 1, witness statement, 24 August 2002), pp. 1-3; P1251 (Witness 1, witness statement, 16 October 2002), p. 4.

their sleeves and breast pockets.<sup>2350</sup> Two of the men wore masks.<sup>2351</sup> “Toger” ordered Witness 1 and Witness 61 to come with them.<sup>2352</sup> The men tied Witness 1’s hands behind his back and took Witness 1 and Witness 61 by foot to the local KLA headquarters in Rznić/Irzniq.<sup>2353</sup> The KLA headquarters were located in a one story house that belonged to the local school.<sup>2354</sup> The house consisted of two or three rooms.<sup>2355</sup> Upon arrival at the headquarters, “Toger” took Witness 61 inside the house and the two men wearing masks threw Witness 1 into a well in front of the house.<sup>2356</sup> According to the witness he stood up to his neck in the water.<sup>2357</sup> Around 4:00 a.m., Witness 1 and Witness 61 were released and they went home.<sup>2358</sup> On the way home, Witness 61 was crying and told Witness 1 that “Toger” had done something to her while they were inside the house.<sup>2359</sup> When they had arrived home, Witness 61 told Witness 1 that “Toger” had raped her.<sup>2360</sup> Around 5:00 a.m. that same day, the witness went to the local KLA commander, Shemsedin Cekaj, and told him what had happened.<sup>2361</sup> The witness testified that Cekaj consequently called a high ranking KLA officer to complain about the things that had happened to Witness 1 and Witness 61.<sup>2362</sup> The next day, Cekaj and this KLA officer came to collect the witness at his house and took him to the KLA headquarters in Rznić/Irzniq.<sup>2363</sup> There, Witness 1 told Ramush Haradinaj what had happened to him and Witness 61.<sup>2364</sup> Ramush Haradinaj said it was impossible that “Toger” would do such a thing, and Witness 1 was denounced as a liar.<sup>2365</sup> The witness also testified that he told Witness 56 what had happened on the day after the

<sup>2350</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

<sup>2351</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

<sup>2352</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

<sup>2353</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

<sup>2354</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

<sup>2355</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

<sup>2356</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3; P1253 (Witness 1, witness statement, 11 August 2006), para. 7.

<sup>2357</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3.

<sup>2358</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 5.

<sup>2359</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 3; P1252 (Witness 1, witness statement, 28 May 2006), para. 38.

<sup>2360</sup> P1251 (Witness 1, witness statement, 16 October 2002), p. 4; P1252 (Witness 1, witness statement, 28 May 2006), para. 38.

<sup>2361</sup> P1250 (Witness 1, witness statement, 24 August 2002), pp. 3, 5; P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

<sup>2362</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 5; P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

<sup>2363</sup> P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

<sup>2364</sup> P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

<sup>2365</sup> P1251 (Witness 1, witness statement, 16 October 2002), p. 3.

incident.<sup>2366</sup> Around 31 August 1998, Witness 1 and his relatives left their village.<sup>2367</sup> Shemsedin Cekaj testified that he was not aware of this incident and that the first time he heard of it was when he was asked about it by an ICTY investigator.<sup>2368</sup>

462. Witness 1 testified that he had seen “Toger” on several occasions prior and subsequent to this incident in early August.<sup>2369</sup> On 15 and 16 October 2002, Witness 1 was shown a photo board with eight pictures.<sup>2370</sup> The witness stated that he recognized “without any doubt” picture number six as the photo of the man he called “Toger”.<sup>2371</sup> Picture number six is the picture of the Accused Idriz Balaj.<sup>2372</sup>

463. Witness 56 testified that some day in 1998, around 11:00 p.m. four or five armed men came to his house, asked him where his son was, and took his son and daughter-in-law, who were living at his house, to the “headquarters”.<sup>2373</sup> According to the witness, the men were from the KLA.<sup>2374</sup> After they had returned together around 4:00 that evening, his son told Witness 56 that he had been put in a well and that they “did whatever they wanted” to his wife.<sup>2375</sup> Witness 56 noticed that his son’s clothes were wet.<sup>2376</sup> According to Witness 56, his son and daughter-in-law were taken from the house and brought back by car.<sup>2377</sup> Witness 56 heard his daughter-in-law say to his son: “he did to me what he wanted” and “they did to me something, and you know what they did to me”.<sup>2378</sup> Witness 56 also heard his daughter-in-law mention the name “Toger”, but did not provide more information about this.<sup>2379</sup> The morning following the incident, Witness 56 went to see the village KLA commander, Shemsedin Cekaj, but he was asleep.<sup>2380</sup> Some two hours later, Shemsedin Cekaj, and another commander came to Witness 56’s house and spoke to his relatives about what had happened.<sup>2381</sup> Witness

<sup>2366</sup> P1252 (Witness 1, witness statement, 28 May 2006), para. 39.

<sup>2367</sup> P1250 (Witness 1, witness statement, 24 August 2002), p. 2; P1252 (Witness 1, witness statement, 28 May 2006), para. 35.

<sup>2368</sup> Shemsedin Cekaj, T. 4517-4518.

<sup>2369</sup> P1252 (Witness 1, witness statement, 28 May 2006), paras 30-35.

<sup>2370</sup> P1251 (Witness 1, witness statement, 16 October 2002), p. 9, Annex 1.

<sup>2371</sup> P1251 (Witness 1, witness statement, 16 October 2002), p. 9.

<sup>2372</sup> P1251 (Witness 1, witness statement, 16 October 2002), p. 9, Annex 1-2.

<sup>2373</sup> Witness 56, T. 7101-7103, 7111, 7114-7115, 7126, 7128-7129.

<sup>2374</sup> Witness 56, T. 7113.

<sup>2375</sup> Witness 56, T. 7103-7104, 7108-7109, 7111, 7128-7129.

<sup>2376</sup> Witness 56, T. 7111-7112.

<sup>2377</sup> Witness 56, T. 7126-7127.

<sup>2378</sup> Witness 56, T. 7109-7110.

<sup>2379</sup> Witness 56, T. 7108-7109, 7112-7113, 7127.

<sup>2380</sup> Witness 56, T. 7101, 7105-7106.

<sup>2381</sup> Witness 56, T. 7105.

56 was not involved in this conversation.<sup>2382</sup> Witness 56 also testified that his son sometimes dug trenches for the KLA, but did not know whether his son did this voluntarily or not.<sup>2383</sup>

464. Roel Versonnen, an ICTY investigator,<sup>2384</sup> testified that he interviewed Witness 1 on 15 and 16 October 2002.<sup>2385</sup> Versonnen showed Witness 1 a photo board, compiled by his team, containing pictures of eight male individuals.<sup>2386</sup> Other than Versonnen, the only people present at the time were Witness 1 and an interpreter.<sup>2387</sup> Versonnen asked Witness 1 if he could recognize or identify any of the individuals from the photo board.<sup>2388</sup> Versonnen did not ask Witness 1 to look for any specific person, nor did he tell Witness 1 that the suspect may or may not be in the line-up.<sup>2389</sup> Versonnen was standing to the side of Witness 1 when he showed him the photo board.<sup>2390</sup> Witness 1 looked at the photo board and immediately pointed at picture number 6 as being the person he referred to as “Toger”.<sup>2391</sup> Picture number 6 is of the Accused Idriz Balaj.<sup>2392</sup> Versonnen did not remember if Witness 1 gave a description of “Toger”.<sup>2393</sup> Versonnen could not remember seeing the identification guidelines of the Office of the Prosecutor and did not think he was aware of them at the time of the interview with Witness 1.<sup>2394</sup> Versonnen did not ask Witness 1 to sign the photo board.<sup>2395</sup>

465. As referred to above, the Trial Chamber has heard evidence that one night around midnight in the summer of 1998, five armed men in black uniforms with KLA insignia took Witness 61 and Witness 1 from their home to the KLA headquarters in Rznić/Irzniq. There, the witnesses were separated. Witness 1 stated that two of the five armed men put him in a well, where he was left standing in water. Witness 61 testified

<sup>2382</sup> Witness 56, T. 7102, 7105-7106, 7116-7117.

<sup>2383</sup> Witness 56, T. 7113-7114.

<sup>2384</sup> P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 2; Roel Versonnen, T. 10610, 10902.

<sup>2385</sup> P1225 (Roel Versonnen, witness statement, 12 February 2007), paras 8-9; Roel Versonnen, T. 10896.

<sup>2386</sup> P1225 (Roel Versonnen, witness statement, 12 February 2007), paras 6, 12; Roel Versonnen, T. 10896, 10902; P1230 (Photo board shown to Witness 1), p. 2.

<sup>2387</sup> P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 13; Roel Versonnen, T. 10896, 10910.

<sup>2388</sup> P1225 (Roel Versonnen, witness statement, 12 February 2007), paras 12-13; Roel Versonnen, T. 10896.

<sup>2389</sup> P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 13.

<sup>2390</sup> P1225 (Roel Versonnen, witness statement, 12 February 2007), para. 13; Roel Versonnen, T. 10896.

<sup>2391</sup> Roel Versonnen, T. 10897-10899.

<sup>2392</sup> Roel Versonnen, T. 10900; P1230 (Photo board shown to Witness 1), pp. 1-2.

<sup>2393</sup> Roel Versonnen, T. 10908.

<sup>2394</sup> Roel Versonnen, T. 10905-10906.

<sup>2395</sup> Roel Versonnen, T. 10906-10907.

that two of the others took her into a room, where she was left alone with a man who interrogated her for about half an hour about whether her husband had collaborated with the Serbian police. This man placed several weapons on a table and then repeatedly subjected her to sexual penetration in the course of about one and a half hours. Witness 61 feared that he would kill her. Witness 61 and Witness 1 returned home around 3 to 4 a.m. Witness 61 told Witness 1 about what had happened to her, which Witness 56 overheard. Witness 1 told Witness 61 and Witness 56 that he had been put in a well, and they both noticed that his clothes were wet.

466. On the basis of this evidence, the Trial Chamber is satisfied that a KLA soldier intentionally sexually penetrated Witness 61, knowing that it occurred without her consent. The Trial Chamber is furthermore convinced that this inflicted severe physical and mental suffering upon her and constituted a serious attack on her human dignity. The Trial Chamber therefore concludes that the KLA soldier committed the crimes of rape and cruel treatment against Witness 61. Considering the circumstances under which the rape was committed, in particular that Witness 61 had been interrogated for about half an hour about whether the husband had collaborated with the Serbian police, the Trial Chamber finds that the rape was aimed at punishing and/or intimidating Witness 61. The Trial Chamber therefore concludes that the KLA soldier committed torture against Witness 61. The Trial Chamber is furthermore convinced that the crimes were closely related to the armed conflict in Kosovo/Kosova.

467. The Trial Chamber finds that it is also not established that KLA soldiers, by putting Witness 1 in a well or by any other acts, caused him serious mental or physical suffering or injury, or seriously attacked his human dignity. Consequently, the Trial Chamber is not convinced beyond a reasonable doubt that cruel treatment or torture was committed against Witness 1.

468. All three Accused are charged with Counts 36 and 37 as participants in a joint criminal enterprise. The Trial Chamber will deal with this mode of liability separately in section 7, below. Idriz Balaj is also charged, in the alternative, with having committed or planned the crimes described in Counts 36 and 37.

469. Witness 1 stated that one of the five men who took him and Witness 61 from their house was "Toger", whom Witness 1 knew from before. Witness 61 testified that one of the five men was addressed as "Toger" by the other four. She also testified that after the incident Witness 1 told her that he had recognized one of these men as

“Toger”. The Trial Chamber finds that “Toger” was among the men who took Witness 61 and Witness 1 from their home. Based on the whole of the evidence, the Trial Chamber is convinced that "Toger" is Idriz Balaj.<sup>2396</sup> Witness 61 and Witness 1 both stated that two of the five armed men took Witness 1 to the well. Witness 61 testified that she was taken to a room in a house by two of the other men, while Witness 1 stated that Toger took her to the house. Witness 1 was not in a position to see who brought Witness 61 into the room where she was raped. The Trial Chamber finds that this evidence leaves reasonable doubt as to whether it was Toger or another KLA soldier who raped Witness 61. As she testified that it was too dark for her to see the soldiers who came to her house, it is possible that she confused Toger with someone else. Furthermore, Witness 61 did not recognize Idriz Balaj on an ICTY photo board, and stated, when seeing Idriz Balaj on television in 2005, that he did not look like the man who raped her and that he looked older. She also testified in court that she would no longer be able to recognize the man who raped her. The Trial Chamber concludes that her memory of the perpetrator is either insufficient for the purpose of identification or does not fit the likeness of Idriz Balaj. As for Witness 1, he was not in a position to know who committed the rape. Considering the doubts arising from this evidence, the Trial Chamber will not rely on the hearsay evidence according to which Toger admitted to having raped Witness 61. Based on the evidence, the Trial Chamber cannot conclude beyond a reasonable doubt that the person who raped Witness 61 was Idriz Balaj, or that he planned for anyone else to do so. Consequently, the Trial Chamber concludes that Idriz Balaj should be acquitted of committing or planning the commission of the crimes of rape, cruel treatment, and torture against Witness 61.

<sup>2396</sup> Shemsedin Cekaj, T. 4394; P1213 (Ylber Haskaj, witness statement, 5 November 2007), para. 14; Ylber Haskaj, T. 10339; P371 (Bogdan Tomaš, witness statement, 24 May 2007), para. 26; and other evidence as discussed in the findings on this Count and in section 6.8.

## **7. The Accused's participation in a joint criminal enterprise**

470. The Prosecution has charged all three Accused with participation in a joint criminal enterprise. The objective of this alleged joint criminal enterprise was “to consolidate the total control of the KLA over the Dukagjin Operational Zone by the unlawful removal and mistreatment of Serbian civilians and by 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”.<sup>2397</sup> The objective involved the commission of the crimes charged in the Indictment. The Trial Chamber has found that KLA soldiers committed acts of cruel treatment, torture, rape, and murder as charged in Counts 6, 14, 20, 22 (with regard to the murder of Nuriye and Istref Krasniqi and the murder of Sanije Balaj), 28, 30, 32, 36, and 37 (with regard to Witness 61).

471. The Prosecution has presented little direct evidence with regard to the alleged common criminal objective. Jakup Krasniqi, a member of the KLA General Staff in late 1996 or the beginning of 1997 and the KLA spokesperson as of 11 June 1998,<sup>2398</sup> testified that it was never KLA policy to target civilians of any ethnicity.<sup>2399</sup> A KLA policy statement, issued on 29 April 1998, condemned violence directed against the civilian population and persons in captivity.<sup>2400</sup> Krasniqi acknowledged that the KLA stopped people at checkpoints, detained and questioned them, and then released them.<sup>2401</sup> He stated that to the extent that crimes against innocent civilians and non-combatants were committed by individuals within the KLA, these were acts committed by rogue elements, without the knowledge, approval or support of anyone in authority or command.<sup>2402</sup> The witness testified that “collaborators” were killed during battle, at

<sup>2397</sup> Indictment, para. 26.

<sup>2398</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 4, Annex 14 (KLA communiqué in Bujku, 12 June 1998); P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3296, 3298, 3307, 3313, 3355, 3427-3429; Jakup Krasniqi, T. 4953, 4973, 4989, 5022, 5024, 5070, 5072, 5074-5075, 5078.

<sup>2399</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 6; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3329, 3363, 3439-3441, 3443, 3445, 3449; P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 18 (Jakup Krasniqi interview in Koha Ditore, 12 July 1998), p. 4; Jakup Krasniqi, T. 4959-4961.

<sup>2400</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 12 (KLA political statement, 29 April 1998), p. 2.

<sup>2401</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3449; Jakup Krasniqi, T. 5114-5115, 5152-5153.

<sup>2402</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), para. 6; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3440-3441.

the front line, “while they were serving the enemy” but that he knew of no “collaborators” who were executed after arrest.<sup>2403</sup> The witness defined a “collaborator” as a person who was recruited into the Serbian security services, police or military, and so served the Serbian regime.<sup>2404</sup>

472. Two KLA communiqés, dated 13 May 1998 and 13 July 1998, respectively, state that the KLA carried out operations against collaborators during March, April, May, and July 1998.<sup>2405</sup> However, the KLA communiqés do not specify what these operations were.<sup>2406</sup> An earlier commiqué, dated 27 February 1998, described “a series of attacks against forces of the Serbian police and their collaborators” during January and February 1998.<sup>2407</sup> Of the specific attacks mentioned two had been launched against the police, a third had been launched against “a collaborator with the occupier”, and a fourth against “a close collaborator of Arkan”. Krasniqi stressed that KLA communiqés aimed to inform the public of KLA activity, but were also used as propaganda, to boost KLA morale, raise KLA standing, and encourage recruitment.<sup>2408</sup> He testified that although the events described in the communiqés did occur, they exaggerated KLA successes and organizational level, while talking down KLA failures and losses.<sup>2409</sup>

473. The Trial Chamber has heard some evidence about people sought by the KLA being placed on lists which were then distributed within the KLA. Witness 17 testified that on 12 July he attended a meeting at Din Krasniqi’s home in Vranovac/Vranoc in Peć/Pejë municipality, together with, among others, the village commanders of the Barane/Baran valley in Peć/Pejë municipality.<sup>2410</sup> At the meeting, the witness was given a list of persons.<sup>2411</sup> The list, as reproduced in the notes of the witness, included the

<sup>2403</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3321; Jakup Krasniqi, T. 5066, 5115, 5117.

<sup>2404</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 18 (Jakup Krasniqi interview in Koha Ditore, 12 July 1998), p. 4; P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3320, 3326-3327, 3437; Jakup Krasniqi, T. 5060-6062, 5064-5065, 5153.

<sup>2405</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 13 (KLA commiqué in Koha Ditore, 13 May 1998), p. 1, Annex 16 (KLA commiqué in Koha Ditore, 13 July 1998); P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), p. 3350; Jakup Krasniqi, T. 4972.

<sup>2406</sup> P328 (Jakup Krasniqi, witness statement, 24 May 2007), Annex 13 (KLA commiqué in Koha Ditore, 13 May 1998), p. 1, Annex 16 (KLA commiqué in Koha Ditore, 13 July 1998).

<sup>2407</sup> P966 (KLA commiqué in Zéri, 27 February 1998).

<sup>2408</sup> P340 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3339-3341, 3346, 3350, 3353-3354, 3377, 3419-3420; Jakup Krasniqi, T. 4953-4954, 4967-4968, 4980, 5011, 5035.

<sup>2409</sup> P328 (Jakup Krasniqi, *Limaj et al.* transcript, 10-12 February 2005), pp. 3321-3327, 3350-3351, 3420; Jakup Krasniqi, T. 4967-4968, 4978-4980, 5011-5012, 5038, 5044.

<sup>2410</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 56; Witness 17, T. 7583-7586.

<sup>2411</sup> P885 (Witness 17, witness statement, 14 August 2007), paras 57-58; Witness 17, T. 7584.

following names: Zenel (illegible family name), Ali (illegible family name), Mehmet Alia, Tahir Zhukri, Zenun Gashi (together with his son), Zenel Mehmeti, Shekrelet Sadiku (together with his family), “two women collaborators Turjak-Kosturiq”, Misin Berisha “- Roman person, Gllogjan”, and Skënder Sali Kuçi “- Lutogllavë”.<sup>2412</sup> The witness did not know any of the persons on the list.<sup>2413</sup> The Trial Chamber has received evidence about the eventual fate of three of the persons on the list, although no evidence with regard to the remaining eight. Witness 17 did not know from whom he got the list.<sup>2414</sup> He could not remember whether he had received the list orally or in writing.<sup>2415</sup> The witness did understand that the persons were sought for but not by whom, or for what purpose, and he did not enquire.<sup>2416</sup> From this evidence, the Trial Chamber cannot draw conclusions about the purpose of this list, who issued the list and under what authority, about any link between the distribution of the list and the commission of crimes charged in the Indictment, or about any link between the list or any of the Accused.

474. Rrustem Tetaj, a former JNA officer from Donja Luka/Lluka ë Ultë in Deçani/Deçan municipality,<sup>2417</sup> testified that he was aware of many people who had been “blacklisted” by two KLA soldiers called Faton Mehmetaj and Fitneta Ramosaj for not being loyal to the KLA, for sympathizing with the LDK, or for having worked for the Serbian MUP or other similar bodies.<sup>2418</sup> These lists were circulated amongst the KLA village guards in several villages that were sympathetic to the KLA so that they could prevent these people from entering the villages.<sup>2419</sup> The purpose of this was to “compromise” or discredit those who had been “blacklisted”.<sup>2420</sup> Rrustem Tetaj testified that he too had been placed on such a list and had been summoned by Faton Mehmetaj for interrogation in the beginning of May 1998.<sup>2421</sup> Although he felt that the interrogation had been conducted in a threatening manner, he was at no point mistreated

<sup>2412</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 57; P886 (Notes of Witness 17), pp. 13-14

<sup>2413</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 58; Witness 17, T. 7694.

<sup>2414</sup> P885 (Witness 17, witness statement, 14 August 2007), para. 57; Witness 17, T. 7584, 7699.

<sup>2415</sup> Witness 17, T. 7694.

<sup>2416</sup> P885 (Witness 17, witness statement, 14 August 2007), paras 57-58; Witness 17, T. 7696-7697, 7700.

<sup>2417</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 1; Rrustem Tetaj, T. 3604-3605.

<sup>2418</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), paras 14-15, 29; Rrustem Tetaj, T. 3671.

<sup>2419</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 29; Rrustem Tetaj, T. 3863, 3858-3859, 3863.

<sup>2420</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 29; Rrustem Tetaj, T. 3671, 3858-3859.

<sup>2421</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 30.

during the two-hour long questioning.<sup>2422</sup> Rrustem Tetaj did not provide any other examples of persons being placed on such lists.

475. The Trial Chamber considers that the direct evidence before it is insufficient to conclude that there existed a joint criminal enterprise the objective of which was to commit the crimes charged in the Indictment. In the absence of sufficient direct evidence, the possibility remains of inferring from circumstantial evidence, principally from evidence on crimes committed by KLA soldiers, that there existed a joint criminal enterprise with the objective to commit such crimes. This must, however, be the only reasonable conclusion on the evidence.<sup>2423</sup> With regard to the murders of Sanije Balaj and Istref and Nuriye Krasniqi the Trial Chamber has, in sections 6.1, 6.12.6, and 6.12.12, above, concluded that there are reasonable alternatives to KLA involvement in the crimes, namely that the three persons were murdered by persons who were not acting under the direction of or in pursuit of the policies of the KLA. In this respect, the Trial Chamber considers, with regard to Sanije Balaj, in particular that Ramush Haradinaj among others insisted on an investigation into her death and that such investigations in fact were undertaken.

476. The crimes in Counts 28, 30, and 32 were all committed in the Jablanica/Jabllanicë compound where the nine victims under these counts were detained. The Trial Chamber has found that KLA soldiers participated in the ill-treatment of the nine detainees and the murder of two of them. At least two of the detainees were released from detention. The Trial Chamber has received evidence about four named men, including Lahi Brahimaj, taking part in the ill-treatment. The Trial Chamber has received no evidence about who decided to establish the detention facility, when such a decision was taken, and for what purpose it was established. The Trial Chamber has received little evidence about the involvement of KLA soldiers from outside Jablanica/Jabllanicë in the events that took place in the compound. A notable exception, described in detail in section 6.17.2, above, is the intervention of Ramush Haradinaj and Rrustem Tetaj in order to have Skender Kuqi released from detention. Although the events in the Jablanica/Jabllanicë compound appear to indicate that crimes committed there were carried out in a systematic way, the evidence before the Trial Chamber is nevertheless insufficient to infer the existence of the common criminal

<sup>2422</sup> P265 (Rrustem Tetaj, witness statement, 17 April 2007), para. 30.

<sup>2423</sup> *Čelebić* Appeal Judgement, para. 458.

objective, shared by the Accused, as alleged by the Prosecution. The commission of the crimes in Counts 6, 14, 20, 28, 30, 32, 36, and 37 occurred over a period of five months in different villages in three municipalities. The Trial Chamber is not able to conclude from the evidence presented on the counts that these crimes were committed by KLA members systematically, pursuant to a single objective.

477. In section 4.2, above, the Trial Chamber has reviewed other evidence with relevance for the question of the existence of a joint criminal enterprise, in particular about Serbs leaving their homes during the indictment period. However, in the mentioned section, the Trial Chamber concluded that, in addition to those who fled out of fear, grounded or not, of being attacked by the KLA there were also those who fled out of general fear of being caught up in the armed conflict between Serbian forces and the KLA. The Trial Chamber could not draw any general conclusion with regard to the alleged attack against a civilian population from this evidence. Neither does this evidence allow the Trial Chamber to infer a common criminal objective, as alleged by the Prosecution.

478. The Trial Chamber cannot conclude from the direct and circumstantial evidence referred to above that the KLA had an objective to unlawfully remove and mistreat Serbian civilians or mistreat 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. The Trial Chamber is therefore not satisfied beyond a reasonable doubt of the existence of a joint criminal enterprise, as charged, in which the three Accused participated. The Trial Chamber concludes that all three Accused should be acquitted on Counts 6, 14, 20, 22 (with regard to the murder of Nurije and Istref Krasniqi and the murder of Sanije Balaj), 30, 36, and 37. In addition, Ramush Haradinaj and Idriz Balaj should be acquitted on Counts 28 and 32. Lahi Brahimaj will not be held responsible under Counts 28 and 32 as a participant in a joint criminal enterprise. The Trial Chamber has dealt with the alternative modes of liability for him for the mentioned counts in sections 6.15 and 6.17.3, above.

## **8. Cumulative convictions**

479. The Trial Chamber has concluded that Lahi Brahimaj should be convicted of charges under Counts 28 and 32 since the elements of crimes of cruel treatment and torture have been met. However, it is permissible to enter cumulative convictions under different statutory provisions to punish the same criminal conduct only if “each statutory provision involved has a materially distinct element not contained in the other”, and an element is materially distinct “if it requires proof of a fact not required by the other statutory provision”.<sup>2424</sup> When this test is not met, the conviction on the more specific provision will be entered.<sup>2425</sup> The more specific offence subsumes the less specific one because the commission of the former necessarily entails the commission of the latter.<sup>2426</sup>

480. The elements of each of the two offences of torture and cruel treatment have been analysed in section 5.1.2, above. Both offences require that the victim must have suffered serious bodily or mental harm, this harm must be a result of an act or omission, and the perpetrator’s act must have been intentional. The offence of torture has an additional element in that the act or omission must have been carried out with a specific purpose such as 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. The offence of cruel treatment does not demand the additional proof of an element above those required for the offence of torture. Therefore, where the offences of torture and cruel treatment arise out of the same criminal conduct of the Accused, the Trial Chamber will enter a conviction only in respect of the charge of torture.

481. In the instant case, the Trial Chamber is convinced that Lahi Brahimaj has committed the crimes of cruel treatment and torture as charged under Counts 28 and 32. Under Count 28 this originated from the same criminal conduct and therefore the Trial Chamber will enter a conviction for torture only. However, under Count 32 the Trial Chamber found two incidents of criminal conduct which were separate in time and

<sup>2424</sup> *Čelebić* Appeal Judgement, para. 412; *Jelisić* Appeal Judgement, para. 78; *Kupreškić et al.* Appeal Judgement, para. 387; *Kunarac et al.* Appeal Judgement, paras 168, 173; *Krstić* Appeal Judgement, para. 218; *Stakić* Appeal Judgement, para. 355; *Naletilić and Martinović* Appeal Judgement, para. 584; *Galić* Appeal Judgement, para. 163.

<sup>2425</sup> *Čelebić* Appeal Judgement, para. 413; *Jelisić* Appeal Judgement, para. 79; *Kupreškić et al.* Appeal Judgement, para. 387; *Kunarac et al.* Appeal Judgement, para. 168; *Krstić* Appeal Judgement, para. 218; *Stakić* Appeal Judgement, para. 355; *Galić* Appeal Judgement, para. 163.

<sup>2426</sup> *Krstić* Appeal Judgement, para. 218; *Galić* Appeal Judgement, para. 163.

place. For the first one the conduct amounted to both cruel treatment and torture, and therefore, based on the law on cumulative convictions, the Trial Chamber will enter a conviction for torture only. For the second incident, the criminal conduct amounted to cruel treatment only. For this incident the Trial Chamber will enter a conviction for cruel treatment.

## **9. Sentencing**

### 9.1 Law on sentencing

482. The relevant provisions of the Tribunal's Statute and Rules are:

#### *Article 24 of the Statute*

##### *Penalties*

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

#### *Rule 101*

##### *Penalties*

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:
- (i) any aggravating circumstances;
  - (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
  - (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
  - (iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.
- (C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

483. The following factors have to be taken into consideration when imposing a sentence: (i) the gravity of the offences or the totality of the culpable conduct; (ii) the individual circumstances of the convicted person, including mitigating circumstances; (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia; (iv) the credit to be given for the period in detention, if any, pending surrender to the Tribunal or pending trial or appeal; and (v) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served.<sup>2427</sup> The last factor is not applicable in this case.

## 9.2 Purpose of sentencing

484. The case law of the Tribunal indicates that the two primary purposes of sentencing are retribution and deterrence.<sup>2428</sup>

485. As a form of retribution, the sentence expresses society's condemnation of the criminal act and of the person who committed it.<sup>2429</sup> To fulfil the objective of retribution, the Trial Chamber must therefore impose a sentence which properly reflects the personal culpability of the wrongdoer.<sup>2430</sup> The Trial Chamber considers that this purpose is reflected in the obligation that the Trial Chamber has to take into account the gravity of the offences or the totality of the culpable conduct.

486. Both special and general deterrence are important purposes of sentencing in criminal law.<sup>2431</sup> The rationale of special deterrence is to dissuade the wrongdoer from recidivism in the future, whereas general deterrence aims at discouraging others from committing similar crimes.<sup>2432</sup> In the present case, and considering the circumstances in which the crimes were committed, the Trial Chamber considers that the risk that Lahi Brahimaj would commit the same kinds of crime in the future is small, which considerably reduces the relevance of special deterrence.

487. As far as general deterrence is concerned, persons who believe themselves to be beyond the reach of international criminal law must be warned that they have to abide

<sup>2427</sup> *Blaškić* Appeal Judgement, para. 679.

<sup>2428</sup> *Aleksovski* Appeal Judgement, para. 185; *Čelebići* Appeal Judgement, para. 806; *Stakić* Appeal Judgement, para. 402.

<sup>2429</sup> *Jokić* Trial Sentencing Judgement, para. 31; *Mrđa* Sentencing Judgement, para. 14.

<sup>2430</sup> *Kordić and Čerkez* Appeal Judgement, para. 1075.

<sup>2431</sup> *Kordić and Čerkez* Appeal Judgement, para. 1076.

by the norms underpinned by substantive criminal law or face prosecution and, if convicted, sanctions.<sup>2433</sup> The Trial Chamber considers that an appropriate sentence for the Accused in this case essentially contributes to achieving a general deterrent effect.

488. Rehabilitation is also considered to be a relevant, though less important, purpose of sentencing.<sup>2434</sup>

### 9.3 Sentencing Factors

#### *9.3.1 Gravity of the offences and the totality of the culpable conduct*

489. The gravity of the offences is the primary consideration in imposing a sentence.<sup>2435</sup> The Trial Chamber finds it appropriate to consider the gravity of the offences that the Accused has committed together with other aggravating circumstances, since a separate examination of these aspects would be an artificial exercise.<sup>2436</sup> By taking this approach, the Trial Chamber avoids the pitfall that a specific factor will be counted twice for sentencing purposes, which is impermissible according to the Appeals Chamber.<sup>2437</sup> Determining the gravity of the crime to impose an appropriate sentence requires consideration of the particular circumstances of the case, as well as the form and degree of the participation of the convicted person in the crime.<sup>2438</sup> Aggravating circumstances must be directly related to the charged offence.<sup>2439</sup> A Trial Chamber has the discretion to find that direct responsibility, under Article 7 (1) of the Statute, is aggravated by a perpetrator's position of authority.<sup>2440</sup> Only factors which have been

<sup>2432</sup> *Kordić and Čerkez* Appeal Judgement, paras 1077-1078; *Dragan Nikolić* Appeal Sentencing Judgement, para. 45.

<sup>2433</sup> *Kordić and Čerkez* Appeal Judgement, para. 1078.

<sup>2434</sup> *Čelebići* Appeal Judgement, para. 806; *Kordić and Čerkez* Appeal Judgement, para. 1079; *Stakić* Appeal Judgement, para. 402.

<sup>2435</sup> *Aleksovski* Appeal Judgement, para. 182; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442; *Blaškić* Appeal Judgement, para. 683; *Momir Nikolić* Appeal Sentencing Judgement, para. 11; *Galić* Appeal Judgement, para. 442.

<sup>2436</sup> *Bralo* Sentencing Judgement, para. 27; *Krajišnik* Trial Judgement, para. 1139.

<sup>2437</sup> *Deronjić* Appeal Sentencing Judgement, paras 106-107; *Limaj* Appeal Judgement, para. 143.

<sup>2438</sup> *Aleksovski* Appeal Judgement, para. 182; *Furundžija* Appeal Judgement, para. 249; *Čelebići* Appeal Judgement, para. 731; *Jelisić* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 683; *Kordić and Čerkez* Appeal Judgement, para. 1061; *Dragan Nikolić* Appeal Sentencing Judgement, para. 18; *Babić* Appeal Sentencing Judgement, para. 39; *Galić* Appeal Judgement, para. 409.

<sup>2439</sup> *Stakić* Trial Judgement, para 911.

<sup>2440</sup> *Aleksovski* Appeal Judgement, para. 183; *Čelebići* Appeal Judgement, para. 745; *Kupreškić et al.* Appeal Judgement, para. 451; *Blaškić* Appeal Judgement, paras 90-91; *Naletilić and Martinović* Appeal Judgement, para. 613.

proven beyond a reasonable doubt will be taken into consideration as aggravating circumstances.<sup>2441</sup>

490. The Trial Chamber has heard evidence that Lahi Brahimaj personally participated in the recurring beatings of Witness 6 over a period of approximately four weeks. On occasions, Lahi Brahimaj was present while other soldiers carried out the beatings. In addition, Lahi Brahimaj personally brought another victim, Witness 3, from a house in Zabelj/Zhabel and subsequently confined him to a room in the Jablanica/Jabllanicë compound. Shortly after Lahi Brahimaj had left the room, several men entered and beat Witness 3 with baseball bats to the point that he lost consciousness. Lahi Brahimaj later took Witness 3 to a room where he personally interrogated him in presence of other individuals. Lahi Brahimaj then called on two women who were present in the room to “practice” on Witness 3. The two individuals beat the hands of Witness 3 for five to ten minutes using a telescopic instrument. During this episode, Lahi Brahimaj handed Witness 3 a revolver and encouraged him to take his own life. Another individual present in the room threatened to cut the victim’s throat. During a separate and subsequent incident, Lahi Brahimaj held up Witness 3 at gunpoint and drove him to his house where they were joined by a woman. Lahi Brahimaj and that individual, after slapping the victim, forced him into a car and drove off. During part of the car ride, Lahi Brahimaj drove the car while the woman held a gun to the victim’s head. At some point Lahi Brahimaj stopped the car and put Witness 3 in the trunk of the car. Later on, Lahi Brahimaj opened the trunk of the car, pulled out his weapon and asked Witness 3 whether he should pull the trigger. When Witness 3 answered in the affirmative, he fired his weapon. Witness 3 briefly thought that he had been shot, but soon realized that he had not. In sections 6.15 and 6.17.3, above, the Trial Chamber has found that Lahi Brahimaj should be convicted of two charges of torture and one charge of cruel treatment.

491. Lahi Brahimaj has held high-ranking positions in the KLA. Not only was he a member of the KLA General Staff, but for some time in June and early July 1998 he was also Deputy Commander of the Dukagjin Operational Staff.<sup>2442</sup> These positions of authority, although he was not the Deputy Commander when most of the crimes were

<sup>2441</sup> *Čelebić* Appeal Judgement, para. 763.

<sup>2442</sup> Jakup Krasniqi T. 5009, 5055-5056, 5070, 5075, 5077-5078, 5138, 5140-5141; Rrustem Tetaj T. 3657-3658, 3661, 3744; P141 (Minutes of meeting of Dukagjin staff of 23 June 1998), pp. 6-8; P142 (Elaborate minutes of meeting of Dukagjin staff of 23 June 1998), p. 3.

committed, are considered as aggravating factors. The Trial Chamber also exercises its discretion in this respect because Brahimaj committed the crimes in the presence of lower ranking KLA soldiers and was present when other soldiers behaved similarly. The Trial Chamber finds that this cannot but have had an encouraging effect on the soldiers to commit or continue to commit such crimes. High-ranking officials should be the first to refrain from the commission of crimes in order to prevent others from seeing this behaviour as permissible and imitating it.

492. The Trial Chamber has considered the special vulnerability of Witness 3 and Witness 6 who were held in confinement.<sup>2443</sup> They were not only deprived of their liberty but also detained under such conditions that left them at the complete mercy of their captors in Jablanica/Jabllanicë. Finally, the Trial Chamber has considered the physical and mental trauma suffered and still being felt by the two victims.<sup>2444</sup> Witness 6 testified how he saw the beating of Skender Kuqi and later learned that Kuqi had been sent for treatment in Glogjan/Glođane where he died. To learn about this fate of another detainee while remaining in detention and having been subjected to ill-treatment himself, must have added to Witness 6's fear for his life. Witness 6 also gave evidence about chronic pain all over his body and his inability to perform physical work, all as a result of the treatment he endured at Jablanica/Jabllanicë. At the time of his testimony in 2007, Witness 6 was still taking medication for the injuries inflicted on him nearly a decade earlier.

493. The Trial Chamber has concluded that Lahi Brahimaj should be convicted of two instances of torture and one instance of cruel treatment. The Trial Chamber has considered the inherent seriousness of these crimes and that Lahi Brahimaj, who held high-ranking positions in the KLA, participated directly in the commission of them. The Trial Chamber has also considered the vulnerability of the victims and the physical and mental trauma suffered by them. All these factors make up the gravity of the offence and the totality of the conduct in this case.

<sup>2443</sup> See *Kunarac et al.* Appeal Judgement, para. 352; *Blaškić* Appeal Judgement, para. 683; *Deronjić* Appeal Sentencing Judgement, para. 124.

<sup>2444</sup> *Vasiljević* Appeal Judgement, para. 167; *Blaškić* Appeal Judgement, para. 683.

### 9.3.2 Individual circumstances of Lahi Brahimaj

494. The acknowledgement and application of mitigating circumstances does not diminish the gravity of the crime.<sup>2445</sup> Such factors only need to be proven by the balance of probabilities.<sup>2446</sup> The only mitigating factor specifically mentioned in the Rules is the “substantial cooperation with the Prosecutor by the convicted person before or after conviction”.<sup>2447</sup> Other mitigating factors include: voluntary surrender;<sup>2448</sup> good character, including no prior criminal record;<sup>2449</sup> comportment in detention;<sup>2450</sup> personal and family circumstances;<sup>2451</sup> and age.<sup>2452</sup> Voluntary surrender constitutes a mitigating factor since it presents considerable benefits to the international community and because it may encourage other accused persons to surrender in the future.<sup>2453</sup> Even well-documented good behaviour in detention does not weigh significantly in favour of mitigation.<sup>2454</sup> An accused person’s young age at the time of the commission of the crimes may cautiously be taken into account as a mitigating factor.<sup>2455</sup> Generally, accused persons 25 years old at the time of the commission of their crimes will not have their age considered a mitigating factor.<sup>2456</sup>

495. The Brahimaj Defence did not raise any argument regarding mitigating factors including any personal circumstances.<sup>2457</sup> Nevertheless, the Trial Chamber will examine information before it to determine whether mitigating circumstances exist. Lahi Brahimaj voluntarily surrendered to the Tribunal immediately upon learning of the

<sup>2445</sup> *Erdemović* Sentencing Judgement, para. 46; *Bralo* Sentencing Judgement, para. 42; *Zelenović* Trial Sentencing Judgement, para. 44.

<sup>2446</sup> *Blaškić* Appeal Judgement, para. 697.

<sup>2447</sup> Rule 101 (B) (ii).

<sup>2448</sup> *Blaškić* Appeal Judgement, para. 696; *Babić* Appeal Sentencing Judgement, para. 43.

<sup>2449</sup> *Kupreškić et al.* Appeal Judgement, para. 459; *Blaškić* Appeal Judgement, para. 696; *Kordić and Čerkez* Appeal Judgement, para. 1090; *Babić* Appeal Sentencing Judgement, para. 43.

<sup>2450</sup> *Blaškić* Appeal Judgement, paras 696, 728; *Kordić and Čerkez* Appeal Judgement, para. 1091; *Babić* Appeal Sentencing Judgement, para. 43; *Blagoje Simić et al.* Appeal Judgement, para. 266.

<sup>2451</sup> *Kunarac et al.* Appeal Judgement, paras 362 and 408; *Blaškić* Appeal Judgement, para. 696; *Kordić and Čerkez* Appeal Judgement, para. 1091; *Babić* Appeal Sentencing Judgement, para. 43; *Simić et al.* Appeal Judgement, para. 266

<sup>2452</sup> *Blaškić* Appeal Judgement, para. 696; *Babić* Appeal Sentencing Judgement, para. 43; *Simić et al.* Appeal Judgement, para. 266.

<sup>2453</sup> *Naletilić and Martinović* Appeal Judgement, para. 600.

<sup>2454</sup> *Momir Nikolić* Sentencing Judgement, para. 168; *Deronjić* Sentencing Judgement, para. 273.

<sup>2455</sup> *Furundžija* Trial Judgement, para. 284; *Jelisić* Trial Judgement, para. 124; *Banović* Sentencing Judgement, paras 75-76; *Orić* Trial Judgement, paras 756-757.

<sup>2456</sup> *Češić* Sentencing Judgement, para. 91; *Mrđa* Sentencing Judgement, para. 93; *Bralo* Sentencing Judgement, paras 47-48; *Orić* Trial Judgement, paras 756-757.

<sup>2457</sup> T. 11195-11197.

Indictment against him.<sup>2458</sup> The Trial Chamber finds this a mitigating factor. Letters of reference were submitted on Lahi Brahimaj's behalf in aid of his requests for provisional release, providing evidence of a few individuals' beliefs as to Lahi Brahimaj's good character.<sup>2459</sup> The content of these letter is of such a general nature that the Trial Chamber is unable to give this any weight in mitigation. Lahi Brahimaj has four children between the age of four and nine.<sup>2460</sup> The Trial Chamber recognizes that the incarceration of any Accused results in hardship for his family, and will therefore take Lahi Brahimaj's family circumstances into account for purposes of mitigation. According to previous decisions taken in this case, Lahi Brahimaj made himself available for an interview with Prosecution investigators, which indicated a degree of co-operation with the Prosecution.<sup>2461</sup> As his voluntary submission for an interview was not substantial, especially as he provided only limited information, it will not weigh in mitigation in this case. In the absence of any documentation regarding Lahi Brahimaj's comportment in the United Nations Detention Unit (UNDU), the Trial Chamber cannot consider this factor. Lahi Brahimaj was 28 years old during the commission of the crimes and 38 years old at the time of this Judgement.<sup>2462</sup> Lahi Brahimaj is not of such an advanced age at the time of this Judgement that incarceration would be harder on him than on others, nor was he so young at the time he committed his crimes that he could be said to have less responsibility than others for his actions.

496. In conclusion, the Trial Chamber has considered Lahi Brahimaj's voluntary surrender to the Tribunal and his family situation as mitigating circumstances.

### *9.3.3 General practice regarding the prison sentences in the courts of the former Yugoslavia*

497. The Trial Chamber is required to consider "the general practice regarding prison sentences in the courts of the former Yugoslavia" in determining the appropriate

<sup>2458</sup> Decision on Motion on Behalf of Lahi Brahimaj for Provisional Release, 14 December 2007, paras 8, 13.

<sup>2459</sup> Further Decision on Lahi Brahimaj's Provisional Release, 3 May 2006, para. 32; Decision on Motion on Behalf of Lahi Brahimaj for Provisional Release, 14 December 2007, para. 8.

<sup>2460</sup> Decision on Motion on Behalf of Lahi Brahimaj for Provisional Release, 14 December 2007, paras 10, 21.

<sup>2461</sup> Decision on Lahi Brahimaj's Interlocutory Appeal Against the Trial Chamber's Decision Denying His Provisional Release, 9 March 2006, paras 12-18; Further Decision on Lahi Brahimaj's Provisional Release, 3 May 2006, para. 31.

<sup>2462</sup> Fourth Amended Indictment, 16 October 2007, para. 11.

penalty. This does not mean that the Trial Chamber is obliged to conform to that practice.<sup>2463</sup> The Tribunal may impose a sentence in excess of that which would be applicable under the relevant law in the former Yugoslavia, and the Appeals Chamber has held that this sentencing practice does not violate the principle of *nulla poena sine lege* because a defendant would have been aware that the crimes for which he or she is indicted constitute serious violations of international humanitarian law, punishable by the most severe of penalties.<sup>2464</sup> Moreover, the Trial Chamber may diverge from the sentencing practice of the former Yugoslavia if this practice is inadequate in light of international law.<sup>2465</sup>

498. Article 24 (1) of the Statute and Rule 101 (B) (iii) of the Rules refer to actual practice in courts of the former Yugoslavia. It is however settled practice within the Tribunal that the sources to be consulted pursuant to these provisions are not limited to case law from the former Yugoslavia, but also include statutory provisions in force in the former Yugoslavia at the time of the commission of the crimes in question.<sup>2466</sup> Criminal law in Kosovo/Kosova during the indictment period, as it pertains to war crimes, was regulated by the Criminal Code, adopted by the SFRY Federal Assembly on 28 September 1976, and in force since 1 July 1977 (“Criminal Code”).<sup>2467</sup> The Code punishes war crimes against civilians, including killings, torture, and inhumane treatment, with a minimum sentence of five years’ imprisonment or the death penalty, or, instead of the death penalty, a prison sentence of 20 years.<sup>2468</sup>

499. The Trial Chamber has taken these factors relating to sentencing practices in the former Yugoslavia into consideration in making its determination of the sentence in this case.

<sup>2463</sup> *Tadić* Appeal Sentencing Judgement, para. 21; *Čelebići* Appeal Judgement, paras 813, 816 and 820; *Jelisić* Appeal Judgement, para. 117; *Kupreškić et al.* Appeal Judgement, para. 418; *Kunarac et al.* Appeal Judgement, paras 347-349; *Krstić* Appeal Judgement, para. 260; *Blaškić* Appeal Judgement, paras 681-682; *Kordić and Čerkez* Appeal Judgement, para. 1085; *Dragan Nikolić* Appeal Sentencing Judgement, paras 17, 69; *Jokić* Appeal Sentencing Judgement, para. 38; *Galić* Appeal Judgement, para. 398.

<sup>2464</sup> *Tadić* Appeal Sentencing Judgement, para. 21; *Čelebići* Appeal Judgement, para. 817; *Krstić* Appeal Judgement, para. 262; *Blaškić* Appeal Judgement, para. 681; *Stakić* Appeal Judgement, para. 398; *Šimić et al.* Appeal Judgement, para. 264.

<sup>2465</sup> *Kunarac et al.* Appeal Judgement, para. 377.

<sup>2466</sup> *Dragan Nikolić* Appeal Sentencing Judgement, para. 85.

<sup>2467</sup> Art. 104 (1) of the Criminal Code.

#### *9.3.4 Credit for the time served in custody*

500. According to Rule 101 (C) credit shall be given to the convicted person for the period during which the convicted person was detained pending surrender to the Tribunal or pending trial. Lahi Brahimaj surrendered and was transferred to the UNDU on 9 March 2005. He has remained in detention since that day, except for a period of provisional release from 21 December 2007 through 4 January 2008. Lahi Brahimaj is therefore entitled to the credit of 1,109 days.

#### 9.4 Determination of sentence

501. The Trial Chamber has considered all the circumstances referred to above and finds that the appropriate sentence in the present case to be a single sentence of 6 years of imprisonment. As mentioned above, Lahi Brahimaj is entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 1,109 days.

<sup>2468</sup> Arts. 38 (2), 142 of the Criminal Code.

## **10. Disposition**

502. The Trial Chamber finds Ramush Haradinaj **NOT GUILTY** on all Counts in the Indictment. Pursuant to Rule 99 (A) of the Rules, the Trial Chamber orders that Ramush Haradinaj be immediately released from the United Nations Detention Unit.

503. The Trial Chamber finds, Judge Höpfel dissenting, Idriz Balaj **NOT GUILTY** on all Counts in the Indictment. Pursuant to Rule 99 (A) of the Rules, the Trial Chamber orders that Idriz Balaj be released from the United Nations Detention Unit after the necessary practical arrangements are made for his transfer to the authorities competent for the enforcement of the sentence he was serving at the time of his transfer to the seat of the Tribunal.

504. The Trial Chamber finds Lahi Brahimaj **GUILTY** of the following charges in the Indictment:

Count 28: Torture as a violation of the laws or customs of war;

Count 32: Torture and cruel treatment as violations of the laws or customs of war;

but finds Lahi Brahimaj **NOT GUILTY** on all other counts in the Indictment.

505. The Chamber hereby sentences Lahi Brahimaj to a single sentence of 6 years of imprisonment. Pursuant to Rule 101 (C) of the Rules, he is entitled to credit for the time spent in detention, which as of the date of this judgement amounts to 1,109 days. Pursuant to Rule 103 (C) of the Rules, Lahi Brahimaj shall remain in the custody of the Tribunal pending the finalization of arrangements for his transfer to the State where he shall serve his sentence.

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

Dated this 3rd day of April 2008  
At The Hague,  
The Netherlands

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Judge Frank Höpfel

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Judge Alphons Orie  
Presiding

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Judge Ole Bjørn Støle

## **11. Partly dissenting opinion of Judge Höpfel on Count 14**

1. In this Judgement, the Trial Chamber found that KLA soldiers had committed the murders of the mother of Witnesses 4 and 19, their sister "S", and their sister "M", as described in section 6.8 of the Judgement. The Trial Chamber also found that Idriz Balaj accompanied sister "S" when, and after, she was recruited into the KLA, and that he was also present when her mother and sister "M" were taken away.

2. While I agree with the Trial Chamber's findings on Count 14 as to the aforementioned points, I respectfully disagree with the majority's finding that there is no evidence to establish that Idriz Balaj knowingly contributed to, or facilitated, the commission of the murder of sister "S". This opinion seeks to explain my dissent.

3. As mentioned above, Idriz Balaj accompanied sister "S" on several occasions when, and after, she was recruited into the KLA in the described manner. He was also present when her mother and sister "M" were taken away. These facts, in my view, establish his substantial assistance in the commission of the three murders. In my opinion, beyond being a mere link in the chain of events of each of the three episodes, his contributions substantially supported the commission of the murders, as bringing the victims into KLA control in this fashion placed them at a direct and serious risk. This risk did materialize, and resulted in their deaths.

4. Witness 4 stated that during the visits to the family, Idriz Balaj took a leading role in all these incidents: "[...] on every occasion when they came, Toger was the number one".<sup>2469</sup> As recalled above in section 6.8, according to credible hearsay accounts of Witnesses 4 and 19, sister "S" took orders from Toger. Witness 4 testified that Toger had threatened to kill sister "S" if she did not obey his orders to kill someone. According to Witness 19, Toger had instructed her to return to the base by a certain time after her second visit. As stated by Witness 4, Toger came looking for sister "S" after her second visit. This means that in addition to the position of superiority that he held in relation to the vulnerable and unarmed family, Idriz Balaj had an especially close relationship with sister "S" that was characterized by his tight and intimidating control over her. Moreover, Idriz Balaj's own belief in his control over her life and death was amply demonstrated by the aforementioned death threat.

<sup>2469</sup> Witness 4, T. 1533-1534.

5. According to Witness 4, sister “S” told him on her second return after her recruitment into the KLA, that she was staying at the KLA headquarters in the old school in Rznić/Irzniq. This is corroborated by Witness 19's testimony that sister “S” had told him that she had to be back at the base by a certain time and by Witness 4's statement that he had accompanied her part of the way toward Rznić/Irzniq. The Trial Chamber has other evidence before it, as set out in section 6.19 above, that establishes Idriz Balaj's presence at the KLA headquarters in Rznić/Irzniq. Given Idriz Balaj's leading role in the harassment of the family, together with his particularly close relationship with and strict control of sister “S”, I find that he was aware that sister “S” would be murdered, and that he was aware that taking sister “S” and tightly controlling her would assist in the commission of this crime. Due to the detailed information which is before the Trial Chamber regarding Idriz Balaj's control over sister “S”, in my view the mens rea for aiding and abetting the murder of sister “S” is established, as opposed to the respective mens rea with respect to the other two victims.

6. I am therefore convinced beyond a reasonable doubt that Idriz Balaj is guilty of aiding and abetting the commission of the murder of sister “S”, which in my view should have resulted in his conviction under Count 14.

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

Dated this 3rd day of April 2008

At The Hague,

The Netherlands

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**Judge Frank Höpfel**

## Appendices

### A. Procedural history

1. *Indictment.* The initial Indictment against Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj was confirmed on 4 March 2005.<sup>2470</sup> On 26 April 2006, the Prosecution sought leave to amend the original Indictment in order to add two new counts and a number of new allegations.<sup>2471</sup> On 25 October 2006, Trial Chamber II confirmed the Amended Indictment.<sup>2472</sup> On the same day, the Prosecution sought leave to further amend the Amended Indictment.<sup>2473</sup> While this motion was pending, the Prosecution sought leave to amend the Amended Indictment and to replace the proposed Second Amended Indictment with a Revised Second Amended Indictment.<sup>2474</sup> On 12 January 2007, Trial Chamber II confirmed the Revised Second Amended Indictment.<sup>2475</sup> The Revised Second Amended Indictment removed Counts 1 and 2 of the Amended Indictment and added the underlying offence of torture to Counts 3, 4, 5, 6, 16, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 35, and 37.<sup>2476</sup> The Accused entered new pleas to all charges contained in these counts at the Pre-Trial Conference on 1 March 2007.<sup>2477</sup> On 13 June 2007, the Prosecution sought leave to amend the Revised Second Amended Indictment.<sup>2478</sup> On 5 September 2007, the Trial Chamber confirmed the Revised Third Amended Indictment.<sup>2479</sup> The amendment concerned the identification of two previously unidentified victims.<sup>2480</sup> Since it did not result in the addition of a new charge against the Accused, there was no need to enter new pleas.<sup>2481</sup> On 28 September 2007, the Prosecution sought leave to amend the Third Amended Indictment.<sup>2482</sup> On 15 October 2007, the Trial Chamber confirmed the Fourth Amended Indictment.<sup>2483</sup> The

<sup>2470</sup> Decision on Review of the Indictment, 4 March 2005.

<sup>2471</sup> Motion for Leave to Amend the Indictment, 26 April 2006.

<sup>2472</sup> Decision on Motion to Amend the Indictment and on Challenges to the Form of the Amended Indictment, 25 October 2006.

<sup>2473</sup> Prosecution Motion Seeking Leave to Amend the Indictment, 25 October 2006.

<sup>2474</sup> Motion Seeking Leave to Amend the Amended Indictment by Substituting a Revised Second Amended Indictment, 10 November 2006.

<sup>2475</sup> Decision on Motion to Amend the Amended Indictment, 12 January 2007.

<sup>2476</sup> Ibid., para. 7.

<sup>2477</sup> T. 265-266.

<sup>2478</sup> Motion Seeking Leave to Amend the Revised Second Amended Indictment, 13 June 2007.

<sup>2479</sup> Decision on Prosecution's Motion Seeking Leave to Amend the Revised Second Amended Indictment, 5 September 2007.

<sup>2480</sup> Ibid., para. 15.

<sup>2481</sup> Ibid., paras 11-15.

<sup>2482</sup> Prosecution's Motion Seeking Leave to Amend the Third Amended Indictment, 28 September 2007.

<sup>2483</sup> Decision on Prosecution's Motion Seeking Leave to Amend the Third Amended Indictment, 15 October 2007.

amendment concerned the identification of a previously unidentified victim.<sup>2484</sup> Since the proposed amendment did not result in the addition of a new charge against the Accused, there was no need to enter new pleas.<sup>2485</sup>

2. *Reduction of the Indictment.* On 6 February 2007, the Trial Chamber invited the Prosecution to reduce the scope of the Indictment.<sup>2486</sup> On 13 February 2007, the Prosecution declined the invitation.<sup>2487</sup> On 22 February 2007, the Trial Chamber decided not to reduce the scope of the Indictment, reasoning that the removal of counts or incidents “may (i) result in an indictment that is no longer reasonably representative of the case as a whole and (ii) may affect the Prosecution’s ability to present evidence on the scope of the alleged widespread or systematic attack and joint criminal enterprise”.<sup>2488</sup>

3. *Arrest, transfer, and initial appearance.* Upon service of the Indictment, Haradinaj, who was the Prime Minister of Kosovo/Kosova within the provisional democratic self-governing institutions under Security Council Resolution 1244 (1990), stepped down and surrendered to the Tribunal. Brahimaj also voluntarily surrendered himself to the Tribunal upon learning of the Indictment. Balaj was serving a term of imprisonment of 13 years following a conviction by a local court for murder in Kosovo. The three Accused were transferred to the seat of the Tribunal on 9 March 2005, and remanded into custody at the United Nations Detention Unit.<sup>2489</sup>

4. On 9 March 2005, the case was assigned to Trial Chamber II of the Tribunal by the Acting President.<sup>2490</sup> The initial appearance of all three Accused was held before Judge Carmel Agius on 14 March 2005.<sup>2491</sup> Each Accused pleaded not guilty to the charges.<sup>2492</sup> The following day, Judge Agius composed a bench of Judges Agius, Hans Hendrik Brydensholt, and Albin Eser, with Judge Brydensholt designated as the Pre-Trial Judge.<sup>2493</sup> On 14 July 2006, after completion of the terms of service of Judges Brydensholt and Eser, Judge Agius designated himself, Judge O-Gon Kwon, and Judge

<sup>2484</sup> Ibid., para. 5.

<sup>2485</sup> Ibid., para. 6.

<sup>2486</sup> Request to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment, 6 February 2007.

<sup>2487</sup> Prosecution’s Response to Trial Chamber’s ‘Request to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment’, 13 February 2007, para. 4.

<sup>2488</sup> Decision Pursuant to Rule 73 bis (D), 22 February 2007, para. 9.

<sup>2489</sup> Order for Detention on Remand, 11 March 2005.

<sup>2490</sup> Order Assigning a Case to a Trial Chamber, 9 March 2005.

<sup>2491</sup> Order Designating Judge for Initial Appearance, 11 March 2005.

<sup>2492</sup> T. 1-51.

<sup>2493</sup> Order Regarding Composition of Trial Chamber and Designating a Pre-Trial Judge, 15 March 2005.

Kimberly Prost as the bench for the pre-trial proceedings, and Judge Kwon as the Pre-Trial Judge.<sup>2494</sup>

5. *Assignment of counsel.* On 31 March 2005, Haradinaj appointed Mr Ben Emmerson, QC, Mr Rodney Dixon, and Mr Michael O'Reilly as his counsel.<sup>2495</sup> On 18 April 2005, the Registrar assigned Mr Gregor Guy-Smith as counsel for Balaj, and Mr Richard Harvey as counsel for Brahimaj.<sup>2496</sup> On 26 July 2006, Mr Paul Troop was assigned as co-counsel to Brahimaj.<sup>2497</sup> On 9 February 2007, Ms Colleen Rohan was assigned as co-counsel to Balaj.<sup>2498</sup>

6. *Assignment of case to Trial Chamber I.* The Acting President, Judge Parker, assigned the case to Trial Chamber I ("the Trial Chamber") on 15 January 2007.<sup>2499</sup> The following day, Judge Alphons Orie appointed himself as Pre-Trial Judge.<sup>2500</sup> On 17 January 2007, Judge Parker assigned *ad litem* judges Frank Höpfel and Ole Bjørn Støle to the case for purposes of pre-trial work.<sup>2501</sup> On 19 January 2007, the President of the Tribunal assigned the same *ad litem* judges to the Trial Chamber for the trial.<sup>2502</sup>

7. *Commencement of trial.* On 24 January 2007, Judge Orie set the pre-trial conference for 1 March 2007 and the start of trial for 5 March 2007.<sup>2503</sup>

8. *Pre-trial briefs.* The Prosecution filed its pre-trial brief on 29 January 2007.<sup>2504</sup> Each Accused filed a pre-trial brief on 12 February 2007.<sup>2505</sup>

9. *Preliminary motions.* On 5 February 2007, the Balaj Defence requested clarification of paragraph 29 of the 12 January 2007 Indictment.<sup>2506</sup> The Trial Chamber found that the Defence had not identified any continuing lack of clarity or uncured

<sup>2494</sup> Order Regarding Composition of Trial Chamber and Designating Pre-Trial Judge, 14 July 2006.

<sup>2495</sup> Power of Attorney, 31 March 2005.

<sup>2496</sup> Decision by the Registrar re: Assignment of Counsel to Balaj, 18 April 2005; Decision by the Registrar re: Assignment of Counsel to Lahi Brahimaj, 19 April 2005.

<sup>2497</sup> Decision by the Registrar re: Assignment of Co-Counsel to Lahi Brahimaj, 26 July 2006.

<sup>2498</sup> Decision by the Registrar re: Assignment of Co-Counsel to Idriz Balaj, 9 February 2007.

<sup>2499</sup> Order Reassigning a Case to a Trial Chamber, 15 January 2007.

<sup>2500</sup> Order Appointing a Pre-Trial Judge, 16 January 2007.

<sup>2501</sup> Order Assigning Ad-Litem Judges for Trial Work, 17 January 2007.

<sup>2502</sup> Order Assigning Ad-Litem Judges to a Case Before a Trial Chamber, 19 January 2007.

<sup>2503</sup> Scheduling Order, 24 January 2007.

<sup>2504</sup> Prosecution's Pre-Trial Brief, 29 January 2007.

<sup>2505</sup> Pre-Trial Brief for Ramush Haradinaj, 12 February 2007; Pre-Trial Brief of Idriz Balaj, 12 February 2007; Pre-Trial Brief on Behalf of Lahi Brahimaj, 12 February 2007.

<sup>2506</sup> Defendant Idriz Balaj's Motion for Clarification of Paragraph 29 of the 12 January 2007 Indictment, 12 April 2007.

defect with the Indictment, which, when read in conjunction with the Prosecution's pre-trial brief, gave sufficient notice of the scope of application of paragraph 29.<sup>2507</sup>

10. *Provisional release motions.* On 16 April 2005, duty Judge Iain Bonomy granted a request by Haradinaj for a 48-hour provisional release.<sup>2508</sup> On 6 June 2005, Trial Chamber II granted provisional release to Haradinaj until ordered to return to the custody of the Tribunal.<sup>2509</sup> Haradinaj was under an obligation to notify UNMIK 24 hours in advance every time he intended to move between Priština/Prishtinë and Glogjan/Gllogjan.<sup>2510</sup> During the first 90 days of his provisional release, Haradinaj was not permitted "to make any public appearances or in any way get involved in any public political activity".<sup>2511</sup> Haradinaj was permitted to "take up administrative or organizational activities in his capacity of the President of the Alliance for the Future of Kosovo", provided that such activities did not conflict with the conditions of provisional release.<sup>2512</sup>

11. On 12 October 2005, Trial Chamber II, having considered further submissions from the Haradinaj Defence, changed this regime to allow Haradinaj to appear in public and engage in political activities, to the extent that UNMIK found them important for "a positive development of the political and security situation in Kosovo".<sup>2513</sup> In response to an appeal by the Prosecution, the Appeals Chamber imposed an additional obligation on UNMIK to both notify the Prosecution and take into account the Prosecution's response before authorizing any political activity.<sup>2514</sup> On 1 February 2007, due to the upcoming trial, the Trial Chamber recalled Haradinaj from provisional release.<sup>2515</sup>

12. On 10 October 2005, Brahimaj Defence requested provisional release.<sup>2516</sup> On 3 November 2005, Trial Chamber II denied the request.<sup>2517</sup> Brahimaj Defence appealed

<sup>2507</sup> Decision on Idriz Balaj's Preliminary Motion Concerning Paragraph 29 of the Indictment, 31 May 2007.

<sup>2508</sup> Decision on Urgent Defence Motion on Behalf of Ramush Haradinaj for Provisional Release, 16 April 2005.

<sup>2509</sup> Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005.

<sup>2510</sup> Ibid., para. 53, sub-para. 6b.

<sup>2511</sup> Ibid., para. 53, sub-para. 5.

<sup>2512</sup> Ibid.

<sup>2513</sup> Decision on Defence Motion on Behalf of Ramush Haradinaj to Request Re-assessment of Conditions of Provisional Release Granted 6 June 2005, 12 October 2005.

<sup>2514</sup> Decision on Ramush Haradinaj's Modified Provisional Release, 10 March 2006, para. 104.

<sup>2515</sup> Order Recalling Ramush Haradinaj from Provisional Release, 2 February 2007.

<sup>2516</sup> Defence Motion on Behalf of Lahi Brahimaj for Provisional Release, 10 October 2005.

<sup>2517</sup> Decision on Lahi Brahimaj's Motion for Provisional Release, 3 November 2005.

and the Appeals Chamber directed the Trial Chamber to reconsider.<sup>2518</sup> On 3 May 2006, the Trial Chamber again denied Brahimaj's request.<sup>2519</sup>

13. On 29 June 2007, the Haradinaj Defence requested temporary provisional release during the Tribunal's summer recess.<sup>2520</sup> On 11 July 2007, the Prosecution objected to this request.<sup>2521</sup> On 16 July 2007, Haradinaj replied.<sup>2522</sup> On 20 July 2007, the Trial Chamber denied the request, arguing that Haradinaj's provisional release would add to an atmosphere in which witnesses felt unsafe to give evidence.<sup>2523</sup>

14. On 3 October 2007, the Haradinaj Defence requested urgent provisional release on compassionate grounds following the death of a close relative of Haradinaj.<sup>2524</sup> On the same day, the Prosecution requested that strict conditions be imposed upon the provisional release.<sup>2525</sup> On 3 October 2007, the Trial Chamber granted the provisional release of Haradinaj from 3 to 7 October 2007.<sup>2526</sup> With the exception of the funeral attendance, Haradinaj was ordered to remain in his home in Glogjan/Gllogjan and avoid any media or political contacts.<sup>2527</sup>

15. On 7 December 2007, the Haradinaj Defence requested Haradinaj's provisional release during the winter court recess.<sup>2528</sup> On 12 December 2007, the Prosecution objected to this request.<sup>2529</sup> On 14 December 2007, the Trial Chamber granted the provisional release of Ramush Haradinaj from 21 December 2007 to 4 January 2008.<sup>2530</sup> The Trial Chamber ordered Haradinaj to remain at his home in Priština/Prishtinë under the supervision of UNMIK at all times, and not to engage in any political activities.<sup>2531</sup> The Trial Chamber further requested UNMIK to report every second day on his

<sup>2518</sup> Decision on Lahi Brahimaj's Interlocutory Appeal Against the Trial Chamber's Decision Denying his Provisional Release, 9 March 2006, paras 30-31.

<sup>2519</sup> Further Decision on Lahi Brahimaj's Motion for Provisional Release, 3 May 2006, paras 42-43.

<sup>2520</sup> Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release, 29 June 2007.

<sup>2521</sup> Prosecution's Response to Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release, 11 July 2007, para. 38.

<sup>2522</sup> Reply on Behalf of Ramush Haradinaj to Prosecution's Response to Defence Motion for Temporary Provisional Release, 16 July 2007.

<sup>2523</sup> Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 20 July 2007, paras 24, 27, 29-30.

<sup>2524</sup> Motion on Behalf of Ramush Haradinaj for Urgent Provisional Release, 3 October 2007.

<sup>2525</sup> Response to Ramush Haradinaj's Motion for Provisional Release, 3 October 2007.

<sup>2526</sup> Decision on Defence Motion on Behalf of Ramush Haradinaj for Urgent Provisional Release, 3 October 2007.

<sup>2527</sup> Ibid.

<sup>2528</sup> Motion on Behalf of Ramush Haradinaj for Temporary Provisional Release, 7 December 2007.

<sup>2529</sup> Prosecution's Response Opposing Haradinaj's Motion for Provisional Release, 12 December 2007.

<sup>2530</sup> Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 14 December 2007.

<sup>2531</sup> Ibid.

compliance with the terms and conditions of the provisional release.<sup>2532</sup> On 4 January 2008, Haradinaj returned to the custody of the UNDU in The Hague.

16. On 7 December 2007, the Brahimaj Defence requested temporary provisional release of Brahimaj on humanitarian grounds during the Tribunal's winter recess.<sup>2533</sup> On 12 December 2007, the Prosecution objected to this request.<sup>2534</sup> On 14 December 2007, the Trial Chamber granted the provisional release of Brahimaj from 21 December 2007 to 4 January 2008.<sup>2535</sup> On 4 January 2008, Brahimaj returned to the custody of the UNDU in The Hague.

17. *Agreement on facts and judicial notice.* On 26 November 2007, the parties filed agreed facts concerning the recovery and identification of bodies, as well as autopsy results.<sup>2536</sup> On 30 November 2007, the parties filed additional agreed facts concerning the chain of custody of certain documents.<sup>2537</sup>

18. *UNMIK.* On 12 January 2007, the Balaj Defence requested that the Trial Chamber order UNMIK to lift Rule 70 constraints over certain documents.<sup>2538</sup> On 31 January 2007, the Prosecution opposed ordering the disclosure of the files without the consent of UNMIK, the Rule 70 provider.<sup>2539</sup> On 12 February 2007, UNMIK responded that it had already consented to the disclosure of approximately half of the files requested by the Balaj Defence and that it was in the process of reassessing whether any additional material could be released.<sup>2540</sup> On 5 April 2007, the Prosecution informed the Trial Chamber that it had discovered three documents in the concerned files which it believed were "potentially exculpatory material".<sup>2541</sup> The Prosecution further informed the Trial Chamber that UNMIK had refused to consent to the disclosure of the requested

<sup>2532</sup> Ibid., pp. 8-9.

<sup>2533</sup> Motion of Lahi Brahimaj for Temporary Provisional Release during Recess Period, 7 December 2007; Lahi Brahimaj's Notice to Lift Confidentiality of His 7 December 2007 Motion, 10 December 2007.

<sup>2534</sup> Prosecution's Response Opposing Lahi Brahimaj's Motion for Provisional Release, 12 December 2007.

<sup>2535</sup> Decision on Motion on Behalf of Lahi Brahimaj for Temporary Provisional Release, 14 December 2007, para. 25.

<sup>2536</sup> Joint Motion on Agreed Facts, 26 November 2007.

<sup>2537</sup> Joint Motion on Additional Agreed Facts, 30 November 2007.

<sup>2538</sup> Submission by the Defence for Idriz Balaj to Request the Chamber to Order UNMIK to lift Rule 70 Constraints over Certain Documents, 12 January 2007.

<sup>2539</sup> Prosecution's Response to Motion by Idriz Balaj for Order to Disclose Material Protected under Rule 70, 31 January 2007.

<sup>2540</sup> Submission by the United Nations Mission in Kosovo (UNMIK) to Motion by Defendant Idriz Balaj Requesting the Chamber to Order UNMIK to Lift Rule 70(B) Confidentiality Measures, 12 February 2007, paras 6-7.

<sup>2541</sup> Prosecution Report on UNMIK Rule 70 Material Subject to Rule 68, 5 April 2007, para. 3.

files to the Defence.<sup>2542</sup> On 19 April 2007, the Trial Chamber invited UNMIK to assign an informed representative to appear before it.<sup>2543</sup> On 10 May 2007, the Trial Chamber held a hearing with the parties and three UNMIK representatives in which a compromise was reached involving the provision of the three documents to the Defence by UNMIK in a redacted form.<sup>2544</sup> It was further agreed that any future request from the Defence to UNMIK would be forwarded to UNMIK through the Trial Chamber's legal staff, without the Trial Chamber reviewing the request.<sup>2545</sup> The Defence for Balaj withdrew its motion of 12 January 2007 at the end of this hearing.<sup>2546</sup>

19. *Recording of proofing sessions.* Following several incidents in which there appeared to have been a discrepancy between what a witness had stated in court and what the same witness had said during a proofing session with the Prosecution, all three Defence teams requested that the Trial Chamber order the Prosecution to audio-record its proofing sessions.<sup>2547</sup> On 22 March 2007, the Prosecution responded.<sup>2548</sup> On 23 May 2007, the Trial Chamber decided not to exert its authority to order the Prosecution to audio-record its proofing sessions, but instructed the Prosecution in the future to produce a supplementary statement signed by the witness which would set out any new, additional or different evidence gleaned from the witness wherever practicable.<sup>2549</sup>

20. *Contempt case against Shefqet Kabashi.* On 5 June 2007, Shefqet Kabashi appeared before the Trial Chamber as a witness, but after making a solemn declaration, refused to answer questions on the substance of the case.<sup>2550</sup> On the same date, the Trial Chamber issued an Order in Lieu of Indictment, ordering the prosecution of Kabashi for contempt of the Tribunal.<sup>2551</sup> The Trial Chamber decided to prosecute the matter itself and summoned Kabashi to appear before it on 7 June 2007.<sup>2552</sup> Kabashi did not appear on the prescribed date, but rather returned to the United States, his country of residence,

<sup>2542</sup> Ibid., para. 4.

<sup>2543</sup> Decision on Prosecution's 5 April 2007 Request for Chamber Review of Rule 70 UNMIK Files Potentially Subject to Rule 68, 19 April 2007, para. 3.

<sup>2544</sup> T. 3923.

<sup>2545</sup> T. 3907-3911.

<sup>2546</sup> T. 3925.

<sup>2547</sup> Defence Submissions on the Procedure for the Proofing of Prosecution Witnesses, 22 March 2007, paras 2-3.

<sup>2548</sup> Prosecution's Written Submissions Opposing Verbatim Recording of "Proofing" Sessions with Witnesses, 22 March 2007.

<sup>2549</sup> Decision on Defence Request for Audio-recording of Prosecution Witness Proofing Sessions, 23 May 2007.

<sup>2550</sup> T. 5414 et seq.

<sup>2551</sup> Order in Lieu of Indictment on Contempt Concerning Shefqet Kabashi, 5 June 2007.

<sup>2552</sup> Ibid.

without the Trial Chamber's authorization. On 20 November 2007, Kabashi was granted another opportunity to testify in the *Haradinaj et al.* case and appeared before the Trial Chamber via video-conference link, but again failed to answer questions on the substance of the case.<sup>2553</sup> Kabashi was unwilling to travel to the seat of the Tribunal to appear in his contempt case. On 11 December 2007, the Trial Chamber referred the case to the Prosecution to further investigate and prosecute the matter.<sup>2554</sup> The Trial Chamber also directed the Prosecution to investigate Kabashi's conduct from 5 June 2007 onwards, as it had reason to believe that he had committed contempt on 20 November 2007.<sup>2555</sup> The Trial Chamber informed the Prosecution that it could view the Order in Lieu of Indictment as a confirmed indictment and that it could amend or withdraw it as it deemed appropriate.<sup>2556</sup> On 13 December 2007, the Prosecution filed an indictment against Kabashi.<sup>2557</sup> The Prosecution requested that the Trial Chamber (i) confirm the new indictment; (ii) issue a warrant for Kabashi's arrest, detention and transfer to the Tribunal; and (iii) make the indictment public upon confirmation.<sup>2558</sup> On 19 December 2007, the Prosecution filed an addendum in which it explained that it was seeking leave to amend the Order in Lieu of Indictment.<sup>2559</sup> On 18 February 2008, the Trial Chamber granted the Prosecution leave to amend the indictment against Kabashi and ordered the Prosecution to make the indictment public.<sup>2560</sup> At the time of rendering this judgement, Kabashi was not in the custody of the Tribunal.

21. *Contempt case against Avni Krasniqi.* On 17 October 2007, the Prosecution applied for a subpoena to testify for Avni Krasniqi, a witness who had refused to appear before the Tribunal.<sup>2561</sup> On 19 October 2007, the Trial Chamber ordered Avni Krasniqi to appear before the Tribunal as a witness on 29 October 2007.<sup>2562</sup> Krasniqi persisted in his refusal to testify, citing fear for the safety of him and his family.<sup>2563</sup> On 30 October 2007, the Prosecution requested the Trial Chamber to direct the Prosecution to

<sup>2553</sup> T. 10939-10941.

<sup>2554</sup> Decision to Refer the Case to the Prosecution, 11 December 2007, para. 7.

<sup>2555</sup> Ibid., para. 7.

<sup>2556</sup> Ibid., para. 6.

<sup>2557</sup> Prosecution's Submission of an Indictment Against Shefqet Kabashi, 13 December 2007, Annex A.

<sup>2558</sup> Ibid., para. 11.

<sup>2559</sup> Prosecution's Addendum to 13 December 2007 Motion Concerning Indictment of Shefqet Kabashi, 19 December 2007.

<sup>2560</sup> Decision Granting Leave to Amend the Indictment, 18 February 2008.

<sup>2561</sup> Prosecution's 22nd Application for a Subpoena ad Testificandum, 17 October 2007.

<sup>2562</sup> Subpoena ad Testificandum, 19 October 2007.

<sup>2563</sup> Memorandum of Service of Subpoena, 29 October 2007; Order to Prosecution to Investigate with a View to Preparation and Submission of an Indictment for Contempt, 31 October 2007, para. 3.

investigate the witness for possible contempt of the Tribunal.<sup>2564</sup> On 31 October 2007, the Trial Chamber ordered the Prosecution to investigate the witness's refusal to appear to testify with a view to the preparation and submission of an indictment for contempt.<sup>2565</sup> On 2 November 2007, the Prosecution filed an indictment for contempt of the Tribunal against Avni Krasniqi.<sup>2566</sup> The Trial Chamber confirmed the indictment on 5 November 2007 and it was made public on 9 November 2007.<sup>2567</sup> On 12 November 2007, the Prosecution corrected the indictment.<sup>2568</sup> The arrest warrant issued against Avni Krasniqi on 5 November 2007 was executed on 9 November 2007, and Avni Krasniqi was transferred to the seat of the Tribunal on 10 November 2007.<sup>2569</sup> After consulting with his counsel, Avni Krasniqi decided to testify in the *Haradinaj et al.* case, which he did on 14 and 15 November 2007.<sup>2570</sup> On 15 November 2007, the Prosecution applied to withdraw the indictment against him.<sup>2571</sup> At the end of his testimony, Avni Krasniqi was informed that the Prosecution's application was granted and that he would be immediately released once the necessary practical arrangements had been made by the Registry.<sup>2572</sup> He was released shortly thereafter. On 5 December 2007, the Trial Chamber confirmed in writing the withdrawal of the indictment.<sup>2573</sup>

22. *Contempt case against Sadri Selca.* On 31 May 2007, the Prosecution applied for a subpoena to testify for Sadri Selca, a witness who had refused to appear before the Tribunal.<sup>2574</sup> On 1 June 2007, the Trial Chamber issued the requested subpoena.<sup>2575</sup> Selca persisted in his refusal to testify before the Tribunal, and indicated that one of his reasons not to comply with the subpoena was his medical condition.<sup>2576</sup> On 28 June 2007, the Trial Chamber directed Selca to provide a representative of UNMIK with all

<sup>2564</sup> Prosecution's Acceptance of the Trial Chamber's Invitation to Consider Initiating a Contempt Proceeding against Avni Krasniqi, 30 October 2007.

<sup>2565</sup> Order to Prosecution to Investigate with a View to Preparation and Submission of an Indictment for Contempt, 31 October 2007.

<sup>2566</sup> Prosecution's Submission of an Indictment against Avni Krasniqi for Contempt, 5 November 2007.

<sup>2567</sup> Decision on Review of Indictment, 5 November 2007; Lifting of Confidentiality, 9 November 2007.

<sup>2568</sup> Prosecution's Filing of a Corrected Indictment, 12 November 2007.

<sup>2569</sup> Order for Detention on Remand, 13 November 2007.

<sup>2570</sup> Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Avni Krasniqi, 5 December 2007.

<sup>2571</sup> Prosecution's Application to Withdraw an Indictment for Contempt against Avni Krasniqi, 15 November 2007.

<sup>2572</sup> T. 10850.

<sup>2573</sup> Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Avni Krasniqi, 5 December 2007.

<sup>2574</sup> Prosecution's Application for Issuance of Subpoena (Witness SST 7/18), 31 May 2007.

<sup>2575</sup> Subpoena ad Testificandum, 1 June 2007.

<sup>2576</sup> Memorandum of Service filed by the Kosovo Police Service of UNMIK, 15 June 2007.

medical records in support of his claim.<sup>2577</sup> On 1 August 2007, UNMIK filed a report with a statement from Selca and two medical documents attached.<sup>2578</sup> On 23 August 2007, the Trial Chamber invited the Prosecution to consider all circumstances relating to Selca and to advise the Trial Chamber whether the Prosecution should undertake a contempt investigation against him.<sup>2579</sup> On 19 October 2007, the Prosecution requested the Trial Chamber to direct the Prosecution to investigate the witness for possible contempt of the Tribunal.<sup>2580</sup> On 31 October 2007, the Trial Chamber directed the Prosecution to investigate the witness's refusal to appear to testify with a view to the preparation and submission of an indictment for contempt.<sup>2581</sup> On 7 November 2007, the Trial Chamber confirmed the indictment for contempt of the Tribunal against Sadri Selca.<sup>2582</sup> On the same day, the Trial Chamber issued an arrest warrant against Selca.<sup>2583</sup> The indictment was made public on 13 November 2007.<sup>2584</sup> On the same day, the arrest warrant was executed, and the Accused was transferred to The Hague.<sup>2585</sup> After consulting with his counsel, Selca decided to testify in the *Haradinaj et al.* case, which he did on 15 November 2007. On the same day, the Prosecution applied to withdraw the indictment against Selca.<sup>2586</sup> At the end of his testimony on 15 November 2007, Selca was informed that the Trial Chamber had decided to grant the Prosecution's application and ordered his immediate release once the necessary practical arrangements had been made by the Registry.<sup>2587</sup> He was released shortly thereafter. On 5 December 2007, the Trial Chamber confirmed in writing the withdrawal of the indictment.<sup>2588</sup>

23. *Witness 8.* On 5 April 2007, the Trial Chamber suspended the cross-examination of Witness 8, inviting the parties to make submissions on whether his testimony had sufficient probative value to be continued.<sup>2589</sup> The Prosecution submitted that the

<sup>2577</sup> Request for Medical Reports of a Subpoenaed Witness and Request for Judicial Assistance, 28 June 2007.

<sup>2578</sup> UNMIK filing, 1 August 2007.

<sup>2579</sup> Invitation to Prosecution to Consider Initiating Contempt Proceedings against Sadri Selca, 23 August 2007.

<sup>2580</sup> Response to Invitation in Respect of Sadri Selca, 19 October 2007, para. 7.

<sup>2581</sup> Order Pursuant to Rule 77(C)(i) in Relation to Witness 18, 31 October 2007.

<sup>2582</sup> Decision on Review of Indictment, 7 November 2007.

<sup>2583</sup> Warrant of Arrest and Order for Surrender of Sadri Selca, 7 November 2007.

<sup>2584</sup> Order on the Lifting of Confidentiality, 13 November 2007.

<sup>2585</sup> Ibid.

<sup>2586</sup> Prosecution's Application to Withdraw an Indictment for Contempt against Sadri Selca, 15 November 2007.

<sup>2587</sup> T. 10891.

<sup>2588</sup> Decision Granting the Prosecution's Application to Withdraw an Indictment for Contempt against Sadri Selca, 5 December 2007.

<sup>2589</sup> T. 2594-2596.

evidence of Witness 8 was consistent on the critical issues on relevant counts.<sup>2590</sup> The Defence argued that the testimony of Witness 8 was manifestly unreliable and incredible and had to be excluded from the evidence.<sup>2591</sup> The Trial Chamber found that the witness was so lacking in reliability and credibility that it could not rely on his testimony for any findings concerning the facts alleged in the Indictment, and therefore decided not to call Witness 8 back to complete his cross-examination.<sup>2592</sup>

24. *Subpoena and video-conference link for Naser Lika.* On 25 May 2007, the Prosecution applied for a subpoena to testify for Naser Lika, a witness who had refused to appear before the Tribunal.<sup>2593</sup> On 12 June 2007, the Trial Chamber issued the requested subpoena.<sup>2594</sup> Lika persisted in his refusal to testify before the Tribunal.<sup>2595</sup> On 30 August 2007, the Prosecution requested the compelled testimony of Lika via video-conference link.<sup>2596</sup> On 14 September 2007, the Trial Chamber granted the motion as it was satisfied that Lika was unable to travel to The Hague due to his medical condition.<sup>2597</sup> However, on 13 November 2007, the date scheduled for his testimony, Lika again failed to appear.<sup>2598</sup> On 15 November 2007, Lika was arrested by the Canadian authorities following his failure to comply with a Canadian order to appear at the video-conference link location. The Trial Chamber again attempted to hear his testimony via video-conference link on 15 November 2007. However, Lika could not be brought to the video-conference link location in time for a hearing to take place that day.<sup>2599</sup> On 20 November 2007, the Trial Chamber granted a further application by the Prosecution to hear the testimony of Lika via video-conference link on 26 and 27 November 2007.<sup>2600</sup> On 26 November 2007, the Prosecution informed the Trial

<sup>2590</sup> Prosecution's Written Submission Regarding Witness 8 and Motion for Trial Chamber to Call a Witness Pursuant to Rule 98, 23 April 2007, para. 5.

<sup>2591</sup> Confidential Submissions on Behalf of Ramush Haradinaj in Relation to the Testimony of Witness 8, 24 April 2007, paras 5, 21-25, 27, 30; Confidential Submissions on Behalf of Idriz Balaj in Relation to the Testimony of Witness 8, 25 April 2007, paras 16-17; Confidential Submissions on Behalf of Lahi Brahimaj in Relation to the Testimony of Witness 8, 26 April 2007, paras 10, 17-19.

<sup>2592</sup> Decision on Whether to Resume Hearing Testimony of Witness 8 and Call Chamber Witness, 20 June 2007.

<sup>2593</sup> Prosecution's Application for Issuance of Subpoena, 25 May 2007.

<sup>2594</sup> Subpoena ad Testificandum, 12 June 2007.

<sup>2595</sup> Memorandum of Service of 16 June 2007, 20 June 2007; T. 6171, 6390.

<sup>2596</sup> Prosecution's Motion for an Order for Compelled Testimony via Video Link, 30 August 2007.

<sup>2597</sup> Decision on Motion for Videolink (Witness 30), 14 September 2007.

<sup>2598</sup> T. 10621-10624, 10628, 10635.

<sup>2599</sup> T. 10631-10632, 10640-1646, 10762, 10876, 10892-10893.

<sup>2600</sup> Prosecution's Application to Hear Testimony of Witness 30 by Video Link on Wednesday 21 November 2007, 16 November 2007; T. 10954-10956.

Chamber that Lika had been hospitalized and that he was unable to testify.<sup>2601</sup> The Trial Chamber was informed that it would be another seven to ten days before an assessment could be made as to when Lika would be able to testify, well beyond the already extended time allocation for the presentation of the Prosecution case.<sup>2602</sup> Naser Lika never testified.<sup>2603</sup>

25. *Final briefs and closing arguments.* On 30 November 2007, considering that the Prosecution case had closed and having received a notification from all Defence teams that they would neither make submissions pursuant to Rule 98 bis of the Rules, nor call any witnesses, the Trial Chamber issued the scheduling order for final trial briefs and closing arguments.<sup>2604</sup> The order set out the requirements and the deadline for the final trial briefs, which were filed on 14 January 2008.<sup>2605</sup> The closing arguments were held on 21, 22, and 23 January 2008.<sup>2606</sup> On 28 March 2008, the Trial Chamber issued a scheduling order for rendering the judgement on 3 April 2008.<sup>2607</sup>

<sup>2601</sup> T. 10975.

<sup>2602</sup> T. 10975.

<sup>2603</sup> T. 10975.

<sup>2604</sup> Scheduling Order for Final Trial Briefs and Closing Arguments, 30 November 2007.

<sup>2605</sup> Prosecution's Final Brief, 14 January 2008; Final Brief on Behalf of Ramush Haradinaj, 14 January 2008; Final Brief on Behalf of Lahi Brahimaj, 14 January 2008; Idriz Balaj's Final Brief, 14 January 2008.

<sup>2606</sup> T. 11027-11262.

<sup>2607</sup> Scheduling Order for the Pronouncement of Judgement, 28 March 2008.

## B. Table of cases\* with abbreviations

\* ICTY cases, unless otherwise indicated.

<i>Aleksovski</i>	Appeal Judgement: <i>Prosecutor v. Zlatko Aleksovski</i> , Judgement (on appeal), 24 March 2000
<i>Babić</i>	Appeal Sentencing Judgement: <i>Prosecutor v. Milan Babić</i> , Judgement on Sentencing Appeal, 18 July 2005
<i>Blaškić</i>	Appeal Judgement: <i>Prosecutor v. Tihomir Blaškić</i> , Judgement (on appeal), 29 July 2004
<i>Blagojević and Jokić</i>	Trial Judgement: <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Judgement, 17 January 2005 Appeal Judgement: <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Judgement (on appeal), 9 May 2007
<i>Banović</i>	Sentencing Judgement: <i>Prosecutor v. Predrag Banović</i> , Judgement, 28 October 2003
<i>Bralo</i>	Sentencing Judgement: <i>Prosecutor v. Miroslav Bralo</i> , Judgement, 7 December 2005
<i>Brđanin</i>	Trial Judgement: <i>Prosecutor v. Radoslav Brđanin</i> , Judgement, 1 September 2004 Appeal Judgement: <i>Prosecutor v. Radoslav Brđanin</i> , Judgement (on appeal), 3 April 2007
<i>Čelebići</i>	Trial Judgement: <i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo</i> , Judgement, 16 November 1998 Appeal Judgement: <i>Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo</i> , Judgement (on appeal), 20 February 2001
<i>Češić</i>	Sentencing Judgement: <i>Prosecutor v. Ranko Češić</i> , Judgement, 11 March 2004
<i>Deronjić</i>	Sentencing Judgement: <i>Prosecutor v. Miroslav Deronjić</i> , Judgement, 30 March 2004 Appeal Sentencing Judgement: <i>Prosecutor v. Miroslav Deronjić</i> , Judgement (on appeal), 20 July 2005
<i>Erdemović</i>	Sentencing Judgement: <i>Prosecutor v. Dražen Erdemović</i> , Judgement, 29 November 1996
<i>Furundžija</i>	Trial Judgement: <i>Prosecutor v. Anto Furundžija</i> , Judgement, 10 December 1998 Appeal Judgement: <i>Prosecutor v. Anto Furundžija</i> , Judgement (on appeal), 21 July 2000
<i>Galić</i>	Appeal Judgement: <i>Prosecutor v. Stanislav Galić</i> , Judgement (on appeal), 30 November 2006
<i>Hadžihasanović and Kubura</i>	Trial Judgement: <i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Judgement, 15 March 2006
<i>Halilović</i>	Trial Judgement: <i>Prosecutor v. Sefer Halilović</i> , Judgement, 16 November 2005

<i>Jelisić</i>	Trial Judgement: <i>Prosecutor v. Goran Jelisić</i> , Judgement, 14 December 1999  Appeal Judgement: <i>Prosecutor v. Goran Jelisić</i> , Judgement, 5 July 2001
<i>Jokić</i>	Trial Sentencing Judgement: <i>Prosecutor v. Miodrag Jokić</i> , Sentencing Judgement, 18 March 2004  Appeal Sentencing Judgement: <i>Prosecutor v. Miodrag Jokić</i> , Judgement on Sentencing Appeal, 30 August 2005
<i>Kamuhanda</i>	Appeal Judgement: <i>Prosecutor v. Jean de Dieu Kamuhanda</i> , Judgement, 19 September 2005 (ICTR)
<i>Kayishema and Ruzindana</i>	Appeal Judgement: <i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Judgement, 1 June 2001 (ICTR)
<i>Kordić and Čerkez</i>	Appeal Judgement: <i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Judgement (on appeal), 17 December 2004
<i>Krajišnik</i>	Trial Judgement: <i>Prosecutor v. Momčilo Krajišnik</i> , Judgement, 27 September 2006
<i>Krnojelac</i>	Trial Judgement: <i>Prosecutor v. Milorad Krnojelac</i> , Judgement, 15 March 2002  Appeal Judgement: <i>Prosecutor v. Milorad Krnojelac</i> , Judgement (on appeal), 17 September 2003
<i>Krstić</i>	Appeal Judgement: <i>Prosecutor v. Radislav Krstić</i> , Judgement (on appeal), 19 April 2004
<i>Kunarac et al.</i>	Appeal Judgement: <i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač, Zoran Vuković</i> , Judgement (on appeal), 12 June 2002
<i>Kupreškić et al.</i>	Appeal Judgement: <i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, and Vladimir Šantić</i> , Judgement (on appeal), 23 October 2001
<i>Kvočka et al.</i>	Trial Judgement: <i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlađo Radić, Zoran Žigić, and Dragoljub Prcać</i> , Judgement, 2 November 2001  Appeal Judgement: <i>Prosecutor v. Miroslav Kvočka, Mlađo Radić, Zoran Žigić, and Dragoljub Prcać</i> , Judgement (on appeal), 28 February 2005
<i>Limaj et al.</i>	Trial Judgement: <i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Judgement, 30 November 2005  Appeal Judgement: <i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Judgement, 27 September 2007
<i>Slobodan Milošević</i>	Rule 98 bis Decision: <i>Prosecutor v. Slobodan Milošević</i> , Decision on Motion for Judgement of Acquittal, 16 June 2004
<i>Martić</i>	Trial Judgement: <i>Prosecutor v. Milan Martić</i> , Judgement, 12 June 2007
<i>Mrđa</i>	Sentencing Judgement: <i>Prosecutor v. Darko Mrđa</i> , Judgement, 31 March 2004
<i>Mrkšić et al.</i>	Trial Judgement: <i>Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin</i> , Judgement, 27 September 2007

<i>Naletilić and Martinović</i>	Appeal Judgement: <i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Judgement, 3 May 2006
<i>Dragan Nikolić</i>	Appeal Sentencing Judgement: <i>Prosecutor v. Dragan Nikolić</i> , Judgement, 4 February 2005
<i>Momir Nikolić</i>	Sentencing Judgement: <i>Prosecutor v. Momir Nikolić</i> , Judgement, 2 December 2003
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<i>Orić</i>	Trial Judgement: <i>Prosecutor v. Naser Orić</i> , Judgement, 30 June 2006
<i>Simić et al.</i>	Appeal Judgement: <i>Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić</i> , Judgement (on appeal), 28 November 2006
<i>Stakić</i>	Trial Judgement: <i>Prosecutor v. Milomir Stakić</i> , Judgement, 31 July 2003
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